

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 GOVERNMENT CENTER AT PARHAM**
4 **AND HUNGARY SPRING ROADS, ON THURSDAY JULY 27, 2017 AT 9:00**
5 **A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
6 **DISPATCH JULY 10, 2017 AND JULY 17, 2017.**
7

Members Present: Dennis J. Berman, Chairman
William M. Mackey, Jr., Vice Chairman
Gentry Bell
Helen E. Harris
James W. Reid

Also Present: Jean M. Moore, Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul M. Gidley, County Planner
R. Miguel Madrigal, County Planner

8
9 Mr. Berman - Good morning. Welcome to the July 27th, 2017
10 meeting of the Henrico Board of Zoning Appeals. For those who are able, please
11 stand and join us for the Pledge of Allegiance.

12
13 Please be seated. Our Board secretary, Mr. Blankinship, will now read you our
14 rules.

15
16 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
17 ladies and gentleman, the rules for this meeting are as follows: Acting as
18 secretary, I'll announce each case. As I'm speaking, the applicant can move
19 down toward the podium, which I guess is not really necessary this morning. We
20 will then ask everyone who intends to speak to that case to stand and be sworn
21 in. Then a member of the staff will give a brief introduction to the case, and then
22 the applicant will present their case. Then anyone else who wishes to speak will
23 be given the opportunity. After everyone has had a chance to speak, the
24 applicant, and only the applicant, will have an opportunity for rebuttal. This
25 morning we only have the two cases, so we'll just hear the two cases and then
26 make the two decisions.

27
28 This meeting is being recorded, so we'll ask everyone who speaks to speak
29 directly into the microphone on the podium. State your name, and please spell
30 your last name so we get it correctly in the record.

31
32 There is one case, Mr. Chairman, that was on the agenda because two months
33 ago it was deferred to this meeting. In the meantime, it has been withdrawn. So
34 let me just announce that. CUP2017-00014, Discipleship RVA, has been
35 withdrawn and will not be heard this morning.

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Two of the three lots were previously granted variances by the Board back in 1993 and 1995 respectively. Houses have since been built on both of these lots. In 1996, today's property received its own variance. And following that approval, today's applicant, Nicholson Holdings, acquired the property. The variance, however, expired before a dwelling was built on the property. As a result, Nicholson Holdings is back to apply for a new variance today.

As far as the proposed home, there are two floor plans that were submitted. They are pretty similar, actually. One is right here. You can see the front elevation anyway. The other one, pretty identical, is right here.

As far as the evaluation of this request, when the lot was created in 1993, it did not have the public street frontage required at the time. However, it was common practice back then to create lots via a family subdivision and then go ahead and apply for a variance for lack of public street frontage. The lot has been in its current configuration for the past 24 years. The owner does not own any land adjacent to this property, and the lot is not large enough to farm economically. As a result, absent a variance there is really no reasonable use for the property.

As far as the five subtests, the applicant acquired the property in good faith and did not create the hardship. In fact, they acquired it after the initial variance, as I said.

Hardship to neighboring properties. The property is currently wooded. This enables there to be buffers along the side and rear property lines as proposed in the conditions. This will screen any adjacent dwellings.

One-family dwellings on large lots are the predominant land use pattern in this area, and this would continue that pattern. As a result, staff does not see any substantial detrimental impact from this proposal.

General recurring regulation. In 2008, the Board of Supervisors amended the Zoning Ordinance to allow family divisions to create lots without public street frontage in certain cases. In this instance, it did not address lots that had already been created. As a result, some of these are basically left in limbo since it did not apply retroactively to these existing lots. As a result, there is not really any legislation on the table to address this.

This is not a use variance. Dwellings are a principal use permitted by right in the A-1 District, and that is what is being proposed here.

Finally, a special exception or modification is not an option in this case.

To conclude, the property was purchased in good faith reliance on the variance that was granted back in 1996. Approval of today's variance would allow for a

128 reasonable use of the property consistent with the neighboring properties.
129 Although general and reoccurring in nature, the recent text amendment did not
130 apply to preexisting lots. For these reasons, staff recommends approval of this
131 request subject to the conditions found in your staff report. I would note on
132 condition #5, the second sentence, it says a driveway shall be improved with
133 durable asphalt or compacted gravel. That should say "the access easement,"
134 and make clear that we're talking about the 50-foot access easement. That would
135 provide access for fire and police.

136
137 Mr. Blankinship - The driveway all the way from Gibbs Lane, the public
138 street, to the location of the dwelling.

139
140 Mr. Gidley - Yes sir. That concludes my presentation. If you have
141 any questions, I'll be happy to answer those.

142
143 Mr. Berman - Thank you, Mr. Gidley. Any questions for Mr. Gidley
144 from the Board?

145
146 Ms. Harris - Do you know the width of that access road?

147
148 Mr. Gidley - It's 50 feet. That's what the easement is, yes. As far
149 as the actual physical width right now . . . let's see here. This gives you an idea
150 right now what's out there. And then this is up near Gibbs. And then a view of the
151 property. And again, you can see the access easement here.

152
153 Ms. Harris - Right. You don't know the width of that road though.

154
155 Mr. Gidley - Again, the recorded easement's 50 feet, but the width
156 across the gravel here, no ma'am, I'm not sure what that is right off hand.

157
158 Ms. Harris - I did drive the road, and it seemed very narrow to me.
159 I was wondering about emergency vehicles getting through. I'm not sure that
160 there were not ditches on the side of this area here.

161
162 Mr. Gidley - Okay.

163
164 Ms. Harris - But I guess the owners who have already built homes
165 there would have a pretty good feel for whether or not an emergency vehicle can
166 travel this road.

167
168 Mr. Gidley - Well that's the reason for the condition. I believe it's
169 fairly similar to what was in the more recent legislation dealing with family
170 subdivisions, and that is to improve it to allow emergency vehicle access, as you
171 noted.

