

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, FEBRUARY 22, 2007, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **FEBRUARY 1, 2007, AND FEBRUARY 8, 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

8
9
10 Mr. Nunnally - Good morning, ladies and gentlemen, we welcome
11 you to our February 22, 2007 Board of Zoning Appeals meeting. We'll ask you to
12 stand and join in the **Pledge of Allegiance to the Flag of Our Country**. Mr.
13 Blankinship, will you read the rules for the meeting, please?

14
15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
16 ladies and gentleman. The rules for this meeting are as follows. As Secretary, I
17 will announce each case and while I'm speaking, the applicant should come
18 down to the podium. We will then ask everyone who intends to speak on that
19 case to stand and be sworn in. The applicant will be given an opportunity to
20 speak and then anyone else who wishes to speak will be given the opportunity.
21 After everyone has spoken, the applicant and only the applicant will have an
22 opportunity for rebuttal. After hearing all of the evidence and asking questions,
23 the Board will take the matter under advisement and they will render all of their
24 decisions at the end of the meeting. If you wish to know their decision on a
25 specific case, you can either stay until the end of the meeting or you can check
26 the Planning Department website this afternoon or you can call the Planning
27 Department this afternoon. This meeting is being tape recorded, so we'll ask
28 everyone who speaks to speak directly into the microphone on the podium. State
29 your name and please spell your last name for us. Finally, out in the foyer, there
30 are two binders that contain the staff report for each case, including the
31 conditions that have been recommended by the staff.

32
33 Mr. Nunnally - Do we have any deferrals or withdrawals, Mr.
34 Blankinship?

36 Mr. Blankinship - No sir.
37
38 Mr. Nunnally - All right, sir, thank you. Please call the first case then,
39 sir.
40
41 **A-002-07** **BRUCE TAYLOR** requests a variance from Section
42 24-9 to build a one-family dwelling at 6951 Willson Road (Parcel 812-699-8604
43 (part)), zoned A-1, Agricultural District (Varina). The public street frontage
44 requirement is not met. The applicant has 0 feet public street frontage where the
45 Code requires 50 feet public street frontage. The applicant requests a variance of
46 50 feet public street frontage.
47
48 Mr. Nunnally - Is there anyone else here interested in this case? If
49 so, please stand and be sworn in.
50
51 Mr. Blankinship - Raise your right hand. Do you swear the testimony
52 you're about to give is the truth and nothing but the truth so help you God?
53
54 Mr. Taylor - I do.
55
56 Mr. Nunnally - Please state your name for the record, sir, and tell us
57 what you're requesting.
58
59 Mr. Taylor - Bruce Taylor. A variance for a lot that doesn't meet
60 the road frontage.
61
62 Mr. Nunnally - Wasn't that deferred for right-of-way?
63
64 Mr. Taylor - That was to check on the driveway entrance.
65
66 Mr. Nunnally - Did you work out anything with anyone?
67
68 Mr. Taylor - No. You all were checking with Traffic or somebody
69 at the County. I haven't received anything else on it since the last meeting. The
70 only thing I got was a letter stating we were having a meeting today.
71
72 Mr. Blankinship - Did anybody from Traffic Engineering contact you?
73
74 Mr. Taylor - No, nobody. No letter has been sent to me or my
75 father-in-law, who actually owns the property right now.
76
77 Mr. Nunnally - Did you check with anyone, Mr. Taylor? Did you call
78 up here and check with anyone?
79
80 Mr. Taylor - No. I didn't call up here.
81

82 Mr. Nunnally - You didn't call the County.
83
84 Mr. Taylor - Nobody's contacted me and I haven't contacted
85 anybody through the County. I assumed it would be done here at the meeting.
86
87 Mr. Nunnally - So, we can blame you on that.
88
89 Mr. Taylor - Maybe so.
90
91 Ms. Dwyer - Mr. Blankinship, what is the County's official response
92 to our questions about access to this lot? Is that summarized or fully contained
93 in the e-mails you sent us?
94
95 Mr. Blankinship - Yes. I would say Mike Jennings's e-mail of January
96 31st is the Department of Public Work's position on the entrance. It's not a flat
97 "no," but I read it as discouraging the idea of a separate driveway coming out on
98 Laburnum.
99
100 Ms. Dwyer - I think Mr. Taylor needs to see a copy of this e-mail.
101 The one I have is dated January 31st.
102
103 Mr. Taylor - I can see that won't work.
104
105 Mr. Blankinship - You can see that that won't work? We can take that, I
106 guess, being Public Works.
107
108 Mr. Taylor - Yes. I have to be 150 feet from the next turn-in,
109 which is only maybe 15 feet. I would already be partially in the turning lane to
110 start with because there's a turning lane there.
111
112 Mr. Blankinship - Right.
113
114 Ms. Dwyer - That's what I thought I understood you to say last
115 month, that your entrance would actually be into a turning lane that's existing.
116
117 Mr. Taylor - I don't know that I'm all the way into that turning, but
118 it's into it. We haven't had it surveyed or anything. Wasn't going through the
119 expense until we knew if we could do it or not. I didn't know that was even going
120 to be a problem.
121
122 Ms. Dwyer - I think it's a problem because you're going to have
123 traffic on a fairly high level.
124
125 Mr. Taylor - There's eight other driveways on Laburnum Avenue.
126

