

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, SEPTEMBER 25, 2008, AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **SEPTEMBER 4, 2008 AND SEPTEMBER 11, 2008.**

7  
Members Present: Elizabeth G. Dwyer, Chairman  
Helen E. Harris  
James W. Nunnally  
Robert Witte, Jr.  
R. A. Wright

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

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9  
10 Ms. Dwyer - Good morning. I'd like to welcome you to the  
11 September 25, 2008 meeting of the Henrico County Board of Zoning Appeals.  
12 We'll begin our meeting with the **Pledge of Allegiance to the Flag of Our**  
13 **Country.**

14  
15 Mr. Secretary, would you read the rules and let us know if there are any deferrals  
16 or withdrawals this morning?

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

36 Particularly if you're the applicant for a use permit case, you need to be familiar  
37 with those conditions.

38

39 We do not have any requests for deferrals or withdrawals.

40

41 Ms. Dwyer - Thank you, Mr. Secretary. Call the first case.

42

43 **A-018-08 BOOKCASE ON BROAD, LLC** appeals a decision of  
44 the director of planning pursuant to Section 24-116(a) regarding the property at  
45 5910 W Broad Street (Westmont) (Parcel 771-740-0065), zoned B-3, Business  
46 District (Brookland).

47

48 Ms. McGetrick - Hello, my name is Mary Katherine McGetrick. I'm with  
49 Williams Mullen, and I'm here on behalf of the applicant, Mr. Patrick Kelly. He's  
50 unable to be here today. He's on family vacation and is out of the country, but  
51 wanted me to appear on his behalf.

52

53 Ms. Dwyer - Ms. McGetrick, could you spell your last name?

54

55 Ms. McGetrick - Yes. It's M-c-g-e-t-r-i-c-k.

56

57 Ms. Dwyer - Thank you.

58

59 Ms. McGetrick - I have some written comment.

60

61 Ms. Dwyer - We need to swear in all the potential witnesses and  
62 speakers.

63

64 Mr. Blankinship - Does anyone else intend to speak to this case?  
65 Raise your right hand please. Do you swear the testimony you're about to give is  
66 the truth and nothing but the truth so help you God?

67

68 Ms. McGetrick - I do.

69

70 Mr. Blankinship - Thank you.

71

72 Ms. Dwyer - State your case, please.

73

74 Ms. McGetrick - Okay. I have some written comments. I apologize for  
75 not getting these any earlier. It's just a one-page summary. I can hand these out  
76 if you want to pass these around.

77

78 Ms. Dwyer - All right.

79

80 Ms. McGetrick - I'm returning from a three-month maternity leave this  
81 week, so I didn't have time to get comments to you earlier. I apologize for that.

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The applicant requests that the sign permit that was rejected be approved pursuant to the Henrico County Code, Section 24-104(13), on the basis of the permits previously issued to the former tenants on the property, Lamar, were issued erroneously. The sign permit that was issued to Lamar for 5912 West Broad Street, was issued on the condition that the outdoor signs located at 5910 West Broad, the property owned by Mr. Kelly, would be removed prior to the construction of the sign at 5912. This was pursuant to Lee Tyson's letter to Lamar dated August 6, which is part of the record. The demolition permit, which was issued to Lamar for 5910, was issued on May 6 without the consent of the owner, Mr. Kelly. The lease with Lamar for 5910 was terminated by Mr. Kelly as of April 22<sup>nd</sup>, so at the time the demolition permit was issued, Lamar has no interest, no real property interest on 5910 West Broad Street. Therefore, we believe the demolition permit was issued in error and is invalid, and therefore the sign permit passed on the condition of the demo permit should also be rendered invalid.

In addition, there was a mistake of facts in the rejection letter to Mr. Kelly that according to County records, the billboards previously located at this location were removed and moved to 5912 West Broad Street. That was in a letter also from Lee Tyson to Mr. Kelly dated July 23<sup>rd</sup>. Those signs at 5912, in fact, did not come down until September 14<sup>th</sup>, just a couple of weeks ago on a Sunday morning.

The right to replace and relocate an outdoor advertising sign pursuant to the Henrico County Code Section that the sign permit applied should invert to the owner of 5910. The former tenants of this property should not be able to take this property right and move it to another property. The billboard sign that was on the 5910 building had been there upwards of 40 years. I don't think either party really knows exactly when it was constructed, but it was in existence when the amendment to the Code was added, and therefore was grandfathered. The ordinance should be used to move that non-conforming sign to another property. The owner bought the property in 2002 with the sign on it, and should have every expectation that his bundle of property rights include the right to have a sign, which is in conformance with the zoning code, on his building. For these reasons, we would ask that the permits issued to Lamar be deemed invalid, and that the sign permits to replace the sign that's been taken down be issued to Mr. Kelly.

- Ms. Dwyer - Thank you. Any questions by Board members?
- Mr. Witte - The signage, was that actually owned by Lamar?
- Ms. McGetrick - Yes. The signage, the physical signage is owed by Lamar.
- Mr. Witte - Was owned by Lamar?

128  
129 Ms. McGetrick - Was owned by Lamar, yes.  
130  
131 Mr. Witte - Mr. Kelly, the owner, did he receive any revenues  
132 from Lamar for the signage?  
133  
134 Ms. McGetrick - Yes. There was a lease in place that ended on April  
135 22<sup>nd</sup>, and he received a monthly rent from Lamar for renting the rooftop space.  
136  
137 Mr. Witte - After that date, Lamar actually owned the signage, but  
138 had no right to display the signs.  
139  
140 Ms. McGetrick - Correct. There was no lease in effect, that's correct.  
141  
142 Ms. Dwyer - On your first point in the handout that you've given us,  
143 are you saying that the new signs have already been constructed?  
144  
145 Ms. McGetrick - They have not, to our knowledge. I was there  
146 yesterday and they were not up. There's a permit out there, obviously, for their  
147 construction, but I believe they intend to construct them sometime soon.  
148  
149 Ms. Dwyer - All right. So, you're saying the sign permit was  
150 issued on the condition that the signs at 5910 be removed prior to construction.  
151 So, they have been removed.  
152  
153 Ms. McGetrick - They have been removed, yes.  
154  
155 Ms. Dwyer - Okay. So, what is your point?  
156  
157 Ms. McGetrick - The point is that the signs were removed from 5910  
158 pursuant to a demolition permit that was not valid because the demolition permit  
159 was issued without the knowledge or consent of the owner of 5910. The owner  
160 had a vested interest if not in the billboards physically themselves, in the  
161 property, in the real property. Lamar did not have a real property interest in that  
162 real property. The billboards have been up there for, like we said, probably  
163 almost 40 years, and there was serious concern on the part of the owner that  
164 taking these billboards down would cause possible structural damage to the  
165 building. So, he reiterated to Lamar several times that he wanted to be there, he  
166 wanted to have a structural engineer there. All of the removal took place without  
167 notice to him or his management company about two weeks ago.  
168  
169 Ms. Dwyer - I see two issues here. One is the issue as to whether  
170 the County is going to allow a sign to exist in any given location, and that's  
171 pursuant to the statute. The other issue is what is the relationship between the  
172 person who builds the billboard and the property owner on which the boards are  
173 placed. I guess the way I analyze this is the County isn't getting involved in the

174 contractual relationship between the owner of the billboard and the owner of the  
175 property, it's merely saying as a matter of law because there are restrictions on  
176 where billboards can be located. We're saying it can be located in one spot, and  
177 it can be removed from the other because that's a prerequisite in the ordinance.  
178 We're not really involved in the property rights' issues, or the contractual issues  
179 between the two parties; that is the relationship between the lessor and the  
180 lessee. It doesn't really control whether or not the County's going to give its  
181 blessing to whether a sign is permitted in a given location.

182

183 Ms. McGetrick - Right, but if the demolition permit had not been  
184 allowed to be issued, then the sign permit, necessarily, could not have been  
185 issued. We're saying the demolition permit should not have been issued, and  
186 was issued incorrectly.

187

188 Ms. Dwyer - That is because?

189

190 Ms. McGetrick - That is because the owner didn't consent to it. Does  
191 the County typically issue demolition permits on property without owner consent?

192

193 Ms. Dwyer - We'll find out. Thank you. Any other questions by  
194 Board members?

195

196 Mr. Wright - What kind of arrangement was there between Lamar,  
197 the advertising company, and the owner?

198

199 Ms. McGetrick - Excuse me, what kind of arrangement?

200

201 Mr. Wright - Yes.

202

203 Ms. McGetrick - Well, there was a lease—

204

205 Mr. Wright - Was there an agreement?

206

207 Ms. McGetrick - There was a written lease that expired April 22<sup>nd</sup> of  
208 this year for the rooftop of 5910.

209

210 Mr. Wright - What happens when the lease expires?

211

212 Ms. McGetrick - When the lease expires, Lamar comes and takes their  
213 property and they leave.

214

215 Mr. Wright - When the lease expired, was Lamar required to  
216 remove the sign?

217

218 Ms. McGetrick - They were permitted under the lease to remove the  
219 sign, which is their property. There was discussion, like I said before, between

220 the parties as to how that was going to happen because the sign had been up  
221 there for so long, and the owner wanted to make sure that no damage would  
222 occur to the building upon removal. That removal, again, there were discussions,  
223 but there was never an agreement as to how and when those signs were going  
224 to be removed between the parties, and they were removed, like I said, a couple  
225 weeks ago without any notice or announcement to my client, the owner, or to the  
226 management company.

227

228 Mr. Blankinship - I'm sorry. Did you say the lease specifically provided  
229 that Lamar had the right to come and remove the billboards?

230

231 Ms. McGetrick - Yes.

232

233 Mr. Blankinship - Yet you think the County erred in giving them a permit  
234 to do that.

235

236 Ms. McGetrick - Without the consent of the owner. I am just surprised  
237 the County would issue a demolition permit without the signature of the owner of  
238 the real property.

239

240 Mr. Wright - If the lease provides that at termination of the lease  
241 Lamar could remove it, the County merely was carrying out the terms of the  
242 lease. They had a right to remove it. Why would the owner have to agree  
243 removal of the sign?

244

245 Ms. McGetrick - I liken it to the ability of anyone to go and get a  
246 construction permit without the owner's consent. What if I or Lamar ever wanted  
247 to go construct a billboard on the property, and they went down and applied for a  
248 permit, and they said here's this contract, I have permission, and they did not  
249 have permission from the owner? The owner, again, didn't sign the lease; it was  
250 signed by a previous owner. Lamar actually asked the owner to sign the  
251 application for the demolition permit, and when my client refused because they  
252 were still negotiating the terms of that removal, they just went—thank you—they  
253 just went ahead and took the termination letter of the lease as evidence that the  
254 owner approved it. I let them know, I said that's absolutely not evidence of the  
255 owner's approval because of the issues, again, between the parties about the  
256 removal because the sign was such an integral part of the building.

257

258 Mr. Wright - That doesn't make any sense. They had a right to  
259 remove it, didn't they?

260

261 Ms. McGetrick - They did, but I question the right to issue a demolition  
262 permit on property without the owner's consent.

263

264 Mr. Wright - If they had a right to remove it, then the County was  
265 merely accommodating Lamar in an effort to remove it. Why would the owner

266 have to agree to have it removed if Lamar in the lease had a right to remove the  
267 sign? That's all they were doing was perfecting that removal.

268  
269 Ms. McGetrick - I would hope that the owner would get notice or  
270 consent by having to sign off on the demolition permit to allow this to happen.

271  
272 Mr. Witte - When the owner purchased this building, did he get a  
273 copy of the lease—

274  
275 Ms. McGetrick - Yes.

276  
277 Mr. Witte - —he inherited?

278  
279 Ms. McGetrick - Yes.

280  
281 Mr. Witte - He was aware of the fact that they could remove the  
282 signs.

283  
284 Ms. McGetrick - Well, actually, he was under the impression that the  
285 signs belonged to the building because they've been up there for so long. The  
286 lease actually says that the tenant can remove anything that they place on the  
287 building. It's actually an earlier lease that states that the tenant can remove  
288 anything that's placed on the building. Even though Lamar didn't place those  
289 billboards, they technically owned them.

290  
291 Mr. Wright - Do we have a copy of the lease?

292  
293 Ms. McGetrick - I have one.

294  
295 Ms. Dwyer - Do we need to go that far, I'm wondering, if the lease  
296 is a contractual relationship between the owner of the billboard and the owner of  
297 the property? Our decisions don't govern that relationship. That exists between  
298 the two parties. Our involvement as a county is, seems to me, giving permission  
299 to remove the billboard and put it in another location because the ordinance  
300 restricts the location of the billboard. Our only involvement is saying where the  
301 billboard can go. I don't think we normally get involved in that, in the terms of the  
302 lease.

303  
304 Ms. McGetrick - That goes to my second point, putting aside the  
305 demolition permit for a moment. The statute that the sign permit was applied for  
306 was not intended to allow a tenant to move this existing sign from place to place.  
307 The sign was in existence when the owner purchased the property, and the  
308 grandfather clause is there so that the sign can be replaced on that property. It's  
309 part of the owner's property rights to have a sign on that property. The Zoning  
310 Ordinance allows him to do that. How can a tenant, a former tenant at that, come  
311 in and use this statute to deprive him of his property rights?

312  
313 Mr. Blankinship - That section of the code specifically says they can  
314 either retain it where it is, or move it within a certain distance.  
315  
316 Ms. McGetrick - Right. I think that's the owner's rights.  
317  
318 Ms. Dwyer - That's a debatable point also I think; who owns the  
319 right to the sign. Is it the company that owns the sign and places the sign on the  
320 building, or is it the building owner's property right? So, I'm not sure I agree with  
321 you either that it's a property right of the owner of the building. That's a question  
322 I'm going to ask Mr. Tokarz as to what was the basis of the County's decision.  
323 Seems to me the basis of the decision was that it's not a right that runs with the  
324 land, that it is a separate right that's given to the owner of the billboard. On what  
325 basis do you claim that it's a property right?  
326  
327 Ms. McGetrick - That the property owner by virtue of owning that  
328 property owns the airspace above it, and has to have a reasonable expectation  
329 when they buy the property that if there's a sign up there, that they can continue  
330 to keep the sign up there.  
331  
332 Ms. Dwyer - Right. They own the airspace so they have the right to  
333 lease that airspace to someone who wants to put in a billboard. The County says  
334 the billboard can go there or not go there. Again, I see it as a contractual  
335 relationship, the lease of that airspace is a contractual relationship between the  
336 billboard owner and the property owner. The right to put the billboard there is the  
337 only involvement that the County has, it seems to me.  
338  
339 Mr. Wright - Doesn't that deprive the owner of the right to put a  
340 sign on his building?  
341  
342 Ms. Dwyer - It might, but I think the statute restricts that.  
343  
344 Mr. Wright - I don't know whether the statute—it doesn't say. Is it  
345 inherent in the statute that we're talking about that the owner has the right to do  
346 that?  
347  
348 Ms. Dwyer - The statute doesn't say who—  
349  
350 Mr. Wright - It's a little peculiar that somebody who's leasing a sign  
351 has a right to take that sign off and move it to another property, and now the  
352 owner is prohibited from putting a sign on his property. That's what we're saying,  
353 isn't it?  
354  
355 Ms. Dwyer - Right. I think the question, in my mind, is who owns  
356 that right. Is it the property owner or is it the billboard owner?  
357



358 Mr. Blankinship - That's an interesting question.  
359  
360 Ms. McGetrick - We maintain that it is the property owner's right.  
361  
362 Ms. Harris - This is not necessarily a legal question, but if the  
363 owners of this property were concerned about moving the structure, the effect  
364 that it would have on the building if the structure were removed—Did you not say  
365 that?  
366  
367 Ms. McGetrick - I'm sorry?  
368  
369 Ms. Harris - The owners of this property were very concerned  
370 about the effect on the business if the structure had been removed.  
371  
372 Ms. McGetrick - They were concerned about the structural effect, yes,  
373 possibly on the building.  
374  
375 Ms. Harris - Yet you still want to put some more signs there?  
376  
377 Ms. McGetrick - Yes.  
378  
379 Ms. Harris - Aren't you still concerned? Aren't the owners still  
380 concerned?  
381  
382 Ms. McGetrick - We were concerned about the removal of a billboard  
383 that had been there for so long, and what that might do the structure of the  
384 building. Yes, we're concerned about putting them back up, but the removal of  
385 something that had been there for so long I think—I'm not a structural engineer—  
386 would possibly have the chance of doing more damage. Putting something back  
387 up on there, that would be the risk that the owner would take. The damage  
388 shouldn't be caused by the tenant who no longer had the lease there to come  
389 and remove it.  
390  
391 Mr. Witte - One more question. When did the lease expire?  
392  
393 Ms. McGetrick - The lease expired April 22<sup>nd</sup>.  
394  
395 Ms. Dwyer - Any more questions for Ms. McGetrick? Thank you.  
396 Mr. Tokarz?  
397  
398 Mr. Tokarz - Members of the Board, I'm Tom Tokarz from the  
399 County Attorney's Office, representing the Director of Planning in this appeal. In  
400 approaching this question, the first thing I would ask the Board to direct its  
401 attention to is what exactly is being appealed to the Board. Looking at the appeal  
402 document, the order requirement or decision that's being appealed is the  
403 rejection of the application of the owner to rebuild a billboard at 5910 West Broad

404 Street. That's what's before you today. I would submit to you that on the basis of  
405 the facts that you have before you, that the decision by the Director of Planning  
406 was correct for this reason. There had been at the time of application by the  
407 owner a demolition permit issued to Lamar, who was the owner of the existing  
408 billboard at 5910 West Broad Street, and a new sign permit that had been  
409 approved for 5912 West Broad Street conditioned upon the removal of the sign at  
410 5910. At the time the application had been made by the owner to the County,  
411 there was a demolition permit in place and a sign permit in place that was  
412 effective as long as there was a removal of the sign at 5910, which is owned by  
413 Bookcase Place. What I would point out to the Board is that, as Ms. McGetrick  
414 has said, the sign permit that was approved in May was to the owner of the  
415 existing sign at 5910 West Broad Street—that's Lamar. I would submit to the  
416 Board that when the County reviewed the demolition permit, it properly  
417 considered a permit application for demolition by the owner of the sign who had  
418 come to the County and said, "We want to demolish the sign at 5910 and to erect  
419 a new sign."

