

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, APRIL 26, 2007, AT 9:00 A.M., NOTICE HAVING**
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH APRIL 5, 2007**
6 **AND APRIL 12, 2007.**

7
Members Present: James W. Nunnally, Chairman
Richard Kirkland CBZA, Vice-Chairman
Elizabeth G. Dwyer
Helen E. Harris
R. A. Wright

Also Present: David D. O'Kelly, Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul Gidley, County Planner
Ann B. Cleary, Recording Secretary

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10
11 Mr. Nunnally - Good morning, ladies and gentlemen. We welcome
12 you to our April 26, 2007 meeting of the Board of Zoning Appeals of Henrico
13 County. If you'll please stand and join us in the **Pledge of Allegiance to the**
14 **Flag of Our Country**. Thank you. Mr. Blankinship, will you read the rules for the
15 meeting, please?

16
17 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
18 ladies and gentleman. The rules for this meeting are as follows. As Secretary, I
19 will announce each case and while I'm speaking, the applicant should come
20 down to the podium. We will then ask everyone who intends to speak on that
21 case to stand and be sworn in. The applicant will be given an opportunity to
22 speak and then anyone else who wishes to speak will be given the opportunity.
23 After everyone has spoken, the applicant and only the applicant will have an
24 opportunity for rebuttal. After hearing all of the evidence and asking questions,
25 the Board will take the matter under advisement and they will render all of their
26 decisions at the end of the meeting. If you wish to know their decision on a
27 specific case, you can either stay until the end of the meeting or you can check
28 the Planning Department website this afternoon or you can call the Planning
29 Department this afternoon. This meeting is being tape recorded, so we'll ask
30 everyone who speaks to speak directly into the microphone on the podium. State
31 your name and please spell your last name for us. Finally, out in the foyer, there
32 are two binders that contain the staff report for each case, including the
33 suggested conditions. It's important that you be familiar with the conditions that
34 have been recommended by the staff. If you did not receive your staff report in
35 the mail for some reason, or if you're another interested party on the case and
36 you want to see the report, please take a minute to read that.

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

Mr. Nunnally - Thank you, sir. Will you please call the first case?

A-007-07 **FERNANDO E. TEMPLE, SR.** requests a variance from Section 24-9 to build a one-family dwelling at 8258 Buffin Road (Parcel 817-685-6624), zoned A-1, Agricultural District (**Varina**). The public street frontage requirement is not met. The applicant has 0 feet public street frontage where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.

Mr. Nunnally - Anyone else here interested in this case? If so, please stand and be sworn in.

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

Mr. Temple - I do.

Mr. Nunnally - Please state your name for the record, sir, and tell us what you're requesting.

Mr. Temple - My name is Fernando E. Temple, Sr. of 8258 Buffin Road. We're requesting a variance for a 50-foot road frontage to build a home on the rear of my property. If we look at the site map, you'll see 8258 as having a narrow leg. The property is shaped like an "L." My present home is built on the narrowest part of the property and I don't have access with road frontage to get to the rear of the property, which is really the better portion of the property. We had applied for and received a variance in 1990 to do the same project, but this variance expired one year after that. If you look at the property next to it, 8246, which is my neighbor's property, and 8240, another neighbor's property, we have deeded right-of-way from 8240 to use their driveway. We have a joint road maintenance agreement for that driveway, and then an easement across 8246 that puts us on the property at 8258.

Mr. Nunnally - Did you apply for this variance in 1990, sir?

Mr. Temple - I did, yes.

Mr. Nunnally - Can you tell me why it wasn't acted upon?

Mr. Temple - Everything didn't fall in place and we only had a year to work it out. It just didn't happen at the time.

83 Mr. Nunnally - The house that you're going to build now, is it going to
84 be for you or are you going to sell it to someone else?
85
86 Mr. Temple - My wife and I are going to live in it.
87
88 Mr. Nunnally - Where do you live now?
89
90 Mr. Temple - I live in the house at 8258 in the front.
91
92 Ms. Dwyer - At this point, it's one parcel, is that correct?
93
94 Mr. Temple - This is all one parcel of 4.3 acres. The intention is to
95 divide it at the line at the back of 8258, leaving 1.6 acres or something with the
96 original house now, and then building on a parcel of 2.8 acres that'll be behind
97 that.
98
99 Ms. Dwyer - So, there's a house on this one parcel at this time,
100 which you've had the benefit and enjoyment of.
101
102 Mr. Temple - That we live in now, yes. That we live in now.
103
104 Ms. Harris - Are there any other homes in the neighborhood built
105 behind the site such as yours?
106
107 Mr. Temple - Yes there are. If we look at—I believe the aerial view
108 may show a little better. If you look at the aerial photo, you'll see at 8240, if you
109 go to the back of that property, you'll see a home there. Then at 8296, there's a
110 home there and my home will be between that. Are we on the same page?
111
112 Ms. Harris - I don't see 8296.
113
114 Mr. Temple - Go down a little further down Buffin Road. You'll see a
115 narrow driveway there that's 8296. Did you get it?
116
117 Mr. Blankinship - That's it right there.
118
119 Mr. Temple - Okay, right. So, we have two homes already built
120 back on like parcels. You can really see the width of my property at 8258, how
121 narrow it is there. That doesn't give me access to the better portion of the
122 property behind me that we wish to build upon.
123
124 Ms. Dwyer - You're going to have to cross two other parcels to get
125 to this.
126
127 Mr. Temple - Yes. We already have deeded easements and
128 access to put us there that we put in place as requested in 1990 when the

129 variance was approved then. I've also spoken with the property owners to
130 address whatever concerns they may have, and they didn't have any so they're
131 still in place. We have those deeds of right-of-way with us, if you'd like to see
132 them.

133

134 Mr. Kirkland - Mr. Temple?

135

136 Mr. Temple - Yes sir.

137

138 Mr. Kirkland - On 8240, which adjoins this property, did you say
139 there are two structures, two homes on that property already?

140

141 Mr. Temple - No. There's one home on 8240 and then if you go
142 down in 8296, you'll see one at the back of that property. The question was
143 whether or not there were other properties in the area where I had planned to
144 build. That's the way I understood it rather.

145

146 Mr. Kirkland - How does that residence have access to a public
147 road?

148

149 Mr. Temple - Which one are we referring to now?

150

151 Mr. Kirkland - The one that you said is to the rear there.

152

153 Mr. Temple - At 8240?

154

155 Mr. Kirkland - Yes.

156

157 Mr. Temple - All right. If you're looking at the aerial view, you'll see
158 a dotted line. That's his driveway as it exists now. What we have is a joint road
159 maintenance agreement and easement with him to use his driveway down to the
160 dotted line and to cross over 8246. That puts me on 8258.

161

162 Mr. Kirkland - So, he built his house way back from the road.

163

164 Mr. Temple - Yes. Originally, yes.

165

166 Mr. Kirkland - What have you used this lot for in the past, the one
167 that you want to construct this house on? What have you used it for?

168

169 Mr. Temple - I've simply cut wood off it for the fireplace. I haven't
170 had any use for it. I haven't used it other than to cut wood from the property
171 because we weren't able to build at the time. When my wife and I decided to
172 build on this property, we got the previous variance approved. That was in 1990.

173

174 Mr. Kirkland - It's wooded, completely wooded right now?

175
176 Mr. Temple - Yes, pretty much so. Mostly wooded now, yes.
177
178 Ms. Dwyer - This is not actually a separate lot at this time.
179
180 Mr. Temple - No, that's right.
181
182 Ms. Dwyer - Okay. Just one parcel that's what we used to call a
183 flag lot.
184
185 Mr. Temple - Total acreage is 4.3 acres and we plan to cut the first
186 part off where you see the dotted line and make that 1.6 acres, then build on the
187 2.6-acre lot behind that.
188
189 Ms. Harris - Mr. Temple, if we deny this variance, do you consider
190 this unreasonable restriction of a use of your property?
191
192 Mr. Temple - Yes ma'am, I would. Right now, as you can see, the
193 narrowest portion of the property is where the home is built. It's really hard for
194 me to even get back behind there. I have limited use of the property because of
195 it being so narrow and the home being built there. When I bought this home, it
196 was already built there. I didn't have it built there. The only way I can use the
197 property behind us is if you would approved the variance.
198
199 Mr. Kirkland - When did you purchase this property?
200
201 Mr. Temple - It was in '79, I believe.
202
203 Mr. Kirkland - You have lived there ever since?
204
205 Mr. Temple - Yes.
206
207 Ms. Dwyer - The staff report states that there's been a promise, I
208 guess, that this will be a nice house or will improve the value of—
209
210 Mr. Temple - Oh, yes. We plan to build a nice home. My wife may
211 call it her dream home. We plan to build a home there. We'll certainly maintain
212 the value of the rest of the property in the area. There's also a subdivision
213 coming in behind us back on Meadowline Court. The home will be of equal or
214 greater value.
215
216 Ms. Dwyer - I think the staff report also said there had been no
217 specifics about what house you would build, how big it would be, what the
218 materials would be, anything like that.
219

220 Mr. Temple - I have my colleague in this project with me, Mr. Joel
221 Gomes. He represents the builder. If you have any questions about the house,
222 he'll be able to answer those questions. When it's finished, the house will be
223 4,000 square feet.

224
225 Ms. Dwyer - Four thousand.

226
227 Mr. Kirkland - What are you going to do with the front house, Mr.
228 Temple?

229
230 Mr. Temple - We're sort of tossing it up right now. I have four
231 children and twelve grandchildren and everyone wants to move in the house, but
232 we haven't really decided whether we're going to hand it down to the family or
233 whether we're going to sell it.

234
235 Mr. Kirkland - Thank you.

236
237 Mr. Nunnally - Any other questions? I ask again, is anyone in
238 opposition to this request? Hear none, that completes the case. We will let you
239 know later. Thank you for coming.

240
241 Mr. Temple - All right. Thank you.

242
243 **DECISION**

244
245 Ms. Harris - I move we approve this. If we deny the variance, he
246 will have unreasonable restrictions on the use of his property.

247
248 Ms. Dwyer - Can we have some discussion?

249
250 Mr. Nunnally - We have a motion from Ms. Harris that we approve it.
251 Do we have a second?

252
253 Mr. Kirkland - I'll seconded it for discussion.

254
255 Mr. Nunnally - Motion by Mr. Kirkland for discussion.

256
257 Ms. Dwyer - As painful as it is, I think that we don't have any
258 choice under the law but to deny this case. In my view, this is a flag lot. The total
259 4.31 acres is a lot that he has reasonable use of because there is an existing
260 house on it. The question is not whether he has reasonable use of that property,
261 the question is can he divide it and create a lot that does not meet the standards.
262 I think not, because the division would create a lot that doesn't meet the
263 standards. If you look at the property as a whole, he has reasonable use of it.
264 We have to look at it as a whole because, for one thing, it hasn't even been

265 divided at this point. It is a single lot. I think under Cochran and Cherrystone, he
266 has reasonable use and we don't have jurisdiction.

267

268 Mr. Wright - That's the question in my mind. I'm reading the
269 conclusion of the Cherrystone decision. "Because lots from which the variances
270 were sought did not exist of record on the effective date of the act." So here
271 that's clear. No question about that. "And," is the second thing, "the effect of the
272 zoning ordinance did not interfere with all reasonable benefits or uses of the
273 property taken as a whole." It's a question of whether we think that the zoning
274 ordinance interferes with the reasonable beneficial uses of the property taken as
275 a whole. How much property are you going to have? There's a house sitting
276 there and there's all this acreage. Does that interfere with the reasonable
277 beneficial uses? What are you going to use it for?

278

279 Ms. Dwyer - He's using it as a dwelling on a 4-acre lot.

280

281 Mr. Wright - Yeah, but you have all this land. You don't need that
282 much land for a dwelling.

283

284 Ms. Dwyer - The law doesn't say that we get to decide or that the
285 homeowner gets to decide that I want to use it for some other things. The point
286 is, is that we have to look at the lot as a whole. And this is an easy case
287 because, in fact, it is a whole lot. It hasn't even been divided at this point in any
288 way. So, he has a whole lot that's 4.3 acres. He has reasonable use of it
289 because there is a house on it. Just as in Cherrystone, they could have had lots
290 of lots on a riverfront property, but the Court said there is one house on the
291 property taken as a whole and that is reasonable use of that lot, even though
292 potentially it could be divided up into lots of smaller lots. I think Cherrystone
293 makes it clear and Cochran makes it clear that we don't jurisdiction in this case.

294

295 Mr. Wright - I don't know that I agree with you entirely because
296 Cherrystone in particular said with the remaining land used as a "valuable
297 waterfront amenity appurtenant to that structure." What's valuable about some
298 acreage sitting at—What is that? That was a different situation entirely.

299

300 Ms. Dwyer - I don't think the Court was saying you have to have
301 waterfront property for Cherrystone to be applicable. I think what they're saying
302 is that yes, you could have, I think it was six lots waterfront, but you're ending up
303 with one house on this six or what could be six lots. The rest of it you're just
304 going to have to treat as an amenity to the house, just as here. Rather than living
305 on a little quarter-acre lot in a small subdivision and being crowded by lots of
306 people, this is a large lot where he has lots of space between him and people
307 around him. The woods, the acreage is an amenity to the house.