127 Ms. Dwyer - Right, but you're asking us to add to that for a lot that
128 does not meet the existing zoning requirements.
129
130 Mr. Taylor - Right.
131
132 Ms. Dwyer - You're asking for an exception to be made for you.
133 We have to weigh the impact of that on a roadway that's divided. In many ways,
134 it's limited access. It has a high speed limit. To put a driveway into a turn lane
135 when you're already going to have traffic pulling off the roadway into the turn lane
136 I think is a concern to Public Works and certainly a concern to me from a safety
137 point-of-view.
138
139 Mr. Taylor - I don't see how that could really work out. It gets
140 rather expensive. The reason for doing it was to save money, rather than clear
141 300 feet back to it.
142
143 Ms. Dwyer - Right.
144
145 Mr. Wright - Mr. Taylor, we talked last time, just looking at my
146 minutes, about access over at Distributor Drive.
147
148 Mr. Taylor - Yes. My wife went over there the next Saturday
149 morning and there were two tractor-trailers there with people sleeping in them, at
150 the warehouse. She really didn't want to go up in there.
151
152 Mr. Wright - I thought one of the things that was to be done during
153 this 30-day deferral was that you were going to check it out to see if it was
154 possible.
155
156 Mr. Taylor - I did. There are two different corporations that own
157 that entrance coming in there, so you'd have to get two different right-of-ways
158 from two different people. You can see how the road coming into the warehouse
159 there sort of comes in curves. There's that little strip of land. It doesn't look very
160 wide. Up in the top corner here, top right corner. Right there. You have two
161 different pieces of property owned by two different corporations there.
162
163 Mr. Wright - How about to the right of that?
164
165 Mr. Taylor - We had to come into [unintelligible] to do it and she
166 didn't like that at all.
167
168 Mr. Wright - It looks like Distributor Drive comes right up to your
169 property, doesn't it?
170
171 Mr. Taylor - The property does, yes. The road doesn't. The road
172 is probably 60 feet over the pavement.

173
174 Mr. Wright - Who owns that little area?
175
176 Mr. Taylor - An electrical company owns part of it and somebody
177 else.
178
179 Mr. Wright - Looks like to me that would be the answer here, if
180 you could get out over Distributor Drive. That's an access to Laburnum.
181
182 Mr. Taylor - I have the access on Willson Road, but I'm a
183 [unintelligible] contractor and with riding up and down the driveway with the mixer
184 on there beside my father-in-law's house, 10 feet off it, beside his bedroom. I
185 didn't want to wake everybody up every morning. I leave by 5:00 every morning.
186
187 Mr. Kirkland - You could not gain access across the church
188 property, right off their parking lot? You didn't want to do that?
189
190 Mr. Taylor - I didn't want to cut their property up. That's why I was
191 trying to stay to the back corner of it. If I did it in the middle, I'd have to put
192 [unintelligible]. It would actually work easier for me; it would be closer to the
193 house.
194
195 Mr. Wright - When was Public Works supposed to get in touch
196 with them, Mr. Blankinship?
197
198 Mr. Blankinship - I thought they were going to discuss with him their
199 conditions, but it sounds like that wasn't really necessary anyway since he said
200 as soon as he read them, that he can't comply with them.
201
202 Mr. Taylor - It's a pretty big expense to put a turning lane in, I
203 would assume. Curb and gutter and pave the road.
204
205 Mr. Blankinship - I think that's just not a practical solution.
206
207 Mr. Taylor - Right.
208
209 Mr. Blankinship - Coming out onto Laburnum is not going to work.
210
211 Ms. Dwyer - Ultimately, it's the applicant's burden and
212 responsibility to show us that there is an acceptable and workable solution, I
213 think, to the proposal when they're asking for an exception to the ordinance.
214
215 Mr. Blankinship - I think there's a danger, I'll just throw this out, that
216 focusing too much on the access question can kind of distract us from the other
217 issues of whether there is a reasonable use of the property taken as a whole,
218 whether this falls under the Supreme Court's guidance on Cherrystone about

219 dividing a lot that was one lot when the regulations were adopted and enforced.
220 The access is only one issue here. I'm afraid we've focused on that to the
221 exclusion of the others.