172

173 Mr. Bell - One quick follow-up. I noticed the ditches as well, but
174 I didn't see any real water problems out there. Did you when you were going
175 through there? Were there any areas that were flat that would justify the ditches
176 being dug the way they were?
177

178 Mr. Gidley - I didn't really look at the ditches, Mr. Bell. I just noted
179 the property here just sloped slightly towards the back. It didn't appear to really
180 have any wetlands or any issues like that with it. Some of these lots we see are
181 below point in an area, but that didn't really appear to be the case here.
182

183 Mr. Bell - Thank you.

184
185 Mr. Gidley - Yes sir.

186
187 Mr. Berman - Mr. Gidley, if this went forward as it is today, the
188 condition of the road, would it meet condition or do there need to be some
189 improvements?
190

191 Mr. Gidley - There would need to be some improvements, yes sir.

192
193 Mr. Berman - Thank you. Any other questions from the Board?
194 Thank you, sir.

195
196 Mr. Gidley - Thank you, Mr. Chairman.

197
198 Mr. Berman - If the applicant would please approach and spell your
199 name into the microphone, please.
200

201 Mr. Nicholson - Good morning, I'm David Nicholson. N-i-c-h-o-l-s-o-n.
202 Thank you, everybody.
203

204 The only question I had was regarding the driveway, and Paul spelled that out. I
205 don't think there are any ditches on either the left or the right side when you
206 come in. I want to say it's 25 feet for how wide the drive is.
207

208 Mr. Blankinship - Twenty-five feet would be two wide travel lanes. A
209 standard travel lane is about eleven feet. So I doubt that it's that wide. I would
210 guess looking at the photos that it's closer to twelve. But I don't know for sure
211 either.
212

213 Mr. Nicholson - Okay.

214
215 Mr. Blankinship - Of course in any case you'll be running heavy
216 construction equipment on that gravel road.
217

218 Mr. Nicholson - Right.

219
220 Mr. Blankinship - And I'm sure some maintenance or repair will be
221 needed anyway.
222
223 Mr. Nicholson - It needs a little bit of gravel in just a couple spots
224 where it's bottomed out. We improved it I want to say in '06, and it was quite a bit
225 to do that. And it hasn't had much work since then, so we just have to come in
226 with some new gravel back there. That's all I have.
227
228 Mr. Berman - Is there any issue with the creek running kind of right
229 at the end of the cul-de-sac there?
230
231 Mr. Nicholson - I've never seen any water in it.
232
233 Mr. Berman - I didn't either; it was on the map.
234
235 Mr. Nicholson - I see it on there, but I've never seen water coming
236 through it at all. But I've never been out there after a heavy rain.
237
238 Mr. Blankinship - There is no County floodplain along there.
239
240 Mr. Nicholson - I've got it perked for an engineered system out there
241 already. And that's probably what the one across the way is going to be also. The
242 one at the end of the road, I believe they were able to go with conventional.
243
244 Mr. Berman - Very good. Any questions for Mr. Nicholson from the
245 Board?
246
247 Ms. Harris - Mr. Nicholson, do you plan to live on this property or
248 are you going to sell it?
249
250 Mr. Nicholson - No, I'm going to sell it. I have a builder that's already
251 looking for it. I had it under contract twice back in '06 and '07, and both times
252 they wanted me to under finance it at the end of the contract, so I said no, not
253 interested. That's why the previous variance expired.
254
255 Mr. Berman - Any other questions?
256
257 Mr. Mackey - Yes sir, Mr. Chair. Mr. Nicholson, have you seen all
258 the conditions of approval?
259
260 Mr. Nicholson - Yes, I agree.
261
262 Mr. Mackey - You agree to all seven?
263
264 Mr. Nicholson - Yes.

265
266 Mr. Berman - Very good. If there are no more questions, thank you,
267 sir.
268
269 Mr. Nicholson - Thank you.
270
271 Mr. Berman - Is there anybody here today who wishes to speak in
272 support of this request? Anybody here who wishes to speak in opposition to the
273 request? Yes ma'am. Can you please step forward and be sworn in?
274
275 Mr. Blankinship - Raise your right hand, please. Do you swear the
276 testimony you're about to give is the truth, the whole truth, and nothing but the
277 truth so help you God?
278
279 Ms. Lett - Yes.
280
281 Mr. Blankinship - Thank you.
282
283 Ms. Lett - Hi, I'm Andrea Lett. I actually live at the end of that
284 road. I own the cul-de-sac—and the area where the creek is. There is water in
285 that creek, and it does flow through when we do have heavy rains. It doesn't
286 wash the road out, but there's water that maintains, that will sit on that road.
287 We've been back there for almost a year. We have done a lot of work on that part
288 of the road and the very front. It will need a lot of work to bring more heavy
289 equipment. As you can tell, when you go through there—you said you drove.
290 There are holes that continue to pop up because whoever did it before put large
291 rocks. The equipment constantly moving and people driving is just creating
292 bigger holes. So that's something my husband and I have been paying to—using
293 our tractor and our equipment to maintain that road.
294
295 My question is on your variance, how much of my space are you talking about
296 using and then who is going to maintain that road? If I'm paying out the money
297 for the gravel now and the improvement, you're going to put someone else back
298 there, are they going to be required to help maintain that road?
299
300 Mr. Blankinship - Ma'am, may I ask you first to spell your last name for
301 us so we get it correctly.
302
303 Ms. Lett - Yes. I'm sorry. It's L-e-t-t.
304
305 Mr. Blankinship - Okay. And when you say you live at the end of the
306 cul-de-sac, you mean Gibbs Lane—
307
308 Ms. Lett - Yes.
309
310 Mr. Blankinship - —or the private drive?