420  
421 The second point I would make to the Board is—and I think Mr. Wright and Ms.  
422 Dwyer have touched on it and I agree—that this is really an issue that is outside  
423 of the Board's purview, the issue of the resolution of the property right between  
424 Lamar and the owner. I don't believe that the County should be placed, nor can  
425 it be placed, in the role of deciding between an owner and a lessee of property,  
426 who has the property rights, when there is an acknowledgement by Ms.  
427 McGetrick today, and there would be an acknowledgement by anybody who  
428 reviewed the lease, that the owner of the billboard (Lamar) was the one that was  
429 applying for the demolition permit and for the new sign permit.

430  
431 In terms of application of the ordinance, which I believe is what is before you  
432 today, the provision we're talking about is a provision that's known as the Cap  
433 and Replace Provision. It was enacted in 1998. I'm going to have to take the  
434 blame for the way it was written because I was involved in the writing of it. It was  
435 designated in 24-104(I)(13)(a) to provide that an outdoor sign in existence on the  
436 effective date of the ordinance, which was May 27, 1998, may be either replaced  
437 or may be relocated to a new site if it met those conditions on there. Really, the  
438 purpose of this was to say we are going to allow the existing number of billboards  
439 in effect at the time of this ordinance amendment to be replaced or relocated if it  
440 meets certain conditions. The ordinance was intended also to say there can be  
441 no new billboards to exceed the existing number of billboards in the County.

442  
443 When the permit application came in from the Bookcase Place to replace the  
444 billboards in existence at 5910 West Broad Street, it's our contention that the  
445 staff properly rejected that application because there was, in effect, a demolition  
446 permit and a sign permit for replacement of the sign at 5910 West Broad Street  
447 at the new location at 5912 West Broad Street. Given that fact, what we had  
448 was—not withstanding any private property dispute between Lamar and the  
449 owner in terms of the County's consideration of the Bookcase Place's permit—

450 the County reviewing an application with knowledge that there was an  
451 outstanding sign permit that had been approved for Lamar at the location at  
452 5912, and that the new application, therefore, would violate both the Cap and  
453 Replace Provision in (a), but also the 1,000-foot limitation in (d). For that reason,  
454 it's our position that the Director of Planning's decision should be upheld, and  
455 that there was proper rejection of the sign permit filed by Mr. Kelly.

456

457 Mr. Wright - Let me ask you a question.

458

459 Mr. Tokarz - Yes sir.

460

461 Mr. Wright - I understand it was a lease, and the lease expired. If  
462 Lamar just removed their signs, the owner of 5910 would then have the  
463 opportunity to put a sign on 5910. Is that correct?

464

465 Mr. Tokarz - If there had not been a sign permit granted to Lamar,  
466 yes sir. The situation we find ourselves in is that Lamar had already come in,  
467 gotten the demolition permit, and had gotten the sign permit. It is the Director of  
468 Planning's position that it's the approval of the permit application by Lamar that  
469 justifies the rejection of the permit application by Mr. Kelly.

470

471 Mr. Wright - Let me clear up one thing. Under the present  
472 circumstances, why would not the owner of 5910 be permitted to put up a sign?

473

474 Mr. Tokarz - For two reasons. Number one, under the provisions  
475 of (a), the relocation or replacement provisions talk about one sign being  
476 relocated or replaced. The sign to be relocated or replaced under provision (a) is  
477 the Lamar sign that's been approved for construction at 5912. In addition, given  
478 the approval of the permit for the construction of the sign at 5912, a sign  
479 construction at 5910 could not be permitted because it would violate the  
480 provisions of 104(13)(d), which provides that outdoor advertising signs must be  
481 at least a thousand feet apart. So, you couldn't have a sign on the adjoining  
482 parcel and meet the 1,000-foot requirement.

483

484 Mr. Wright - If there were no signs at all on either building, and the  
485 owner of 5912 came in and got a permit to put a sign on 5912, there could not be  
486 a sign on 5910.

487

488 Mr. Tokarz - Let me step back one step. If there was an existing  
489 sign at 5910—

490

491 Mr. Wright - Let's assume there are no existing signs.

492

493 Mr. Tokarz - Oh, okay.

494

495 Mr. Wright - No signs at all. We have two different owners, one  
496 owns 5910 and one owns 5912.  
497  
498 Mr. Tokarz - Okay. If the owner of 5912 came to the County and  
499 applied for a sign permit, because of the Cap and Replace Provision of the  
500 ordinance, the County staff would say, "What sign are you replacing or  
501 relocating," because you can't exceed the existing number of signs that were in  
502 place on May 27, 1998. So, Lamar, for example, could have come and said, "We  
503 want to place a sign at 5912, and we're taking down our existing sign at such-  
504 and-such a location." They could have done that.  
505  
506 Mr. Wright - Let's say no signs at all. Forget this replacement  
507 business. Let's assume that there were no signs in place anywhere in the  
508 vicinity.  
509  
510 Mr. Tokarz - Okay.  
511  
512 Mr. Wright - You have an owner of 5910 and an owner of 5912.  
513  
514 Mr. Tokarz - Yes sir.  
515  
516 Mr. Wright - The 5912 owner comes in and says he wants a sign,  
517 and you give him a permit.  
518  
519 Mr. Tokarz - No sir. We could not give him a permit. That's what  
520 I'm trying to—  
521  
522 Mr. Wright - Why couldn't you give him a permit?  
523  
524 Mr. Tokarz - We could only give him the permit if he came in to  
525 place a sign at 5912 that was a replacement or a relocation of an existing sign  
526 that is going to be taken down somewhere else. The Cap and Replace Provision  
527 is designed to limit the number of signs in the County to those in existence on  
528 May 27, 1998. So, any application for a new outdoor advertising sign has to  
529 come in and say, "Here is our plan for the sign, and here's the sign that we are  
530 replacing with the new sign." They have to show us that the sign that's being  
531 replaced is going to come down. That's the reason.  
532  
533 Ms. Dwyer - In that scenario, 5912 could not get a sign.  
534  
535 Mr. Tokarz - Unless they came in and said, "We are replacing a  
536 sign at some location elsewhere in the County."  
537  
538 Mr. Wright - 5910 couldn't get a sign.  
539  
540 Ms. Dwyer - Nobody could.

541  
542 Mr. Tokarz - Nobody could get a sign.  
543  
544 Mr. Wright - Because of the sign requirements for that particular  
545 area?  
546  
547 Mr. Tokarz - That's correct.  
548  
549 Mr. Wright - So, the only way you can get a sign is if it's a  
550 replacement sign?  
551  
552 Mr. Tokarz - That's correct. That's why I called it the Cap and  
553 Replace Provision.  
554  
555 Mr. Wright - It's a particular statute for that particular area.  
556  
557 Mr. Tokarz - It's been the subject of—  
558  
559 Mr. Wright - Explain again the purpose of that ordinance. Why is  
560 that the case, I guess.  
561  
562 Mr. Tokarz - Yes sir. I'll give you a short history lesson. The short  
563 history lesson is that in 1987, I believe, the Sign Ordinance initially required the  
564 amortization of all billboards in Henrico County, an amortization being the taking  
565 down of all signs by a certain date. I don't recall the date right this second, but it  
566 was somewhere after 1998. As we approached the 1998 deadline, the sign  
567 companies said, "We're concerned that this is an unconstitutional taking of  
568 property. We think these signs serve an economic benefit to the County. We  
569 think the ordinance should be amended." On the other side of the billboard  
570 industry were those people, citizens who had supported the original amortization  
571 provision in 1988 or '87 that said, "We don't like billboards because they clutter  
572 up the environment, and we don't want billboards to continue." So, the  
573 compromise was the Board passed the ordinance in 1998 that said outdoor  
574 billboards do not have to be removed in their entirety as provided in the original  
575 ordinance, but we will limit the number with this Cap and Replace Provision. That  
576 was the compromise that was reached. No additional billboards, and if you are  
577 going to replace billboards, you're going to have to meet certain requirements  
578 that were set forth in 24-104(l)(13).  
579  
580 Mr. Wright - Did the owner of 5910 want to put another billboard  
581 up? Is that what they wanted to do?  
582  
583 Mr. Tokarz - That's what the application is for, yes sir.  
584  
585 Mr. Wright - A billboard.  
586

587 Mr. Tokarz - Yes, that's right.  
588  
589 Mr. Wright - Not a little sign.  
590  
591 Mr. Blankinship - These are not business signs.  
592  
593 Mr. Wright - That's the key. There's no indication—That's what I  
594 was trying to get at. They're trying to put up a billboard, not a business sign.  
595  
596 Mr. Tokarz - That's correct. This was a sign—as the application  
597 says—to rebuild the billboards at 5910.  
598  
599 Mr. Wright - What you're saying in summary is that if Lamar had  
600 removed the sign and not even requested to put it up on 5912, the owner of 5910  
601 couldn't put up a billboard sign anyhow.  
602  
603 Mr. Tokarz - No, no. If Lamar had removed the sign at 5910, had  
604 not applied for permission to build a sign somewhere else, to replace the sign, to  
605 relocate the sign, in the words of the ordinance, then the owner at 5910 could  
606 have applied for a sign permit on the grounds that it was merely replacing at the  
607 present location, which is permitted by (a)(13) of 24-104.  
608  
609 Mr. Wright - That puts us back to the beginning of this thing.  
610  
611 Mr. Tokarz - Yes sir.  
612  
613 Mr. Blankinship - Now we've got the background covered.  
614  
615 Mr. Witte - I have one question. In the time between when the  
616 lease expired on the 22<sup>nd</sup> of April and when the application was filed on the 6<sup>th</sup> of  
617 May, had the owners of Bookcase Place filed for a permit to have their own signs  
618 put on that building, since there was no lease and there was no tie to it, could  
619 they have at that time applied, and in reasonable probability had their permit  
620 accepted?  
621  
622 Mr. Tokarz - As I understand the way the staff is applying the  
623 ordinance, the answer is yes.  
624  
625 Mr. Witte - Okay.  
626  
627 Mr. Tokarz - It was the first one through the door got the permit.  
628  
629 Mr. Wright - It was a race.  
630  
631 Mr. Tokarz - Yes sir.  
632

633 Ms. Dwyer - Mr. Tokarz, as I see the ordinance, it just regulates, in  
634 effect, the number of billboards that can be in the County. It doesn't really say  
635 anything about who owns—In effect, it does also kind of create a right in the  
636 billboard that is of some independent value because the number of billboards is  
637 restricted. But it doesn't address who owns that right, whether it's the billboard  
638 owner or the property owner.

639  
640 Mr. Tokarz - It does not. I don't believe the staff could make what I  
641 would consider to be a judicial determination as to who has the property rights. I  
642 would also point out the ordinance does not require that it be the owner of the  
643 property who signs the demolition permit. The testimony before you already is  
644 that the owner of the billboard was Lamar, and the owner of the billboard is who  
645 came in and applied to the County for permission to demolish his own billboards.  
646 For that reason, I believe the permit was properly granted. Now, if there is a  
647 dispute between Lamar and the owner of 5910 as to who had the property right  
648 to apply for a new sign permit, or to demolish the existing signs and remove  
649 them, that is, in our view, a private civil matter between the two that's beyond  
650 both the purview of County staff and, I would respectfully submit, to this Board.

651  
652 Ms. Dwyer - The County's position, then, is that either the billboard  
653 owner or the property owner upon which an existing billboard is placed could  
654 come and get a permit to build a new sign to replace one taken down.

655  
656 Mr. Tokarz - Yes. Just as a property owner across the street on  
657 West Broad has nothing to do with the lease here could come and apply to the  
658 County for a permit to erect a sign. The only thing the County would be looking to  
659 is where are you planning to remove an existing sign so that you can fall within  
660 the Cap and Replace Provision? The lease arrangements, in my view of this  
661 particular situation, amount to a private matter of contractual rights between the  
662 parties that they need to resolve outside of this forum.

663  
664 Mr. Wright - It's in the wrong forum. They should go to court to  
665 determine—

666  
667 Mr. Tokarz - That is correct, sir. That is our view, yes sir.

668  
669 Ms. Dwyer - When we normally issue demolition permits, do we  
670 normally require the property owner to consent?

671  
672 Mr. Tokarz - I don't believe that we do. I'm not in the office every  
673 day. I have Mr. O'Kelly and Mr. Blankinship who may know. I don't know the  
674 answer, but taken on the evidence of this case, this answer is no.

675  
676 Mr. Blankinship - I know we issue building permits to builders every day  
677 without having the owner of the property sign the building permit. Sign permits  
678 are actually on a building permit form.

679  
680 Ms. Dwyer - Okay. There is a precedent for that.  
681  
682 Mr. Blankinship - Lamar comes in and pulls these permits routinely.  
683 We have a couple of them that we're discussing for different reasons right now  
684 where Lam has applied to move a billboard from one location to another, and  
685 we've never spoken to the landowners. I've not.  
686  
687 Mr. Tokarz - The other reality is—I will just point this out to the  
688 Board. The other reality is that what a tenant does on a piece of property is  
689 totally dependent upon the contractual rights it has vis-à-vis the owner. I think  
690 the protection for the County and for the citizens is that regardless of whether the  
691 owner signs a demolition permit or not, the reality is that if someone were to go  
692 onto somebody's property without the right to do so, the owner would have a  
693 property right to see redress for that, but that would not, as I said before, be in  
694 this forum, it would be in a different forum.  
695  
696 Ms. Harris - Mr. Tokarz, could you talk more about the 500-foot  
697 limit? How far was 5910 from 5912 West Broad?  
698  
699 Mr. Tokarz - My understanding is it's next door.  
700  
701 Mr. Blankinship - It's across the street.  
702  
703 Mr. Tokarz - Across the street.  
704  
705 Ms. Harris - Across from Hanover?  
706  
707 Mr. Witte - 5910 and 5912, you would think they'd be on the  
708 same side of the street.  
709  
710 Mr. Blankinship - Well, the side of West Broad.  
711  
712 Mr. Tokarz - On the other side of Hampstead.  
713  
714 Mr. Blankinship - They're about 200 feet apart.  
715  
716 Mr. Tokarz - Right. They're not further than 1,000 feet apart, which  
717 is why I mentioned subsection (d).  
718  
719 Ms. Harris - As it stands now, can Lamar do anything with locating  
720 the sign?  
721  
722 Mr. Tokarz - Lamar?  
723  
724 Ms. Harris - Yes.



725

726 Mr. Tokarz - Lamar has an existing permit to place the signs at  
727 5912 because they've now satisfied the condition of the demolition permit. I think  
728 there was a picture on the board before showing that the signs at 5910 have  
729 been removed. That demolition permit has now been effectuated. The condition  
730 for the sign at 5910 has now been satisfied, so they can erect at any time.

731

732 Ms. Harris - That structure that we see on the screen that  
733 supported the sign, did that belong to Lamar or Bookcase?

734

735 Mr. Tokarz - I don't know the answer to that question. I think that's  
736 a matter between Lamar and the property owner.

737

738 Ms. Dwyer - Any more questions for Mr. Tokarz? Thank you.

739

740 Mr. Tokarz - Thank you.

741

742 Ms. Dwyer - The applicant may come back for rebuttal. I'm going  
743 to give you a five-minute period to rebut the arguments made.

744

745 Ms. McGetrick - I'd like to address the fact that the applicant did not—  
746 Mr. Tokarz talked before about the race to apply for a permit. The applicant did  
747 not feel that there was a race to apply for a permit because this was not a  
748 permitted sign, so to speak. It was a grandfathered sign under the amendment,  
749 and a sign that had been there for many years, and had been there since he  
750 bought the property. But for the fact that Lamar went around him and got the  
751 permit another way, he had no way of knowing that they were going to take this  
752 property right from him by demolishing. He had always intended to replace the  
753 signs when Lamar left, and the sign goes with the location. There is a permit for a  
754 sign. Not for this particular sign, but when a permit is issued for a sign, it's for  
755 that sign. That location, however, that property, there's a right to put the sign up  
756 on that property. You can either issue the permit to put the sign up, or you can  
757 issue it for the property next door, but the sign goes with the location. It's always  
758 been my client's intent, once these signs were taken down, to replace them.

759

760 My client is not in the business of putting up signs himself, so he went ahead and  
761 signed with another company a lease management agreement after Lamar's  
762 lease was over, and sent Lamar notice of this agreement, and asked that they be  
763 notified when they were coming to remove the signs. None of that. Lamar came  
764 on a Sunday morning, I think, to remove the signs so that there would be no  
765 chance for my client or his management company to be there and supervise the  
766 removal.