222
223 Ms. Dwyer - That's the issue that you get to after you satisfy
224 Cochran, to determine whether it's in the public interest or doesn't harm the
225 public.

226
227 Mr. Taylor - I'd have access [unintelligible] the access on Willson
228 Road with no problem. I've got that on this plat.

229
230 Ms. Dwyer - Right, but you still need a variance.

231
232 Mr. Taylor - Right.

233
234 Mr. Nunnally - Any other questions of Mr. Taylor? Anyone in the
235 audience have anything to say on this case? Hear none, that concludes the
236 case. Thank you, Mr. Taylor. We'll let you know something later on.

237
238 Mr. Taylor - All right.

239
240 **DECISION**

241
242 Mr. Kirkland - I make a motion we deny it.

243
244 Ms. Dwyer - Second.

245
246 Mr. Kirkland - The reason being that under Cochran, he has
247 reasonable use of the property taken as a whole.

248
249 Ms. Dwyer - I agree. Also, I think its incumbent upon an applicant
250 who wants an exception to the law to show us that there is an appropriate and
251 reasonable way to, in this case, at least gain access. I don't think that that's
252 been proven. That's actually not the issue. I think, as Mr. Blankinship mentioned
253 earlier, the real issue is that under Cochran, they have reasonable beneficial use
254 of the property without dividing it at this time.

255
256 Mr. Nunnally - All right. A motion by Mr. Kirkland and seconded by
257 Ms. Dwyer that it be denied. All in favor say aye. All opposed say no. It's been
258 denied.

259
260 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by
261 Ms. Dwyer, the Board **denied** application **A-002-07**, requesting a variance from
262 to build a one-family dwelling at 6951 Willson Road (Parcel 812-699-8604 (part)),
263 zoned A-1, Agricultural District (Varina).

264

265 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
266 Negative: 0
267 Absent: 0

268
269

270 **A-003-007** **KWABENA AGYEKUM** requests a variance from
271 Section 24-9 to allow the existing dwelling to remain at 6538 Monahan Road
272 (Parcel 820-702-7260), zoned A-1, Agricultural District (Varina). The public
273 street frontage requirement is not met. The applicant has 0 feet public street
274 fronts, where the Code requires 50 feet public street frontage. The applicant
275 requests a variance of 50 feet public street frontage.

276

277 Mr. Blankinship - Mr. Chairman, let me call your attention to an e-mail
278 message received from one of the adjoining landowners, which is included in
279 your packet.

280

281 Mr. Nunnally - Anyone here interested in this case this morning?
282 Anyone interested in case A-003-07, Monahan Road?

283

284 Mr. Blankinship - This was the case, Mr. Chairman that was deferred
285 because they didn't appear last time.

286

287 Mr. Nunnally - Okay, let's pass it over until the end of the cases.

288

289 **A-004-07** **ROMULO P. NEYRA** appeals a decision of the
290 director of planning pursuant to Section 24-116(a) regarding the property at 1509
291 Carter Street (Lynn Grove) (Parcel 799-736-4014), zoned R-4, One-Family
292 Residence District (Fairfield).

293

294 Mr. Nunnally - Anyone else here interested in this case? If so,
295 please stand and raise your right hand to be sworn.

296

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

300

301 Mr. Neyra - Yes sir.

302

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

305

306 Mr. Neyra - My name is Romulo Neyra. I reside at 1509 Carter
307 Street. Can I have a copy of that paper? Like what he got. I never received
308 one.