311
312 Ms. Lett - Well, if you go back to your picture on Gibbs Lane—
313 yes, that's it. I'm 8640 Gibbs—
314
315 Mr. Blankinship - So your address is on Gibbs Lane, but your property
316 is not at the end of Gibbs Lane. Your property is at the end of the private drive.
317
318 Ms. Lett - If you call that private drive, yes.
319
320 Mr. Blankinship - Yes. Gibbs Lane is a public street that you turn off of.
321
322 Ms. Lett - Yes.
323
324 Mr. Blankinship - Okay, thank you. I just wanted to make sure that was
325 clear. Your question was how much of your property would be used for this.
326
327 Ms. Lett - Yes.
328
329 Mr. Blankinship - None of your property is under consideration. The
330 Board couldn't authorize the applicant to trespass on your property.
331
332 Ms. Lett - Well I'm curious because he wants to use the lot
333 across or in front of me.
334
335 Mr. Blankinship - Well, there are two applications on this morning's
336 agenda, and they both adjoin you.
337
338 Ms. Lett - Well that's what we were told and that's what we're
339 trying to understand.
340
341 Mr. Blankinship - Ma'am, there are two applications on this morning's
342 agenda, and they both adjoin your property. This one is just before you get to
343 yours.
344
345 Ms. Lett - The one on the right-hand side.
346
347 Mr. Blankinship - Yes.
348
349 Ms. Lett - Okay.
350
351 Mr. Blankinship - And the next one will be the other side of you.
352
353 Ms. Lett - Okay.
354
355 Mr. Blankinship - So it's a good thing you're here this morning to
356 represent your interests. Neither of them will be allowed to encroach on your

357 property in any way. But the driveway is in an easement that is shared by all of
358 the property owners whose properties abuts that easement. So he does have the
359 right, from the documents I've seen, to use that. And I understand there is a
360 written maintenance agreement.

361

362 Ms. Lett - That agreement's not being followed.

363

364 Mr. Blankinship - Okay.

365

366 Ms. Lett - It's there, but no one—

367

368 Mr. Blankinship - Okay.

369

370 Ms. Lett - There's nothing—the two families that were already
371 there, there's nothing that no one was doing. No one's done anything. Like I said,
372 we moved back there, a private property, in 2014. We finally cleared the lot out.
373 And then in that time frame, we noticed the road. And we worked on the road
374 prior to moving, prior to even construction, and then since we've been in there.

375

376 Mr. Blankinship - Okay.

377

378 Mr. Berman - Any questions for Ms. Lett?

379

380 Ms. Harris - Yes. On this survey here, does your property show?
381 We know we're dealing with parcel C right now. The land that you own, does it
382 show on this survey?

383

384 Ms. Lett - Yes ma'am. It's D.

385

386 Mr. Blankinship - Yes, she's parcel D.

387

388 Ms. Lett - So actually I am just—the piece where the creek is,
389 we call the Little Creek, I own a piece of that all at the beginning of that cul-de-
390 sac there and coming up into the cul-de-sac area back.

391

392 Mr. Blankinship - We have a photograph of her house, don't we?

393

394 Mr. Gidley - Yes.

395

396 Mr. Blankinship - There we go.

397

398 Ms. Lett - I can tell from that picture, that's actually on my
399 property. That's coming through where we put the chain up. And that's at the
400 very end where we haven't cleared.

401

402 Mr. Berman - So the chain begins your property?

403
404 Ms. Lett - It's actually I want to say 25, 30 feet away from the
405 property line, but we put at the end where the cul-de-sac starts the circle. We had
406 an issue with people continually just driving up.
407
408 Mr. Mackey - I did that myself.
409
410 Mr. Berman - I will admit I turned around. Sorry.
411
412 Mr. Mackey - Yes, I turned around.
413
414 Ms. Lett - Oh, that was you?
415
416 Mr. Mackey - It was me.
417
418 Mr. Blankinship - There is a sheriff's deputy if you would like . . .
419
420 Ms. Harris - Is this the one that had the big dog, the large dog in
421 the backyard?
422
423 Ms. Lett - No ma'am, I don't have a dog.
424
425 Ms. Harris - Okay. That's where I turned around.
426
427 Mr. Berman - Ms. Lett, I want to kind of replay your two concerns to
428 make sure that they're addressed. One is your concern that there is going to be
429 some land of yours that would be involved. We have stated that there is not. The
430 other was the maintenance of the gravel driveway. Are you speaking of the one
431 on your property or just getting from Gibbs to your property?
432
433 Ms. Lett - Getting from Gibbs to my property.
434
435 Mr. Berman - Through the years you said you've actually
436 maintained some of that?
437
438 Ms. Lett - Yes. We have a tractor that we go down and
439 actually—my husband would try to grade that to keep the water flow and make it
440 more travel safe. As it stands right now, like I said there are holes. And as you
441 continue to drive on it, it just wears the holes and the gravel out and the dirt
442 washes away.
443
444 Mr. Berman - Okay.
445
446 Mr. Blankinship - Would you like to hear from Mr. Nicholson?
447
448 Mr. Berman - Okay, very good. Any other questions for Ms. Lett?