308

309 Mr. Wright - So, you can sit under the trees and listen to the birds
310 sing.

311
312 Ms. Dwyer - Well, I'm not on the Supreme Court; I didn't make that
313 decision. I'm just saying it seems clear that this is one lot that we have to
314 consider as one lot. It has a reasonable use and under Cherrystone, extra
315 acreage is an amenity to the house.
316
317 Mr. Wright - What you're saying is that we will have no authority to
318 approve basically any zero front road frontage requirements because every one
319 of them will have the same thing applying.
320
321 Ms. Dwyer - I'm not happy to have that opinion, but that seems to
322 me to be the only choice that we have. The only way around that would be for
323 the Board to make a decision that something else is permissible under the zoning
324 ordinance.
325
326 Mr. Wright - Like building a house on it.
327
328 Ms. Dwyer - The Board has to change the requirements for—
329
330 Mr. Wright - I think we have some discretion. We don't insofar as
331 the first point. In other words, this lot was there at the time of the ordinance. That
332 we have no discretion with.
333
334 Ms. Dwyer - Right.
335
336 Mr. Wright - It's a question of whether or not we think that the
337 zoning ordinance interferes with what we consider a reasonable beneficial use of
338 the property taken as a whole.
339
340 Ms. Dwyer - Right. That's exactly what Cherrystone and
341 Cochran—
342
343 Mr. Wright - Yeah, but you have to read that decision based on the
344 facts of that case.
345
346 Ms. Dwyer - I am.
347
348 Mr. Wright - I'm reading it and evidently, I'm not reading it the
349 same way you are.
350
351 Ms. Harris - If we had a parcel that had 400 acres of land and they
352 decide to do something different with that, we're still saying that we have no
353 jurisdiction?
354
355 Mr. Wright - Exactly. It's the same thing.
356

357 Ms. Harris - This makes no sense to me.
358
359 Mr. Wright - You have a house sitting there and you go out and
360 you drive around to enjoy the view of your property.
361
362 Ms. Dwyer - No. What we're saying is, if you have a 400-acre
363 parcel and you want to start dividing it up, you have to put a public road in there,
364 for example, because that's what the Board of Supervisors has said you have to
365 have in order to get access to a piece of property. It's not that you can't develop
366 the 400 acres or you can't put a house on it, but you have to meet the zoning
367 requirements. You can't create your own hardship by saying, "I'm going to put a
368 lot here and I get to build a house on it because without a variance I can't build a
369 house."
370
371 Ms. Harris - In 1990, the variance was granted.
372
373 Ms. Dwyer - That was prior.
374
375 Ms. Harris - That would imply [unintelligible] those requirements
376 were not satisfied by 1991, that maybe hardship—I think it alludes that hardship
377 was involved, financial hardship. Maybe we should just take a vote.
378
379 Mr. Nunnally - All in favor say aye. All opposed say no. It's been
380 approved 4 to 1.
381
382 After an advertised public hearing and on a motion by Ms. Harris, seconded by
383 Mr. Kirkland, the Board **granted** application **A-007-07** for a variance to build a
384 one-family dwelling at 8258 Buffin Road (Parcel 817-685-6624). The Board
385 granted the variance subject to the following conditions:
386
387 1. This variance applies only to the public street frontage requirement for one
388 dwelling only. All other applicable regulations of the County Code shall remain in
389 force.
390
391 2. Approval of this request does not imply that a building permit will be issued.
392 Building permit approval is contingent on Health Department requirements,
393 including, but not limited to, soil evaluation for a septic drainfield and reserve
394 area, and approval of a well location.
395
396 3. At the time of building permit application, the applicant shall submit the
397 necessary information to the Department of Public Works to ensure compliance
398 with the requirements of the Chesapeake Bay Preservation Act and the code
399 requirements for water quality standards.
400
401 4. The applicant shall present proof with the building permit application that a
402 legal access to the property has been obtained.

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5. 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:	Harris, Kirkland, Nunnally, Wright	4
Negative:	Dwyer	1
Absent:		0

Mr. Nunnally - Next case, Mr. Blankinship.

A-008-07 **HAMLIN HOMES, INC.** requests a variance from Section 24-94 to build a one-family dwelling at 6205 Glendale Woods Drive (Glendale Woods) (Parcel 852-687-5545), zoned A-1, Agricultural District (**Varina**). The lot width requirement is not met. The applicant has 145 feet lot width, where the Code requires 150 feet lot width. The applicant requests a variance of 5 feet lot width.

Mr. Nunnally - Is there anyone else here interested in this case? If so, will you please stand. All right, sir.

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

Mr. Brawn - I do.

Mr. Nunnally - Please state your name for the record, sir, and tell us what you're requesting.

Mr. Brawn - My name is Alan Brawn. I represent Hamlin Homes. We're requesting a five-foot variance for Lot 32-A-1, Glendale Woods.

Ms. Dwyer - On what basis are you requesting the variance?

Mr. Brawn - It doesn't meet the lot width requirement, 50 feet back for an A-1 lot.

Ms. Dwyer - That's how the lot's deficient. What grounds?

Mr. Brawn - The subdivision was recorded back on June 29, 1985. It had gone through multiple review processes. It was approved, it was recorded. Back in late January, we were notified that 10 lots did not meet their lot

449 requirements. It had gone through Planning review and the engineering
450 company that we had hired. With the help of the Planning Department, we were
451 able to modify 10 of the lots by shifting lot lines and doing a corrected plat.
452 Unfortunately, we found out later that there was still one more that did not meet
453 the requirement. Unfortunately, the lot to the left was exactly one acre, so that
454 was the minimum requirement. The lot to the right was already sold, so we
455 couldn't go back to them. We met with the Planning Department and here we
456 are.

457

458 Mr. Nunnally - Mr. Blankinship, do you consider this a County error?

459

460 Mr. Blankinship - There was an error made on the part of the staff who
461 reviewed this subdivision. It should have been caught at that time. The lot width
462 was measured incorrectly. As we stated in the staff report, that responsibility
463 ultimately falls back on the owner and his engineer, but I do accept that the
464 County made a mistake as well. As Mr. Brawn said, there were 10 of these in
465 this one subdivision. They filed a corrected plat that fixed nine of them, adjusting
466 lines here and there, and doing different things to bring them into compliance
467 wherever possible. This is the only one that we just could not find a solution for.

468

469 Ms. Dwyer - Were the 10 errors all on cul-de-sac lots?

470

471 Mr. Brawn - No ma'am. They're kind of sporadic. I can name the
472 lot numbers, if you—

473

474 Ms. Dwyer - No, that's not—I'm just curious as to why there were
475 so many that were improperly—

476

477 Mr. Brawn - Again, you learn a lot when you go through the
478 process. If every lot was a perfect rectangle, it would be easy, but the way they
479 were all shaped and the way the book describes minimum lot width 50 feet back,
480 the perpendicular line 50 feet back, after doing the dots and all that. Mr.
481 Blankinship can explain that. We were able to get them corrected. It was just a
482 miscommunication from the engineering company who is a reputable company
483 that works and thrives in the Varina District. I'm thankful we were able to get
484 those all corrected. Unfortunately, this is the only one we couldn't get correct.

485

486 Ms. Harris - Did the drainfields and wells have any affect on
487 determining your lot size? I notice for this particular lot, it seems to have an
488 issue with drainfields.

489

490 Mr. Brawn - You have your primary reserve up front.

491

492 Ms. Harris - Yes.

493

494 Mr. Brawn - And, of course, the minimum lot width. Because it is
495 a cul-de-sac lot, the criteria are different. The way it's written, A-1 lots are
496 measured differently than let's say R-3 or R-4 lots. The drain field, the house is
497 pushed back 74 feet from the cul-de-sac and, of course, we have to work with the
498 quality ground first and then work around that with the primary reserve fields.
499

500 Ms. Harris - So that had no affect on your lot size?

501
502 Mr. Brawn - No ma'am. Again, in the beginning 2-1/2 years ago, if
503 we had known about it, we could have adjusted lot 33 and it wouldn't have been
504 an issue.
505

506 Ms. Dwyer - I'm looking at this slide, Mr. Blankinship. Can you
507 show me where the lot width is measured?
508

509 Mr. Blankinship - The definition is that it's measured perpendicular to a
510 line that is—I can't remember the term right now. You take the center line of the
511 lot and then draw a line perpendicular to that. So, here you'll see a long dotted
512 line, a very faint line, more or less top to bottom of the slide. Then you see a
513 curve 50 feet back from the street. That's the setback line. Where those two
514 intersect, you draw a line perpendicular to that center line and that's where you
515 measure the width. This shows it correct. The 145.26 is measured correctly. On
516 a cul-de-sac lot as defined in the Code, the lot has to meet the lot width
517 requirement at the actual building setback line. So here, they set the house back
518 a little farther and if you measure at that point rather than at the setback, it meets
519 the 150-foot requirement. But under the definition in the Code, this is not a cul-
520 de-sac lot. Even though it's a lot on a cul-de-sac, it doesn't meet that technical
521 definition. That was the error in this case. This was treated as a cul-de-sac lot
522 when it does not quite meet the definition of a cul-de-sac lot.
523

524 Ms. Dwyer - Thank you.
525

526 Mr. Nunnally - Any other questions from the Board or staff? I'll ask
527 again, is anyone in opposition to this case? Hear none, that completes the case.
528 Thank you, sir.
529

530 Mr. Brawn - Thank you.
531

532 Mr. Nunnally - Do we have a motion?
533

534 **DECISION**
535

536 Mr. Kirkland - I make a motion we approve it.
537

538 Mr. Nunnally - Motion by Mr. Kirkland it be approved. Do we have a
539 second?

540
541 Mr. Wright - Second.
542
543 Mr. Nunnally - Second by Mr. Wright. All in favor say aye.
544
545 Mr. Kirkland - Are we going to have some discussion first?
546
547 Mr. Nunnally - Oh, discussion, I'm sorry.
548
549 Mr. Kirkland - The reason I made the motion is that part of this is
550 due to error on the County's part. The gentleman has gone back in good faith
551 and it looks like he's corrected 10 lots and, unfortunately, he was squeezed on
552 this because the other lot had sold before he could correct this. I think this is
553 good-faith effort on his part. He definitely got led astray down the line, so that's
554 why I made the motion.
555
556 Mr. Nunnally - Any other discussion? Well, let's take a vote on it.
557 All in favor say aye. All opposed say no. The motion is approved.
558
559 After an advertised public hearing and on a motion by Mr Kirkland, seconded by
560 Mr. Wright, the Board **granted** application **A-008-07** for a variance to build a one-
561 family dwelling at 6205 Glendale Woods Drive (Parcel 852-687-5545). The
562 Board granted the variance subject to the following condition:
563
564 1. This variance applies only to the minimum lot width requirement for one
565 dwelling only. All other applicable regulations of the County Code shall remain in
566 force.
567
568
569 Affirmative: Wright, Harris, Kirkland, Dwyer, Nunnally 5
570 Negative: 0
571 Absent: 0
572
573
574 Mr. Nunnally - Next case, Mr. Blankinship.
575
576 **A-009-07** **JOSEPH SATTELMAIER** requests a variance from
577 Section 24-94 to build a one-family dwelling at 957 Yates Court (Parcel 815-724-
578 1107), zoned R-2A, One-Family Residence District (**Varina**). The total lot area
579 requirement is not met. The applicant has 11,325 square feet lot area where the
580 Code requires 13,500 square feet lot area. The applicant requests a variance of
581 2,175 square feet lot area.
582
583 Mr. Nunnally - Is there anyone else here interested in this case?
584

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

588
589 Mr. Sattelmaier - Yes.

590
591 Mr. Nunnally - Please state your name for the record, sir, and tell us
592 what you're requesting.

593
594 Mr. Sattelmaier - Yes. My name is John Sattelmaier and this is my
595 son, Joseph.

596
597 Mr. Nunnally - All right, sir, tell us what you're requesting.

598
599 Mr. Sattelmaier - What we're requesting is the opportunity to build on
600 this second lot. We had originally bought the property. It was a house on the
601 corner of Oakleys Lane and Yates Lane. The house was in pretty bad shape
602 when we bought it and we restored it with the intention of renting it for a while,
603 which we did. With the size of the lot that we had, we looked at the possibility of
604 putting another house on the property. We hired a real estate attorney, Mr. Brian
605 Stevens, and asked him what could be done. I had gone to the County one time
606 to pay for a water and sewer connection for the existing house and we spoke to
607 someone there and asked if the lot could meet the requirements for connecting to
608 the water and sewer. We told the gentleman what we wanted to do is put
609 another house on the property. He had told me that he thought it could be done,
610 but we would have to go through the proper channels. We then hired Mr.
611 Stevens to do everything for us. He, in turn, hired the surveyor to come out and
612 survey the lot. We then sold the existing property, the house and the lot that it sat
613 on. A few months later, we decided to start building a house. I was trying to work
614 a deal with Rodney Williams. He had gone to the County, I guess, to check and
615 make sure that everything was proper. When he came back to us, he said,
616 "Well, you realize that the zoning is not right on the lot." That's when we found
617 out about this R-3 zoning, that the surveyor had cut the property to meet those
618 requirements. At that point, I called the County. Rodney had told me to call and
619 speak to a Mr. Blankinship. I don't know if it's the same Mr. Blankinship here. I
620 came up there and met with you. The surveyor had said he had spoken to or
621 gone to somebody, and I have a copy of the letter. I guess you all have a copy.
622 He said he was given the wrong information. Speaking of that, there is also a
623 letter from someone at the County saying that I had had several discussions, and
624 this is not correct. I was only up there one time and the issue at that time was
625 whether we had sewer and water connections. Nothing ever came up about
626 rezoning or anything of that nature. Anyway, to make a long story short, Mr.
627 Jolliffe was the surveyor that was hired by our attorney to do this work and
628 somewhere along the line, a mistake was made and we're sitting with a lot that
629 we don't know what to do with.