309

310 Mr. Nunnally - You didn't receive a notice from the County?

311
312 Mr. Neyra - No sir, but they told me the day that I'm supposed to
313 come over here. I don't have a paper with me. I talked to the Zoning
314 Department last time. They're telling me that I can't keep any roosters in my yard
315 because they say they're making a lot of noise. I went to the Police Department
316 and they said there is no existing ordinance for that kind of noise because it's
317 animal noise.
318
319 Ms. Dwyer - They said there is no ordinance?
320
321 Mr. Neyra - Existing, yes.
322
323 Ms. Dwyer - Okay.
324
325 Mr. Neyra - There's no ordinance. They said they were going to
326 fine me for having that, so I came to the Board to make it clear for me. I don't
327 want to make any violation of the law. I have roosters and consider them my
328 pets and they told me I cannot make the distance requirement because they are
329 farm animals. I told them that pets are farm animals. You have cats and dogs.
330 They're farm animals, used to be. They're domesticated now. Even my roosters,
331 they're not running around my yard. We have a big cage on there and I keep it
332 clear and there's no odor about. For some reason, my neighbors complain
333 they're making noise. I have that rooster for a long time until a dog come in my
334 yard and kill my rooster. What I did, I put a trap for the dog and I catch the dog.
335 Then I call the law about the dog. They law came and picked it up. They asked
336 me if I wanted to file charges, but I can't file charges because there is no collar
337 on the dog. They told me they're going to pick up the dog and if nobody claims it
338 within three days, they're going to put the dog to sleep. The policeman that
339 picked up the dog asked me if I wanted to file charges. I told him if somebody
340 came and claimed the dog, I would file charges. I never heard anything about
341 that. That's where my problems started. The neighbors complain that my
342 rooster is making a lot of noise.
343
344 Mr. Nunnally - Mr. Neyra, how many roosters do you have?
345
346 Mr. Neyra - Right now sir, I have five.
347
348 Mr. Nunnally - Even if we called that a pet, you can't have but three
349 under the code.
350
351 Mr. Neyra - Yes sir. I know I can only have three. I talked to, I
352 can't remember the name of the person that's in my District for the Zoning
353 Department. I asked him what I should do. He told me to wait for the decision of
354 the Board.
355

356 Mr. Nunnally - Let me say this. If the Board were to say that that's a
357 pet, you can only have three pets.
358
359 Mr. Neyra - I get rid of the other two.
360
361 Mr. Nunnally - Do you have any other pets?
362
363 Mr. Neyra - No sir, that's all.
364
365 Mr. Nunnally - No dogs or cats or kangaroos or anything like that?
366
367 Mr. Neyra - No sir, just roosters.
368
369 Ms. Dwyer - Mr. Neyra, I guess the way the law reads is that these
370 animals are considered poultry. The law doesn't say this about cats and dogs,
371 but it does say that with poultry, you have to meet these distance requirements.
372 That has nothing to do with neighbors or dogs or noise. The law says if you have
373 poultry in a residential area, not on a farm, but in a residential area where there
374 are houses close together, that you have to meet these distance requirements.
375 That's the way the law reads and it doesn't have anything to do with the noise or
376 the complaints or the police or the dogs or anything else. That's just the zoning
377 law. It doesn't matter whether they're pets or not, because they're still chickens
378 or roosters. The law specifically says if it's poultry, it has to meet the distance
379 requirement.
380
381 Mr. Neyra - I read the 24-10, because they give me a copy of that.
382 It's under "Farming and Poultry Raising," that I have to meet the requirements. I
383 understand that, but I'm not raising poultry, I'm just having them as pets. That's
384 why I come here for an appeal. There's a difference between raising them and
385 having them as pets.
386
387 Ms. Harris - How many roosters do you have? One rooster and
388 four chickens?
389
390 Mr. Neyra - All I have is five roosters, ma'am.
391
392 Ms. Harris - Five roosters.
393
394 Mr. Nunnally - Do they make a lot of noise at night?
395
396 Mr. Neyra - Not really, sir, but, you know. They crow in the
397 morning because that's their natural behavior. They're happy to be alive. People
398 just have different opinions, that's all.
399
400 Ms. Dwyer - The law doesn't say anything about raising. It talks
401 about horses and ponies for personal enjoyment. I think this law recognizes that

402 farm animals may also be pets. Ponies may be pets, poultry may be pets. None
403 of that really matters. What matters is that if it's poultry, it has to meet this
404 distance requirement. I guess I'm saying that because I understood you to be
405 saying that because they're pets, the law doesn't apply. The law still applies
406 because even though they're pets, they're still poultry.

407

408 Mr. Neyra - What I come over here for is the dogs, the cats do not
409 have a distance requirement they're supposed to meet? How come the rooster
410 does?