767

768 Mr. Tokarz also mentioned that now that the demolition's been complete, the sign  
769 permit for 5912 can go forward. However, the demolition, obviously, has not been  
770 complete. There are still I-beams up there to be removed.

771

772 The owner thinks that because this sign location was not a permitted location but  
773 was a sign in existence for many years that had been grandfathered, that it is  
774 within this Board's purview to decide that the owner owns that sign right. It's part  
775 of the ordinance that's not necessarily clear, but we think that the owner should  
776 have the right, has always had the right to put the signs there, and just because  
777 Lamar has personal property, these signs that they removed from there does not  
778 give them the right to put them elsewhere under a permit that was issued, and if  
779 the demolition permit was not incorrectly issued, then it was issued without all the  
780 facts being known. I would like to point out also, again, that when the rejection  
781 letter was issued to my clients, the reject of his permit, it stated that the billboards  
782 had been brought down in July. They were not brought down until September.

783

784 Ms. Dwyer - Do you have a copy of original permit, or do we know  
785 to whom the original permit was issued?

786

787 Ms. McGetrick - I talked to the Permit Office yesterday. I was told they  
788 came into existence in 1984. The sign was in existence long before that, so there  
789 was no permit for this sign ever issued. It's not a matter of transferring a permit;  
790 it's a matter of a right to have a sign up there, which we think belongs to the  
791 owner.

792

793 Ms. Dwyer - Any questions by Board members? Thank you.

794

## 795 **DECISION**

796

797 Do I have a motion? This is an appeal of the decision by the Director of Planning.

798

799 Mr. Witte - I would make a motion that we decline this  
800 application. I think that the Cap and Replace Provision was very evident at the  
801 time all this was taking place, and that they were aware of it. I also think that they  
802 had an opportunity of 18 days, or 12 days—whatever it is. They had that window  
803 of opportunity to apply for the application themselves.

804

805 Ms. Dwyer - You're talking about the Bookcase.

806

807 Mr. Witte - The Bookcase. In which case, they could have taken  
808 the stance that the frame of the property and the space was actually their's to  
809 take care of.

810

811 Ms. Dwyer - If I understand your motion correctly, you want to  
812 affirm the decision of the Director of Planning to reject the application of  
813 Bookcase on Broad, LLC.

814

815 Mr. Witte - Exactly.

816

817 Ms. Dwyer - Do I have a second?  
818  
819 Mr. Wright - I'll second that.  
820  
821 Ms. Dwyer - Discussion?  
822  
823 Mr. Wright - Now that I understand the whole process, this is a  
824 billboard and not a business sign that would really go with the property of the  
825 owner. I think the intent of the ordinance would be that whoever had the sign,  
826 which was Lamar, would be in a position to move it under that recap situation. I  
827 think that's the way it should be.  
828  
829 Ms. Harris - Then we further say that the problem that existed  
830 here was not a problem under our jurisdiction, but one between the sign owner  
831 and the owner of the property.  
832  
833 Mr. Wright - They have the recourse to go to court if they want to.  
834  
835 Mr. Witte - Right. It's a civil matter.  
836  
837 Ms. Dwyer - I agree with Ms. Harris that there are a number of  
838 issues that were raised about the lease, and who had the right to be on the  
839 property, and had the right to remove the billboard and when. That is a private  
840 matter between the billboard owner and the property owner. I think our  
841 involvement was just to maintain the cap. When the application came in to  
842 replace a billboard, on its face it was valid and it was appropriate to approve that  
843 particular case, and then to deny this one because it would have exceeded the  
844 cap.  
845  
846 Any other discussion?  
847  
848 All in favor say aye. All opposed say no. The ayes have it; the motion passes.  
849  
850 After an advertised public hearing and on a motion by Mr. Witte, seconded by Mr.  
851 Wright, the Board **denied** application **A-018-08, Bookcase on Broad, LLC's**  
852 appeal of a decision of the director of planning pursuant to Section 24-116(a)  
853 regarding the property at 5910 W Broad Street (Westmont) (Parcel 771-740-  
854 0065), zoned B-3, Business District (Brookland).  
855  
856  
857 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
858 Negative: 0  
859 Absent: 0  
860  
861

862 **UP-018-08** **DEBRA AND GLENN MULLIAN** request a  
863 conditional use permit pursuant to Section 24-95(i)(4) to build an in-ground pool  
864 in the side yard at 12601 Amber Terrace (Burgundy Parke) (Parcel 733-759-  
865 2808), zoned R-3AC, One-family Residence District (Conditional) (Three Chopt).

866

867 Ms. Mullian - Good morning, I'm Debra Mullian.

868

869 Ms. Dwyer - Just a moment, please.

870

871 Ms. Mullian - Okay.

872

873 Ms. Dwyer - You'll need to swear in anybody who wants to speak.

874

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

878

879 Ms. Dwyer - You're Ms. Mullian?

880

881 Ms. Mullian - I'm Ms. Mullian. I'm Debbie Mullian.

882

883 Ms. Dwyer - Okay.

884

885 Ms. Mullian - My husband couldn't be here. It's M-u-l-l-i-a-n. We  
886 live in Burgundy Park. We have a pie-shaped lot. We built our house 12 years  
887 ago. It was our choice, of course, to place it [unintelligible], I guess is the right  
888 terminology, so it's somewhat turned. If we had not done that, if the house was  
889 straight forward on the pie-shaped lot, where we would like to build the pool  
890 would be our backyard. We, basically, don't have a backyard because our  
891 neighborhood has a brick wall into the development, which is on our property,  
892 which is behind us. We pretty much have a very small backyard that's an  
893 embankment with a rock garden. No room to build a pool. The side is a perfect  
894 little place to have a kidney-shaped pool. We're talking about a dimension of 12  
895 by 28. You cannot see it. It would be right there at the back of the driveway.  
896 You could not see it from the road as you come in on the cul-de-sac. Of course  
897 we'd also have a privacy fence. The only people would be our neighbors on that  
898 side, which of course, again, we would have a privacy fence. We would like it to  
899 be considered. We have three other pools on our cul-de-sac. I have recently  
900 talked to the president of our association, and evidently, there is another home in  
901 our development that is presently building a pool on their side yard. I haven't  
902 seen that, but he did bring that to my attention. It's very private. It would be right  
903 off the deck, perfect little place. Like I said, it won't affect any other property.

904

905 Mr. Wright - How much screening would there be between the  
906 pool and your neighbor at 12600?

907

908 Ms. Mullian - We haven't made those complete decisions as to  
909 what kind of screening and fencing, because we kind of ran into this issue. Of  
910 course, you know, we would do what we have to do for proper privacy. I know  
911 that as far as the lines go, the easement lines and the property lines, everything  
912 is within the regulations. As far as what type of fence we would put up, we  
913 haven't made that decision.  
914  
915 Mr. Wright - A fence is required, of course—  
916  
917 Ms. Mullian - Correct.  
918  
919 Mr. Wright - —for safety reasons.  
920  
921 Ms. Mullian - We do understand that.  
922  
923 Mr. Wright - Have you read the conditions?  
924  
925 Ms. Mullian - I have. You can see the house right there. That's  
926 pretty much the angle where the pool would be on the right side. You don't even  
927 see it from the road.  
928  
929 Mr. Wright - If you notice, Condition #2 provides that the fence  
930 shall be opaque.  
931  
932 Ms. Mullian - I did read that.  
933  
934 Ms. Dwyer - Could we go back to the, "View Neighbors" slide, that  
935 one? From this perspective, the pool is going to be in the grassy area.  
936  
937 Ms. Mullian - Correct.  
938  
939 Ms. Dwyer - This is your neighbor's house that we're looking at.  
940  
941 Mr. Blankinship - That's 12600.  
942  
943 Ms. Dwyer - Right. The yellow house that we're looking at is the  
944 neighbor's house, and your house is to the right. The corner of your house is  
945 barely visible.  
946  
947 Ms. Mullian - Correct.  
948  
949 Ms. Dwyer - This photo points out my particular concern.  
950 Sometimes when we build large houses on relatively small lots, we might want to  
951 put too much on the lot. This seems to me to be in direct view of the neighbor's  
952 house. I'm not sure, is that backyard or side yard?  
953

954 Ms. Mullian - For us? That is really their side yard. Where the  
955 mulch is, that is really our yard. I have a hammock over there that you can't see.  
956 I have a sitting area. We were definitely going to put a fence in where that mulch  
957 is so that they would not even really see the pool. They really only have one  
958 window on that side, which I believe is their laundry room. There are no other  
959 windows. They have a garage that you can see. Of course we would put a fence  
960 to block our driveway, because number one, I know it's required, but also we  
961 don't want to see in the driveway.  
962  
963 Ms. Dwyer - You have fencing around the pool, but not along the  
964 property line, or did you say you were going to add a fence along the property  
965 line as well?  
966  
967 Ms. Mullian - We would add a fence right at the driveway, and  
968 where the mulch is. Our other question would definitely be, you know, there's a  
969 brick wall right behind our house. We would put the fence up to the brick wall,  
970 but our next question would be is that brick wall okay for privacy, or would we  
971 have to run another fence.  
972  
973 Ms. Dwyer - That's a question someone else would have to  
974 answer.  
975  
976 Mr. Wright - How tall is that brick wall?  
977  
978 Ms. Mullian - Well, it kind of varies.  
979  
980 Mr. Blankinship - It showed in one of our photos.  
981  
982 Ms. Mullian - It measures differently at different areas depending on  
983 the depth of the ground.  
984  
985 Mr. Wright - I see a brick wall back there.  
986  
987 Mr. Blankinship - One of the photos showed it a little bit.  
988  
989 Mr. Wright - That looks to be more than six feet.  
990  
991 Mr. Witte - Is that serpentine rock?  
992  
993 Ms. Mullian - Yes, it is. In some areas it's higher. Some areas it's  
994 six feet, some areas it's five feet.  
995  
996 Mr. Wright - There it is.  
997  
998 Ms. Mullian - That's my garden back there.  
999

1000 Ms. Dwyer - What kind of fence do you plan to put around the  
1001 pool?  
1002  
1003 Ms. Mullian - Well, we really haven't gotten there yet. We would do  
1004 whatever is required. I know it was mentioned as opaque. I'm not sure exactly  
1005 what that means.  
1006  
1007 Mr. Wright - That means it's a cloudy sort of—  
1008  
1009 Mr. Blankinship - You can't see through it.  
1010  
1011 Ms. Mullian - Okay. So, we couldn't put wrought iron. It would have  
1012 to be a solid piece?  
1013  
1014 Mr. Blankinship - Right. Vinyl or—  
1015  
1016 Mr. Wright - Around the pool.  
1017  
1018 Ms. Mullian - Around the pool.  
1019  
1020 Mr. Wright - That's what they're talking about here.  
1021  
1022 Mr. Blankinship - Specifically facing—  
1023  
1024 Ms. Mullian - You would allow vinyl.  
1025  
1026 Mr. Blankinship - —the neighbor and facing the cul-de-sac is what we  
1027 were talking about there.  
1028  
1029 Ms. Mullian - Right. So, at the back of the driveway right there.  
1030  
1031 Mr. Blankinship - Yes.  
1032  
1033 Ms. Mullian - That's the only thing that faces the cul-de-sac.  
1034  
1035 Mr. Blankinship - Yes.  
1036  
1037 Ms. Mullian - That's the only—and you can't even see that from the  
1038 cul-de-sac. When our cars are parked there, you can't see our cars from the  
1039 street.  
1040  
1041 Mr. Blankinship - Right. Because it's around the corner of your house.  
1042  
1043 Ms. Mullian - Correct, correct.  
1044  
1045 Mr. Wright - What's the size of the pool?

1046  
1047 Ms. Mullian - The maximum that we would do would be—I know  
1048 I've written it down. I think I said 12 by 28. So, it's a small pool. It's about the  
1049 smallest that you can really do.  
1050  
1051 Mr. Wright - Is there anywhere in our papers that we have the  
1052 size?  
1053  
1054 Mr. Blankinship - It's on the application form. It says 12 by 28.  
1055  
1056 Mr. Wright - Is it? Oh, I see it, yes. Okay. I didn't see that.  
1057  
1058 Ms. Harris - Have you spoken with your neighbor at 12600 to get  
1059 their consent?  
1060  
1061 Ms. Mullian - Yes ma'am, we have, and they're all for it. Actually,  
1062 my neighbor was teasing. He said, "I think I'm going to put an extra window so  
1063 that I can see everything you're doing." They're fine with it.  
1064  
1065 Ms. Harris - You don't have any supporting documents to give us,  
1066 but this is sworn testimony so.  
1067  
1068 Ms. Mullian - Right.  
1069  
1070 Ms. Harris - Okay.  
1071  
1072 Mr. Blankinship - We have not heard from them. They haven't called to  
1073 ask any questions or complain or anything.  
1074  
1075 Ms. Mullian - I did ask if they were going to be here, because I  
1076 know they received a notice. They weren't able to, but there is no problem as far  
1077 as they have told us.  
1078  
1079 Ms. Dwyer - Since there was a question about the fencing,  
1080 suppose we say in Condition 2 that it shall be solid and opaque to make it clear.  
1081 A wrought iron is okay where the iron is, but there's space in between.  
1082  
1083 Ms. Mullian - The wrought iron would not work, is what you're  
1084 saying.  
1085  
1086 Mr. Blankinship - It needs to be something you can't see through.  
1087  
1088 Ms. Mullian - Something you cannot see through.  
1089  
1090 Ms. Dwyer - On the sides facing the neighbor and the road is the  
1091 way this reads. It says, "The fence shall be opaque where it faces 12600 Amber



1092 Terrace and the Amber Terrace cul-de-sac.” So, on two sides it would need to  
1093 be solid.

1094  
1095 Ms. Mullian - Okay.

1096  
1097 Ms. Dwyer - Solid and opaque is agreeable to you.

1098  
1099 Ms. Mullian - Yes ma'am.

1100  
1101 Ms. Dwyer - Any other questions by Board members? Thank you,  
1102 Ms. Mullian.

1103  
1104 Ms. Mullian - Thank you. Did anyone else want to speak to this  
1105 case? No one else raised their hand earlier, but thought I'd check. All right,  
1106 thank you.

1107  
1108 **DECISION**

1109  
1110 Ms. Dwyer - Do I have a motion on this?

1111  
1112 Mr. Wright - I move we approve this application on the grounds it  
1113 will not affect the health, safety, or welfare of the persons residing or working on  
1114 the premises or in the neighborhood. It will not unreasonably impair an adequate  
1115 supply of light and air to the adjacent property, nor increase congestion in the  
1116 street, nor increase public danger from fire, or otherwise unreasonably affect  
1117 public safety, nor be likely to reduce or impair the value of the buildings or  
1118 property in surrounding area. It will be in substantial accordance with the general  
1119 purposes and objectives of Chapter 24 of the County Code.

1120  
1121 Mr. Nunnally - Second.

1122  
1123 Ms. Dwyer - Do we want to change the—

1124  
1125 Ms. Harris - Condition 2? Solid and opaque?

1126  
1127 Mr. Wright - Yes, let me look at that condition.

1128  
1129 Ms. Dwyer - I think the applicant has some question about the  
1130 meaning of opaque.

1131  
1132 Ms. Harris - We clarified that, I believe.

1133  
1134 Mr. Blankinship - By adding solid and—

1135  
1136 Ms. Dwyer - Solid and opaque.