630

631 Mr. Blankinship - So, you came up and met with Mr. Sendra and he
632 said that if it had water and sewer, it could be developed if you went through, you
633 said the proper channels.
634
635 Mr. Sattelmaier - Correct.
636
637 Mr. Blankinship - He says that he said rezoning. Those could both be
638 true, but he said rezoning.
639
640 Mr. Sattelmaier - I cannot remember. That's when we hired Mr.
641 Stevens.
642
643 Mr. Blankinship - And he said you needed rezoning.
644
645 Mr. Sattelmaier - He said—
646
647 Mr. Blankinship - You said Rodney Williams.
648
649 Mr. Sattelmaier - Rodney Williams told us. He said either get a
650 variance, or apply for a variance or for rezoning. That's when I went to see you.
651
652 Mr. Blankinship - I said you should really apply for rezoning, because a
653 variance is really not the appropriate remedy.
654
655 Mr. Sattelmaier - Then when I went to pick up my forms and I was
656 explaining it to the lady there, she suggested that I go the variance way, that it
657 was quicker. She said it was less expensive.
658
659 Mr. Blankinship - Okay.
660
661 Mr. Sattelmaier - We were there the day before the deadline for today's
662 meeting.
663
664 Ms. Dwyer - A County person suggested that you go the variance
665 route rather than—
666
667 Mr. Sattelmaier - Yes. She gave me both forms.
668
669 Mr. Blankinship - I bet I know who that was. We have some training to
670 do. As you'll see in the staff report, our position is that this is a case for a
671 rezoning and that a variance is not the appropriate relief. I'm glad to hear that
672 you have been told that consistently.
673
674 Mr. Sattelmaier - Well, the thing about it is, we didn't intentionally try to
675 do anything improper. We hired, we thought, the professionals and now we're in
676 a little bit of a mess. I guess the only thing I want to say concerning this lot—

677 There's an aerial view. There's another view with like photos on it. If you could
678 focus that back a little further. The lot is not any smaller than most of the lots in
679 that subdivision. We weren't trying to create something that did not go with
680 everything else that's in there.

681

682 Mr. Blankinship - It's not much smaller.

683

684 Mr. Sattelmaier - Right.

685

686 Mr. Blankinship - It is smaller.

687

688 Mr. Sattelmaier - It's actually a little larger than some of the ones right
689 across the street.

690

691 Ms. Dwyer - It's over 2,000 square feet too small.

692

693 Mr. Blankinship - It looks like you bent the property line in order to get
694 around an accessory building there.

695

696 Mr. Sattelmaier - There's a shed there.

697

698 Mr. Blankinship - Had you drawn that line straight, you'd have been
699 okay.

700

701 Mr. Sattelmaier - That's the thing. I met with the surveyor that morning
702 when he was there and he asked me, did I want to take the shed with the new lot
703 or leave it with the existing house. He said because if I left it with the existing
704 house, we still had plenty of square footage.

705

706 Mr. Blankinship - If you'd drawn the line straight, you would have.

707

708 Mr. Sattelmaier - Right. The problem now is we've sold the house and
709 we don't know what to do.

710

711 Mr. Blankinship - I understand.

712

713 Ms. Dwyer - When did you draw this line and make two lots out of
714 one? I want to know when you did that in relation to these conversations that
715 you had with Mr. Blankinship.

716

717 Mr. Sattelmaier - We did that before, not knowing that there was going
718 to be a problem.

719

720 Mr. Blankinship - After meeting with Mr. Sendra, but before meeting
721 with me.

722

723 Mr. Sattelmaier - Correct.
724
725 Ms. Dwyer - Your understanding at that time was that the lots were
726 big enough to divide.
727
728 Mr. Sattelmaier - Yes.
729
730 Ms. Dwyer - Who gave you that understanding?
731
732 Mr. Sattelmaier - I have a copy of the letter here. I can read it to you, if
733 you like.
734
735 Mr. Blankinship - It's in the package.
736
737 Mr. Sattelmaier - Oh, okay. They were hired by our attorney as a
738 reputable—They do a lot of work with the County. We didn't want to do anything
739 on our own because we wanted to make sure everything went the right way and
740 that we would end up with a buildable lot.
741
742 Ms. Dwyer - The way I look at it, there's no way that this lot could
743 have been divided into two lots and still had enough square footage, because
744 13,500 square feet is the requirement and the total lot had 26,570 square feet.
745
746 Mr. Blankinship - Oh, okay. Well, yes, 13,500 square feet. Yes, you're
747 right, they'd still come up just a hair short, wouldn't they.
748
749 Mr. Wright - Mr. Blankinship, what is 961 zoned?
750
751 Mr. Blankinship - That whole block is zoned R-2A.
752
753 Mr. Wright - The whole block is?
754
755 Mr. Blankinship - I believe. The zoning is shown on the site map. Well,
756 almost that whole block.
757
758 Mr. Wright - How about across the street, that block across the
759 street.
760
761 Mr. Blankinship - Across Yates Lane is R-5. I'm sorry, across Yates
762 Court is R-5. Across Yates Lane is R-3AC.
763
764 Mr. Wright - So, this is R-2A.
765
766 Mr. Blankinship - Yes sir.
767

768 Mr. Wright - What would be the chance of having property that's to
769 be zoned R-3 next to an R-2A property?
770

771 Mr. Blankinship - I'm not the most appropriate person to answer that
772 question, but I wouldn't see any difficulty with it. Just to the west, you have
773 Hechler Village, which is zoned R-3, and then just to the south, you have R-3AC,
774 and just to the east, you have R-5.
775

776 Mr. Wright - I was just curious why this was R-2A and across the
777 street would be something else.
778

779 Mr. Blankinship - If I were writing the staff report, I wouldn't find
780 anything objectionable to it, but I don't work directly with that.
781

782 Mr. Wright - I was just curious to know whether that would be a
783 problem, since it would not be in keeping with the other properties in that block.
784

785 Mr. Blankinship - In that block, yes. You can see that that zoning
786 boundary line goes just north of 965. North of that point, it is again R-5.
787

788 Mr. Wright - So, if he applied for rezoning and it were denied, then
789 this would be the proper place to come?
790

791 Mr. Blankinship - Yes sir, I think so.
792

793 Ms. Dwyer - I'd like to say, Mr. Sattelmaier, that what someone
794 apparently told you notwithstanding, there are very strict rules that this Board
795 needs to abide by that have been imposed by the General Assembly, by the
796 Board of Supervisors, and by the Supreme Court. This is meant to be an
797 exception, an extremely narrow exception, an extraordinary circumstance, not a
798 circumstance such as this, for example, in which you may have created this
799 problem by improperly dividing a lot. I just want you to be aware that this
800 probably is not the place to be initiating your corrective action.
801

802 Mr. Blankinship - I'm glad that that's not news, that you've been told
803 that consistently for three years.
804

805 Mr. Sattelmaier - Did I understand, this gentleman said if I rezoned it, it
806 would end up back?
807

808 Mr. Blankinship - No. Only if the rezoning were denied. If you were
809 denied a rezoning, then this would be the only relief left to you. Now, again,
810 whether you meet the narrow constraints that the Supreme Court has put on the
811 Board would then be the issue, but at this point, you're really in the wrong forum.
812

813 Mr. Sattelmaier - I have some questions. I'm new at all this and I don't
814 understand a lot of the—You all have made several, I guess, questions and then
815 there were answers.

816
817 Mr. Blankinship - Right. That's what Ms. Dwyer is referring to. Well
818 first of all, the Code of Virginia lays out very strict guidelines for when the Board
819 can grant a variance and those have been clarified just in the last couple of years
820 by the Virginia Supreme Court.

821
822 Mr. Sattelmaier - Do we fall into any of that in a positive way?

823
824 Mr. Blankinship - In my view, no. In my view, this needs to be a
825 rezoning case. That's the reason the Board is here. That's a delicate balance
826 sometimes to make that determination. It's not up to me; it's up to the Board.

827
828 Mr. Blankinship - Mr. Jolliffe, the surveyor, in his letter and then when I
829 talked to him about this when he wrote the letter for us, he said it was confusion
830 in the fact that there was so many different—Like directly across the street was
831 the R-3. Directly on the side street is R-3AC, and then R-5, which all this road
832 doesn't—I don't understand. He said possibly that is the reason for the
833 misinformation that he was given before he came out there to do the work for us,
834 which we paid for.

835
836 Mr. Blankinship - Unfortunately, he doesn't identify either person
837 involved. He says, "A representative of the company went to the County's East
838 End," so.

839
840 Mr. Sattelmaier - One of his—

841
842 Mr. Blankinship - We can't really backtrack that. What we do know is
843 that Mr. Sendra has a clear memory of discussing this lot and saying no, it's R-
844 2A, you have to get it rezoned.

845
846 Mr. Sattelmaier - Just for the record, I guess is what I'm trying to say,
847 he did not have that discussion with me like that letter indicates. I don't know if
848 he possibly maybe had that discussion with the surveyor or his rep or whatever.

849
850 Mr. Blankinship - Mr. Sendra says that he spoke to you when he said
851 rezoning.

852
853 Ms. Harris - Is Mr. Sendra here?

854
855 Mr. Blankinship - No, he's not here this morning.

856
857 Mr. Sattelmaier - I just wanted to get that on record. We only spoke
858 about the water and sewer connection.

859
860 Mr. Blankinship - I'm not sure how relevant it is, but there is a disputed
861 fact.
862
863 Ms. Harris - I have a question, Mr. Blankinship. Is spot zoning—I
864 call it spot zoning. Is that the rule of thumb? Is that an exception to the rule? Is
865 that ever done?
866
867 Mr. Blankinship - In my opinion, if he was applying B-3 zoning or
868 industrial zoning in the middle of this neighborhood, that would be a spot zoning.
869 But because these are all one-family zoning districts and this is the most—All of
870 the adjoining property is smaller lot size residential district. I would not view this
871 as a spot zoning, but again, I don't handle rezonings on a daily basis.
872
873 Ms. Harris - You mentioned in your report a one-split exception to
874 the Subdivision Ordinance.
875
876 Mr. Blankinship - Right. The Subdivision Ordinance shouldn't be a
877 problem. He's allowed one division without going through the Subdivision
878 Ordinance.
879
880 Ms. Dwyer - What's the date that this property was divided by the
881 applicant?
882
883 Mr. Blankinship - 2005. The plat was dated—
884
885 Mr. Sattelmaier - April of '05, yes.
886
887 Mr. Blankinship - The plat was revised June of '05, so it was probably
888 recorded late June, early July.
889
890 Ms. Dwyer - Again, we are running into that problem where people
891 are allowed to record lot splits and create lots that do not meet with the zoning
892 ordinance and then they have the false impression that that's all they need to do
893 because it's been accepted by the Courthouse Records Department. Then they
894 come back with a lot and have to request a variance because the lot they have
895 created is insufficient. I don't know how the rest of the Board feels about it, but
896 maybe this is something we could raise with the Board of Supervisors to see if
897 there's some way that we can put some procedural step in the way of recording
898 lots that do not meet the zoning ordinance so that people aren't falsely believing
899 that they have legitimate lots. We have cases in which people have even sold
900 the lots to assuming buyers and then the problem is passed down to someone
901 who has no notice of it. That's something we can talk about after the meeting,
902 but I'm just raising it now because it seems to be a problem with this case, too.
903

904 Mr. Nunnally - Any other questions from the Board or staff? Anyone
905 in opposition? Hear none, that conclude the case. Thank you, sir, for coming
906 out.

907

908 **DECISION**

909

910 Ms. Harris - I move that we deny this variance. I believe that this
911 is self-inflicted and the remedy is to get the zoning changed.

912

913 Mr. Nunnally - Motion by Ms. Harris it be denied.

914

915 Ms. Dwyer - Second.

916

917 Mr. Nunnally - Seconded by Ms. Dwyer. Any discussion? All in
918 favor of the denial say aye. All opposed say no. It's been denied.

919

920 After an advertised public hearing and on a motion by Ms. Harris, seconded by
921 Ms. Dwyer, the Board **denied** application **A-009-07** for a variance to build a one-
922 family dwelling at 957 Yates Court (Parcel 815-724-1107).

923

924

925 Affirmative: Wright, Harris, Kirkland, Dwyer, Nunnally 5

926 Negative: 0

927 Absent: 0

928

929

930 Mr. Nunnally - Next case, Mr. Blankinship.

931

932 **A-010-07** **DAVID C. WYNNE** requests a variance from Section
933 24-9 to build a one-family dwelling at 10820 Tiller Road (Parcel 763-768-6597),
934 zoned A-1, Agricultural District (**Brookland**). The public street frontage
935 requirement is not met. The applicant has 0 feet public street frontage where the
936 Code requires 50 feet public street frontage. The applicant requests a variance
937 of 50 feet public street frontage.