411

412 Mr. Blankinship - The impact of living near a rooster is different from the
413 impact of living near a cat.

414

415 Ms. Dwyer - The way the law works is the Board of Supervisors
416 passes the law and we are asked today to determine whether the Director of
417 Planning properly interpreted that law. We don't make the law, we look at it and
418 see if the way the Planning Department interpreted it is the correct way to
419 interpret it. That's what we're here today to determine. The law would have to
420 be changed in order for you to keep these animals.

421

422 Mr. Neyra - I'm not asking the Board to change the law for
423 everybody, just for me. I'm just coming here to reason out my interpretation.

424

425 Mr. Blankinship - Do we hear from the neighbors?

426

427 Mr. Nunnally - Do you have any questions?

428

429 Ms. Harris - Not at this time.

430

431 Mr. Nunnally - All right, sir. If you'll have a seat, we'll ask the
432 opposition to come forward and then we'll call you back up.

433

434 Mr. Neyra - All right, sir.

435

436 Mr. Nunnally - Anyone in opposition, please come forward and state
437 your case.

438

439 Mr. Morris - Yes sir. My name is Richard W. Morris. I live at 1522
440 Young Street.

441

442 Mr. Nunnally - Morris, you said?

443

444 Mr. Morris - Yes sir.

445

446 Mr. Nunnally - 15 what, sir?

447

448 Mr. Morris - 1522 Young Street.
449
450 Ms. Dwyer - Are you behind?
451
452 Mr. Morris - Yes ma'am. He lives over there at 1509 and I live at
453 1522 Young Street, right behind him.
454
455 Ms. Dwyer - Right. I see it on the map.
456
457 Mr. Morris - I wouldn't be here today if it was just one rooster. I
458 have gone behind my garage, which abuts his property, and I've counted up to
459 15 roosters at one time. When you get one crowing, all of them start crowing.
460 The man says he can't hear them. Well, I can hear them and all my neighbors
461 can hear them. I'm here to represent them as well as myself today. I could put
462 up with one, maybe, but not 15 roosters, 5 roosters, or 6 roosters. I have been at
463 4:05 in the morning because they're crowing. They have crowed as late as 9:05
464 at night. You get this going on every day, it's not very nice. I don't think any of
465 you would like to have them in your backyard. I've got 4-1/2 lots. I don't have
466 them and I don't want them. The guy across the street from me said if you all
467 allow him to have all these roosters and everything, that he wants to come over
468 here and see if he can get a pony to put in his backyard. I would like to get it to
469 where I can buy some guineas and put them in mine. I've been putting up with
470 this mess now for over four years. I've called Russell, Paul Johnson and Paul
471 Gidley to try to get some help with this. I don't want to be mad with my
472 neighbors. I have faced him and asked him to get rid of them. He said he's not
473 going to do it because they are his pets. I've never seen anybody out there
474 playing with them. Does a chicken have to have rabies shots? No. A dog and a
475 cat do, and I own them both. When I'm not at home, I keep my dog tied with a
476 big chain. He's never been out of the yard. When I'm there, I turn him loose. I
477 don't know what to do about the situation. I even thought about moving 1-1/2
478 years ago, but I didn't figure it was for me to get out here and spend 220-some
479 thousand dollars to move over one little problem that could be solved. Every
480 time I've called somebody to come out there, they've heard the roosters.
481 They've seen them. Yeah, he's got them caged, but he had two running loose all
482 over the yard. A white and a brown one. I don't like to be mad with my
483 neighbors, but I'm not going to put up with roosters crowing all the time, seven
484 days a week. It's not right. I've had enough of it and my neighbors have. I'd like
485 to give this to you, if you don't mind. That's all I can say. I just don't want to
486 have to keep putting up with roosters waking me up at 4:00 in the morning. All
487 the people that signed that, I don't really want their names to get out, but they
488 said if it became necessary, we could have another meeting and they'd set up a
489 time to get off work and come over here. I had a stroke a couple years ago and if
490 I live to see Monday, I'm going to be 65. I'd like to enjoy a little of my retirement.
491 I'm going to leave the situation up to you and hope that you will do the right thing.
492 I don't know where to go other than this. Thank you all very much.
493