1137

1138 Mr. Wright - That would be condition number what?  
1139  
1140 Ms. Dwyer: Two.  
1141  
1142 Ms. Harris - Two.  
1143  
1144 Mr. Wright - That would include a fence along the property line.  
1145 That's what we're talking about.  
1146  
1147 Ms. Harris - Yes.  
1148  
1149 Ms. Dwyer - So, condition two. Part of your motion, then, is to  
1150 amend Condition #2 to add, "solid and opaque."  
1151  
1152 Mr. Wright - Right.  
1153  
1154 Ms. Dwyer - Something you can't see through.  
1155  
1156 Mr. Wright - Right.  
1157  
1158 Ms. Dwyer - We have a motion and a second. Is there any  
1159 discussion on this case? All in favor say aye. All opposed say no. The ayes  
1160 have it; the motion passes.  
1161  
1162 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
1163 Mr. Nunnally, the Board **approved** application **UP-018-08, Debra and Glenn**  
1164 **Mullian's** request for a conditional use permit pursuant to Section 24-95(i)(4) to  
1165 build an in-ground pool in the side yard at 12601 Amber Terrace (Burgundy  
1166 Parke) (Parcel 733-759-2808), zoned R-3AC, One-family Residence District  
1167 (Conditional) (Three Chopt). The Board approved the Conditional Use Permit  
1168 subject to the following conditions:  
1169  
1170 1. Only the improvements shown on the plot plan and building design filed with  
1171 the application may be constructed pursuant to this approval. Any additional  
1172 improvements shall comply with the applicable regulations of the County Code.  
1173 Any substantial changes or additions to the design or location of the  
1174 improvements may require a new use permit.  
1175  
1176 2. [AMENDED] The applicant shall meet all requirements of the Building  
1177 Inspections Department, including safety fencing around the pool. The fence  
1178 shall be solid and opaque where it faces 12600 Amber Terrace and the Amber  
1179 Terrace cul-de-sac.  
1180  
1181  
1182 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
1183 Negative: 0



1230 shall occupy any required handicapped-accessible parking spaces. I suppose if  
1231 you're replacing them, then they're not occupied.  
1232  
1233 Mr. Blankinship - Maybe it should say, "shall not reduce the number  
1234 of"?  
1235  
1236 Ms. Dwyer - I think that would be clearer.  
1237  
1238 Mr. Nunnally - This is the same operation you've had for the last four  
1239 years?  
1240  
1241 Mr. Ruhlen - Yes sir.  
1242  
1243 Mr. Nunnally - How about the removal of the tent? You have January  
1244 31, 2009.  
1245  
1246 Mr. Ruhlen - We do.  
1247  
1248 Mr. Nunnally - Is that the same as last time?  
1249  
1250 Mr. Ruhlen - I believe it's the same. We usually have it down right  
1251 after Christmas. We don't need that much time. I'm not sure why we had January  
1252 31<sup>st</sup>, but we've never gone that far with that tent, that long a time period.  
1253  
1254 Ms. Dwyer - Will you have any sanitary facilities in the trailer?  
1255  
1256 Mr. Ruhlen - No, there will be none. It's right next to our facility.  
1257  
1258 Ms. Dwyer - I notice where the tent is going to be is on the rear of  
1259 the property, and Bailey—is it Bailey?—Bailey Court is now being developed, and  
1260 there is actually a house that is right up against that fence. Not directly behind  
1261 where the tent is going to go, but it's in the process of being constructed. I don't  
1262 think that's going to be an issue this year, but it may be in the future. As the  
1263 leaves fall off those trees, I think the rear of your property is going to be quite  
1264 visible for that time.  
1265  
1266 Mr. Ruhlen - We realize we're going to have to contend with that in  
1267 the future, or else make those people congregants and—  
1268  
1269 Ms. Dwyer - That would be your first visit. Okay. Well, I just  
1270 wanted to mention that particular lot.  
1271  
1272 Mr. Wright - You could have some sort of a screen there.  
1273  
1274 Ms. Dwyer - I don't know if you have space.  
1275

1276 Mr. Ruhlen - We have right now about a seven-foot high picket  
1277 fence, so from the ground you could see maybe the tip of the tent, but I'm sure  
1278 from their upstairs windows they could have more access than that.  
1279

1280 Ms. Dwyer - I'm just mentioning that because I think in the future  
1281 that's going to be an issue for you. You might want to think of a location for the  
1282 tent.  
1283

1284 Ms. Harris - I have a question. The long-term place for West End  
1285 Assembly, have you thought of another facility that's specifically designed for  
1286 events like that?  
1287

1288 Mr. Ruhlen - Yes ma'am, we have. We've looked at the  
1289 neighborhood, at the usage and applications. We're not in turmoil, but we're  
1290 really kind of looking at every possible avenue to remain there and build  
1291 something that we can all live with—the neighborhood and the church—and  
1292 would make it easy on us as we conduct this production.  
1293

1294 Ms. Harris - Do you have any plans in the near future?  
1295

1296 Mr. Ruhlen - No plans in the near future.  
1297

1298 Mr. Wright - The number of participants, the people who come see  
1299 the event, has it increased each year?  
1300

1301 Mr. Ruhlen - No, because we sell it out every year.  
1302

1303 Mr. Wright - You have a limit.  
1304

1305 Mr. Ruhlen - Yes sir, we have a limit. It's about 25,000+ over 19  
1306 shows.  
1307

1308 Mr. Wright - Each show is 25,000.  
1309

1310 Mr. Ruhlen - No sir. It's the total of 19 shows.  
1311

1312 Mr. Wright - How much—  
1313

1314 Mr. Ruhlen - About 1500 people come to see it, and then the  
1315 support and us poor guys working behind the scenes.  
1316

1317 Mr. Wright - I've seen it, so I understand all that. So, it's about  
1318 1500 people, tickets that you sell.  
1319

1320 Mr. Ruhlen - Yes sir.  
1321

1322 Ms. Harris - How much acreage do you have there at that site?  
1323  
1324 Mr. Ruhlen - I believe it's 22, but I'm not really sure.  
1325  
1326 Mr. Blankinship - It's 14.141. There may be two parcels there. That's  
1327 the parcel that the church building is on.  
1328  
1329 Ms. Dwyer - We've not had any complaints in the past years when  
1330 we've allowed these trailers and tents, I understand from the staff report. Any  
1331 more questions? Thank you, Mr. Ruhlen.  
1332

### 1333 **DECISION**

1334  
1335 Ms. Harris - I move that we approve this use permit. Condition #3.  
1336 We said we would change that to show "reduce" rather than "shall occupy any  
1337 required handicap accessible parking."  
1338  
1339 Ms. Dwyer - Shall not reduce.  
1340  
1341 Ms. Harris - Shall not reduce.  
1342  
1343 Ms. Dwyer - The number of.  
1344  
1345 Ms. Harris - Shall not reduce the number. In as much as West  
1346 End Assembly has secured this use permit for the last I believe four years, we've  
1347 had no complaints about the health, safety, or welfare of any of the citizens. I see  
1348 no objection to granting them this use permit.  
1349  
1350 Ms. Dwyer - And it is temporary. Do I have a second?  
1351  
1352 Mr. Nunnally - Second.  
1353  
1354 Ms. Dwyer - Any further discussion? All in favor say aye. All  
1355 opposed say no. The ayes have it; the motion passes.  
1356

1357 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
1358 Mr. Nunnally, the Board **approved** application **UP-019-08, West End Assembly**  
1359 **of God's** request for a temporary conditional use permit pursuant to Section 24-  
1360 116(c)(1) to erect a temporary box office trailer and a tent at 401 N Parham Road  
1361 (Parcel 753-736-0655), zoned R-1, One-family Residence District (Tuckahoe).  
1362 The Board approved the Conditional Use Permit subject to the following  
1363 conditions:  
1364

1365 1. Only the improvements shown on the plot plan filed with the application may  
1366 be constructed pursuant to this approval. Any additional improvements shall  
1367 comply with the applicable regulations of the County Code. Any substantial

1368 changes or additions to the design or location of the improvements may require a  
1369 new use permit

1370  
1371 2. The applicant shall cooperate with the Division of Police to implement the  
1372 principles of Crime Prevention Through Environmental Design.

1373  
1374 3. [AMENDED] Neither the trailer nor the tent shall reduce the number of  
1375 handicapped-accessible parking spaces or block any walkways required for  
1376 handicapped accessibility.

1377  
1378 4. Any sanitary facilities in the trailer shall be connected to a disposal system  
1379 approved by the health department.

1380  
1381 5. The trailer shall be removed from the site on or before December 31, 2008.  
1382 The tent shall be removed from the site on or before January 31, 2009, at which  
1383 time this permit shall expire.

1384  
1385  
1386 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
1387 Negative: 0  
1388 Absent: 0

1389  
1390  
1391 **A-019-08 VIRGINIA LANDBANK COMPANY** requests a  
1392 variance from Section 24-9 to build a one-family dwelling at 2421 Hartman Street  
1393 (Montezuma Farms) (Parcel 801-728-7752), zoned R-4, One-family Residence  
1394 District (Fairfield). The public street frontage requirement is not met. The  
1395 applicant has 0 feet public street frontage where the Code requires 50 feet public  
1396 street frontage. The applicant requests a variance of 50 feet public street  
1397 frontage.

1398  
1399 Ms. Dwyer - Is there anyone else here to speak to this case?

1400  
1401 Mr. Blankinship - Will you raise your right hand please? Do you swear  
1402 the testimony you're about to give is the truth and nothing but the truth so help  
1403 you God?

1404  
1405 Mr. Hooker - Good morning, members. My name is Randy Hooker  
1406 with Engineering Design Associates. The owner of the property is here as well.  
1407 We are requesting a variance for access to this property.

1408  
1409 Ms. Dwyer - Is there anything else you'd like to say in support of  
1410 your case?

1411  
1412 Mr. Hooker - One time the original subdivision sign that—the  
1413 railroad right-of-way had been vacated, taken over by the power company, and

1414 constructed a transmission right-of-way. The County has since taken over that  
1415 property. The transmission lines do exist today. The owner is looking to gain  
1416 access to his property through this easement. I had discussions with Mike  
1417 Jennings, the Traffic Engineer, this morning. He stated he had no comments  
1418 regarding access through this easement.

1419

1420 Ms. Dwyer - That means you don't have access at this time.

1421

1422 Mr. Hooker - We do not have an access agreement in place today,  
1423 no.

1424

1425 Ms. Harris - Mr. Hooker, had you considered gaining access  
1426 through the subdivision located on the east side of that property?

1427

1428 Mr. Hooker - Through Hollybrook townhomes?

1429

1430 Ms. Harris - Yes.

1431

1432 Mr. Hooker - I don't know that—I have not, no. I have not looked at  
1433 that. I glanced at it. I don't know that we could really get a driveway to work with  
1434 the existing parking conditions and everything else.

1435

1436 Ms. Harris - How far is that from the nearest street in Hollybrook?  
1437 It seems like the tip of your property is—

1438

1439 Mr. Hooker - The properties adjoin. This property adjoins  
1440 Hollybrook townhomes.

1441

1442 Ms. Harris - Right.

1443

1444 Mr. Hooker - I don't know that we'd really be able to get a driveway  
1445 without probably losing some of that parking that's there.

1446

1447 Ms. Dwyer - Have you investigated Hartman Street through the lot  
1448 that's between your property and Hartman Street?

1449

1450 Mr. Hooker - I'd have to defer that question to the owner.

1451

1452 Mr. Wright - Have you read the conditions?

1453

1454 Mr. Hooker - Yes, we have.

1455

1456 Mr. Wright - You know that you must have proof of legal access to  
1457 the property before you can get a building permit.

1458

1459 Mr. Hooker - Correct. Yes, we did see that.



1460  
1461 Ms. Harris - The septic system that you plan to use, why would  
1462 you do that when water is on your site, and you have public water and sewer  
1463 available on Hartman Street?  
1464  
1465 Mr. Hooker - The owner has stated if it's a requirement for him to  
1466 tie into public utilities, water and sewer, he will.  
1467  
1468 Mr. Wright - That's one of the requirements in the conditions. You  
1469 have to have public water and sewer.  
1470  
1471 Mr. Witte - Have you acquired or made an attempt to have the  
1472 County vacate part of that easement to make access to the property?  
1473  
1474 Mr. Hooker - No, we have not. Like I say, I talked to Mike Jennings  
1475 this morning, the Traffic Engineer. He said that he didn't have any issues with us.  
1476 Of course we'd have to go through Real Property to work out the formal  
1477 easement. I don't know that this easement would actually have to be anything  
1478 permanent. I mean, just access. Not that it's really taking anything from the  
1479 County. It's just an access through an existing easement.  
1480  
1481 Mr. Wright - Which way would the house face?  
1482  
1483 Mr. Hooker - The house is shown on the plat to face that existing  
1484 easement.  
1485  
1486 Mr. Wright - Okay. South.  
1487  
1488 Mr. Hooker - Correct.  
1489  
1490 Ms. Dwyer - One of the conditions states that only improvements  
1491 on the plot plan file may be constructed, but there aren't any plans, there aren't  
1492 any improvements.  
1493  
1494 Mr. Hooker - A footprint is shown. A footprint is the only thing  
1495 that's shown.  
1496  
1497 Ms. Dwyer - My thought is that this is a premature request for a  
1498 variance given the fact that you don't have any legal access to the property at  
1499 this point, and you're unable to tell us what you plan to build there.  
1500  
1501 Mr. Wright - Would you suggest that he defer the case?  
1502  
1503 Ms. Dwyer - That would be my suggestion.  
1504

1505 Mr. Hooker - I think the owner wants to get up and speak for a  
1506 second.  
1507  
1508 Ms. Dwyer - He's been sworn.  
1509  
1510 Mr. Blankinship - Yes.  
1511  
1512 Ms. Dwyer - Would you state your name, please?  
1513  
1514 Mr. Henry - Michael Henry.  
1515  
1516 Ms. Dwyer - Michael Henry?  
1517  
1518 Mr. Henry - Michael Henry. The interpretation by the County that  
1519 a right-of-way does not exist, I don't agree with the stand that they've taken. I  
1520 have the original subdivision plat here that shows the existing Montezuma  
1521 Avenue. Can we go back to the aerial? You see where Montezuma stops at  
1522 Hartman Street. The plat shows it continuing down the entire right-of-way as a  
1523 paper street. After that original survey, they do show that you have the  
1524 transmission towers, but you have Hartman Street and Montezuma going all the  
1525 way from there further up that already exists. It was never vacated at any time.  
1526 Montezuma has never been vacated. So, for them to deny the right-of-way that  
1527 had existed when it was originally platted, it would have had to have been  
1528 vacated. I feel as through the access is there. Now, for me to clarify some  
1529 technicalities with the County of where it's located, that may be another issue.  
1530  
1531 Ms. Dwyer - Pardon me if I'm wrong, but—  
1532  
1533 Mr. Blankinship - I can see why Mr. Henry would think that, because  
1534 when I first glanced at the plat, that's what I thought as well. I had a meeting a  
1535 couple of months ago with the Director of Real Property and the Director of  
1536 Public Works to hammer out this exact issue. They were very clear that the  
1537 County never owned that right-of-way until the County purchased it from  
1538 Dominion Virginia Power. Their predecessor, Virginia Electric Power Company,  
1539 bought that strip of land from private landowners, and it was never dedicated or  
1540 accepted as County right-of-way. I thought so, too, when I looked at the plat.  
1541 Those who are responsible for those things, and who have done all the research  
1542 are certain that it was not.  
1543  
1544 Ms. Dwyer - This plat was filed in the '30s?  
1545  
1546 Mr. Blankinship - Yes.  
1547  
1548 Ms. Dwyer - Correct me if I'm wrong on this, but sometimes people  
1549 can file plats, and put streets that they don't own on property that they don't own,

1550 and that doesn't necessarily mean that they own it, and that that constitutes legal  
1551 access to the lot. If that's what you're relying on, that might be—  
1552  
1553 Mr. Hooker - Well, if you notice, though, it was originally—I don't  
1554 know if it's possible to show you this, the original plat.  
1555  
1556 Mr. Blankinship - It's in the file. We may not have put that in there.  
1557  
1558 Mr. Hooker - You see where the letter "H" is? It's 2.5 acres.  
1559  
1560 Ms. Dwyer - Yes.  
1561  
1562 Mr. Hooker - That's the original parcel. If you go back to the aerial  
1563 picture that we have.  
1564  
1565 Ms. Dwyer - Before you leave this, orient us with the streets.  
1566  
1567 Mr. Hooker - Where it says "Montezuma Avenue," as it continues—  
1568  
1569 Mr. Wright - Right there on the bottom.  
1570  
1571 Ms. Dwyer - Okay.  
1572  
1573 Mr. Hooker - It lists it as an abandoned railroad right-of-way.  
1574  
1575 Ms. Dwyer - Okay.  
1576  
1577 Mr. Hooker - Hartman Street is where it runs next to the 2.5-acre  
1578 parcel. Then you can see the sliver. You'll recognize that when we go back to  
1579 the aerial. There's this pie-shaped cutout.  
1580  
1581 Ms. Harris - That "J," is that the subdivision that's adjacent that we  
1582 were speaking of a few minutes ago?  
1583  
1584 Mr. Hooker - Yes.  
1585  
1586 Ms. Dwyer - The townhouse?  
1587  
1588 Mr. Hooker - Yes. If you notice, they actually took action to vacate  
1589 the road that's there. This road was never vacated. Montezuma was never  
1590 vacated at that point.  
1591  
1592 Ms. Harris - Where are the power lines on this map?  
1593  
1594 Mr. Hooker - I don't think they existed at that point.  
1595

1596 Ms. Harris - Would you point those out when we flip back to the  
1597 other?  
1598  
1599 Mr. Hooker - Also, I think there should be a note that the Virginia  
1600 Power, or VEPCO easement was granted, and I don't think it was an exclusive  
1601 easement. I think they retained the rights to use that right-of-way when it was  
1602 granted.  
1603  
1604 Ms. Harris - Do you have any data to support that?  
1605  
1606 Mr. Hooker - I would have to look it up.  
1607  
1608 Mr. Blankinship - When do you mean that an easement was granted?  
1609  
1610 Mr. Hooker - When I did the title insurance.  
1611  
1612 Mr. Blankinship - Just this past?  
1613  
1614 Mr. Hooker - Yes, when I purchased it.  
1615  
1616 Mr. Blankinship - When the County acquired the property from  
1617 Dominion Virginia Power we allowed them to retain an easement to keep the  
1618 lines there. Prior to that, they owned the property; they weren't in an easement.  
1619  
1620 Mr. Hooker - When I purchased the property, it was subject to the  
1621 easement that had been granted to VEPCO.  
1622  
1623 Mr. Blankinship - On your property.  
1624  
1625 Mr. Hooker - Yes, on mine.  
1626  
1627 Mr. Blankinship - Oh, okay. I'm sorry, I thought they were walking  
1628 about—  
1629  
1630 Mr. Hooker - So, I assumed that they had granted them the right  
1631 along—they were one of the grantors. That can be clarified.  
1632  
1633 Ms. Dwyer - Virginia Power has an easement on your property, on  
1634 this lot.  
1635  
1636 Mr. Hooker - They were one of the grantors. They granted an  
1637 easement at some point. There is some confusion as to exactly what the  
1638 easement is.  
1639