938

939 Mr. Nunnally - Is there anyone else here interested in this case? If
940 so, will you please stand.

941

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

945

946 Mr. Wynne - I do.

947

948 Mr. Nunnally - Please state your name for the record, sir, and tell us
949 what you're requesting.

950
951 Mr. Wynne - David C. Wynne. I'm requesting a variance to build a
952 home site, our home site on Tiller Road. It does not meet the required public
953 street frontage. The property was left and subdivided by my family. It was left to
954 me by my grandmother in '87 with the intent for us to build a home on it.
955
956 Ms. Harris - So this is a family division.
957
958 Mr. Wynne - Yes ma'am.
959
960 Ms. Harris - Have you determined the cost to extend the public
961 road, Tiller Road?
962
963 Mr. Wynne - No ma'am.
964
965 Ms. Harris - Do you have any idea?
966
967 Mr. Wynne - No ma'am. There is a home site on it that was my
968 great grandmother's place. It's actually back beyond our property, back further
969 down what I call Tiller Road. It's currently being lived in by my cousins. As far as I
970 know, they'll live there and probably their children will probably live there after
971 them.
972
973 Mr. Blankinship - There was a plat filed in 1984 that created parcels A,
974 B, and C and this is parcel C. Are you familiar with this? Okay. Are all three of
975 those lots still in the family?
976
977 Mr. Wynne - Yes sir.
978
979 Mr. Blankinship - Okay. We couldn't tell just from a cursory look.
980
981 Mr. Wynne - Yes, they're all—
982
983 Mr. Blankinship - They're all three still in—
984
985 Ms. Wynne - The [unintelligible] and they own the next two parcels.
986
987 Mr. Wynne - They have the house and they have the other parcels.
988
989 Mr. Nunnally - Excuse me, ma'am, if you're going to speak, could
990 you state your name, please?
991
992 Ms. Wynne - Deborah Wynne.
993
994 Mr. Nunnally - All right, now tell us what you were saying.
995

996 Ms. Wynne - The Vanstaden's, they still own Parcels A and B.
997 Once again, they were left by the family also.
998
999 Ms. Dwyer - Who owns this small piece between your property and
1000 Tiller Road?
1001
1002 Ms. Wynne - Preston Willis' heirs.
1003
1004 Ms. Dwyer - Is that part of your family, too?
1005
1006 Ms. Wynne - Yes ma'am.
1007
1008 Ms. Dwyer - Is there a house on that?
1009
1010 Ms. Wynne - No ma'am.
1011
1012 Ms. Dwyer - Mr. Blankinship, I have a question for you. In the next
1013 case, it seems to be staff's position that a lot on what was called a paper street,
1014 that is a street where the land for the road has been deeded, dedicated, platted,
1015 and filed, recorded so everything's official for that road, but the road hasn't
1016 actually been built, that was sufficient to allow a house to be built on a public
1017 street. That was considered a public street.
1018
1019 Mr. Blankinship - Right.
1020
1021 Ms. Dwyer - What if in this case, or in any of the other cases in
1022 which we have public street frontage issues, if these applicants dedicated the
1023 right-of-way for Tiller Road and then considered that a paper street as it is in the
1024 next case, and sufficient, therefore, to count as public road frontage?
1025
1026 Mr. Blankinship - Today, the County would not accept that dedication
1027 unless the road was built.
1028
1029 Ms. Dwyer - I see.
1030
1031 Mr. Blankinship - Back in the '20's prior to the Byrd Act, you could plat
1032 just about anything and you could record it, without even having the County
1033 accepting it from a [unintelligible] perspective. After the Byrd Act in 1931, when
1034 the County became directly responsible for maintaining all those roads, that
1035 whole process started to change.
1036
1037 Ms. Dwyer - So the difference in the case is that was subdivided in
1038 1910.
1039
1040 Mr. Blankinship - Right.
1041

1042 Ms. Dwyer - And this is now, so we don't accept that.
1043
1044 Mr. Blankinship - They will be required to make improvements. It's up
1045 to the Department of Public Works to decide how great of an improvement.
1046 Typically, in cases like the next one, and perhaps we should have this discussion
1047 then, where it's only one lot, Public Works will allow them to basically just put in a
1048 driveway. We have had cases where people have bought 10 or 12 lots in an old
1049 subdivision with paper streets and Public Works has made them build public
1050 streets in those rights-of way.
1051
1052 Ms. Harris - In 1987 when this was divided among the three family
1053 members, the picture that we see of the road, this is a private road, if you had the
1054 right-of-way to do this. It's still being used, of course.
1055
1056 Mr. Wynne - Yes ma'am.
1057
1058 Ms. Wynne - Yes ma'am.
1059
1060 Ms. Dwyer - The critical time period here is 1987 when this lot was
1061 created. That's the point in time we have to look at as a Board to determine what
1062 the property as a whole constitutes. In this case, the property as a whole would
1063 constitute all three parcels. Is that correct? Mr. Blankinship, is that correct?
1064
1065 Mr. Blankinship - That's our view, yes. Since the public street frontage
1066 requirement was already in the Code when the lots were created, they were not
1067 buildable lots.
1068
1069 Mr. Wright - It was not a buildable lot before that. An 8-acre parcel
1070 was not a buildable lot.
1071
1072 Mr. Blankinship - That's correct, yes sir. When the dwelling was first
1073 built in 1937, the public street frontage requirement was not in the Code at that
1074 time.
1075
1076 Ms. Dwyer - So, the original house is—
1077
1078 Mr. Blankinship - Lawfully non-conforming.
1079
1080 Ms. Dwyer - Okay.
1081
1082 Mr. Nunnally - Any other questions from the Board or staff?
1083
1084 Ms. Harris - I have one more question. After '87, one house was
1085 built?
1086
1087 Mr. Wynne - No ma'am.

1088
1089 Ms. Harris - No houses were built?
1090
1091 Mr. Wynne - No ma'am. There's a subdivision right across Tiller
1092 Road that backs right up to it, but it's got half million dollar or \$400,000 homes on
1093 it.
1094
1095 Ms. Dwyer - I think that was the house that was built in '37. Is that
1096 what you were saying, Mr. Blankinship?
1097
1098 Mr. Wynne - The house in '37, that's existing on the property.
1099
1100 Ms. Dwyer - Right, 1937.
1101
1102 Mr. Wynne - People are living in it now. Like I said, it's actually past
1103 where I would build, as far as going down that road.
1104
1105 Ms. Dwyer - The reason that is important is that when that house
1106 was built, there was no road frontage requirement, so that house was lawfully
1107 built. What you're asking is to build a house at this time which has no road
1108 frontage. Unfortunately, the Code requires that. It also required it in 1987 when
1109 this lot was created. At that time, it was not a buildable lot either. So, it's never
1110 been a buildable lot, Lot C.
1111
1112 Ms. Harris - Back in '87, I think it was—Correct me because I
1113 wasn't on the Board. I think it was traditional for family divisions to be approved
1114 with the private road, as long as you had the right-of-way. Am I correct?
1115
1116 Mr. Blankinship - That's a fair statement, yes. [Unintelligible] every
1117 case was reviewed on its facts.
1118
1119 Ms. Harris - But since that was legal—
1120
1121 Mr. Blankinship - Certainly they weren't viewed as strictly as they are
1122 today.
1123
1124 Mr. Wright - Mr. Wynne, what has this property been used for, the
1125 entire three parcels? Before they were subdivided, what was it used for?
1126
1127 Mr. Wynne - Back in the good old days, my family—That's my
1128 great grandma's old home place, like I said, that my cousins are living in now. It
1129 was farmed a long time ago, probably back in the 40's. They had chickens and—
1130 Since then, it's just a home site that they live in. Like the other gentleman said,
1131 he might cut a piece of wood off it or something like that for the fireplace, but
1132 other than that, nothing.
1133

1134 Mr. Wright - Has it been farmed, ever been farmed?
1135
1136 Mr. Wynne - Years and years and years ago.
1137
1138 Mr. Wright - How long ago was that?
1139
1140 Mr. Wynne - In the 30's—
1141
1142 Mr. Blankinship - You said before or after '87?
1143
1144 Mr. Wynne - Oh, no. No farming that I'm aware of unless he's
1145 grown some tomato plants or something in the backyard. Nothing major. As a
1146 child, when I played on that property, it was old chicken coops, dilapidated and
1147 whatnot, but nothing major as far as a major—
1148
1149 Mr. Wright - Is it wooded, basically?
1150
1151 Mr. Wynne - All of mine is, yes sir. All of my piece of it.
1152
1153 Mr. Wright - Yours is Parcel C?
1154
1155 Mr. Wynne - Yes sir.
1156
1157 Mr. Wright - And that's all wooded.
1158
1159 Mr. Wynne - Yes sir.
1160
1161 Mr. Wright - How about B, is that wooded?
1162
1163 Mr. Blankinship - B has the house on it.
1164
1165 Mr. Wynne - Yeah. I would say most all of that is not and I'm not
1166 sure about A. Do you know? [asking of spouse]
1167
1168 Ms. Wynne - Part of A is still wooded.
1169
1170 Mr. Blankinship - You want to put the aerial back up?
1171
1172 Mr. Wright - I see it, yeah.
1173
1174 Ms. Dwyer - That's a [unintelligible] on Parcel A.
1175
1176 Mr. Wynne - Yeah.
1177
1178 Ms. Wynne - Yes ma'am.
1179

1180 Mr. Nunnally - Any other questions from the Board or staff? I ask
1181 again, is anyone in opposition to this case? Hear none, that concludes the case.
1182 Thank you for coming.

1183
1184 Mr. Wynne - Thank you.

1185
1186 **DECISION**

1187
1188 Mr. Nunnally - Do we have a motion on this?

1189
1190 Mr. Kirkland - I make a motion we deny it.

1191
1192 Ms. Dwyer - Second.

1193
1194 Mr. Nunnally - Discussion, Mr. Kirkland?

1195
1196 Mr. Kirkland - Again, this property was split in 1987. It wasn't
1197 buildable lots then and it still isn't today without the road. I believe the applicant
1198 possibly could connect the road to the existing paved road, which backs up
1199 behind Meadow Farm and that would clear up his problem. It's definitely a
1200 Cherrystone case, in my book, and that's the best explanation I can give at this
1201 point.

1202
1203 Ms. Dwyer - If I might add, Mr. Kirkland, in our ordinance it states
1204 that, "No variance shall be authorized unless the Board specifically finds that the
1205 situation or condition of the property is not of a general or recurring nature." So,
1206 we're supposed to specifically make that finding. This is clearly a situation that is
1207 recurring in nature. We have several on the agenda today. We have them every
1208 single month. So, the lack of road frontage is a recurring situation. Under our
1209 ordinance, we cannot make the finding today that it is not. Again, the rules that
1210 we have to operate under, it seems to me that we need to deny it for that reason.
1211 That also applies to the first case, which I forgot to mention in the heat of the
1212 debate.

1213
1214 Mr. Kirkland - I'm in agreement with you, Ms. Dwyer, that we
1215 definitely need to get something discussed with the Board of Supervisors on how
1216 to remedy this. Mr. Wright did make a comment that we will be turning down all
1217 of these. There needs to be some little escape gap in there.

1218
1219 Ms. Dwyer - What I would like to see is something to prevent
1220 people from dividing property into lots that don't meet the zoning ordinance.
1221 Somehow we allow that to happen.

1222
1223 Mr. Kirkland - In this case, I assume it was a death that caused this,
1224 so this wasn't anything that was planned. They saw the old house there. They
1225 probably thought the next house could be built next to it.

1226
1227 Ms. Dwyer - Mr. O’Kelly?
1228
1229 Mr. O’Kelly - The property was divided by a deed of partition.
1230 That’s something the Court decided.
1231
1232 Ms. Dwyer - Oh, was it?
1233
1234 Mr. O’Kelly - Yes.
1235
1236 Ms. Dwyer - Or was it by will.
1237
1238 Ms. Harris - The report says deed of partition.
1239
1240 Ms. Dwyer - Okay. That probably was something that—
1241
1242 Mr. O’Kelly - We don’t have any control on any action the Court
1243 may take.
1244
1245 Ms. Dwyer - That’s true. So, we might not be able to prevent every
1246 one of these. A Deed of Partition and the Court does that, if we still had some
1247 provision that these couldn’t be recorded. I think that staff has said other states
1248 do this, or maybe other jurisdictions do this where it can’t be recorded unless
1249 they have some sort of approval—
1250
1251 Mr. O’Kelly - It was also a family division, which doesn’t require
1252 subdivision approval.
1253
1254 Ms. Dwyer - Well, are you saying there’s no way to do that?
1255
1256 Mr. O’Kelly - I think it would be difficult.
1257
1258 Mr. Kirkland - This one would have gotten through, probably,
1259 because of the death situation.
1260
1261 Ms. Dwyer - Right.
1262
1263 Mr. Gidley - [Off mike.] Ms. Dwyer’s point is good, though. Where I
1264 used to work, the Planning Director had to sign off on any new lots created and
1265 that would eliminate a lot of the ones [unintelligible].
1266
1267 Ms. Dwyer - For it to be recorded in the Deed Office?
1268
1269 Mr. Gidley – Correct. So, that would eliminate a lot of them.
1270

1271 Ms. Dwyer - It might not eliminate them all, but it seems like it
1272 would catch them before people start relying on these lots as being in existence.
1273
1274 Ms. Harris - I have a point here, I hope. If you think that somehow
1275 they were misled in 1987 when they were allowed the lot division, why allow a lot
1276 division and then you can't use it to build a home? So to me, we're going against
1277 what was dictated in '87. I know the law has changed, Cherrystone and Cochran
1278 have occurred.
1279
1280 Mr. Blankinship - Three people inherited the property. So it was divided
1281 so that each of them could own part of it individually, but that doesn't mean they
1282 could build a gas station there.
1283
1284 Mr. Kirkland - It was a farm. It was a huge farm at that time.
1285
1286 Mr. Blankinship - It doesn't mean they could make any use of the
1287 property that they felt was appropriate. They still have to comply with the
1288 requirements.
1289
1290 Mr. Kirkland - Right. If I gave you a piece of land, Ms. Harris, you
1291 still have to comply even if I just gave it to you.
1292
1293 Ms. Harris - If you gave your children three parcels, it would seem
1294 to me that your natural conclusion is they may one day build a home on it.
1295
1296 Mr. Kirkland - That's correct.
1297
1298 Ms. Harris - And the Board granted that.
1299
1300 Mr. Kirkland - You would have to recuse yourself from that case.
1301
1302 Mr. Nunnally - All right, let's take a vote on that.
1303
1304 Mr. Wright - My comment is that the deed of partition has to be
1305 instituted by somebody, an individual. The Court doesn't institute that. An
1306 individual has a right to come in and have the property partitioned. I don't know,
1307 aside from that. Of course this one, other than for the road frontage, is a
1308 buildable lot that's going to be sitting there vacant.
1309
1310 Ms. Dwyer - There's nothing wrong with the lot itself. It's just a
1311 question of getting a road to it.
1312
1313 Mr. Blankinship - They just need to extend that public street.
1314

1315 Mr. Nunnally - All right, let's take a vote on this. Motion made by Mr.
1316 Kirkland it be denied, second by Ms. Dwyer. All in favor of denial say aye. All
1317 opposed say no. It's been denied 4 to 1.