494 Ms. Harris - Mr. Morris, I have a question.
495
496 Mr. Morris - Yes ma'am.
497
498 Ms. Harris - I did drive through the neighborhood and I do
499 commend your neighbors in trying to upgrade and keep everything looking really
500 nice. I have a question about pets. What other type of pets are in your
501 neighborhood?
502
503 Mr. Morris - The only other things that I know are in my
504 neighborhood are dogs and cats. We do have a problem with dogs running
505 around that don't have collars, no tags. We've been trying to catch them. We've
506 got cages sitting around over there now. We can't even catch them; they're too
507 smart to get in the cage. I think if people would quit feeding them. I know some
508 that does. I can't say too much about that; I can't go in their yard and stop them.
509 I know of no other animal in that neighborhood other than dogs and cats. If I'm
510 wrong, sorry.
511
512 Ms. Harris - When did you last see the roosters in the yard?
513
514 Mr. Morris - My wife fed my dog yesterday. Over this past
515 weekend, they started disappearing. I talked to one of my neighbors and they
516 told me that he was trying to get some place to put them.
517
518 Mr. Nunnally - Do you have one dog or two dogs?
519
520 Mr. Morris - Yes sir.
521
522 Mr. Nunnally - You just have one pet.
523
524 Mr. Morris - Yes sir.
525
526 Mr. Nunnally - You said these dogs were running around without
527 collars.
528
529 Mr. Morris - Yes sir.
530
531 Mr. Nunnally - Could you call the Animal Protection people and—
532
533 Mr. Morris - Yes sir, we had them out there.
534
535 Mr. Nunnally - Run down there and pick them up? They'll pick them
536 up.
537
538 Mr. Morris - Yes sir, we've called them, but they can't catch them.
539

540 Mr. Nunnally - Can't catch them?
541
542 Mr. Morris - No sir. The dog runs away from them. He was over
543 there Saturday.
544
545 Mr. Nunnally - You better get two or three of them over there then.
546
547 Mr. Morris - Well, you can call them and ask them to come out
548 there, but if they get there 15, 20 minutes late, the dogs are gone. I've tried to
549 catch them myself. We have a cage sitting right beside my fence in the lady's
550 yard next to me. She's 1524. The cage is sitting right there on her driveway and
551 up against my fence. We un-trap it at night and set it in the morning trying to
552 catch them. If somebody's dog happens to get in it and he freezes to death or
553 something, as it gets warmer, maybe we can trap them at night and keep them in
554 there. When it's cold weather, you don't want to keep a dog in a cage just lying
555 on the ground. I wouldn't want anybody to do that to mine.
556
557 Mr. Nunnally - Any other questions for Mr. Morris? Anyone else
558 want to speak on this case? You're for the case, though. Any opposition? Any
559 more opposition?
560
561 Ms. Dwyer - If the County is here and has any information to give
562 us, I'd like to hear that.
563
564 Mr. Teague - I'm Russell Teague and I'm the zoning inspector
565 under Community Revitalization. I would like to state that in 2003, there was a
566 case called into our office. At that time, we didn't handle this kind of thing and
567 referred it to another section. Our first case was in 2005. It's been since April
568 2005 that I've been having communication with Mr. Neyra about his chickens. At
569 that time, he got rid of them. From the back of Mr. Morris' property, I ask him
570 permission and I walk into the back of his yard and I can see the chickens easily
571 in the cages back there. In 2005, I think he might have dismantled the cages, so
572 I thought the problem had ended, but we've had a couple more times since then
573 where we've had complaints. I've gone and looked at them and I can find one, or
574 I can't see them, or I see them one day and a week later I don't see any roosters
575 at all.
576
577 The current case we're looking at we started in November of this past year. In
578 November, I took a few photographs and counted about nine roosters at that
579 time. I've given Mr. Neyra the notice. I knew he had an appeal period. Any time
580 I'm in that neighborhood within two blocks, I can hear the roosters crowing. If I
581 stop within a couple streets of this neighborhood, if I sit there for a moment, I can
582 hear roosters crowing. That's completely accurate. I've seen dogs running
583 around the neighborhood and I've called APO myself a couple of times. As Mr.
584 Morris states, 15 minutes later when they get there, the dogs have gone off
585 somewhere else. I've had communication. I've left him literature and brochures

586 about the ordinances in the past, and given him notices in the past also. Mr.
587 Neyra is well aware.

588
589 Ms. Dwyer - Was this case being handled by someone else prior
590 to 2005? If so, do you know how long it's been going on?

591
592 Mr. Teague - There was a complaint called into our office in June
593 2003, but at that time, it went to another section of Planning and honestly, I have
594 no idea what they did or didn't do at that time. Our first case under our office that
595 I have record of is from April 2005.