1640 Ms. Dwyer - Let me clear about my question. Virginia Power has  
1641 an easement on your property, on this lot that you're asking to put a house on. Is  
1642 that what you said?  
1643  
1644 Mr. Hooker - They granted an easement. I don't know the exact  
1645 location of where that easement was granted.  
1646  
1647 Ms. Dwyer - Again, I don't know how the other Board members  
1648 feel, but my thought is that this is premature, and there are a lot of unanswered  
1649 questions about whether access is even possible.  
1650  
1651 Mr. Hooker - If we can backtrack to the aerial, I can conclude the  
1652 thought.  
1653  
1654 Ms. Dwyer - Okay.  
1655  
1656 Mr. Blankinship - Can you take us back to the aerial?  
1657  
1658 Mr. Hooker - The original 2-1/2-acre piece included those three  
1659 houses and remainder. I don't think the County would have granted a subdivision  
1660 if that remainder was landlocked. At the time they granted that subdivision, the  
1661 County recognized Montezuma as being the right-of-way, prior to their ownership  
1662 of that right-of-way. Otherwise, the County granted this subdivision with this  
1663 piece being inaccessible.  
1664  
1665 Mr. Wright - They all had road frontage.  
1666  
1667 Mr. Hooker - Yes, but the County never lets you landlock a piece  
1668 when you do a subdivision. I'm not sure of the exact date of that, but it was  
1669 current enough. That wasn't done in the '30s. It's current enough that it would be  
1670 subject to modern design.  
1671  
1672 Mr. Wright - Who subdivided it?  
1673  
1674 Mr. Hooker - That I don't—That was not where—  
1675  
1676 Mr. Blankinship - We have that in the file.  
1677  
1678 Ms. Harris - Your saying the street was not there when the County  
1679 granted the right?  
1680  
1681 Mr. Hooker - I'm saying it was a paper street, and the right-of-way  
1682 was there. They recognized it when they granted, when they subdivided the  
1683 original 2-1/2 acres.  
1684

1685 Mr. Wright - Was it actually subdivided or just that part was sold  
1686 off?  
1687

1688 Mr. Hooker - It had to be subdivided because it created four lots  
1689 out of one.  
1690

1691 Mr. Blankinship - There's no date on this plat, unfortunately,  
1692

1693 Mr. Wright - What about the subdivision question, Mr. Blankinship?  
1694

1695 Mr. Blankinship - We're looking at the plat that created those three lots  
1696 just to the north of this parcel, cut out of what was Lot H. We did all this research  
1697 a week or two ago, and it's not as fresh in my memory as I wish it were. All of  
1698 these plats, the one you looked at a minute ago was in Plat Book 14; the one  
1699 creating these three lots is in Plat Book 16; and there's a 1949 plat that's in Plat  
1700 Book 22. So, it's sometime in the 30's or the early 40's that these subdivisions  
1701 were created.  
1702

1703 Mr. Wright - What was the ordinance in effect at that time?  
1704

1705 Mr. Blankinship - It certainly wasn't the one we have now.  
1706

1707 Mr. Wright - That's what I'm saying.  
1708

1709 Ms. Harris - We see a lot of this all over some districts, some  
1710 districts more so than others, where we have the situation that's created here.  
1711 Have you spoken with any of the neighbors in that area? That house is going to  
1712 be behind three on the one side, and behind the—I don't know how many houses  
1713 are on the other side.  
1714

1715 Mr. Hooker - I tried to pursue purchasing that small sliver between  
1716 Hartman and the property to approach from that angle, which brings up Condition  
1717 #2 that was presented. If the County's asking me to go back to pursue that  
1718 avenue, then the house location and direction is definitely going to change also.  
1719 If I'm going to switch from septic to public utilities, then the house location is  
1720 going to change. For that purpose, maybe deferring it would be wise in order to  
1721 relocate the house based on the approach.  
1722

1723 Ms. Harris - What results did you get when you pursued  
1724 purchasing that property?  
1725

1726 Mr. Hooker - They didn't return my—  
1727

1728 Ms. Harris - If we defer it, will you have time to?  
1729

1730 Mr. Hooker - I spent some time. I took it that they were not  
1731 interested in me accessing, but what I could do is possibly offer them a boundary  
1732 line adjustment, and give them land behind their house for the land on the side. I  
1733 had not pursued that part. Part of my feeling was Montezuma Avenue obviously  
1734 exists and is there up to Hartman. I don't see how it could just disappear for the  
1735 rest of the platted road on the subdivision. Now, if it never existed on any of it, I  
1736 could see the County saying it doesn't fall in our easement. But that part of  
1737 Montezuma is within their so-called fee-simple property they purchased from  
1738 Virginia Power. From that case, I felt as though it wasn't my obligation to pursue  
1739 another entrance, when I already had rights to one.  
1740  
1741 Ms. Dwyer - You perceive that you have rights through this  
1742 easement because?  
1743  
1744 Mr. Hooker - Of the platted subdivision. If you could vacate a right-  
1745 of-way within a subdivision once it's recorded, then everybody could just  
1746 change—You can't just change lot lines once it's been approved; there's a  
1747 process to do that. That process was never initiated on this portion. On the  
1748 original subdivision, that was done, I guess redone in the '70s.  
1749  
1750 Mr. Blankinship - What was done in the '70s?  
1751  
1752 Mr. Hooker - I think this plat that we have over here has dates in  
1753 the '70s.  
1754  
1755 Mr. Blankinship - No, those are in the '30s and '40s.  
1756  
1757 Mr. Wright - How wide is that easement?  
1758  
1759 Mr. Blankinship - The strip that the County owns now?  
1760  
1761 Mr. Wright - Yes.  
1762  
1763 Mr. Blankinship - I don't know for sure; let me look. I should know that.  
1764  
1765 Mr. Hooker - If you could zoom in on this drawing again. Look over  
1766 to the right. If you can zoom in where it says, "J and N." I'm sorry. On the right  
1767 of Holly Street. Yes, keep going.  
1768  
1769 Mr. Wright - Can't make that out.  
1770  
1771 Mr. Blankinship - It looks like it's about 73 feet wide, to answer the  
1772 previous question. Oh, yes, there was a vacation, the vacation of the block  
1773 where the townhouses are now.  
1774  
1775 Mr. Hooker - Right. What's the date on that?

1776  
1777 Mr. Blankinship - That was done in '73.  
1778  
1779 Mr. Hooker - Okay. Now, look over to your left. The lot was still 2-  
1780 1/2-acres in size in '73, then.  
1781  
1782 Mr. Blankinship - No, no, no. This plat was not drawn in '73. That was  
1783 a note that was added to this plat in '73.  
1784  
1785 Mr. Hooker - Okay.  
1786  
1787 Mr. Wright - If the County were to vacate that easement, who  
1788 would own the property?  
1789  
1790 Mr. Hooker - It would be a right-of-way. What they do with it, it  
1791 says, "subject to the property owner's right to access."  
1792  
1793 Mr. Wright - Would you have ownership in that easement if they  
1794 vacate it?  
1795  
1796 Mr. Hooker - If they vacate it, it has to go somewhere.  
1797  
1798 Mr. Wright - It has to be owned by someone.  
1799  
1800 Mr. Hooker - It's usually split between the two adjoining owners on  
1801 each side.  
1802  
1803 Mr. Blankinship - If the right-of-way is vacated, the two adjoining  
1804 owners—  
1805  
1806 Mr. Wright - But it's not wide enough to get—  
1807  
1808 Ms. Dwyer - I don't think the County could vacate it because it  
1809 sounds like Virginia Power has an easement interest in that property. What the  
1810 County could do, possibly, is to grant you an easement to access your property.  
1811 That is speculative at this point, as I understand it. Any more questions?  
1812  
1813 Ms. Harris - Can we go back to the aerial photo please? On the  
1814 aerial photo, would you show us where the power lines are? We know it's on the  
1815 property.  
1816  
1817 Mr. Blankinship - There's the tower right there.  
1818  
1819 Ms. Harris - Right there?  
1820  
1821 Mr. Wright - Oh, there's a tower in there?



1822  
 1823 Mr. Blankinship - Yes.  
 1824  
 1825 Ms. Harris - Could this be why the street was not continued?  
 1826  
 1827 Mr. Hooker - They go all the way up Montezuma because people's  
 1828 driveways go under the towers.  
 1829  
 1830 Ms. Harris - The question is, should they go under the towers.  
 1831  
 1832 Mr. Hooker - Well, under the lines.  
 1833  
 1834 Ms. Harris - Should they go under the lines. The other thing is on  
 1835 the map, or the plat, I notice that you have the proposed primary and reserve  
 1836 drainfield area. So, you'd have to avoid that, right?  
 1837  
 1838 Mr. Hooker - Yes. Based on the conditions that they gave on  
 1839 relocating the house, I wouldn't mind deferring it so we could relocate it based on  
 1840 us using public utilities and not using the septic. That would give us time to find  
 1841 proper access points.  
 1842  
 1843 Mr. Wright - Also to come up with some type of house or what you  
 1844 would want to put on the property.

1845  
 1846 **DECISION**

1847  
 1848 Ms. Dwyer - So, you're willing to defer. Do we need a motion for  
 1849 that?  
 1850  
 1851 Ms. Harris - I so move.  
 1852  
 1853 Mr. Wright - Second.  
 1854  
 1855 Ms. Dwyer - Motion by Ms. Harris, second by Mr. Wright. All in  
 1856 favor of the deferral say aye. All opposed say no. The ayes have it; the motion  
 1857 passes. We will defer to the October meeting.

1858  
 1859 After an advertised public hearing, **A-019-08, Virginia Landbank Company's**  
 1860 request for a variance from Section 24-9 to build a one-family dwelling at 2421  
 1861 Hartman Street (Montezuma Farms) (Parcel 801-728-7752), zoned R-4, One-  
 1862 family Residence District (Fairfield), has been **deferred at the request of the**  
 1863 **applicant** until the October 23, 2008 meeting of the Board of Zoning Appeals.  
 1864

1865  
 1866 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
 1867 Negative: 0

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1913

Absent:

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**UP-020-08**                                 **MR. AND MRS. MARK CHRISTIAN** request a conditional use permit pursuant to Section 24-95(i)(4) to build a swimming pool in the front and side yards at 5 Twin Lake Lane (Glenbrooke Hills) (Parcel 754-732-5280), zoned R-1, One-family Residence District (Tuckahoe).

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

Mr. Blankinship -                         Will you 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. Leipertz -                             I do. My name is Bob Leipertz. The spelling of the last name is L-e-i-p-e-r-t-z. I'm here today representing Mr. and Mrs. Mark Christian on this matter. The request before you, as indicated, is to construct an in-ground swimming pool—permanent pool, I should point out, I guess—in what would be the left side yard of the existing residence. There are a number of conditions here that I think will make this request viable and suitable. As noted in the description, the residence is situated approximately midway in a three-acre residential lot. Once the pool is constructed, the closest portion of the pool, the deck itself, will be within 81 feet of what would be their left side yard. That dimension increases as you go down the side yard towards the front street of Twin Lake Lane, a distance in excess of 100 feet.

The other point I think that's worth considering is the fact that the house is built on a knoll on the property, and all of the surrounding side yard slopes off to the front street, and to the side yard such that the elevation difference between the subsequent pool deck and the left side property line would be something on the order of 25 to 30 feet. This means that the pool deck would be 25 to 30 feet higher than the left side property line. As you come around to the front of the property, that grade gets even more exaggerated to the point that you're certainly well in excess of 30 feet.

In conjunction with the construction of the pool, we'll have a five-foot wall, masonry and stone wall, that would be constructed along the left side of the pool that will contain some water features, which raises the site line yet another five feet above the pool level. The subsequent patios and deck areas around the pool with also have a four-foot high stone and stucco enclosure. All of that is opaque, I should note I guess, since that came up in a previous discussion.

In addition to that, the existing—, which you can somewhat see in the photographs—. The side yard and the front yard are heavily covered in trees and vegetation. All of that is deemed to remain. The combination of all three of those items would make it a physical impossibility for anybody to see the pool

1914 from either the front yard or the side yard. All of the construction that would take  
1915 place would be of materials that are identical to or similar to the existing  
1916 residence.

1917

1918 Ms. Harris - Will you lose any of the trees?

1919

1920 Mr. Leipertz - If you go back in those photographs up to the pool  
1921 site.

1922

1923 Ms. Dwyer - Where the trampoline is? The pool is going to kind of  
1924 be where the trampoline is, isn't it?

1925

1926 Mr. Leipertz - That is correct. Actually, you can see a portion of the  
1927 existing deck area and screen wall that is there now. We are continuing that out.  
1928 To answer your question specifically, off to the edge we have to construct a fairly  
1929 significant retaining wall because of this grade transition. We might lose some  
1930 trees right along the edge of that drop, but everything from that point to the street  
1931 would remain undisturbed.

1932

1933 Mr. Wright - This is a rectangular pool?

1934

1935 Mr. Leipertz - It is sir, yes sir.

1936

1937 Mr. Wright - Twenty by forty-five. It doesn't say in the application,  
1938 but I see on the pool itself the distance of 20 wide, 45 long.

1939

1940 Mr. Leipertz - That would be correct. Then there is a spa that would  
1941 project, a triangulated spa that projects off of that towards the house, on the  
1942 house side of the pool.

1943

1944 Ms. Dwyer - The garage, Mr. Blankinship, is not part of this  
1945 application?

1946

1947 Mr. Blankinship - Right. The garage is in the rear yard, or would be.

1948

1949 Ms. Dwyer - It's an unusually shaped lot.

1950

1951 Mr. Wright - It's hard to know what is what.

1952

1953 Ms. Dwyer - So we consider this Twin Lake Lane, the front yard.

1954

1955 Mr. Blankinship - Yes ma'am.

1956

1957 Ms. Dwyer - The side yard is—

1958

1959 Mr. Leipertz - That's a private drive. It's a little confusing. If you go  
1960 to the site, you get the appearance that that—other than by its condition, you get  
1961 the appearance that Hilltop Road is actually a public road, but it is a private road.  
1962 That would be, as I understand, what they're declaring is our left side property  
1963 line.  
1964  
1965 Mr. Blankinship - That's correct.  
1966  
1967 Ms. Dwyer - Any other questions by Board members?  
1968  
1969 Ms. Harris - How many acres of land do you have here?  
1970  
1971 Mr. Leipertz - I think the total they indicated was right at three acres,  
1972 I believe.  
1973  
1974 Ms. Dwyer - Any other questions? Thank you, Mr. Leipertz.  
1975  
1976 Mr. Leipertz - Thank you.  
1977  
1978 **DECISION**  
1979  
1980 Ms. Dwyer - A-019-08, a variance request from Virginia Landbank  
1981 Company. Do I have a motion on the case?  
1982  
1983 Mr. Wright - I move that we approve this request.  
1984  
1985 Mr. Nunnally - Second.  
1986  
1987 Mr. Wright - My ground is it will not affect the health, safety, or  
1988 welfare of the persons residing or working on the premises. It will not  
1989 unreasonably impair an adequate supply of light. Excuse me?  
1990  
1991 Mr. Blankinship - I think one of us is on the wrong the case.  
1992  
1993 Mr. Wright - I'm looking at the use permit for Christian.  
1994  
1995 Mr. Nunnally - Mark Christian.  
1996  
1997 Ms. Harris - Right.  
1998  
1999 Ms. Dwyer - No.  
2000  
2001 Ms. Harris - The previous case was deferred.  
2002  
2003 Mr. Wright - That was deferred.  
2004

2005 Ms. Dwyer - Oh, I'm sorry. I called the wrong case.  
2006  
2007 Mr. Blankinship - My mistake. I apologize.  
2008  
2009 Ms. Dwyer - We deferred that. Okay.  
2010  
2011 Mr. Wright - It will not be likely to reduce or impair the value of  
2012 buildings or properties found in the area. It will be in substantial accordance with  
2013 the general purpose and objectives of Chapter 24 of the County Code.  
2014  
2015 Ms. Dwyer - And just for my clarification, we're talking about UP-  
2016 020-08.  
2017  
2018 Mr. Wright - That's one I thought we were talking about.  
2019  
2020 Ms. Dwyer - You were right.  
2021  
2022 Mr. Blankinship - I apologize.  
2023  
2024 Ms. Harris - "No unusual shape" is not considered a major factor  
2025 in a use permit. I think it does need to be noted that their lot is one of unusual  
2026 shape.  
2027  
2028 Ms. Dwyer - Do I have a second?  
2029  
2030 Mr. Witte - I'll second.  
2031  
2032 Ms. Dwyer - Any discussion? I would just like to add that this is a  
2033 very large lot; it's three acres. It's 80 to 100 feet from the property line, the new  
2034 pool will be. The elevation is quite high off the road, so it will certainly be invisible  
2035 from the property lines and from the roadway. It is also very heavily wooded, and  
2036 I don't see any detrimental impact on any of the neighbors whatsoever.  
2037  
2038 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
2039 Mr. Witte, the Board **approved** application **UP-020-08, Mr. and Mrs. Mark**  
2040 **Christian's** request for a conditional use permit pursuant to Section 24-95(i)(4)  
2041 to build a swimming pool in the front and side yards at 5 Twin Lake Lane  
2042 (Glenbrooke Hills) (Parcel 754-732-5280), zoned R-1, One-family Residence  
2043 District (Tuckahoe). The Board approved the Conditional Use Permit subject to  
2044 the following conditions:  
2045  
2046 1. Only the proposed improvements shown on the plot plan and building design  
2047 filed with the application may be constructed pursuant to this approval. Any  
2048 additional improvements shall comply with the applicable regulations of the  
2049 County Code. Any substantial changes or additions to the design or location of  
2050 the improvements may require a new use permit.