1318
1319 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by
1320 Ms. Dwyer, the Board **denied** application **A-010-07** for a variance to build a one-
1321 family dwelling at 10820 Tiller Road (Parcel 763-768-6597).

1322
1323
1324 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4
1325 Negative: Harris 1
1326 Absent: 0

1327
1328
1329 Mr. Nunnally - Next case, Mr. Blankinship.

1330
1331 **A-011-07 WILLIAM K. SAHNOW, JR.** requests a variance from
1332 Section 24-95(c)(4) to allow a one-family dwelling to remain at 10006 Virginia
1333 Road (Greenwood Park) (Parcel 781-762-1699), zoned R-4, One-Family
1334 Residence District (Fairfield). The front yard setback is not met. The applicant
1335 has 24 feet front yard setback where the Code requires 35 feet front yard
1336 setback. The applicant requests a variance of 11 feet front yard setback.

1337
1338 Mr. Nunnally - Anyone else here interested in this case? If so, will
1339 you please stand and be sworn. All right, sir.

1340
1341 Mr. Blankinship - Raise your right hand please. Do you swear the
1342 testimony you're about to give is the truth and nothing but the truth so help you
1343 God?

1344
1345 Mr. Nunnally - Please state your name for the record, sir, and tell us
1346 what you're requesting.

1347
1348 Mr. Sahnnow - William Sahnnow. Variance for [unintelligible]
1349 requesting setback.

1350
1351 Mr. Nunnally - Can you get a little closer to that mike? I don't know
1352 whether it's me or the mike.

1353
1354 Mr. Sahnnow - William Sahnnow. I'm requesting a variance from the
1355 setback requirement for the new divided lot.

1356
1357 Mr. Kirkland - Mr. Blankinship, we discussed this on the phone.
1358 This is in the Fairfield District, right?
1359

1360 Mr. Blankinship - Yes, thank you. I should have corrected the printed
1361 agenda. We have corrected it on the database now. This is in the Fairfield
1362 District.

1363

1364 Ms. Harris - Mr. Sahnou, I don't know if I'm pronouncing your
1365 name correctly.

1366

1367 Mr. Sahnou - That's perfect.

1368

1369 Ms. Harris - Why not tear the structure down?

1370

1371 Mr. Sahnou - I believe it was built in 1937 and I just thought I'd keep
1372 the look and the structure of it and then improve it for now.

1373

1374 Mr. Blankinship - It was built in 1937, but it wasn't built as a dwelling. Is
1375 that right?

1376

1377 Mr. Sahnou - Right. I believe it was a barn.

1378

1379 Mr. Blankinship - Do you know when it was converted to a dwelling?

1380

1381 Mr. Sahnou - The neighbors, the older neighbors have told me
1382 sometime in the '60's or '70's that he had gotten verbal permission to convert it,
1383 but you know...

1384

1385 Mr. Blankinship - We were not aware of this when we prepared the staff
1386 report, but I think it is significant. This was converted after 1960. At that time,
1387 there were minimum standards for the square foot of the floor area of a dwelling
1388 and this building does not comply with the floor area requirement. He's going to
1389 need to either tear down and rebuild or build an addition onto this to bring it up to
1390 the requirement.

1391

1392 Mr. Sahnou - Which I actually plan to do.

1393

1394 Mr. Blankinship - Okay. In some way, he's going to have to meet that
1395 floor area requirement.

1396

1397 Mr. Sahnou - What is that minimum; because it is a thousand
1398 square feet.

1399

1400 Mr. Blankinship - I think it's 1,100 square feet.

1401

1402 Ms. Dwyer - A thousand?

1403

1404 Mr. Blankinship - One thousand square feet is the minimum.

1405

1406 Mr. Sahnaw - That's what I have, right at a thousand. With the 4-
1407 1/2 or 4-1/4.
1408
1409 Mr. Blankinship - What are you showing?
1410
1411 Mr. Gidley - I know that it looked like it was right at 930 square
1412 feet, when I was on site.
1413
1414 Mr. Blankinship - We can determine that later and he could build an
1415 addition.
1416
1417 Mr. Sahnaw - Which, like I said, I plan on doing anyway. I want to
1418 keep the look of it but build off the back a small one-floor, one-story.
1419
1420 Mr. Blankinship - Do you know whether a Certificate of Occupancy for
1421 this was ever issued?
1422
1423 Mr. Sahnaw - I don't think so. Like I said, it was all done back in the
1424 '30's, '40's, '50's.
1425
1426 Mr. Blankinship - It may not have ever met building code for a dwelling.
1427
1428 Mr. Sahnaw - Which again is my intention to clean up what's there
1429 and then get from the County the proper permits, electrical, plumbing.
1430
1431 Mr. Blankinship - You may end up having to demolish and rebuild
1432 anyway. If it was originally built as a storage building and it was never brought
1433 up to the building code requirements for an occupied dwelling, then you're not
1434 going to get a Certificate of Occupancy without basically starting over. That
1435 matter is not really before the Board.
1436
1437 Ms. Harris - Could we see the area photo please? Okay. Can you
1438 tell us which of these buildings we are discussing? That used to be a barn and
1439 now it's a house.
1440
1441 Mr. Sahnaw - I guess it's been used as an in-law unit or suite in the
1442 past.
1443
1444 Ms. Harris - Is it occupied now?
1445
1446 Mr. Sahnaw - No ma'am.
1447
1448 Ms. Harris - So, the division of this lot is not an issue because the
1449 two lots that have now been created here out of what had been treated as one is
1450 sufficient. The only problem is this accessory building is too close to the paper
1451 street of Virginia Avenue.

1452
1453 Mr. Blankinship - Right. As an accessory building in the rear yard, it
1454 meets the accessory building requirement.
1455
1456 Ms. Dwyer - Right.
1457
1458 Mr. Blankinship - But if that becomes the front yard and that becomes a
1459 dwelling, then it's going to be in violation.
1460
1461 Ms. Dwyer - You're also saying that this developer might also have
1462 to improve Virginia Avenue?
1463
1464 Mr. Blankinship - He will have to make some improvements, but that's
1465 up to Public Works whether they allow him to just build a driveway or something.
1466 It'll have to be enough to get a fire truck into. For one individual dwelling, they
1467 probably would not require him to bring it up to public street standards. Have you
1468 met with Public Works and discussed this?
1469
1470 Mr. Sahnou - I've talked them two or three times and they've pretty
1471 much said get this figured out and then go from there.
1472
1473 Mr. Blankinship - They did not comment on the variance case.
1474
1475 Mr. Sahnou - There's certainly an all-weather access to that
1476 property.
1477
1478 Ms. Dwyer - Is water and sewer available to this lot?
1479
1480 Mr. Sahnou - Not yet. Again, Public Works, the three or four times I
1481 talked to them, said that if I can get this taken care of, then they've given me
1482 three options to get water and sewer to the property.
1483
1484 Mr. Blankinship - He would not meet the minimum lot requirements
1485 without water and sewer.
1486
1487 Mr. Sahnou - Right.
1488
1489 Mr. Blankinship - So, he would have to extend water and sewer.
1490 Perhaps that should be a condition.
1491
1492 Ms. Harris - This is the street we're talking about, Virginia Road?
1493
1494 Mr. Sahnou - Right. The paved road is Stewart and the gravel road
1495 is Virginia. As you can see, the back part of my property turns into woods for the
1496 next two lots.
1497

1498 Mr. Wright - Are you considering Virginia Road as a public road?
1499 Is it a public road?
1500
1501 Mr. Blankinship - It's a paper street.
1502
1503 Mr. Wright - But it is a public road?
1504
1505 Mr. Blankinship - It's a public right-of-way that's never been constructed
1506 or maintained.
1507
1508 Mr. Wright - So, you consider this to be fronting on a public road.
1509
1510 Mr. Blankinship - Yes. It meets the public street frontage requirement
1511 test.
1512
1513 Mr. Sahnaw - Is that because it's a paper road, like you said earlier?
1514
1515 Mr. Blankinship - Yes.
1516
1517 Mr. Sahnaw - Regardless of the finished product, it's still a road.
1518
1519 Mr. Blankinship - It's just a matter of you spending money to be able to
1520 get access to it.
1521
1522 Mr. Sahnaw - Right.
1523
1524 Mr. Blankinship - In some of the other cases like the previous case,
1525 they have to cross someone else's property. That someone else could someday
1526 come out and put up a fence. Then you have a huge legal battle. In your case,
1527 no one can do that because the right-of-way is dedicated for a public street.
1528
1529 Ms. Dwyer - And it was done in 1910. We couldn't do this today, if
1530 we were starting today.
1531
1532 Mr. Sahnaw - Yes. I heard you earlier, yes.
1533
1534 Mr. Wright - Is that your intent to use that paper street as a road
1535 for access to the property?
1536
1537 Mr. Sahnaw - Yes. Since there is a gravel road access to that
1538 property.
1539
1540 Mr. Wright - When was this dwelling or this building built on the
1541 property?
1542

1543 Mr. Sahnou - I believe the house was built in 1937 and the
1544 construction is the same, appears to be the same. So, I think that old building
1545 was built in 1937 as well and then updated through the years.
1546

1547 Ms. Dwyer - If you decided to tear down this building and build
1548 another structure, you wouldn't need a variance.
1549

1550 Mr. Sahnou - Right, but I'd prefer not to do that.
1551

1552 Mr. Wright - Without the variance, you could not use the property.
1553

1554 Mr. Blankinship - Yes, he could use the property. It's only—
1555

1556 Mr. Wright - He could not use the dwelling.
1557

1558 Mr. Blankinship - Right. It's just that structure that's the problem. I
1559 emphasize I was about three quarters of the way through the staff report when I
1560 realized I was chasing the wrong trail completely. I was writing it up as a public
1561 street frontage case and I had start over again.
1562

1563 Ms. Dwyer - He can use the structure as an accessory building,
1564 which it was originally built to be.
1565

1566 Mr. Blankinship - Right.
1567

1568 Ms. Dwyer - Now that he's divided the property and wants to use it
1569 as a residence, that changes the requirements.
1570

1571 Mr. Blankinship - The setback.
1572

1573 Mr. Sahnou - By 5, 10 feet. What's that?
1574

1575 Mr. Gidley - Is that one lot today?
1576

1577 Mr. Sahnou - Yes. The whole thing is one lot right now. My
1578 intentions are to split this and then renovate and get everything cleaned up and
1579 properly documented with the County and pay the proper taxes.
1580