596
597 Mr. Nunnally - Any other questions?

598
599 Mr. Teague - I have photographs, but I don't know if you—

600
601 Mr. Blankinship - Yes, they were included.

602
603 Ms. Dwyer - Have there often been more than, you said, nine?

604
605 Mr. Teague - Nine is the most I counted. At that time, there was at
606 least one loose. Generally, they are in the cages. The cages look like they're
607 kept very well; there's no issue with that. It was nine on November 21st, the last
608 time I specifically counted.

609
610 Ms. Harris - Mr. Teague, do you get many complaints about
611 chickens and roosters?

612
613 Mr. Teague - I'm not sure about the entire office, but in the areas
614 I've worked, I think this is the only one. I've been in this position for seven years.

615
616 Mr. Blankinship - I'd say we get one a year, two a year, one every two
617 years.

618
619 Mr. Kinsey [Off Mike] - 1%.

620
621 Mr. Blankinship - About 1% of your cases, says Mr. Kinsey.

622
623 Mr. Nunnally - Any other questions?

624
625 Mr. Kirkland - No sir.

626
627 Mr. Nunnally - Thank you, sir. Anyone else want to speak against
628 the case? All right, Mr. Neyra, you want to come up please? Yes ma'am.

629
630 Mr. Blankinship - Were you sworn before?

631

632 Ms. Jordan - No.
633
634 Mr. Nunnally - Raise your right hand, please. Do you swear the
635 testimony you're about to give is the truth and nothing but the truth so help you
636 God?
637
638 Ms. Jordan - Yes sir. My name is Mary Jordan. I live at 1509
639 Carter Street. My son plays with those chickens every day when he gets out of
640 school. Sometimes, I hear the next-door neighbor's dog barking at night, making
641 noise. I don't think he has the right to complain. I do see dogs and cats in the
642 yard, too. That's what I wanted to say. That's all.
643
644 Ms. Harris - Is Mr. Neyra going to come back to the mike? I have
645 a question for him.
646
647 Mr. Nunnally - All right, thank you, ma'am. Sir, will come back up to
648 the mike, please? Ms. Harris has a question for you.
649
650 Ms. Harris - Did you sell the roosters. We've heard people saying
651 that they have counted as many as 15 and 9, and you said 5. What happens to
652 the roosters?
653
654 Mr. Neyra - What happened is a friend of mine went on vacation
655 and he asked me to keep the roosters for a while, so I keep them. I'm glad that
656 Mr. Teague is here. We discussed this a lot. When I come to Mr. Blankinship's
657 office, I'm trying to get a license for it. I have to go through them to get a license.
658 I ask Mr. Teague what to do and he told me to wait for the decision of the Board.
659 I still have five.
660
661 Ms. Harris - Thank you.
662
663 Mr. Nunnally - Any other questions? Anyone else here want to
664 speak on this case? Hear none, that completes the case. Thank you for coming.
665 We'll let you know something soon.
666
667 **DECISION**
668
669 Ms. Harris - I move that we deny.
670
671 Mr. Wright - Second.
672
673 Mr. Nunnally - Motion by Ms. Harris and second by Mr. Wright that—
674
675 Ms. Dwyer - Could we have some discussion?
676

677 Ms. Harris - The reason for my motion to deny the appeal is
678 because it does not conform to the distance that we require in the zoning
679 ordinances. Also, the argument about being pets, they are poultry, they function
680 as poultry. They're not functioning as pets. With the noise level, we can see why
681 there is an ordinance. We can see very much that that noise is disturbing the
682 neighbors and it's been disturbing them for quite some time. Even if they were
683 pets, they would be bothersome pets and we would have to do something. I see
684 them as poultry.

685
686 Ms. Dwyer - I think, Ms. Harris, the reason the law treats poultry
687 differently from the way it treats dogs is that it recognizes that there are different
688 kinds of nuisances associated with these kinds of animals. As one of speakers
689 pointed out, dogs and cats have to have licenses, they have to get rabies shots
690 and those kinds of things, so there are protections for dogs and cats. I agree
691 with you, dogs can be a noise nuisance as well, but the fact is, the law treats
692 poultry differently. The law says that these distance requirements have to be met
693 for poultry. Whether or not they're pets doesn't matter; they're still poultry. It
694 seems clear to me that the Director of Planning has correctly interpreted the
695 statute and I agree that the appeal should be denied.

696
697 Mr. Nunnally - Okay. Do we put a time limit on it to remove those
698 roosters?