449
450 Ms. Lett - I can tell you the answer to your question: The road is
451 only one car wide. You can only drive one of us through there one at a time.
452
453 Mr. Berman - I assume you're not an expert in the area, but do you
454 feel that a fire truck or EMT could get down there?
455
456 Ms. Lett - Honestly, no. I think it would be tight for a rescue. For
457 an ambulance to come though, I think it would be tight, especially with the trees
458 hanging over. I think some of that would definitely have to be cut back and
459 maybe a little wider for an ambulance to safely come through. A fire truck, no.
460
461 Mr. Berman - Okay.
462
463 Ms. Lett - I don't think a fire truck could come—
464
465 Mr. Blankinship - In the worse case, there's also access from Gibbs,
466 but that's not optimal.
467
468 Ms. Lett - But where we are on Gibbs, there is no other access
469 to it. You have to come up the main blacktop to the dirt road. Once you come
470 through there, it's tight.
471
472 Mr. Berman - Understood.
473
474 Mr. Blankinship - The fire marshal is also with us this morning if you'd
475 like to ask him some of those questions.
476
477 Mr. Berman - Absolutely.
478
479 Mr. Mackey - Mr. Chairman, I'd like to say something. Ms. Lett, I'm
480 sure you haven't seen any of the conditions for the approval of it. In condition 5
481 they state that the overhead clearance would need to be 14 feet in height to allow
482 for police and fire to access the road. So they have addressed that issue, if it
483 were approved.
484
485 Ms. Lett - Okay.
486
487 Mr. Berman - Thank you very much. Please feel free to speak
488 during the next application as well. Is there anybody else here to speak in
489 opposition to the application? Would the fire marshal be able to approach,
490 please? Thank you. Good morning.
491
492 Mr. Rosenbaum - Good morning. It's Henry Rosenbaum. The last name
493 is R-o-s-e-n-b-a-u-m.
494

495 Mr. Berman - Thank you for being in attendance. Could you speak
496 to the—I don't know how familiar you are with the application—with the
497 accessibility to emergency vehicles in this area?
498

499 Mr. Rosenbaum - Correct. I was looking at it on Google Earth while we
500 were looking at the photos here. We're only seeing a snapshot of a small part of
501 that road. Just from the pictures I've seen here, an apparatus would be able to
502 travel down that road based on width. The width of a fire truck is 10 feet wide
503 from body to body and then another foot or so, maybe 11 or 12 feet, for the
504 mirrors to clear. There are probably areas where the turn radius may be a
505 concern. And obviously we're not looking at the whole road, and there may be
506 some additional areas.
507

508 I'll be happy to send somebody out there to take a look at it today or tomorrow.
509 But that would apply to the current owners making the improvements and making
510 the adjustments now, which would most likely consist of just turning back the
511 overgrown trees and bushes that have come up throughout the years.
512

513 You are correct on the height. The minimum height would be 14 feet, yes sir.
514

515 Mr. Berman - Any questions for Mr. Rosenbaum from the Board?
516 Thank you very much. Appreciate it.
517

518 Mr. Rosenbaum - Okay.
519

520 Mr. Berman - As Mr. Secretary stated, we'll make a motion after
521 we're done with both applications. So at this time, we move on, please, to the
522 next application.
523

524 Ms. Harris - Excuse me. Did Mr. Nicholson have anything else to
525 address?
526

527 Mr. Blankinship - A rebuttal?
528

529 Ms. Harris - Yes.
530

531 Mr. Berman - Since there was opposition, you do have an
532 opportunity to rebut. Thank you, Ms. Harris.
533

534 Mr. Nicholson - When Gibson applied for the variance for parcel D, I
535 came in to the hearing and supported it as well. And then I also gave access
536 across the front of my property for them to have a Virginia Power easement
537 through there. So I was kind of surprised that there was any opposition today,
538 based on me doing two things to help parcel D become available. That's it.
539

540 Mr. Blankinship - I believe you stated before that you anticipate having
541 to do some work on the maintenance of the road.

542
543 Mr. Nicholson - Yes. We're going to make it look pretty.

544
545 Mr. Blankinship - And that you intend to sell the house once it's
546 complete.

547
548 Mr. Nicholson - Correct.

549
550 Mr. Blankinship - So it won't be you living there in the future.

551
552 Mr. Nicholson - Correct.

553
554 Mr. Blankinship - I guess the buyer will be provided with a copy of the
555 existing maintenance agreement. And the easement does show on the survey.

556
557 Mr. Nicholson - John Gibbs had drafted that in that '05, '06 range.
558 And I'm not sure what he did with it after that, if he was able to get parcel A and
559 parcel B to sign it. You can come up with the agreement, but I don't know if you
560 can force somebody who's already living there to sign it. I can probably find a
561 copy of that to pass along. I just don't know how enforceable it is because it's
562 been so long. And I don't know if anybody has chipped in. I want to say it was a
563 \$400 fee. I don't think it was per year. But I'd have to go back and look at it; it's
564 been so long since I've pulled that paperwork out just because I didn't think
565 anybody was maintaining it from A and B.

566
567 Mr. Blankinship - Okay. All right.

568
569 Mr. Nicholson - Thank you.

570
571 Mr. Berman - At this time, can we please hear the next application.

572
573 **[After the conclusion of the public hearings, the Board discussed the case**
574 **and made its decision. This portion of the transcript is included here for**
575 **convenience of reference.]**

576
577 Mr. Berman - Do I hear a motion?

578
579 Mr. Mackey - Yes, Mr. Chair. I move that we accept the County's
580 recommendation for VAR2017-00013 and approve the variance. I don't see any
581 detriment to the rest of the neighbors as long as they accept the conditions going
582 forward in repairing the road as needed.

583
584 Mr. Berman - Thank you. We have a motion from Mr. Mackey. Do I
585 hear a second?

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Mr. Reid - Second.

Mr. Berman - We have a second from Mr. Reid. Any discussion from the Board?

Ms. Harris - I think that we did address most of our concerns. The five tests were met as far as the County is concerned. Those were the only concerns I had.

Mr. Berman - Any other discussion? All in favor say aye. Any opposed say nay. None opposed; motion carried 5 to 0.