1581 Mr. Wright - It wasn't one lot when this subdivision plat was
1582 recorded, was it?
1583

1584 Mr. Blankinship - You could argue that it's six lots.
1585

1586 Mr. Sahnou - Yeah, it's six lots.
1587

1588 Mr. Wright - Greenwood Park. I've got a copy of it here.

1589
1590 Mr. Sahnaw - Originally, I think the intentions were that road,
1591 Virginia, was to cut up from Stewart to Cole, and then the houses were all going
1592 to back on each other, but for whatever reason was never—
1593
1594 Mr. Blankinship - Water and sewer was—
1595
1596 Mr. Wright - This is dated February 11, 1910.
1597
1598 Mr. Blankinship - Yes sir, that's right.
1599
1600 Mr. Nunnally - If you turn this accessory building into a dwelling,
1601 would you live there or you're going to rent it out or what?
1602
1603 Mr. Sahnaw - I'm either going to use it as a second home sort of or
1604 rent it out. A family right now is interested in it. It'll go either way.
1605
1606 Mr. Wright - Did you tell us what the size of that building was, how
1607 many square feet are in it?
1608
1609 Mr. Sahnaw - Yes. I measured it to be a thousand square feet.
1610
1611 Mr. Wright - You said that, I guess, a thousand square feet.
1612
1613 Mr. Sahnaw - It has a bathroom downstairs, a small kitchen area,
1614 and then there's a lofted bedroom upstairs.
1615
1616 Mr. Wright - Mr. Blankinship, did you say that wasn't large enough
1617 to satisfy the requirements?
1618
1619 Mr. Blankinship - We're going to have to make sure. It's very close. The
1620 minimum is 1,000 square feet. We'll have to get some drawings of the house to
1621 determine that. If he's going to be going through building inspections anyway,
1622 we can nail all that down.
1623
1624 Mr. Wright - If it is a thousand feet, he's okay.
1625
1626 Mr. Blankinship - Yes sir.
1627
1628 Mr. Nunnally - Any other questions from staff or the Board? Anyone
1629 in opposition? Hear none, that completes the case. Thank you for coming, sir.
1630
1631 Mr. Sahnaw - Thank you all.
1632
1633 **DECISION**
1634

1635 Mr. Nunnally - Do we have a motion on this?
1636
1637 Ms. Harris - I move that we deny this case.
1638
1639 Ms. Dwyer - Second.
1640
1641 Mr. Nunnally - Motion by Ms. Harris, seconded by Ms. Dwyer that we
1642 deny it. You want to tell us why, Ms. Harris?
1643
1644 Ms. Harris - I don't think we're denying the reasonable beneficial
1645 use of the property taken as a whole on the one hand. On the other hand, I
1646 cannot imagine how this parcel will look with homes not following the setback
1647 requirements along that Virginia Road, that paper road. Those are my reasons.
1648
1649 Ms. Dwyer - This is a public road.
1650
1651 Ms. Harris - Yes.
1652
1653 Mr. Wright - Even though it's a paper street, it's a public road. A
1654 house has been there since, what, way before the ordinance.
1655
1656 Ms. Dwyer - The structure's been there.
1657
1658 Ms. Harris - The barn.
1659
1660 Mr. Wright - I mean the structure has.
1661
1662 Ms. Dwyer - But it was a structure that was an accessory building
1663 in the rear yard of the lot, which has sufficient setback. If we allow someone to
1664 turn this from an accessory structure, a shed or barn, into a dwelling, a
1665 residence, I agree with you that it doesn't meet the requirements.
1666
1667 Mr. Wright - He described that it had a bathroom and bedrooms
1668 and so forth.
1669
1670 Ms. Dwyer - Someone has illegally converted it, sounds like.
1671
1672 Mr. Kirkland - Mr. Blankinship, if he tears this structure down, when
1673 he rebuilds, he can build it with the right amount of setback, correct?
1674
1675 Mr. Blankinship - Yes. There's plenty of room on the lot to build a
1676 dwelling.
1677
1678 Mr. Kirkland - We can't make him tear it down, can we?
1679
1680 Mr. Blankinship - Make him tear it down?

1681
1682 Mr. Kirkland - Right. Approve this as long as a new structure was
1683 put on the site?
1684
1685 Mr. Blankinship - There would be no need. If he's going to rebuild, he
1686 does not need a variance to build—
1687
1688 Mr. Kirkland - I don't believe he can afford to redo that structure and
1689 run water and sewer and everything to it. It's going to have a lot of Code work to
1690 be done.
1691
1692 Mr. Blankinship - As Ms. Harris said, though, it's not the use of the
1693 property that's in question. He has the right to use the property for a dwelling.
1694
1695 Mr. Kirkland - Right.
1696
1697 Mr. Blankinship - He just can't use that structure for that dwelling.
1698
1699 Ms. Harris - Right. We don't want to encourage substandard
1700 dwellings in any of the districts.
1701
1702 Mr. Kirkland - That's a super illegal conversion.
1703
1704 Mr. Nunnally - Okay, let's vote on that. Motion by Ms. Harris,
1705 seconded by Ms. Dwyer it be denied. All in favor say aye. All opposed say no.
1706 It's been denied.
1707
1708 After an advertised public hearing and on a motion by Ms. Harris, seconded by
1709 Ms. Dwyer, the Board **denied** application **A-011-07** for a variance to allow a one-
1710 family dwelling to remain at 10006 Virginia Road (Parcel 781-762-1699).
1711
1712
1713 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1714 Negative: 0
1715 Absent: 0
1716
1717 Mr. Nunnally - Next case, Mr. Blankinship.
1718
1719 **A-012-07 FRANK J. AND LISA W. COTTRELL** request a
1720 variance from Section 24-9 to build a one-family dwelling at 8027 Upper Western
1721 Run Lane (Parcel 856-687-8039), zoned A-1, Agricultural District (Varina). The
1722 public street frontage requirement is not met. The applicant has 0 feet public
1723 street frontage where the Code requires 50 feet public street frontage. The
1724 applicant requests a variance of 50 feet public street frontage.
1725

1726 Mr. Nunnally - Is anyone else here interested in this case? If so, will
1727 you please stand.
1728
1729 Mr. Blankinship - Raise your right hand, please. Do you swear the
1730 testimony you're about to give is the truth and nothing but the truth so help you
1731 God?
1732
1733 Ms. Cottrell - I do.
1734
1735 Mr. Cottrell - Yes.
1736
1737 Mr. Nunnally - Please state your name for the record and tell us what
1738 you're requesting.
1739
1740 Ms. Cottrell - I'm Lisa W. Cottrell.
1741
1742 Mr. Nunnally - Could you get closer to the mike, please, ma'am.
1743
1744 Ms. Cottrell - Lisa W. Cottrell.
1745
1746 Ms. Cottrell - My name is Frank Cottrell.
1747
1748 Mr. Nunnally - All right. Tell us what you're requesting, please.
1749
1750 Ms. Cottrell - We are requesting a variance to build a one-dwelling
1751 home on 18.3 acres.
1752
1753 Mr. Nunnally - 18.37-acre parcel, you said?
1754
1755 Ms. Cottrell - Yes sir.
1756
1757 Mr. Nunnally - You'll put one dwelling on there?
1758
1759 Ms. Cottrell - Yes sir.
1760
1761 Mr. Nunnally - What's your plan for the future? Are you planning on
1762 just having that one house on there or are you planning on—
1763
1764 Ms. Cottrell - No, just the one house, our family home.
1765
1766 Mr. Nunnally - Okay.
1767
1768 Mr. Wright - Do you have a contract to purchase this subject to
1769 your being able to get this variance?
1770
1771 Ms. Cottrell - That is correct.

1772
1773 Ms. Harris - On this original 102-acre tract, is there a house at all?
1774 I'm looking at the aerial photo.
1775
1776 Ms. Cottrell - Yes. It started as 102 acres and I believe the
1777 gentleman had purchased the large lot in the '30's and then it was divided into
1778 five plots then. The original farmhouse is still there and then there are two other
1779 houses in the front of property that comes in off of Charles City Road. Then there
1780 is a modular home that was built and put in there on another little piece of parcel,
1781 a little over an acre, in 2001 or 2002.
1782
1783 Mr. Blankinship - There's a total of five dwellings on the original 102-
1784 acre parcel.
1785
1786 Ms. Dwyer - The division of the 102 acres was done in 1988, is
1787 that correct?
1788
1789 Ms. Cottrell - Yes, I believe it was 1988.
1790
1791 Ms. Dwyer - How many parcels do we now have on this original
1792 102 acres?
1793
1794 Ms. Cottrell - I believe there's still the five.
1795
1796 Ms. Dwyer - Those five have not been subdivided themselves?
1797
1798 Mr. Blankinship - I think there must be six.
1799
1800 Ms. Cottrell - Yes, it is six. The 1.3 acres was done in 2002. That
1801 was off of the 19.5, which was the original lot. Then they broke that little piece off
1802 for the nephew. The remaining is what we're trying to get.
1803
1804 Ms. Dwyer - The only problem you have is lack of road frontage. If
1805 a public street were built to your lot, you would have no problem.
1806
1807 Ms. Cottrell - That's correct. There's a 20-foot existing road that
1808 runs back through the property back there. We would need a variance to
1809 basically just put the driveway in onto that parcel from the existing right-of-way
1810 road.
1811
1812 Ms. Dwyer - Charles City?
1813
1814 Ms. Cottrell - Yes, it's Charles City. We've had the County go out
1815 and do soil tests and perk, and everything is great there, so that's been done as
1816 well.
1817

1818 Mr. Cottrell - We've also been accepted for the loan. I believe the
1819 land was perked probably about less than a month ago, probably three weeks.
1820
1821 Ms. Cottrell - I believe it was a month ago.
1822
1823 Mr. Blankinship - The holes were fresh when we took the photos.
1824
1825 Mr. Cottrell - I originally lived down there, probably from '65 to '86,
1826 probably not even a half a mile, so I know a lot of the people down there. I know
1827 it's a lot of family there.
1828
1829 Ms. Cottrell - We also are going to continue to let the guys that
1830 have been farming the land to get the hay. We're going to continue to do that as
1831 well for them. I know that the property is assessed at \$78,000. If we were to
1832 build a three-bedroom home, of course then this assessed property value is
1833 going to go up. There's no clearing that needs to be done at all on the property.
1834 That's it.
1835
1836 Mr. Nunnally - Any other questions from the Board or staff?
1837
1838 Mr. Wright - I have one question. What date would affect the use
1839 of this property?
1840
1841 Mr. Blankinship - Again, the public street frontage requirement has
1842 been in the Code since 1960.
1843
1844 Mr. Wright - Sixty.
1845
1846 Mr. Blankinship - Yes sir.
1847
1848 Mr. Wright - It was divided in 1988.
1849
1850 Ms. Cottrell - Yes.
1851
1852 Mr. Blankinship - Yes sir.
1853
1854 Mr. Wright - What was the property used for in 1960, do you
1855 know?
1856
1857 Ms. Cottrell - Just family use and farm use, basically, is what they
1858 did with it. The two brothers that live in the front part of the property, one has
1859 goats, the other has cows. So, they still farm most of that land.
1860
1861 Mr. Wright - It was farmed.
1862

1863 Ms. Cottrell - Yes. The nephew that got the 1.3-something acres,
1864 of course, he got a variance to put the modular home in there. Basically, it's
1865 beside it.
1866
1867 Mr. Cottrell - I believe Upper Western Run Lane just has their
1868 driveways coming off that. I believe that was the main road leading back to the
1869 main farmhouse.
1870
1871 Ms. Cottrell - Yes.
1872
1873 Mr. Cottrell - So, I guess that main Upper Western Run has been
1874 there since the '30's.
1875
1876 Ms. Cottrell - I would think so, too, because the farmhouse is from
1877 the Civil War, and it's still there.
1878
1879 Ms. Dwyer - But it's not a public street.
1880
1881 Ms. Cottrell - No.
1882
1883 Mr. Cottrell - What would you call it?
1884
1885 Mr. Blankinship - A private road.
1886
1887 Mr. Cottrell - It has a name?
1888
1889 Mr. Blankinship - Yes. Anytime you have more than two dwellings off a
1890 road, we give it a name just to make it easier for the fire department to find it.
1891
1892 Ms. Cottrell - Right, that makes sense.
1893
1894 Mr. Cottrell - We also heard about a cell tower coming in and we
1895 don't know how that would affect us or if it could help us.
1896
1897 Mr. Nunnally - Any other questions?
1898
1899 Ms. Harris - Did anyone determine the cost of a public road? I've
1900 heard a figure and I'm just seeing—
1901
1902 Ms. Cottrell - I have no idea.
1903
1904 Mr. Cottrell - Mr. Cochran that owns the land now that's selling to
1905 us, he'd like to sell it to us, he said it was like a gentlemen's agreement between
1906 all the family members. I believe there is some paperwork on it that they've had.
1907

1908 Ms. Cottrell - Where they all take care of it themselves. Our lawyer,
1909 Mr. Chissom, he is in the process of still getting signatures, too, from the other
1910 family members that have their parcels there to allow us to use that exiting 20-
1911 foot right-of-way.
1912
1913 Mr. Cottrell - I believe we would need your acceptance and also
1914 their acceptance, too. I guess there are a couple of things going on at the same
1915 time.
1916
1917 Ms. Cottrell - We plan on just building one house, one three-
1918 bedroom house. We're not going to sell any of the land. It's just going to be us.
1919
1920 Mr. Wright - Could you tell me how this property is assessed by
1921 the County?
1922
1923 Ms. Cottrell - It has been assessed at \$78,000.
1924
1925 Mr. Wright - Just this one lot?
1926
1927 Ms. Cottrell - Yes, just this one. Of course, if we put a \$250,000
1928 home on it, then it's going to be worth more.
1929
1930 Mr. Blankinship - So, it's about 4,000 an acre.
1931
1932 Mr. Wright - Could you tell us what the contract for this lot is?
1933
1934 Ms. Cottrell - Yes. The contract price is \$115,000.
1935
1936 Mr. Wright - You've got a lot assessed for \$78,000. You pay
1937 \$115,000 and you can't build a house on it.
1938
1939 Ms. Cottrell - Well, it's stated in the contract that if we're unable to
1940 build, then of course we don't want the land, we don't have use for it.
1941
1942 Mr. Wright - But the owner's paying taxes on a lot assessed at
1943 \$78,700.
1944
1945 Ms. Cottrell - Yes.
1946
1947 Mr. Cottrell - I've already gone to my retirement and got some of
1948 that to put 25% down.
1949
1950 Ms. Cottrell - Basically, the whole contract states that if this isn't
1951 met, of course, then we can't get a building permit, we can't build a house.
1952 Therefore, we're not going to purchase the land. Then I guess he's kind of in a
1953 bind himself because he's sitting on a piece of property that he can only farm that

1954 has been assessed at \$78,000. If a house was put on it, then of course the
1955 assessment and taxes and everything is going to increase. It's going to increase
1956 the value of the property if we do put a house on it.