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2. The accessory building shall not be used for residential occupancy or for any business purposes.

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

**UP-021-08**                      **FAYE PLEASANTS** requests a conditional use permit pursuant to Section 24-52(a) to operate a private noncommercial kennel at 2663 Portugee Road (White Oak Bluffs) (Parcel 840-703-7026), zoned A-1, Agricultural District (Varina).

Ms. Dwyer -                      Is anyone else here to speak to this case?

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

Ms. Dwyer -                      Please state your name, and you might want to pull down the microphone a little bit so that we can hear you.

Ms. Pleasants -                      Good morning, my name is Faye Pleasants. That's spelled P-l-e-a-s-a-n-t-s. I want to thank you all for giving me the opportunity to be able to at least come and speak with you this morning on my issue about my Pomeranians.

I'm going to give you a little bit of background. I've been raising, showing, and having Pomeranians for over 40 years. The only Pomeranian to win the Westminster was the great-great-grandson to my female. I stopped showing, raising, and selling my Poms seven years ago. The ones that I now have are the last babies. Once these have passed, my kennel name ceases to exist. Over the years of my breeding and raising Poms, I have made lawyers, doctors, people all over the country, including Japan and Canada, happy with the Poms. Two months ago, I received a call from a person that bought one over ten years ago, and had lost their Pom, and wanted to know if I still have Poms. I have had pictures sent to me, Christmas cards from my clients. I've always placed the Poms with people that matched the personality of Poms. Poms get very stressed even if you move a picture off the wall. The Poms and I are very close; they are like my children—they are my children. My grandchildren and my children live quite a ways away from me. Like I said, when this kennel passes, they'll be no more magic. But they've brought lots of years of happiness to a lot of people.

2096 I have pictures of the home that they live in. It's vinyl, and it matches the house.  
2097 It's a fenced in yard, and it has pea gravel. I have pictures of them playing in the  
2098 yard. I have pictures of them being born, where I delivered them, bred them, and  
2099 raised them. I have pictures of when they first started walking, playing, and  
2100 being loved by their mother. I have pictures of the next stage when they were  
2101 made a playpen until they learned how to paper train and learned how to behave.  
2102 I have pictures of me in the showroom with one of them I have now at the house.  
2103 I have one living champion left.

2104  
2105 Mr. Wright - Excuse me just a minute. Would you pass those  
2106 pictures up here? I don't know what a Pom is.

2107  
2108 Ms. Pleasants - Okay, I'll be glad to. I have pictures of us playing with  
2109 our Poms. I have a picture of my granddaughter visiting, and loves the Poms. I  
2110 have five grandchildren. When they come visit, they always want to see Nanny's  
2111 and Grandpa's Pomeranians, and Grandpa. I have pictures of us actually  
2112 playing in their home. It's fixed up exactly like your family room or living room. It  
2113 has central air and central heat. It has a refrigerator to keep their food in and their  
2114 water. I use distilled water, not sink water. They have a microwave in there. I  
2115 heat their food up. Because of the sensitivity of the Pomeranian stomachs, you  
2116 need to warm their food if it's in the refrigerator. I have family pictures of us  
2117 together.

2118  
2119 I have brought with me letters from the vet, my neighbors surrounding me, all  
2120 asking that I be granted the right to keep all five Poms until two of them demise,  
2121 and then there's no question. I have some signatures with no comments, I have  
2122 some comments, and I have a letter from my vet stating how well I take care of  
2123 the dogs, and how much I love them. So, I'd like you to take this into  
2124 consideration. I have made each of you a set of this documentation.

2125  
2126 Ms. Dwyer - Would you pass that to Mr. Blankinship, and he'll pass  
2127 it down so we can see it. Thank you.

2128  
2129 Ms. Pleasants - My Poms are all aged. The oldest is 10 years, 5  
2130 months as of this month. She weighs seven pounds. The life expectancy of most  
2131 of my Poms, they pass between 10 and 12 years. They die of either a heart  
2132 attack or pancreatic cancer. I have one at home, the champion, who has crystals  
2133 in his kidneys. For over two years, he's been on special medicine and canned  
2134 food so that the crystals do not develop into kidney stones, which would cause  
2135 his death. Cuddles is the youngest; she is 7 years, 10 months. She weighs 4  
2136 pounds, 14 ounces. There's Furbie; he's 9 years, 7 months. There's Lovebug,  
2137 the champ, who's 9 years, 4 months. And I have Peaches, who is the little sister  
2138 at 9 years, 4 months.

2139  
2140 As you can see by their ages, we've been together for a long, long time. With the  
2141 length of the expectancy of their lives, they don't have but a few years before

2142 they will demise. That is why I am requesting to keep them, and keep them  
2143 together instead of breaking us apart. That's why I am here today.  
2144  
2145 Ms. Dwyer - Ms. Pleasants, may I ask you a question? Have you  
2146 read the conditions that were part of this case?  
2147  
2148 Ms. Pleasants - Yes.  
2149  
2150 Ms. Dwyer - You're agreeable to those?  
2151  
2152 Ms. Pleasants - For the demise of two, yes. That's what I'm asking for.  
2153  
2154 Ms. Dwyer - No replacement animals.  
2155  
2156 Ms. Pleasants - No.  
2157  
2158 Mr. Wright - Except three. She could have three.  
2159  
2160 Ms. Dwyer - Right.  
2161  
2162 Ms. Harris - Have you had any complaints from your neighbors  
2163 about barking or whatever?  
2164  
2165 Ms. Pleasants - That's why the letters are there. They will tell you they  
2166 have not heard any. They know me very well; they know my dogs. No. I have  
2167 lived in many counties, and even in the state of Florida, and here. Most of my life  
2168 here. I have never had a neighbor once complain about the dogs, the number of  
2169 dogs, the type of dogs that I've ever had. I have never had not one complaint.  
2170  
2171 Ms. Dwyer - Any questions by Board members for Ms. Pleasants?  
2172 Thank you, Ms. Pleasants. Did you have anything else you wanted to add?  
2173  
2174 Ms. Pleasants - Just that I love them and they're my life.  
2175  
2176 Ms. Dwyer - Thank you very much.  
2177  
2178 Mr. Pleasants - I'm sorry, I couldn't see the mike there. I'm not going  
2179 to take up much more of your time, but I would just like to reiterate what Faye  
2180 has said. Other than the fact that she does have children by a previous  
2181 marriage, I never have had. These Pomeranians really are my children. I've  
2182 threatened to train them to be miniature seeing-eye dogs or something. Anyway,  
2183 we certainly would appreciate your consideration in this matter. Thank you so  
2184 much.  
2185  
2186 Ms. Harris - Thank you.  
2187



2188 Mr. Blankinship - Did you tell us your name, sir?  
 2189  
 2190 Mr. Pleasants - I'm sorry. John Pleasants. I'm sorry.  
 2191  
 2192 Ms. Dwyer - Thank you, Mr. Pleasants. Any questions for Mr.  
 2193 Pleasants? Thank you, and we'll render our decision at the end of the meeting.  
 2194

2195 **DECISION**

2196  
 2197 Mr. Nunnally - I move we approve it.  
 2198  
 2199 Mr. Wright - Second.  
 2200  
 2201 Ms. Dwyer - Any discussion?  
 2202  
 2203 Mr. Nunnally - The reason I move we approve it is that it will not  
 2204 affect the health, safety, and welfare of the people residing in that neighborhood.  
 2205  
 2206 Ms. Dwyer - All in favor of the motion—Oh, excuse me. Go ahead.  
 2207  
 2208 Mr. Nunnally - That's all right. I just wanted to say I wish I had  
 2209 somebody to love me like she loves her dogs.  
 2210  
 2211 Ms. Dwyer - All in favor say aye. All opposed say no. The ayes  
 2212 have it; the motion passes.  
 2213

2214 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
 2215 Mr. Wright, the Board **approved** application **UP-021-08, Faye Pleasant's**  
 2216 application for a conditional use permit pursuant to Section 24-52(a) to operate a  
 2217 private noncommercial kennel at 2663 Portugee Road (White Oak Bluffs)  
 2218 (Parcel 840-703-7026), zoned A-1, Agricultural District (Varina). The Board  
 2219 approved the Conditional Use Permit subject to the following conditions:

- 2220 1. This approval is only for the five dogs presently owned by the applicant. The  
 2221 approval is not for the commercial boarding or breeding of dogs at any time.  
 2222
- 2223 2. No new or replacement animals may be added, so that the number of existing  
 2224 animals will be reduced by natural means to three, as permitted by code, at  
 2225 which time this conditional use permit shall expire.  
 2226
- 2227 3. All animals shall be kept primarily indoors. The applicants shall maintain the  
 2228 property so that noise and odors are controlled.  
 2229

2230  
 2231 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
 2232 Negative: 0  
 2233 Absent: 0

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**A-020-08**                                 **ROBERT AND JOAN IRBY** request a variance from Section 24-9 to reconstruct an existing one-family dwelling at 1300 Chaffins Bluff (Parcel 803-679-3332), zoned R-2A, One-family Residence 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.

Ms. Dwyer -                                 Is there anyone else here to speak to this case? Please stand and raise your hand to be sworn in.

Mr. Blankinship -                         Will you 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. Marris -                                 I do.

Ms. Dwyer -                                 State your name and your case.

Mr. Marris -                                 Good morning. Thank you. I'm Brad Marris. I'm with the law firm of Meyer, Goergen, and Marris. I'm here representing Robert and Joan Irby.

Ms. Dwyer -                                 What was your last name again?

Mr. Marris -                                 Marris. It's M-a-r-r-s. I apologize. Mr. Irby is actually seated behind me at this time, if you have any questions at the end. As the introduction indicated, we are here seeking a variance from the road frontage requirement, and that is the one issue presented.

The Irby's actually own two riverfront lots that are side by side in the Varina District. We're here today on only one of them at 1300 Chaffins Bluff Lane. The Irby's bought these lots in 1997, and their hope was possibly to build on that site for themselves, possibly also for investment. The goal here is to build a home that will take full advantage of the spectacular river views that are offered by the property. As the name of the road indicates, it sits on a bluff. The home site is elevated above the river, and it is quite a potential showplace property.

The problems or challenges facing the Irby's are, number one, that the lot does not abut a public road—and that's the reason for the variance application we're here on today—but also that the existing house on the property has fallen into disrepair. It's not currently occupied. Under the ordinance, without variance, the Irby's could only repair or possibly enlarge that house. What we're hoping to do is start confirming our ability to have that structure completely demolished, and

2279 be able to replace it with a wholly new home that is more appropriate for the  
2280 location and the neighborhood.

2281  
2282 Some of the key points that we'd submit for your consideration, as the staff report  
2283 confirms, this particular lot really has no value unless we're able to build on it and  
2284 have a home. It's zoned residential. The house upon it right now is  
2285 approximately 83 years old. There is only so much that can be done with it, and  
2286 as we say, it is in disrepair. There was a kind of slide or collapse of part of the  
2287 bluff that essentially led to the destruction of the patio at the property. The patio  
2288 was tied into the foundation of the home on one side, and that has caused some  
2289 damage. Really undertaking something to rebuild this structure as it is would be  
2290 quite expensive, and not very realistic. It would improve the neighborhood. The  
2291 neighbors, I think, would appreciate it, too, if we were able to put a more modern  
2292 and attractive structure on the property. In fact, we don't think this would be an  
2293 imposition on the neighbors; we think it would benefit them by making the  
2294 property more attractive. Obviously, we're not increasing the occupancy or the  
2295 use, since there has been a house on the property for over 80 years.

2296  
2297 We do have access to the property from the public road. There is an easement  
2298 reserved by deed. That easement is currently somewhat overgrown, and there is  
2299 a culvert in need of repair. The Irby's are now moving to make those repairs to  
2300 the culvert, and to do some clearing along the easement to make sure that that  
2301 remains a viable means of access.

2302  
2303 The particular problem we're presented with, lack of road frontage, is one that is  
2304 fairly common in the area, as the report indicates. This Board has granted similar  
2305 variances. There are, in fact, at least seven properties in the immediate vicinity  
2306 that lack frontage, but nonetheless have non-conforming houses upon them.

2307  
2308 In summary, we feel that this variance would, basically, allow the property to  
2309 remain viable. Without the variance, it basically has no value. It would essentially  
2310 be locked-up property with a decaying structure upon it, and no other value to it.  
2311 We think that if we're allowed to start clearing the legal path to have a more  
2312 modern and attractive structure on it, it would be good not merely for the Irby's,  
2313 but for the area generally, for the neighbors who have a view of the property, and  
2314 it would clear the way for us to completely remove the current decaying and  
2315 decrepit unsightly structure, and replace it with something I think everyone would  
2316 appreciate more.

2317  
2318 Ms. Dwyer - Mr. Marrs, one of the findings that we're obligated to  
2319 make under the statute is—and I'll just read the statute. It says, "No variance  
2320 shall be authorized unless the Board specifically finds that the condition or  
2321 situation of the property is not of a general or recurring nature." On what basis  
2322 could we make that finding in your case?

2323

2324 Mr. Marrs - Not of a general or recurring nature. I don't see how  
2325 this situation would recur, except that I suppose every 80 or 100 years a house  
2326 may need to be replaced, unless we build a structure that is more subject to  
2327 being remodeled from time to time. This home having been built prior to the  
2328 existing ordinance, and being an existing non-conforming use, was not built to  
2329 that standard. It's a more modest structure, and it has simply, we think, run its  
2330 course. Without the variance, as we said, there's really no value to this property.  
2331 We need the ability to put some sort of home on it. Obviously, it's a residentially  
2332 zoned area.

2333  
2334 Ms. Dwyer - All right, that's one hurdle.

2335  
2336 Mr. Marrs - Right.

2337  
2338 Ms. Dwyer - Are you going to be denied reasonable use of the  
2339 property if we don't grant the variance. But there are other hurdles in the  
2340 ordinance, and that's a particularly difficult one, I think, for us to have to reckon  
2341 with.

2342  
2343 Mr. Marrs - I'm not sure if I understand the question completely,  
2344 but when you say would it recur, I mean, we're not looking to build than one  
2345 home on this parcel.

2346  
2347 Ms. Dwyer - The situation that gives rise to the variance, is that a  
2348 recurring situation. We have to make a finding that it is not, because if it is a  
2349 recurring situation, then it is a matter for the legislature to deal with. Variances  
2350 are extraordinary remedies. I think the Supreme Court and the statute  
2351 contemplates that all lots will conform to what the legislative branch of  
2352 government has said lots must conform to, and that variances are an  
2353 extraordinary remedy. They have to be granted in situations in which several  
2354 conditions exist, one of those being that there is no other reasonable use for the  
2355 property without the variance. Another is that it is not a recurring issue, situation,  
2356 or circumstance.

2357  
2358 Mr. Marrs - You mean recurring for multiple lots in the area, or  
2359 recurring for this particular parcel?

2360  
2361 Ms. Dwyer - Recurring generally for lots in the County.

2362  
2363 Mr. Marrs - I think if you look at the aerial photograph, you'll see  
2364 that there are a number of lots that do abut a public road, and this would arise  
2365 only for those that have been, essentially, trapped by history between those lots  
2366 and the river. I don't think that the number of lots affected is going to be of such a  
2367 recurring nature. Most of those I think already are grandfathered, so I would not  
2368 anticipate that this Board would see numerous requests of this nature in that  
2369 area. Does that answer your question more specifically?