After an advertised public hearing and on a motion by Mr. Mackey, seconded by Mr. Reid, the Board **approved** application **VAR2017-00013, DAVID NICHOLSON's** request for a variance from Section 24-9 of the County Code to build a one-family dwelling at 8578 Gibbs Lane (Parcel 818-681-2641) zoned Agricultural District (A-1) (Varina). The Board approved the variance subject to the following conditions:

1. This variance applies only to the public street frontage requirement for one dwelling only. All other applicable regulations of the County Code shall remain in force.
2. Only the improvements shown on the plot plan and building design submitted with the application shall be constructed pursuant to this approval. Any additional improvements must comply with all applicable regulations of the County Code. Any substantial changes to the plans shall require a new variance.
3. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on health department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
4. Before beginning any clearing, grading, or other land disturbing activity, the applicant shall submit an environmental compliance plan to the Department of Public Works.
5. The applicant shall present proof with the building permit application that a legal access to the property has been obtained. The driveway shall be improved with a durable asphalt or compacted gravel surface at least 10 feet wide with 12 feet of horizontal clearance and 14 feet of overhead clearance to provide access for police, fire, emergency medical services, and other vehicles. The owners of the property, and their heirs or assigns, shall accept responsibility for maintaining access to the property until such

632 a time as the access is improved to County standards and accepted into
633 the County road system for maintenance.

634
635 6. Any dwelling on the property shall be set back 50 feet from the private
636 road easement (100 feet from the eastern property line).

637
638 7. The existing trees shall be maintained within 50 feet of the side and rear
639 property lines.

640
641
642 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
643 Negative: 0
644 Absent: 0

645
646
647 **[At this point, the transcript continues with the public hearing on the next**
648 **case.]**

649
650 **VAR2017-00014 DOMINION LAND & DEVELOPMENT CORP.**
651 requests a variance from Section 24-9 of the County Code to build a one-family
652 dwelling at 8630 Gibbs Lane (Parcel 818-681-7630) zoned Agricultural District
653 (A-1) (Varina). The public street frontage requirement is not met. The applicant
654 proposes 0 feet public street frontage, where the Code requires 50 feet public
655 street frontage. The applicant requests a variance of 50 feet public street
656 frontage.

657
658 Mr. Blankinship - Do you swear the testimony you're about to give is the
659 truth, the whole truth, and nothing but the truth so help you God?

660
661 Mr. Madrigal - I do.

662
663 Mr. Blankinship - All right, everyone else is still under oath. So you may
664 begin.

665
666 Mr. Madrigal - All right. Thank you, Mr. Secretary. Mr. Chair,
667 members of the Board, good morning.

668
669 Before you is a variance request to allow the construction of a one-family
670 dwelling in an agricultural district. This is the subject property here that we're
671 talking about.

672
673 The subject property is an acreage parcel dating back to the early 1920s. It is
674 three acres in size. It is landlocked, unimproved, and currently a wooded lot.
675 Access is by way of a private road coming off of Gibbs Lane. The applicant
676 acquired this property and the adjoining lot to the west in 2010. That's Mr. Gibson
677 Wright. In 2014, he obtained variances to waive the street frontage requirement

678 and allow the construction of a one-family dwelling on each respective lot. So it's
679 basically this lot and this parcel here.

680
681 The adjacent lot to the west, addressed as 8640 Gibbs Lane, was soon
682 thereafter sold, and a 3,300-square-foot dwelling was built and completed in
683 September of 2016. We've already seen the picture, but this is the home that
684 was built.

685
686 The subject property was not sold or developed, and the respective variance
687 expired. The applicant would like to obtain a new variance for the resale and
688 development of the property.

689
690 With respect to the threshold question, the subject property is zoned A-1 and is
691 designated as Rural Residential on the Comprehensive Plan. At one time, the
692 property had been improved with a single-family dwelling, but it was razed in
693 1975, and the property has remained unimproved since then. On some of the
694 larger parcels in the area, surface mining is a fairly typical use, but the subject
695 property is too small for this type of activity. Also, because of the lot's limited size
696 and lack of public access, it calls into question the feasibility of using it for an
697 agricultural purpose. Thus, absent a variance, the property would appear to lack
698 any reasonable and beneficial use under the A-1 standards outlined in the Code.

699
700 With respect to the five mandated tests, the applicant appears to satisfy all the
701 requirements of list items. In particular, item #3, staff found the approval of the
702 applicant's request will not result in a detrimental impact to adjacent or nearby
703 property. Item #4, although the lack of public street frontage is a general and
704 recurring issue, in this case the age of the lot and the negotiated access and
705 maintenance agreement make the applicant's situation unusual.

706
707 In conclusion, the applicant's request is consistent with both the zoning and
708 Comprehensive Plan designations. The property was established in the early
709 1920s and predates the Zoning Ordinance. Although it is an acreage parcel, it is
710 limited in size, and lack of public access restricts any significant agricultural or
711 mining use.

712
713 Recognizing the limited nature of the property, the previous property owner,
714 Mr. Gibbs, negotiated an access and maintenance agreement with all the
715 neighbors at that time along the private road. This agreement also limits further
716 subdivision of the lots using the private road without having unanimous consent
717 from all the participating property owners.

718
719 Thus, based on the facts of the case and lack of any significant detrimental
720 impact, staff recommends approval subject to conditions. That concludes my
721 presentation. I'll be happy to answer any questions.

722

723 Mr. Berman - Thank you, Mr. Madrigal. Any questions from the
724 Board?
725
726 Ms. Harris - Just a clarification. On the land surveyor's plan here,
727 this is parcel—is this parcel F or what?
728
729 Mr. Madrigal - What was your question again, ma'am?
730
731 Ms. Harris - You see parcel A, B, C.
732
733 Mr. Madrigal - A, B, and C, yes.
734
735 Ms. Harris - What is the ID for this parcel?
736
737 Mr. Madrigal - This parcel here is the three-acre parcel that we're
738 talking about.
739
740 Ms. Harris - Right. Does it have an identification like A, B, C, D, E,
741 F?
742
743 Mr. Madrigal - This would be, I believe, E.
744
745 Ms. Harris - And the house that we see sort of sketched in here—
746
747 Mr. Madrigal - That's right here.
748
749 Ms. Harris - Okay. This would be the location of the—
750
751 Mr. Madrigal - That's D.
752
753 Ms. Harris - —proposed home?
754
755 Mr. Madrigal - The proposed home for the subject property would be
756 right here. The house that's already built is approximately at this location.
757
758 Ms. Harris - So you said the proposed home. I missed that.
759
760 Mr. Madrigal - That's the proposed home.
761
762 Ms. Harris - Right. I was wondering with three acres of land why
763 would they squeeze it into this corner.
764
765 Mr. Madrigal - I would leave that up to the applicant to discuss.
766
767 Ms. Harris - I was wondering if there were problems with the
768 parcel.