699
700 Mr. Blankinship - Mr. Teague will take care of that.

701
702 Mr. Nunnally - Okay. Motion by Ms. Harris and seconded by Mr.
703 Wright that it be denied. All in favor say aye. All opposed say no. It's been
704 denied.

705
706 After an advertised public hearing and on a motion by Ms. Harris, seconded by
707 Mr. Wright, the Board **denied** application **A-004-07**, an appeal to a decision of
708 the director of planning regarding the property at 1509 Carter Street (Lynn
709 Grove) (Parcel 799-736-4014).

710
711
712 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
713 Negative: 0
714 Absent: 0

715
716
717 Mr. Blankinship - You want to call A-003-07 one more time?

718
719 Mr. Nunnally - Yes sir.

720
721 **A-003-007** **KWABENA AGYEKUM** requests a variance from
722 Section 24-9 to allow the existing dwelling to remain at 6538 Monahan Road

723 (Parcel 820-702-7260), zoned A-1, Agricultural District (Varina). The public
724 street frontage requirement is not met. The applicant has 0 feet public street
725 fronts, where the Code requires 50 feet public street frontage. The applicant
726 requests a variance of 50 feet public street frontage.

727

728 Mr. Nunnally - Is anyone here on this case? All right. Can we defer
729 that for another month?

730

731 Mr. Blankinship - Not without the applicant's request.

732

733 Ms. Dwyer - I would move to deny. I feel that if a person files a
734 case and doesn't show up two months in a row that it's appropriate to, based on
735 our analysis of what's been presented to us in the staff report, to make a decision
736 to deny. They can come back in a year. Is that right, Mr. Blankinship?

737

738 Mr. Blankinship - Yes.

739

740 Ms. Dwyer - That's my opinion.

741

742 Mr. Kirkland - He did receive the notice both times, correct?

743

744 Mr. Blankinship - As far as we know. They weren't returned by the post
745 office.

746

747 Ms. Dwyer - He filed the case.

748

749 Mr. Blankinship - We used the address on the application.

750

751 Mr. Kirkland - He has to remove that house then, right?

752

753 Ms. Dwyer - No, he just has to stop using it as a residence, as I
754 understand it.

755

756 Mr. Kirkland - You'll let them know, right, Mr. Blankinship?

757

758 Mr. Blankinship - Yes, yes.

759

760 Mr. Kirkland - I second the motion, Ms. Dwyer.

761

762 Ms. Dwyer - In terms of the reasons why I recommend denial is
763 when we consider the property as a whole, the 20 acres as a whole, the
764 residents have a reasonable and beneficial use of the property as it is without
765 dividing it for an additional residential parcel. Under the terms of Cochran, it
766 seems to me that the applicant has not met the threshold question for BZA
767 jurisdiction. That would be the basis of my motion.

768

769 Mr. Nunnally - Okay, thank you. Motion by Mrs. Dwyer and
770 seconded by Mr. Kirkland that it be denied. All in favor say aye. All opposed say
771 no. It's been denied.

772
773 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
774 Mr. Kirkland, the Board **denied** application **A-003-07**, requesting a variance to
775 allow the existing dwelling to remain at 6538 Monahan Road (Parcel 820-702-
776 7260), zoned A-1, Agricultural District (Varina).

777
778
779 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
780 Negative: 0
781 Absent: 0

782

783

784 Mr. Nunnally - All right, the minutes.

785

786 Mr. Wright - I move we approve the minutes.

787

788 Ms. Harris - I second the motion.

789

790 Mr. Nunnally - Motion by Mr. Wright and seconded by Ms. Harris that
791 the minutes be approved. All in favor say aye. All opposed say no. It's been
792 approved.

793

794 On a motion by Mr. Wright, seconded by Ms. Harris, the Board **approved the**
795 **minutes** of the January 25, 2007 Board of Zoning Appeals meeting.

796

797

798 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
799 Negative: 0
800 Absent: 0

801

802

803 Move for adjournment.

804

805 Mr. Wright - I move we adjourn.

806

807 Mr. Kirkland - Second.

808

809 Mr. Nunnally - Motion by Mr. Wright and seconded by Mr. Kirkland
810 that we adjourn. All in favor say aye. All opposed say no.

811

812 The Board adjourned until the **March 22, 2007** meeting, at 9:00 a.m.

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831

James W. Nunnally

Chairman

Benjamin Blankinship, AICP

Secretary