2370  
2371 Ms. Dwyer - Another issue raised in the staff report seems to be  
2372 concern over safe access to the property. Can you address that issue?  
2373  
2374 Mr. Marrs - There is access by easement legally reserved; that's  
2375 another condition. The issue of safety is a condition that the staff proposed  
2376 putting on a variance, and we're fine with that being a condition.  
2377  
2378 Mr. Wright - Have you read the conditions?  
2379  
2380 Mr. Marrs - Yes sir.  
2381  
2382 Mr. Wright - Condition #4 would address that very issue.  
2383  
2384 Mr. Marrs - Yes sir. Number four is the legal access issue, and  
2385 then there's also the question of safe access. We feel there is—  
2386  
2387 Mr. Wright - It has to be that access has been improved such that  
2388 it is passable to fire, rescue, and other public service vehicles, shall have a  
2389 gravel surface at least 12 feet wide, and a clearance of at least 20 feet wide. The  
2390 stream crossing shall be improved with a bridge or culvert, etcetera. This was  
2391 designed by the staff to take care of the safe access question.  
2392  
2393 Mr. Marrs - Exactly. As we stated—  
2394  
2395 Mr. Wright - You'd have to comply with this to get your building  
2396 permit.  
2397  
2398 Mr. Marrs - We understand that, and we're not arguing against  
2399 that.  
2400  
2401 Ms. Dwyer - What are your plans for the other lot? Is your client  
2402 going to be, or some person to whom he will sell the lot be in here again asking  
2403 for a variance for the other lot to build on?  
2404  
2405 Mr. Marrs - He has not made that determination at this point in  
2406 time. The Irby's are not the only people with an interest in that property. They  
2407 have kind of a silent partner in that other property, and they're not really in a  
2408 position to speak without consulting with those persons. I think that would be a  
2409 separate issue for another day. Right now, there are no firm plans. There are a  
2410 number of options being looked at, and all of them have their own challenges.  
2411 That will be another set of hurdles for another day that they'll have to take up.  
2412  
2413 Ms. Dwyer - So, no plans to combine the two properties.  
2414

2415 Mr. Marrs - Not immediately. That is one of the options that is  
2416 being considered, but it's not immediately in the works.  
2417  
2418 Ms. Dwyer - Any other questions by Board members? Thank you,  
2419 Mr. Marrs. Anyone else to speak for the case? Those who are in opposition to  
2420 the case, please come forward. If there are more to speak, please come forward  
2421 so that we can have a quicker, easier transition from one speaker to the next. I  
2422 would ask you, too, to not be repetitive in your comments.  
2423  
2424 Ms. Anderson-Ellis - My name is Nicole Anderson-Ellis. I'm a resident of  
2425 the Varina District in Henrico County, and I live adjacent to this property. I'm  
2426 going to read a prepared statement.  
2427  
2428 Mr. Wright - Adjacent on which side?  
2429  
2430 Ms. Anderson-Ellis - If we can go to the aerial view. My house is in that  
2431 square box on Chaffins Bluff right here. I also own the kind of L-shaped property  
2432 that is—I own the property directly behind that box along Chaffins Bluff, and I  
2433 own the property in front of it. It's platted separately, but it runs along Chaffins  
2434 Bluff toward Osbourne Turnpike.  
2435  
2436 Mr. Blankinship - So, you basically own that whole side of Chaffins  
2437 Bluff.  
2438  
2439 Ms. Anderson-Ellis - I do. My husband and I do.  
2440  
2441 Ms. Dwyer - Wait a minute. Let me be quick. You said the L-  
2442 shaped. You own the L-shape and then the other two parcels in front of that.  
2443  
2444 Ms. Anderson-Ellis - Yes, I do.  
2445  
2446 Ms. Dwyer - But not the lot on the river?  
2447  
2448 Ms. Anderson-Ellis - No.  
2449  
2450 Ms. Dwyer - Okay. Does the easement come through your  
2451 property?  
2452  
2453 Ms. Anderson-Ellis - Yes it does. It runs right along the edge of my  
2454 property.  
2455  
2456 Ms. Dwyer - Okay.  
2457  
2458 Ms. Anderson-Ellis - I just want to start by pointing out that in October of  
2459 2005, I spoke before this body opposing a variance request by Mr. Irby to build a  
2460 house on the vacant lot. Both lots have only a 70-foot lot width, and 0 feet of

2461 public street frontage. You know what the code requirements are. At that  
2462 meeting, then-vice chairman Richard Kirkland asked Mr. Irby about plans to  
2463 renovate the existing building. "So, will we back here arguing the same thing,"  
2464 Mr. Kirkland asked. That request was denied. Now we are back, and little about  
2465 the situation has changed, and none of it for the better.

2466  
2467 Mr. Irby's property still has no road frontage. It is only accessible by a right-of-  
2468 way on a gravel lane that runs down the edge of my family's property. Yet, as  
2469 you've seen, even that lane does not provide access. It's been impassable since  
2470 2004 when Tropical Storm Gaston undermined the bridge's foundation, as was  
2471 reported to this Board by the Fire Marshall in 2004. That picture is taken right  
2472 next to my house.

2473  
2474 For four years, no motor vehicles, including fire and rescue, have had access to  
2475 this house.

2476  
2477 Mr. Wright - Have your read Condition #4, if this were approved?

2478  
2479 Mr. Blankinship - She probably has not seen it.

2480  
2481 Ms. Anderson-Ellis - I have not, but I head you read it a moment ago.

2482  
2483 Mr. Wright - That's where staff addressed this question, and this  
2484 would not be approved unless they had safe access. That's a condition. That  
2485 would be a condition of the approval.

2486  
2487 Ms. Anderson-Ellis - Understood.

2488  
2489 Mr. Wright - Not what exists now. It would be what would be  
2490 required for them to get a building permit.

2491  
2492 Ms. Anderson-Ellis - I understand. My concern, really, is that this bridge  
2493 has been out for such a very long time. I put those cones up. I built sawhorses  
2494 and put them up. I put signs up to prevent someone from accidentally driving  
2495 down and into this very dangerous situation. The cone on the left of this picture  
2496 you can see indicates a significant sinkhole that I could stand in up to my knee.  
2497 It's questionable even for walking at this point. It is continuing to degrade.

2498  
2499 Mr. Wright - My point is, unless they can provide safe access that  
2500 is approved by the staff, they can't get a building permit.

2501  
2502 Ms. Anderson-Ellis - I understand that.

2503  
2504 Mr. Wright - So, I mean, what it is now I don't think has anything to  
2505 do with it.

2506

2507 Ms. Anderson-Ellis - I think it demonstrates a lack of good faith on the part  
2508 of Mr. Irby to the community and to the neighbors. This has been a dangerous  
2509 situation that we have taken steps to provide care for people. He spoke to you in  
2510 2005 and said that he was going to get the neighbors together and it was going  
2511 to be fixed. He has not once spoken to us about it, and nothing has changed. He  
2512 keeps coming before this Board and asking for exceptions to the rules.  
2513

2514 Mr. Wright - This is a different case than the 2005 case.  
2515

2516 Ms. Anderson-Ellis - It is.  
2517

2518 Mr. Wright - Each case stands on its own.  
2519

2520 Ms. Anderson-Ellis - Understood. My point is simply that the situation has  
2521 not changed, on the contrary, it has degraded. The house is much more decrepit  
2522 now than it was then. The bridge is more decrepit now than it was.  
2523

2524 Ms. Harris - Would you feel differently if he combined the two  
2525 parcels?  
2526

2527 Ms. Anderson-Ellis - I mean, it certainly would make it easier for you to  
2528 provide—Then he wouldn't need to ask for the variance, right?  
2529

2530 Mr. Blankinship - For the lot width. He still wouldn't have any street  
2531 frontage.  
2532

2533 Ms. Anderson-Ellis - I have a lot of issues with the fact that Mr. Irby has  
2534 demonstrated a pattern of buying property in the Varina District, and allowing  
2535 demolition by neglect of the structures on those properties without regard to the  
2536 danger it poses to the neighbors, or the impact it has on their property value. I  
2537 think the fact that he has someone stand here and say that building this would be  
2538 good for the neighbors is a bit of a joke. He has not demonstrated in the years  
2539 that I've lived adjacent to him any care for the health and safety of the  
2540 community. I'm not just talking about immediate neighbors. I have photos here of  
2541 chunks of brick that have fallen into the James River, and they've been falling for  
2542 10 years. To my knowledge, no effort has been made to prevent, none. I won't  
2543 go into detail, because you asked us not to say the same thing, and I know that  
2544 there's someone else here who's going to address this, and who has better  
2545 knowledge about it. But I have photographs of the house from the river, if you'd  
2546 like to see them.  
2547

2548 Mr. Wright - That's not material either because he's going to build  
2549 this in a different location, and remove that old house.  
2550

2551 Ms. Anderson-Ellis - Again, my concern is just the demonstrated lack of  
2552 good faith to the community.



2553  
2554 Mr. Blankinship - Are you interested at all in working with Mr. Irby to  
2555 improve the condition of the existing Chaffins Bluff Drive?  
2556  
2557 Ms. Anderson-Ellis - There was a time at which I wrote a letter to all of the  
2558 neighbors involved. There were at that time four people who had access to  
2559 Chaffins Bluff—Mr. Irby and another neighbor who used it as their right-of-way,  
2560 and then Delegate Joe Morrissey who owns on the other side of it. I indicated a  
2561 willingness at that time to split the cost of repairing this bridge in particular. My  
2562 concern was simply because my elderly neighbor didn't have access. I received  
2563 no response from anyone. My elderly neighbor stopped driving, and has since  
2564 died. I'm not interested in investing financially in a bridge that serves me in no  
2565 way.  
2566  
2567 Mr. Blankinship - It's way beyond your house.  
2568  
2569 Ms. Anderson-Ellis - Yes.  
2570  
2571 Ms. Dwyer - Mr. Blankinship, the lot is less then 100 feet wide?  
2572  
2573 Mr. Blankinship - Yes ma'am. The plat doesn't show the width clearly,  
2574 but that's approximate.  
2575  
2576 Ms. Dwyer - The zoning is R-2A.  
2577  
2578 Mr. Blankinship - Yes, but it does not have water and sewer, so the  
2579 development standards are different.  
2580  
2581 Ms. Dwyer - What's the status of a buildable lot? Will they be  
2582 coming in for another variance for side yard setbacks or?  
2583  
2584 Mr. Blankinship - Because this one had the dwelling on it already, it  
2585 comes under the exceptions in 24-95(e), which I think reduces the lot width to 80.  
2586 The requirement is 80 feet.  
2587  
2588 Ms. Dwyer - Okay.  
2589  
2590 Mr. Blankinship - I think this lot is okay. I seem to remember when they  
2591 applied in 2005, they had to have variances for both lot width and public street  
2592 frontage.  
2593  
2594 Ms. Dwyer - The '85 application was for this lot or the other one?  
2595  
2596 Mr. Blankinship - No, it was the lot just to the south.  
2597  
2598 Ms. Dwyer - The one next door, which was denied.

2599  
2600 Ms. Anderson-Ellis - May I make one final point?  
2601  
2602 Ms. Dwyer - Yes, please.  
2603  
2604 Ms. Anderson-Ellis - I understand the thoughtfulness that this Board and  
2605 County demonstrates in making decisions that could be viewed as [unintelligible],  
2606 and I applaud that caution. None of us want our leaders to be casual with  
2607 citizens' property. In this case, however, I feel strongly that Mr. Irby has been  
2608 taking from Henrico County residents by subjecting others to the eyesore,  
2609 danger, and diminished property value associated with proximity to an  
2610 abandoned house. Mr. Irby has demonstrated a surprising lack of concern for his  
2611 neighbors. Had he at least tried to prevent a decades' worth of decay from  
2612 dropping off his house and into the river, or demonstrated a good faith effort to  
2613 secure the safety of that bridge that provides his only access, I would support his  
2614 request. But given his pattern of neglect, I harbor grave concerns about the  
2615 County granting him an exception to the Code. I thank you for listening to all the  
2616 diverse perspectives on this issue.  
2617  
2618 Ms. Dwyer - Thank you. Anyone else care to speak?  
2619  
2620 Ms. Senn - Hi. My name is Jocelyn Senn. I'm also a neighbor of  
2621 Mr. Irby's.  
2622  
2623 Ms. Dwyer - I'm sorry, what was your last name?  
2624  
2625 Ms. Senn- Senn. S-e-n-n.  
2626  
2627 Ms. Dwyer - Thank you.  
2628  
2629 Ms. Senn- He has the property adjoining my property on—I live  
2630 on San Ramon, which is Rustling Cedar Lane. He also had adjoining property off  
2631 our main road we share. First I'd like to say those properties are and should be  
2632 condemned, although that's different—  
2633  
2634 Mr. Blankinship - Those are not the properties we're talking about this  
2635 morning.  
2636  
2637 Ms. Senn- No, but I'm saying in general he owns property  
2638 besides this property that is in deplorable and dangerous condition. There were  
2639 condemned signs on those houses; they're gone. My concern with this house  
2640 is—When I built my house on the river—which I'm down river from Mr. Robert  
2641 Irby's house—I looked at buying this house. It was not falling into the river. It was  
2642 repairable, and it could have been saved. It's a historic structure, one that is very  
2643 unusual for Varina, to have a river home with these kinds of details, architectural  
2644 details. I am a real estate developer. I do historic restoration in the city of

2645 Richmond. My biggest concern is that since he's bought this house—11 years—  
2646 he has done nothing to keep this house from becoming a danger to the people  
2647 down river from him. This house is falling into the river. He has let it fall into the  
2648 river over the last 11 years. When this house goes, it's going to take an oil tank,  
2649 it's going to take asbestos, it's going to take all sorts of hazardous materials and  
2650 drag it into the river. It's going to wash downstream and potentially take out my  
2651 pier, my neighbor's pier. It'll create an environmental hazard of the river. My  
2652 concern is, again, this historic structure could have been saved, and he has done  
2653 nothing.

2654  
2655 I think at this point it needs to be torn down immediately, before it becomes a  
2656 danger to the river and the river community.

2657  
2658 Mr. Wright - Are you aware that the Department of Building  
2659 Construction and Inspection has condemned the building and it must be  
2660 removed?

2661  
2662 Ms. Senn- I don't know that, but—

2663  
2664 Mr. Wright - Well it is. That order, evidently, has been issued.

2665  
2666 Ms. Senn- Well, why hasn't it been condemned—

2667  
2668 Mr. Wright - I don't know, but evidently it—

2669  
2670 Ms. Senn- —and torn down because—

2671  
2672 Mr. Wright - —will be removed. I take it that they've given—Is  
2673 there time on that?

2674  
2675 Mr. Blankinship - That was held up because of this hearing.

2676  
2677 Mr. Wright - Oh, okay. As soon as this is resolved today, that will  
2678 go forward.

2679  
2680 Ms. Senn- Okay. This is really a hazard. I don't think Trey has  
2681 shown any—

2682  
2683 Mr. Wright - What would cause the building to fall into the river?

2684  
2685 Mr. Blankinship - The [unintelligible] of the riverbank.

2686  
2687 Ms. Senn- It's on a bluff, and it's been wearing out.

2688  
2689 Mr. Wright - What could have been done? The house didn't have  
2690 anything to do with that, it's the ground, the hill, isn't it?

2691  
2692 Ms. Senn - That's true.  
2693  
2694 Mr. Wright - It's eroded away or something.  
2695  
2696 Ms. Senn- I'm not a structure engineer, but I know that bank  
2697 could have been shored up, or the house could have been moved back.  
2698  
2699 Mr. Wright - That was back then, the bank could have been  
2700 shored up.  
2701  
2702 Ms. Senn - Yes. What's to say that if he builds another—The  
2703 erosion problem is not going to stop. Even if he builds another house, that  
2704 problem is not going to stop on that bluff; it's too far gone. You'd have to see it  
2705 from the river. How many feet would say that is? Is Nicole gone? Yes. I do  
2706 believe that Mr. Irby has shown no regard for the safety of his neighbors. None.  
2707 I don't think he has on any of his properties. I do believe it needs to be torn down  
2708 immediately. You know, I think also he has shown a lack of respect for the  
2709 neighbors in the County for this property he has.  
2710  
2711 Female - [Off mike.] [Inaudible.]  
2712  
2713 Ms. Senn- I don't know why he all of a sudden thinks he's going  
2714 to do all this miraculous restoration and recovery of this property.  
2715  
2716 Mr. Nunnally - What you're saying, ma'am, you wouldn't want  
2717 anybody to build a house there right at that particular location, right?  
2718  
2719 Ms. Senn- I think it's unsalvageable. I can't speak to the road; I  
2720 don't live on that road. I know that the road that we have, that we share, we have  
2721 an agreement that we would all share the cost of repairing the road, which when  
2722 we have approached Mr. Irby about helping us maintain the road, which he has  
2723 two properties on, he has absolutely flat out refused to cooperate with any of his  
2724 neighbors. I can speak for Chaffins Bluff, but I can speak for Rustling Cedar  
2725 Lane, which he has had zero regard for the property rights, and the condition of  
2726 the property, and the road where we live.  
2727  
2728 Mr. Wright - How far is your house from the river?  
2729  
2730 Ms. Senn- I live on the river. I have 4-1/2 acres on the James  
2731 River.  
2732  
2733 Mr. Wright - How far is it from the road?  
2734

2735 Ms. Senn- My house is probably, gosh, I don't know, a couple  
2736 hundred yards. I'm way away from the river. If I live on 4-1/2 acres, there's  
2737 probably at least three acres between me and the river.

2738  
2739 Mr. Wright - Are you saying that he could not build a house on this  
2740 lot that would be safe, back from the river far enough so it would be safe?

2741  
2742 Ms. Senn- Again, I'm not an engineer. I would think not. I think  
2743 the river is eroding so rapidly because it is on a bend there.

2744  
2745 Mr. Wright - That's going to take a lot of houses with it, then.

2746  
2747 Ms. Senn- Well, it's obvious his house is going. Again, he could  
2748 have done something over the last 11 years, which he chose not to. He has a  
2749 bridge that could have been repaired that he chose not to fix on Chaffins Bluff.  
2750 He has demonstrated on our road that he is absolutely unwilling to cooperate  
2751 with any of his neighbors to ensure their safety, or to ensure our property value  
2752 because of his houses that are in deplorable condition. They are not much  
2753 different than this one. He is suppressing my property value because of his  
2754 choices not to do the bare minimum. I can't tell you how many times our  
2755 neighbors have had to call Community Maintenance because he doesn't even  
2756 mow the grass. We have a snake pit, a tick-infested problem because of the  
2757 condition of his property.