769
770 Mr. Madrigal - My guess would be it's less clearing. If they push it
771 farther back on the property, it's going to involved a lot more clearing of trees and
772 land, grading.
773
774 Ms. Harris - That's all. Thank you.
775
776 Mr. Berman - Thank you. Mr. Madrigal, in your intro you mentioned
777 access was from Gibbs Lane, although I don't see any access. Isn't the access
778 from the gravel road?
779
780 Mr. Madrigal - Let's see here.
781
782 Mr. Blankinship - Gibbs Lane via the gravel road.
783
784 Mr. Madrigal - There is an access point from the Gibbs Lane, and we
785 showed it in the pictures here.
786
787 Mr. Berman - I must have missed it.
788
789 Mr. Madrigal - Let me go back to that access point.
790
791 Mr. Berman - It's obviously facing Gibbs.
792
793 Mr. Madrigal - This is Gibbs Lane here, and this is the access point
794 for the private road. It's the turnoff.
795
796 Mr. Berman - Okay, so it is the private road, the same as the prior
797 application.
798
799 Mr. Madrigal - Yes, yes.
800
801 Mr. Berman - Okay. I thought there was some cut-in off of Gibbs—
802
803 Mr. Madrigal - No.
804
805 Mr. Berman - —near the end of its cul-de-sac, and I didn't think
806 there was. Which was is the house going to face? So it's not facing . . .
807
808 Mr. Madrigal - The way the home's been drawn, it would more than
809 likely face north.
810
811 Mr. Berman - Okay.
812
813 Mr. Madrigal - Is that correct? Let's see here.
814

815 Mr. Blankinship - Let's just wait and ask the applicant.
816
817 Mr. Berman - Okay. That's fine. Any further questions for
818 Mr. Madrigal? No further questions? Thank you, sir.
819
820 Mr. Madrigal - Thank you.
821
822 Mr. Berman - I would like to hear from the applicant again, please.
823
824 Mr. Nicholson - David Nicholson. I would say I'm just representing as
825 far as being able to say yes or no. The strip that comes down where he's
826 drawn—can I use this? Okay. Is this part of the easement here all the way back?
827
828 Mr. Blankinship - No.
829
830 Mr. Nicholson - That's her driveway, correct?
831
832 Mr. Blankinship - Yes. The easement ends there where the—
833
834 Mr. Nicholson - Okay. So I don't know why he put it back here either. I
835 would still think that that would be a lot of clearing. What if the house was set
836 more in this area with the same 50 feet off of here? I don't know if you're looking
837 for 100 feet off of this property line.
838
839 Mr. Berman - Would the positioning of the house be taken up at the
840 time of the building permit?
841
842 Mr. Blankinship - Yes sir.
843
844 Mr. Berman - Instead of here? Okay.
845
846 Mr. Nicholson - That would give her more privacy here.
847
848 Mr. Blankinship - If there is a concern such that the Board would
849 approve the variance with one location but would deny it with another location,
850 then it's certainly appropriate for the Board to address the subject. If you intend
851 to leave it to the property owner, then he does have to meet the required
852 setbacks.
853
854 Mr. Nicholson - Right.
855
856 Mr. Blankinship - But it's up to the board.
857
858 Mr. Nicholson - I think it would be better up here, especially because
859 if you're having privacy for this one, and then this one would have—I think it's
860 better up top.

861
862 Mr. Berman - Okay.
863
864 Mr. Nicholson - Does Gibson have the same seven conditions or is
865 there something that I wasn't seeing on mine?
866
867 Mr. Berman - They appear to be the same conditions.
868
869 Mr. Blankinship - They should be very similar.
870
871 Ms. Harris - They're the very same.
872
873 Mr. Nicholson - Okay, okay. We accept those also.
874
875 Mr. Berman - We would have the same clarification of the driveway
876 that Mr. Gidley previously stated for #5.
877
878 Mr. Nicholson - Yes.
879
880 Mr. Berman - Anything else?
881
882 Mr. Nicholson - No. Thank you.
883
884 Ms. Harris - Question. You're not the owner of this property, right?
885
886 Mr. Nicholson - Pardon? I am not the owner, no.
887
888 Ms. Harris - So you're representing the owner.
889
890 Mr. Nicholson - Can accept, yes, any recommendations.
891
892 Ms. Harris - And the builder of this house is the same as the
893 builder of the previous—
894
895 Mr. Nicholson - Correct.
896
897 Ms. Harris - Okay. Thank you.
898
899 Mr. Nicholson - Thank you.
900
901 Mr. Berman - Thank you, sir. Anybody here today speaking in
902 support of this request? Anybody speaking in opposition?
903
904 Ms. Lett - My same questions that I had before.
905
906 Mr. Berman - Okay. Off mic Ms. Lett—okay. Please approach.