1957

1958 Mr. Nunnally - Any other questions from the Board or staff? Anyone
1959 in opposition to his case? Hear none, that completes the case. Thank you from
1960 coming.

1961

1962 Ms. Cottrell - Thank you.

1963

1964 **DECISION**

1965

1966 Mr. Nunnally - Do we have a motion on that? The one house going
1967 on 18 acres.

1968

1969 Ms. Dwyer - I'll move that we deny this case. It's a beautiful piece
1970 of land and I have no problem with a house being on 18 acres in theory, but the
1971 law does require public road frontage. In order for us to grant a variance from
1972 that legal requirement, we have to say that there is no other beneficial use for the
1973 property taken as a whole. The property taken as a whole has to be the 102
1974 acres, which does have a reasonable use. It has an existing home on it, before it
1975 was subdivided, and it was used for agricultural purposes. So, under both
1976 Cochran and Cherrystone, looking at the property taken as a whole, it does have
1977 a reasonable use; therefore, we do not have jurisdiction under those two
1978 Supreme Court cases. Another reason for the denial is that under our own
1979 ordinance, paragraph 3 of Section 24-116(b)(3), it states that we have to make a
1980 specific finding that the issue presented here is not of a general or recurring kind
1981 of issue. This issue of road frontage certainly is. We cannot make that finding
1982 that it's not recurring. Those are my reasons.

1983

1984 Mr. Nunnally - Motion by Ms. Dwyer it be denied. Do I have a
1985 second? No second? Do I have another motion?

1986

1987 Mr. Wright - I move we approve it.

1988

1989 Mr. Nunnally - Motion by Mr. Wright it be approve.

1990

1991 Ms. Harris - Second.

1992

1993 Mr. Nunnally - Second by Ms. Harris.

1994

1995 Ms. Dwyer - Could we have reasons?

1996

1997 Mr. Wright - The reason is that there are already five dwellings on
1998 this property. It's not sitting there as 102 acres. I think we have to use some
1999 judgment insofar as what this reasonable beneficial use it. I think the ordinance

2000 interferes with the reasonable beneficial use of the property taken as a whole
2001 under the circumstances.

2002
2003 Mr. Nunnally - All right. Motion by Mr. Wright it be approved,
2004 seconded by Ms. Harris. All in favor say aye. All opposed say no. It's approved
2005 4 to 1.

2006
2007 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2008 Ms. Harris, the Board **granted** application **A-012-07** for a variance to build a one-
2009 family dwelling at 8027 Upper Western Run Lane (Parcel 856-687-8039). The
2010 Board granted the variance subject to the following conditions:

2011
2012 1. This variance applies only to the public street frontage requirement for one
2013 dwelling only. All other applicable regulations of the County Code shall remain in
2014 force.

2015
2016 2. Approval of this request does not imply that a building permit will be issued.
2017 Building permit approval is contingent on Health Department requirements,
2018 including, but not limited to, soil evaluation for a septic drainfield and reserve
2019 area, and approval of a well location.

2020
2021 3. At the time of building permit application, the applicant shall submit the
2022 necessary information to the Department of Public Works to ensure compliance
2023 with the requirements of the Chesapeake Bay Preservation Act and the code
2024 requirements for water quality standards.

2025
2026 4. The applicant shall present proof with the building permit application that a
2027 legal access to the property has been obtained.

2028
2029 5. The owners of the property, and their heirs or assigns, shall accept
2030 responsibility for maintaining access to the property until such a time as the
2031 access is improved to County standards and accepted into the County road
2032 system for maintenance.

2033
2034
2035 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2036 Negative: Dwyer 1
2037 Absent: 0

2038
2039
2040 Mr. Nunnally - Next case, Mr. Blankinship.

2041
2042 **A-013-07** **NATASHA EVANS** requests a variance from Section
2043 24-94 to build a one-family dwelling at 10634 Courtney Road (Parcel 766-768-
2044 2363), zoned R-2, One-family Residence District (**Brookland**). The lot width

2045 requirement is not met. The applicant has 87 feet lot width where the Code
2046 requires 100 feet lot width. The applicant requests a variance of 13 feet lot width.
2047
2048 Mr. Nunnally - Is anyone else here interested in this case? If so, will
2049 you please stand and be sworn.
2050
2051 Mr. Blankinship - Would you all three raise your right hand, please.
2052 Stand and raise your right hand, please. Do you swear the testimony you're
2053 about to give is the truth and nothing but the truth so help you God?
2054
2055
2056 Ms. Evans - I do.
2057
2058 Mr. Nunnally - Please state your name for the record and tell us what
2059 you're requesting.
2060
2061 Ms. Evans - My name is Natasha Evans. What I'm requesting is a
2062 variance to build a single-family dwelling on this property located at 10634
2063 Courtney Road, Glen Allen.
2064
2065 Mr. Blankinship - Mr. Chairman, let me call your attention to the fax that
2066 was left on the table for each of you. It's just a change in the house plan. Since
2067 this is a lot width variance, it's not directly relevant because the lot width isn't
2068 going to change, but we did want to have it on the record that this is what you're
2069 approving.
2070
2071 Mr. Nunnally - All right, thank you, sir.
2072
2073 Mr. Kirkland - So, Ms. Evans, this is a pre-manufactured home that
2074 you're placing on the lot?
2075
2076 Ms. Evans - Yes.
2077
2078 Mr. Kirkland - That hasn't changed.
2079
2080 Ms. Evans - Right.
2081
2082 Ms. Dwyer - So this was a 2.71-acre parcel that was divided in
2083 1972. In that division, three parcels were created, two of which met the zoning
2084 ordinance requirements and this one did not. Are you clear about that?
2085
2086 Mr. Moore - That is what we came to understand.
2087
2088 Ms. Dwyer - Okay.
2089
2090 Mr. Blankinship - Can we get your name on the record?

2091
2092 Mr. Moore - My name is Howard Moore. I'm Ms. Evans' fiancé
2093 and it was originally in my family. We owned it for maybe 70 to 100 years.
2094
2095 Mr. Blankinship - "Moore" is spelled M-O-O-R-E?
2096
2097 Mr. Moore - M-double O-R-E, that's correct.
2098
2099 Ms. Dwyer - Had you thought about getting this lot rezoned to say
2100 an R-2A? The lot width requirement for an R-2A zoning is only 80 feet. I believe
2101 that's right, Mr. Blankinship.
2102
2103 Mr. Blankinship - An R-2A would go to 80 feet, yes ma'am.
2104
2105 Mr. Moore - No we hadn't, because we just learned of the fact that
2106 we didn't meet the zoning requirements a few weeks ago.
2107
2108 Ms. Dwyer - As I look at the zoning map, Church Glen subdivision
2109 has two lots that appear to have been separately zoned. Church Glen is R-2 and
2110 then a lot that is kind of within that rectangle is R-2A and an R-3. I'm guessing,
2111 just looking at the configuration of these lots, that the lots that those houses are
2112 on, in the corner, probably did not meet zoning requirements of R-2.
2113
2114 Mr. Kirkland - The R-3 one is owned by the County of Henrico.
2115
2116 Ms. Dwyer - Is that gas station?
2117
2118 Mr. Kirkland - Then the R-2A is owned by another owner. It's not
2119 part of that subdivision.
2120
2121 Ms. Dwyer - Okay. Do you know when it was zoned R-2A?
2122
2123 Mr. Kirkland - That's possible, it has been there for quite some time.
2124 That's always been part of the Barlow's situation there.
2125
2126 Ms. Dwyer - Okay. I guess my point is; there are two zoning
2127 exceptions in the vicinity of the R-2 zoning classification. That seems to
2128 predominate in the subdivisions in this area. Also, it looks like on the other side
2129 of Mountain Road there's an R-2A. That goes to your question earlier here about
2130 spot zoning and whether rezoning this lot might be acceptable to the Board and
2131 the Planning Commission.
2132
2133 Ms. Harris - Who told you to come before us first instead of getting
2134 the zoning changed?
2135

2136 Mr. Moore - Well, when we learned that it was too small in the
2137 front—We had always assumed until the gentleman purchased the house next to
2138 our land, that part of the lawn belonged to us. Then we found out that 12 feet
2139 belonged to him in the front. So, when we went to contract to get the home,
2140 that's when we learned that we had to get a variance. We came and met down
2141 here in the County and they told us we needed to apply for a variance.
2142

2143 Ms. Harris - If you purchased part of that land to satisfy these
2144 requirements, do you think that owner would consent to that, or does that owner
2145 need that for his zone?
2146

2147 Mr. Moore - Our original home where we thought was his lawn, I
2148 offered to give him like 30 feet of that to get the required little footage that we
2149 need, but he said no. Actually, where my mother's home is he uses for part of his
2150 lawn, which we thought was his. Some kind of way it got mixed up.
2151

2152 Ms. Dwyer - Where's you mother's home here?
2153

2154 Mr. Moore - Yes. Are they going to put it up on the camera?
2155 Which one do you want me to point from? Okay. My mother's house would be
2156 10632 Courtney Road, 30. Next to that is my sister's house.
2157

2158 Mr. Nunnally - Which one is this?
2159

2160 Mr. Moore - They originally had it put in their name in 1937, but
2161 previous to that, my grandmother owned it.
2162

2163 Ms. Harris - The property you thought was yours came from
2164 10636?
2165

2166 Mr. Moore - 32.
2167

2168 Ms. Harris - I thought you said that was your sister's property.
2169

2170 Mr. Moore - No. 10626 is my sister. 10630 was my mother's
2171 home.
2172

2173 Ms. Harris - Okay.
2174

2175 Mr. Moore - Which my brother is presently living in there. I guess
2176 my family has been there a hundred years or more.
2177

2178 Mr. Nunnally - All right. I think we have some opposition, so if you all
2179 will have a seat, we'll let them speak and we'll let you rebut after. Will you come
2180 forward, ma'am?
2181

2182 Ms. Bishop - Jeanie Bishop. I'm terribly embarrassed because I
2183 now realize. I thought it was the property that was sold right beside our house
2184 and it's not. It's a different plot. I can attribute that to sleep deprivation from two
2185 little boys. I'm really embarrassed. But anyway, I'll have some neighbors. I was
2186 actually happy that I thought you guys were going to be beside us and there was
2187 going to be a 200-foot setback. Now, who knows what's going to happen with
2188 that property beside us. But, congratulations and good luck. Sorry.
2189
2190 Mr. Moore - We were originally going to build a 4200 square foot
2191 house on this land, but we found that it would be three inches over the setback
2192 requirements, so the three inches, we changed and it's approximately a 3,000
2193 square foot house.
2194
2195 Mr. Wright - What was paid for this lot?
2196
2197 Mr. Moore - I beg your pardon, sir?
2198
2199 Mr. Wright - How much did you pay for this lot?
2200
2201 Mr. Moore - It was in my family for over a hundred years.
2202
2203 Mr. Wright - Our notes say that it was sold to the current owner,
2204 who is the applicant. Is that true?
2205
2206 Mr. Moore - This is my fiancé.
2207
2208 Mr. Wright - You bought it, did you?
2209
2210 Ms. Evans - I acquired it through a Quick Claim Deed last year, so
2211 he gave it to me.
2212
2213 Mr. Wright - I mean, did you buy it or was it conveyed to you?
2214
2215 Ms. Evans - No, no.
2216
2217 Mr. Wright - Oh, so this is not correct, then.
2218
2219 Mr. Moore - I have PTSD and I've been diagnosed by the VA. I
2220 don't receive any money for it, but it would make it better for us to get it because
2221 of my illness.
2222
2223 Mr. Wright - Yes, I see. I was just checking what was said here in
2224 our notes and it indicated that you bought it. It was conveyed to you.
2225
2226 Mr. Nunnally - Any other questions? Hear none, that completes the
2227 case. Thank you for coming. Do we have a motion?

2228
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2273

Mr. Kirkland - I'm thinking.

Mr. Nunnally - Oh.

Mr. Blankinship - I'm going to decrease you all's pay.

DECISION

Mr. Kirkland - Yeah. I make a motion we approve it. Reason being, this lot where the structure is located is far enough back. The only problem they have is that 13 feet on that one corner. I think the effect of the zoning ordinance on this property does interfere with the reasonable uses of the property. There are homes all the way around it. There is no other reasonable use other than a lot to build a home on, in my book. So, I make a motion we approve it.

Mr. Nunnally - Motion by Mr. Kirkland it be approved. Do I have a second?

Ms. Harris - I have a question.

Mr. Nunnally - Question.

Ms. Harris - Do you think that the zoning should have been pursued here, to change the zoning?

Mr. O'Kelly - Ms. Harris, I think R-2 is preferable zoning for this area.

Ms. Harris - Okay.

Mr. Kirkland - Thank you, Mr. O'Kelly.