907
908 Ms. Lett - Sorry.
909
910 Mr. Berman - No reason to apologize.
911
912 Ms. Lett - Same question I had before. How are they going to
913 access that lot?
914
915 Mr. Nicholson - Where is your gate? Is it here?
916
917 Ms. Lett - I put it right there.
918
919 Mr. Nicholson - Right here?
920
921 Ms. Lett - Yes. I put the gate there.
922
923 Mr. Nicholson - I wonder how many feet there is from this to—
924
925 Mr. Blankinship - The easement's 50 feet wide, and that looks like it's
926 about the same as the width. So I would guess that's 50 feet.
927
928 Mr. Nicholson - Okay. Make a square, say through here. So definitely
929 not through your property.
930
931 Ms. Lett - Not through the chain? We wouldn't have to move it?
932
933 Mr. Nicholson - No. Not as long as your chain is here.
934
935 Ms. Lett - Yes, so—
936
937 Mr. Nicholson - We can hug with the driveway, the property line. Is
938 that correct?
939
940 Mr. Blankinship - Yes.
941
942 Mr. Nicholson - Okay.
943
944 Ms. Lett - Okay.
945
946 Mr. Nicholson - We'll just hug it here and then the house based on the
947 setback requirements.
948
949 Ms. Lett - Okay.
950
951 Ms. Harris - Okay, question. Mr. Blankinship, I guess this is for
952 you, but I wanted Ms. Lett to hear the response. If the owners of these parcels do

953 not honor their responsibilities to maintaining this road, what recourse is there for
954 Ms. Lett?

955
956 Mr. Blankinship - Mr. Nicholson testified earlier that he wasn't sure
957 whether all of the owners had signed the agreement. And I don't know the
958 answer to that either. If all the owners have signed the agreement and it's still in
959 force—also, it's at least ten years old, so it may have expired or there may be
960 some other change in law. But assuming that everybody signed it and that it's still
961 in force, it would be essentially a contract among the owners, so they would
962 enforce it through court. Any of them could require the others to comply with their
963 contractual obligation.

964
965 Mr. Bell - But if it's passed here, you won't be by yourself
966 because this covers the two new lots in terms maintenance as well.

967
968 Mr. Blankinship - Yes.

969
970 Mr. Bell - So if the ones prior to this, if we can't find proof of
971 that, anything built here, three now would be responsible more so than just
972 yourself.

973
974 Mr. Blankinship - Right.

975
976 Ms. Lett - Well I have the agreement from Mr. Gibson when we
977 bought ours. And he did mention about the agreement to maintain the road. But it
978 is more than ten years old. And when I inquired about it, because we're not an
979 official HOA, because we don't pay dues, because there's nothing—I can't make
980 my neighbors pay to help maintain the road.

981
982 Mr. Nicholson - [Off microphone] We could do the two ones, but we'd
983 just have to figure out who's going to hold the funds for that.

984
985 Mr. Blankinship - By putting this condition in the variances, that gives
986 you an additional level of protection which is that now the County can enforce
987 this condition.

988
989 Ms. Lett - Okay.

990
991 Mr. Blankinship - So the County could require the owners of these two
992 lots to comply with this condition. And I presume there's a similar condition on
993 your variance. So if somebody complained that you weren't doing your part, then
994 you would also have the same obligation. Now the parcels farther north, those
995 variances were approved in the 1990s, and I don't think that condition was
996 standard at that time.

997
998 Ms. Lett - Right.

999

1000 Mr. Blankinship - I haven't looked. Did anybody look to see if those
1001 were conditions were on the previous variances? So I'm not sure whether the
1002 County could enforce against parcels A and B on the plat. But the others, the
1003 County would also be able to—we would be able to enforce this condition in this
1004 variance. We would not be able to enforce the maintenance agreement.

1005

1006 Ms. Lett - Right.

1007

1008 Mr. Blankinship - But we could enforce this condition.

1009

1010 Ms. Lett - Right.

1011

1012 Mr. Nicholson - When the two sell, what if we had a contribution to
1013 you for ongoing maintenance? And then that way you wouldn't have to get a
1014 certain amount each year that you'd have to enforce and then have bad blood
1015 between the neighbors. But what if there was an amount that was given to you
1016 that we got from the buyer that went towards you guys for ongoing maintenance?

1017

1018 Mr. Blankinship - Those are certainly things that you all could work out
1019 privately outside of this context.

1020

1021 Mr. Nicholson - Okay.

1022

1023 Mr. Berman - Thank you. For the written record, the opposition
1024 speak was Andrea Lett (L-e-t-t). Thank you, ma'am. Okay, anybody else
1025 speaking in opposition? Hearing none, let's move into the motions, Mr. Secretary.

1026

1027 **[After the conclusion of the public hearings, the Board discussed the case**
1028 **and made its decision. This portion of the transcript is included here for**
1029 **convenience of reference.]**

1030

1031 Mr. Berman - Do I hear a motion?

1032

1033 Mr. Mackey - Yes, Mr. Chairman. I move that accept the County's
1034 recommendation and grant the variance for VAR2017-00014. The applicant has
1035 met all five tests, and I don't see any detriment for the other neighbors. I think
1036 them accepting, again, all the conditions for the improvement on the road will
1037 make everything fine.

1038

1039 Mr. Berman - Thank you, Mr. Mackey. We have a motion. Do I hear
1040 a second?

1041

1042 Mr. Bell - Second the motion.

1043

1044 Mr. Berman - Second from Mr. Bell. Any further discussion? All in
1045 favor of the motion signify by saying aye. Any opposed say nay. None opposed;
1046 motion carried 5 to 0.

1047
1048 After an advertised public hearing and on a motion by Mr. Mackey, seconded by
1049 Mr. Bell, the Board **approved** application **VAR2017-00014, DOMINION LAND &**
1050 **DEVELOPMENT CORP's** request for a variance from Section 24-9 of the County
1051 Code to build a one-family dwelling at 8630 Gibbs Lane (Parcel 818-681-7630)
1052 zoned Agricultural District (A-1) (Varina). The Board approved the variance
1053 subject to the following conditions:

- 1054
- 1055 1. This variance applies only to the public street frontage requirement for one
1056 dwelling only. All other applicable regulations of the County Code shall
1057 remain in force.
 - 1058
 - 1059 2. Only the improvements shown on the plot plan and building design
1060 submitted with the application shall be constructed pursuant to this
1061 approval. Any additional improvements shall comply with the applicable
1062 regulations of the County Code. Any substantial changes to the plans shall
1063 require a new variance.
 - 1064
 - 1065 3. Approval of this request does not imply that a building permit will be
1066 issued. Building permit approval is contingent on health department
1067 requirements, including, but not limited to, soil evaluation for a septic
1068 drainfield and reserve area, and approval of a well location.
 - 1069
 - 1070 4. Before beginning any clearing, grading, or other land disturbing activity,
1071 the applicant shall submit an environmental compliance plan to the
1072 Department of Public Works.
 - 1073
 - 1074 5. The applicant shall present proof with the building permit application that a
1075 legal access to the property has been obtained. The driveway shall be
1076 improved with a durable asphalt or compacted gravel surface at least 10
1077 feet wide with 12 feet of horizontal clearance and 14 feet of overhead
1078 clearance to provide access for police, fire, emergency medical services,
1079 and other vehicles. The owners of the property, and their heirs or assigns,
1080 shall accept responsibility for maintaining access to the property until such
1081 a time as the access is improved to County standards and accepted into
1082 the County road system for maintenance.
 - 1083
 - 1084 6. Any dwelling on the property shall be set back 50 feet from the western
1085 property line, abutting the private road.
 - 1086
 - 1087 7. The existing trees shall be maintained within 50 feet of the side and rear
1088 property lines.
 - 1089

1090
1091 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1092 Negative: 0
1093 Absent: 0
1094
1095
1096 Mr. Berman - Mr. Secretary, is there any other business?
1097
1098 Mr. Blankinship - The minutes from the previous meeting would be the
1099 next item.
1100
1101 Mr. Berman - Okay. Do we have any corrections for the minutes?
1102 Hearing none, do I have a motion for the minutes?
1103
1104 Ms. Harris - I move that the minutes of the previous meeting be
1105 accepted as presented.
1106
1107 Mr. Berman - We have a motion from Ms. Harris. Do I hear a
1108 second?
1109
1110 Mr. Bell - Second.
1111
1112 Mr. Berman - Second from Mr. Bell. Any discussion? All in favor
1113 signify by saying aye. Any opposed say nay. None opposed; motion carries 5 to
1114 0.
1115
1116 On a motion by Ms. Harris, seconded by Mr. Bell, the Board **approved as**
1117 **presented the Minutes of the June 22, 2017**, Henrico County Board of Zoning
1118 Appeals meeting.
1119
1120
1121 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1122 Negative: 0
1123 Absent: 0
1124
1125
1126 Mr. Blankinship - The other item, Mr. Chairman, is that we have
1127 distributed the proposed calendar of meeting dates and application deadlines for
1128 2018. We traditionally adopt the calendar in July. As is the normal practice
1129 according to the Board's rules, we'll meet on the fourth Thursday of every month
1130 January through October, and then in November and December we move to the
1131 third Thursday to avoid the holidays.
1132
1133 Mr. Berman - Does this require a motion?
1134
1135 Mr. Blankinship - Yes sir.

1136
1137 Mr. Berman - Do I hear a motion for accepting the 2018 meeting
1138 schedule?
1139
1140 Mr. Mackey - Mr. Chairman, I move that we accept the 2018
1141 calendar schedule.
1142
1143 Ms. Harris - Second the motion.
1144
1145 Mr. Berman - We have a motion from Mr. Mackay, a second from
1146 Ms. Harris. Any discussion? All in favor signify by saying aye. Any opposed say
1147 nay. None opposed; the motion carries 5 to 0.
1148
1149 Affirmative: Bell, Berman, Harris, Mackey, Reid 5
1150 Negative: 0
1151 Absent: 0
1152
1153 Mr. Berman - Any business?
1154
1155 Mr. Blankinship - That is all I have.
1156
1157 Mr. Mackey - Mr. Chairman, I'd like to make a statement. I'd like to
1158 take this time to thank you for your service on the Board. You've been a big help
1159 to me, and I'm sure Mr. Reid, as newcomers to the Board. Your presence will be
1160 missed, but you definitely won't be forgotten. I wish you well going forward.
1161
1162 Mr. Berman - Thank you very much, Mr. Mackey. It's been an
1163 honor.
1164
1165 Mr. Reid - I second that.
1166
1167 Mr. Berman - But seriously, thank you very much. It has been an
1168 honor and a pleasure, as I've stated to you all before, serving with you all and
1169 this wonderful County. And the staff and support team as well. I will miss you all,
1170 and I look forward to serving the County in some other capacity hopefully in the
1171 near future. Thank you very much.
1172
1173 Ms. Harris - Mr. Berman, I did express my sentiments through text
1174 message. We certainly hope that your successor will hit the ground running just
1175 like you did. You leave a legacy that will be difficult to fulfill.
1176
1177 Mr. Berman - Thank you very much. A successor has been sworn
1178 in, and you will meet him at the August session.
1179

1180 Mr. Blankinship - Actually, I believe the new member will be moving his
1181 daughter to Yale on the date of our August meeting, so we will likely have a
1182 vacant seat that day. We will meet him in September.

1183

1184 Mr. Berman - We will also have the vote for chairperson and vice
1185 chairperson.

1186

1187 Mr. Blankinship - Yes. We will elect officers next month.

1188

1189 Mr. Berman - Sorry I'll miss that. Thank you again for all of your
1190 camaraderie. It's much appreciated. With that, we are adjourned. Everybody
1191 have a great day.

1192

1193

1194

1195

1196

1197

1198

1199

1200

1201

1202

1203

1204

for → Dennis Berman
Chairman

William Mabe
BWB
Benjamin Blankinship, AICP
Secretary