Mr. Wright - Second.

Mr. Nunnally - Motion by Mr. Kirkland, seconded by Mr. Wright it be approved. All in favor say aye. All opposed say no. It's been approved 4 to 1.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright the Board **granted** application **A-013-07** for a variance to build a one-family dwelling at 10634 Courtney Road (Parcel 766-768-2363). The Board granted the variance subject to the following conditions:

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

2274 2. Only the improvements shown on the plan filed with the application may be
2275 constructed pursuant to this approval. Any additional improvements shall comply
2276 with the applicable regulations of the Code. Any substantial changes or additions
2277 may require a new variance.

2278
2279
2280 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2281 Negative: Dwyer 1
2282 Absent: 0

2283
2284

2285 Mr. Nunnally - Next one, Mr. Blankinship. Last case.

2286

2287 **UP-007-07 RIVER CITY LAND COMPANY** requests a temporary
2288 conditional use permit pursuant to Section 24-116(c)(1) to install a temporary
2289 sales trailer at 4501 Pouncey Tract Road (Avington) (Parcel 740-764-5065),
2290 zoned RTHC, Residential Townhouse District (Conditional) (**Three Chopt**).

2291

2292 Mr. Nunnally - Is there anyone else here interested in this case? If
2293 so, will you please stand and be sworn.

2294

2295 Mr. Blankinship - Raise your right hand please. Do you swear the
2296 testimony you're about to give is the truth and nothing but the truth so help you
2297 God?

2298

2299 Mr. Paner - I do.

2300

2301 Mr. Nunnally - Please state your name for the record, sir, and tell us
2302 what you're requesting.

2303

2304 Mr. Paner - My name is Evan Paner with River City Land
2305 Company. I'm here, obviously, to request a conditional use permit pursuant to the
2306 County Code for the temporary sales trailer on our proposed townhouse project
2307 called Avington on Pouncey Tract Road. As it says in the staff report, it's an
2308 understatement to say, I think, that we're not going to cause any detrimental
2309 physical characteristics to the surroundings out there. If you've been out there
2310 along Pouncey Tract Road recently, it's just a big construction mess out there.
2311 To the south of us is an existing self-storage warehouse. To the north of us is the
2312 Pryor Hauling offices as well as the VDOT area headquarters there. We are
2313 basically as far away as possible from the existing residential to the east of us
2314 there at Parsons Walk at Twin Hickory. I feel we have met every condition for
2315 approval of a use permit out here. I'm okay with the suggested conditions. I
2316 would like to see if it's possible if I could stretch the time of that permit into
2317 January. Where we are right now, we're finalizing our plat for signatures, hoping
2318 to be recorded. My estimation right now it would probably be early June. We're
2319 going to start our model on Block A, which is immediately north. That's Block F

2320 where the trailer is proposed. Block A, we're going to start our models as soon as
2321 we get recorded and open those up as soon as we can, but realistically, it's
2322 probably going to be January before we can have those opened up.

2323

2324 Mr. Blankinship - Is January going to be long enough? We'd rather not
2325 have you back.

2326

2327 Mr. Paner - Well, if it's okay. I would be okay with March or
2328 something, if it's okay with you guys. I don't want to stretch my boundaries too
2329 much, but absolutely. It typically takes us about a month or six weeks for the
2330 permit and then once we're furnishing those models and everything, it's going to
2331 be a good six months there. With not knowing exactly when I'm going to be able
2332 to get it recorded, that's my concern. March would be great, too.

2333

2334 Mr. Wright - How about a year?

2335

2336 Mr. Blankinship - We're not very good negotiators. We'd rather not
2337 have you come back in a year.

2338

2339 Mr. Wright - Why don't we just make it a year? Is this where the
2340 old Target Golf used to be?

2341

2342 Mr. Paner - Yes sir.

2343

2344 Mr. Wright - I was wondering what's going in there.

2345

2346 Mr. Paner - All our pads are in, our pond's in. Where that says
2347 RTHC there.

2348

2349 Mr. Wright - You're having problems getting to the property, aren't
2350 you, with all that construction?

2351

2352 Mr. Paner - Yeah, and now if you've been out there this week
2353 looking at the property, they're raising Pouncey Tract Road a couple feet there.
2354 The new lanes are going to be opened up, according to VDOT's schedule,
2355 August 24th.

2356

2357 Mr. Wright - Of this year?

2358

2359 Mr. Paner - On the northbound lanes, which will be the eastern
2360 two lanes there. Those are going to be open and all the traffic will be diverted to
2361 those new lanes right before Labor Day. Then they're going to be working all on
2362 the other side of our property and it shouldn't impact us nearly as much at that
2363 point.

2364

2365 Mr. Wright - Glad to hear that. I was wondering when that was
2366 going to be done.
2367

2368 Mr. Blankinship - That's going to be a dangerous mess for a while.
2369

2370 Mr. Paner - It is. Our trailer, realistically, is not going to really get
2371 in there until July. We're preparing the permit and then it seems to take forever
2372 for the trailer company to get it out there. We just want to try to get some sort of
2373 representation or acknowledgement that, yeah, we're opening, and hopefully get
2374 some sales in there prior to us having to build that model.
2375

2376 Ms. Dwyer - The M use is self-storage?
2377

2378 Mr. Paner - Yes ma'am. I think it's Short Pump Self-Storage.
2379

2380 Ms. Harris - Where will the landscaping be? I see there will be
2381 landscaping.
2382

2383 Mr. Paner - I did not have a landscaping plan at the time of my
2384 submittal here. I do have, unfortunately, just one copy that I can provide you guys
2385 here. Basically, what we're trying to do is incorporate a lot of the landscaping
2386 we're going to have in the model units over there, they are basically just going to
2387 be able to start growing a little earlier around our trailer.
2388

2389 Mr. Kirkland - That's good. Is your model going to be connected to
2390 public water and sewer?
2391

2392 Mr. Paner - No, it has an under-the-trailer storage tank for the
2393 water and the—There will be bathrooms in the trailer.
2394

2395 Mr. Kirkland - Right.
2396

2397 Mr. Paner - Then the storage tanks will be in the ground there
2398 underneath. Then we have the regular cleaning out of those.
2399

2400 Mr. Kirkland - There's no exposed tanks or anything.
2401

2402 Mr. Paner - No sir, no sir.
2403

2404 Mr. Kirkland - It's all under the trailer.
2405

2406 Mr. Paner - Yes sir.
2407

2408 Mr. Wright - So, you'll access this property from Pouncey Tract
2409 Road? Is that correct?
2410

2411 Mr. Paner - Yes sir. Our construction entrance, where it's located
2412 now, is what will be our permanent entrance in there.
2413
2414 Mr. Wright - There's a stoplight just to the west of that.
2415
2416 Mr. Paner - Right, at Twin Hickory Drive and the Colonial Trail.
2417
2418 Mr. Wright - The only other stoplight is down at Lowe's.
2419
2420 Mr. Paner - Down at the Lowe's. Once Pouncey Tract is
2421 completed, there's a painted median in the road there, the continuous left.
2422
2423 Mr. Wright - There will be a median strip there?
2424
2425 Mr. Paner - Yes sir.
2426
2427 Mr. Wright - So you would not be able to cross there.
2428
2429 Mr. Paner - No, it's a painted median. It's one of those continuous
2430 left-turn lanes in there. It will not be a concrete median.
2431
2432 Mr. Wright - There's a lot of traffic there.
2433
2434 Mr. Paner - Yes sir.
2435
2436 Mr. Blankinship - You can sell tickets to stand out there and watch the
2437 accidents happen.
2438
2439 Mr. Paner - That's why we need this trailer up. We're selling
2440 location and product.
2441
2442 Mr. Wright - This has been approved by Public Works, etcetera,
2443 the access and everything?
2444
2445 Mr. Paner - I certainly hope so, because we've been developing
2446 out there for four or five months.
2447
2448 Mr. Blankinship - Once all the construction is complete, I'm sure it will
2449 be safe, but while it's under construction—
2450
2451 Mr. Kirkland - That won't eliminate the traffic.
2452
2453 Mr. Wright - That won't eliminate the traffic because then you're
2454 going to have twice as much going across there with no median strip and no
2455 light.
2456

2457 Ms. Harris - The picture that we have of the trailer, will the
2458 foundation be that way or will it be skirted?

2459
2460 Mr. Paner - Actually, what we've started doing with our
2461 construction trailers is having those at grade to the property. Rather than having
2462 to necessitate the construction of a handicapped ramp and that sort of thing, you
2463 have the at-grade walk-in.

2464
2465 Mr. Nunnally - Any other questions for the applicant? Anyone here
2466 in opposition to this case? What did we decide to do, put May 2008 on here?

2467
2468 Mr. Blankinship - April 30 is what I have, but whatever you all want.

2469
2470 Mr. Nunnally - Make it the 30th. All right. Hear none, that completes
2471 the case. We'll let you know later. Thank you for coming. Do we have a motion?

2472
2473 **DECISION**

2474
2475 Mr. Wright - I move we approve it.

2476
2477 Ms. Dwyer - Second.

2478
2479 Mr. Wright - Make it April.

2480
2481 Ms. Harris - April 2007, I mean 2008.

2482
2483 Mr. Wright - April 30th.

2484
2485 Ms. Harris - 2008.

2486
2487 Mr. Blankinship - 2007 would give them four days.

2488
2489 Mr. Nunnally - Who seconded that, you, Ms. Harris?

2490
2491 Ms. Harris - Ms. Dwyer.

2492
2493 Mr. Nunnally - Ms. Dwyer?

2494
2495 Ms. Dwyer - Yes.

2496
2497 Mr. Nunnally - Motion by Mr. Wright, second by Ms. Dwyer it be
2498 approved. All in favor say aye. All opposed say no. It's been approved.

2499
2500 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2501 Ms. Dwyer, the Board **granted** application **UP-007-07** for a temporary conditional
2502 use permit to install a temporary sales trailer at 4501 Pouncey Tract Road

2503 (Avington) (Parcel 740-764-5065). The Board granted the Use Permit subject to
2504 the following conditions:

2505
2506 1. Only the improvements shown on the plan filed with the application may be
2507 constructed pursuant to this approval. No substantial changes or additions to the
2508 layout may be made without the approval of the Board of Zoning Appeals. Any
2509 additional improvements shall comply with the applicable regulations of the
2510 County Code.

2511
2512 2. The trailer shall be skirted on all sides with a durable material as required by
2513 the building code for a permanent installation.

2514
2515 3. A detailed landscaping and lighting plan shall be submitted to the Planning
2516 Department with the building permit for review and approval. Approved
2517 landscaping shall be installed as soon as the weather permits. All landscaping
2518 shall be maintained in a healthy condition at all times. Dead plant materials shall
2519 be removed within a reasonable time and replaced during the normal planting
2520 season.

2521
2522 4. The bathroom in the trailer shall be connected to sanitary facilities approved
2523 by the Virginia Department of Health. This facility shall be screened from
2524 adjacent property.

2525
2526 5. If more than 2,500 square feet of land disturbance is required to locate the
2527 sales trailer, construction plans need to be approved first that show the
2528 temporary trailer or provide a separate erosion and sediment control plan.

2529
2530 6. Adequate site distance must be provided entering onto public roads.

2531
2532 7. [AMENDED] The trailer shall be removed from the property on or before April
2533 30, 2008, at which time this permit shall expire.

2534
2535

2536 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2537 Negative: 0

2538 Absent: 0

2539

2540

2541 Mr. Nunnally - All right, now the minutes.

2542

2543 Ms. Dwyer - I have one correction on page 28, line 1245. It says,
2544 "use," u-s-e. It should be "us," u-s. It's just an extra "e." It should "us" instead of
2545 "use." Then on page 17, line 756, it says, "Mr. Cosby." It should be "Ms. Cosby."
2546 She's female.

2547

2548 Mr. Nunnally - Any other corrections? Can I have a motion it be
2549 approved as corrected?
2550
2551 Ms. Dwyer - So move.
2552
2553 Mr. Kirkland - Second.
2554
2555 Mr. Nunnally - Motion by Ms. Dwyer, seconded by Mr. Kirkland it be
2556 approved as corrected. All in favor say aye. All opposed say no.
2557
2558 Mr. Wright - I abstain since I wasn't here.
2559
2560 On a motion by Ms. Dwyer and seconded by Mr. Kirkland, the Board **approved**
2561 the corrected minutes of the **March 22, 2007** Henrico County Board of Zoning
2562 Appeals meeting.
2563
2564 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
2565 Negative: 0
2566 Abstain: Wright 1
2567
2568
2569 Mr. Kirkland - Mr. Blankinship, we have some other people here.
2570 Have we missed some cases?
2571
2572 Mr. Blankinship - No, we don't. We have some new staff members,
2573 who may want to introduce themselves, or may not.
2574
2575 Mr. Nunnally - Nice to see you.
2576
2577 [Off mike] [Unintelligible]
2578
2579 Ms. Dwyer - Welcome.
2580
2581 Mr. Kirkland - Did we adjourn? I missed the motion.
2582
2583 Ms. Harris - I move we adjourn.
2584
2585 Mr. Blankinship - All in favor please stand.
2586
2587
2588 There being no further business, the Board **adjourned** until the **May 24, 2007**
2589 meeting at 9:00 a.m.
2590
2591
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2603

James W. Nunnally
Chairman

Benjamin Blankinship, AICP
Secretary