2758  
2759 Ms. Dwyer - As you speak, I'm thinking that's relevant in particular  
2760 to Condition #5, which states that the owners of the property will accept  
2761 responsible for maintaining access until such time as access is improved to  
2762 County standards. What that is, is neighbors have to agree to jointly maintain  
2763 access to properties. Your concern is that won't work very well in this situation.

2764  
2765 Ms. Senn - It's a proven history. I've been neighbors with him on  
2766 Rustling Cedar for almost 15 years. He has done nothing to repair or maintain  
2767 the houses or the road, or even his grass. I mean, he was forced into doing that,  
2768 very much against his will. I was talking to the realtor. He has another piece of  
2769 property next to me, which is almost 20 acres that he has on the market for one  
2770 and a half million dollars. I addressed the concern with the realtor about this  
2771 house, why hasn't Trey done anything to secure the safety of his neighbors.  
2772 These are abandoned houses. Kids go in there. There's a possibility of arson.  
2773 There are snakes. I talked to the realtor about this property. I was like what is  
2774 going to happen? This is going to come off this cliff. It's going to wash out our  
2775 piers—which we spent thousands and thousands of dollars building—and pollute  
2776 the river. Do you know what his remark was? "Oh, Trey and I jokingly refer to  
2777 that house as the cliffhanger," which is why I'm here. His absolute disregard for  
2778 the community is why I am involved with this now. Not only am I worried for the  
2779 safety of the river, but his cavalier or his joking attitude that this cliffhanger is not  
2780 his problem.

2781  
2782 Actually, I was talking to one of his neighbors. Now, obviously, I did not witness  
2783 this, but I was told that one of the contractors working on the houses out there  
2784 saw Mr. Trey Irby put a hose under the foundation to try and undermine the  
2785 foundation so the house would drop into the water, so he wouldn't have to pay to  
2786 have it removed. That was what I was told. I don't know whether it's fact or not,  
2787 but I would not put it past him. I also am concerned that the houses that were  
2788 next to me have condemned signs on them that were removed, and when I  
2789 approached the County about them, all the records mysteriously disappeared  
2790 from the files. So, to me, I just feel like this has gotten a little out of control. I  
2791 think why he wants to do all this community service now and be a good neighbor,  
2792 why is this different after all these years. I don't think he's proven that at all.  
2793  
2794 Ms. Dwyer - Can you show us where you house is on this aerial  
2795 photograph?  
2796  
2797 Ms. Senn - Well, you can't really see it; I'm more east.  
2798  
2799 Mr. Blankinship - If you go to the vicinity map. Rustling Cedar Lane is  
2800 toward the bottom of this map.  
2801  
2802 Ms. Dwyer - When you talk about having experience with this  
2803 owner, it's with a different property.  
2804  
2805 Ms. Senn - It's with two properties, one on Cedar Crest, and one  
2806 on Rustling Cedar.  
2807  
2808 Ms. Dwyer - Okay.  
2809  
2810 Ms. Senn - And yes.  
2811  
2812 Ms. Dwyer - Any questions by Board members of this speaker?  
2813 Thank you very much.  
2814  
2815 Ms. Senn - All right, thank you.  
2816  
2817 Ms. Dwyer - Is there anyone else who would like to speak?  
2818  
2819 Ms. Irving - My name is Joyce Irving, and I have spoken before  
2820 this Board in the past. I live at 1501 Rustling Cedar Lane.  
2821  
2822 Mr. Blankinship - Can I just interrupt you? We're interested in the  
2823 house on Chaffins Bluff. We're not really interested in what happened there.  
2824  
2825 Ms. Irving - Right. The only thing I want to tell you is that I can  
2826 confirm the history of his neglect of the properties. This is not a new thing; this

2827 has been going on for years. That's really all I wanted to reiterate to you guys.  
2828 Thank you.

2829  
2830 Mr. Blankinship - I apologize for interrupting you.

2831  
2832 Ms. Irving - That's okay.

2833  
2834 Ms. Dwyer - Any questions by Board members? All right, thank  
2835 you very much. We'll give you five minutes for rebuttal.

2836  
2837 Mr. Marrs - Thank you, Madam Chairman. I hope I will not take  
2838 that much time unless you have questions to address.

2839  
2840 Of the things that were raised first by Ms. Ellis as far as questions about the 2005  
2841 variance proceeding on the adjoining vacant lot, it's important to note that the  
2842 reason for denial of that variance had to do with the width issue. I think Mr.  
2843 Blankinship explained that very clearly, that the width rules for the two lots are  
2844 different rules because of the non-conforming structure on the particular lot at  
2845 issue in this application here today.

2846  
2847 Ms. Dwyer - What is the width of this lot?

2848  
2849 Mr. Marrs - I understand that it's roughly 80 feet. Is that correct?

2850  
2851 Male - [Off mike.] A little more.

2852  
2853 Mr. Marrs - A little more than 80 feet as it goes down. With  
2854 respect to the road issues, or the easement and maintenance issues, I think the  
2855 staff has fully addressed those in the conditions being imposed and being  
2856 accepted by the owner. I think that, essentially, the staff, and by extension this  
2857 Board, would be addressing Ms. Ellis' concerns by adopting as fully as she might  
2858 wish those conditions. Essentially, what she's saying is unless the road gets  
2859 fixed, I don't think this man should get anything. What the conditions say is  
2860 unless this access gets fixed, he's not going to get anything. It seems to me that  
2861 her position, the staff position, and the variances that would be issued as  
2862 proposed are all in synch.

2863  
2864 I think it's fair to say some personal anger that's being directed towards a  
2865 situation that really has to be decided more under some objectivity, and we would  
2866 ask the Board to keep its objectivity in the face of the entreaties to take sides in a  
2867 dispute at another location. If Ms. Senn in particular has anger over another  
2868 situation, then this is not the place to be bringing that up. It essentially amounts  
2869 to lashing out in situation A in order to retaliate over something she's angry about  
2870 at situation B. The Board has no way to judge situation B, and the Board is not in  
2871 a position simply to assume that everything Ms. Senn says is true, and that there  
2872 is no possible second side to that. Then to bring up kind of scurrilous

2873 accusations by hearsay, I think it just shows how far some of that went. Really,  
2874 in the final analysis, we don't have anything at all there that's pertinent to this  
2875 application for this requested variance.

2876  
2877 What it boils down to is they're claiming that he has a history of not maintaining  
2878 properties. Well, this property is something that we're trying to clear a path to  
2879 demolish and replace with a new structure. It would have to go through the  
2880 permitting process. It would have to go through inspections during construction,  
2881 and it would have to qualify for a Certificate of Occupancy at the end of the day.  
2882 I think that what we're doing here today is addressing exactly those concerns. I  
2883 think that the conditions require us to meet that standard. If the variance is  
2884 approved as presented, essentially, you will have answered every concern that  
2885 the witnesses have raised. Other than this sort of vindictive approach that says  
2886 because I'm angry at him he shouldn't get anything, I think if we look at this more  
2887 objectively, we're already addressing all of the concerns stated.

2888

2889 Mr. Wright - Let me ask you a question, Mr. Marrs.

2890

2891 Mr. Marrs - Yes sir.

2892

2893 Mr. Wright - Mr. Irby's owned this property for 11 years?

2894

2895 Mr. Marrs - Yes sir. He and his wife.

2896

2897 Mr. Wright - He's never lived on the property.

2898

2899 Mr. Marrs - No sir. What happened is shortly after they closed on  
2900 it, there was a storm that created some of this erosion problem along the bank,  
2901 and it has left them in something of a quandary about exactly what to do.

2902

2903 Mr. Wright - It took them 11 years to decide that?

2904

2905 Mr. Marrs - I can't speak to the timing of it. I don't know if Mr. Irby  
2906 wants to address that. It might be fair to say that the County's move towards a  
2907 demolition order may have lit a fire.

2908

2909 Mr. Wright - So, he had to wait until the County got a demolition  
2910 order to remove the house.

2911

2912 Mr. Marrs - I think at this point, he's forced at a crossroads. The  
2913 question is do you try to save the existing structure in some way, subject to the  
2914 ordinances right to enlarge it even? Do we try to move that existing structure  
2915 back to another location on the lot where the ground is more stable? Or can we  
2916 clear a path towards what we think is more appropriate, which is to essentially—  
2917 substitute would be the phrase that the ordinance uses—to remove the structure  
2918 entirely and build something new.



2919  
2920 Mr. Wright - Over this period, did he look into the possibility of  
2921 saving the house?  
2922  
2923 Mr. Marrs - There have been a number of efforts on his part to  
2924 look at alternatives. Unfortunately, most of them are extraordinarily cost  
2925 prohibitive beyond his means.  
2926  
2927 Mr. Wright - When was the storm that you say began the process?  
2928  
2929 Male - [Off mike.] Within month after [inaudible].  
2930  
2931 Mr. Wright - Could we ask Mr. Irby a question?  
2932  
2933 Mr. Marrs - Sure.  
2934  
2935 Mr. Wright - I'm concerned, Mr. Irby, that this has gone on for 11  
2936 years, and now the house is in such a state of ill repair that it has to be removed.  
2937 Why did you wait until the County gave you a demolition order to remove it? Did  
2938 you realize that it had to be removed?  
2939  
2940 Mr. Irby - I didn't. You all have heard one side of the story.  
2941  
2942 Mr. Wright - I understand that. There are two sides to every story.  
2943 That's why I'm just trying to get a little more information on it.  
2944  
2945 Mr. Irby - Can I give you a little background?  
2946  
2947 Mr. Wright - That would be very helpful to me, yes.  
2948  
2949 Mr. Irby - All right. I started investing out in that area specifically  
2950 on the James River back in '91, which is one of the houses that she's talking  
2951 about that's on 21 acres. All of these houses or properties were purchased for  
2952 the property not for the structures that were on them. The land is worth a whole  
2953 lot more than the houses. The house that's on that property has been just, has  
2954 been boarded up, and we're trying to keep with the County, you know, everything  
2955 they've told us to do. There's a farmer that farms my property. He's been in  
2956 charge of cutting the grass. I live 30 minutes away from these properties, so I  
2957 can't go out there every week and see how the grass is. If they have a problem  
2958 with it, they call the County, and then I call the farmer and get on him because he  
2959 hasn't been cutting the grass.  
2960  
2961 Mr. Wright - How many times has that gone on?  
2962  
2963 Mr. Irby - I think three times since 1991.  
2964

2965 Mr. Wright - Looks like to me the first time would have indicated to  
2966 you that you either have to cut it yourself, or you get somebody else to cut it.  
2967  
2968 Mr. Irby - Like I said, it's happened three times since 1991.  
2969  
2970 Mr. Wright - That's not good for the neighbors to have—  
2971  
2972 Mr. Irby - No, it's not. But the neighbors, they act like it's me  
2973 that has not been willing to work with them.  
2974  
2975 Mr. Wright - You're the owner, though. You're responsible to see  
2976 that the property's maintained.  
2977  
2978 Mr. Irby - Yes sir, and I am. I've tried to keep it within that  
2979 means. The thing is, none of these houses were worth fixing up to begin with.  
2980 When I bought the property adjoining Ms. Senn, there were vagrants living in that  
2981 house. There was no power, no water running in there, and people were living in  
2982 it. I bought that house at a County tax auction to protect my other property, to  
2983 keep vagrants out of there, so that one day we could do something with that  
2984 property that would go along with the riverfront property next door. So, to say  
2985 that it's in worse condition now than it was when there were homeless people  
2986 living in it I think is a little bit absurd. The neighbors have gone in there and  
2987 busted every windowpane out of it. We started redoing. We added a dining  
2988 room onto it, had just put new French doors in it. They repeatedly broke in the  
2989 house and busted out brand new windows and a French door—  
2990  
2991 Mr. Wright - Which house was that, this house that's on this  
2992 property?  
2993  
2994 Mr. Irby - This was the one that adjoins her that she's tried to  
2995 buy from me.  
2996  
2997 Ms. Dwyer - Okay. You don't need to get into criminal activity  
2998 that's been on the premises.  
2999  
3000 Mr. Irby - I don't want to.  
3001  
3002 Mr. Wright - All I was trying to understand is why it has taken 11  
3003 years to get to this point.  
3004  
3005 Mr. Irby - We bought that house. We were originally planning on  
3006 moving into it. My wife got pregnant right at that same time, and with a 55-foot  
3007 bluff behind the house, that was not going to be a good place for a toddler to be  
3008 running around. Number two, the bank went in when we had this monsoon that  
3009 lasted for about two months—it seemed like it rained just about every day. If you  
3010 go back and look at the weather records, I think you'll see that.

3011  
3012 Mr. Wright - What year was that?  
3013  
3014 Mr. Irby - 1997. It was within months that we purchased the  
3015 property. All this erosion that's been going on, this property looks in the exact  
3016 same condition from that day. The building inspector was out there because we  
3017 were doing work on the house before we closed on it. There should be County  
3018 records of that, that the building inspector was there within months of when that  
3019 patio went in because work was being done on the house, preparing it to be  
3020 moved into. We had this storm. I have a daughter that's been in a vegetative  
3021 state since she was two years old; she's now 26. My family, she stays with us,  
3022 and she always will. We lost insurance coverage right at this time, and had to  
3023 take Prudential insurance to court over it. That's why we're in the financial  
3024 situation we're in. We put this other property up for sale before any of this  
3025 happened last spring. The reason for that was so we could fix all these other  
3026 properties up. I don't want to sell it right now because of everything happening  
3027 out in that area, but I don't have any choice. We have taxes that are killing us.  
3028  
3029 Ms. Dwyer - Mr. Irby, do you know the exact width of this property?  
3030  
3031 Mr. Irby - I think it's right around 90 feet.  
3032  
3033 Ms. Dwyer - You don't have a survey that—  
3034  
3035 Mr. Irby - Yes ma'am, but it does not show that direct width  
3036 across it. I can just tell you from going by the scale on the map and a ruler what  
3037 it is.  
3038  
3039 Ms. Dwyer - That's a key piece of information, I think, for us to  
3040 know if at a minimum, the width of the property meets the requirements of the  
3041 ordinance.  
3042  
3043 Mr. Irby - There's no question that it's over 80 feet, which is  
3044 what the width requirement is.  
3045  
3046 Ms. Harris - Do you think constructing a home on an 80-foot lot on  
3047 the James River would be in keeping with the other homes that are there?  
3048  
3049 Mr. Irby - I don't know if Mr. Marrs has a picture of it, but we've  
3050 had a model done up, a computer model of what could be put on there. The  
3051 house itself has got roughly 5,000 square feet in it.  
3052  
3053 Ms. Harris - You don't want to combine those two parcels, the  
3054 adjacent parcels. You don't want to combine them to maybe have a better  
3055 chance of gaining legal access?  
3056

3057 Mr. Irby - It's always had legal access to it. When we bought the  
3058 property, it was two separate lots. We've kept it separate ever since that day. My  
3059 parents have an interest in that other lot, so I have no way of joining the two of  
3060 them. It's not up to me.

3061  
3062 Mr. Marrs - If I may, combining the lots would not, as far as I  
3063 know, assist in any way with the access issue. The easement is on the other side  
3064 of the subject lot. So, combining the lots to the other side would not in any way  
3065 address improving the easement that's already there. If you look at the drawing  
3066 that is currently up there, you can see the dashed line that shows where it comes  
3067 into the subject property and goes out across Ms. Ellis' property towards that  
3068 road—or it might be the Morrissey property at that particular point. The vacant lot  
3069 is the one beneath, so it doesn't get us any closer to access. Now, whether it  
3070 addresses width issues, I think with respect to this one lot, we believe this one lot  
3071 is in compliance with the ordinance with respect to width issues.

3072  
3073 Ms. Harris - I asked you that question because combining the lots  
3074 would cause you to make a more acceptable piece of real estate there that may  
3075 sway your neighbors to give you the legal access that you need.

3076  
3077 Mr. Irby - I have legal access now.

3078  
3079 Mr. Marrs - We have an easement reserved by deed. The issue is  
3080 the state of the improvements, graveling, clearing underbrush, and fixing the  
3081 culvert. With respect to combining the lots, I would say that is one idea under  
3082 consideration. If you'll indulge us, we're not ready to make that commitment here  
3083 today.

3084  
3085 Ms. Dwyer - Any other questions for the applicant? We'll take a  
3086 10-minute recess.

3087  
3088 **BOARD BREAKS FOR TEN-MINUTE RECESS**

3089  
3090 **DECISION**

3091  
3092 Mr. Wright - I move that we approve this. This is a difficult one,  
3093 but the house has been on that property since 1925, and they had access since  
3094 1925, which was long before this ordinance was adopted. I believe that denying  
3095 this variance would unlawfully take their property because there would be no  
3096 reasonable beneficial use of that property. Furthermore, I believe that the  
3097 conditions that have been crafted by the staff, improve the situation. I think it  
3098 would require that this owner be checked to ensure that he complies with these  
3099 conditions. If he complies with these conditions, I think that we would end up  
3100 with a lot better situation there for the surrounding properties.

3101  
3102 Mr. Witte - I second it.

3103

3104 Ms. Dwyer - Motion have been made and seconded. Is there any  
3105 discussion about this case? There was quite a bit of testimony.

3106

3107 Ms. Harris - I agree with Attorney Wright. I think that if we deny  
3108 this case, maybe in a couple years we'll have the same case before us again,  
3109 and then the house would really have fallen into the James River. I think we  
3110 have to do something about this case. If the conditions are followed, and we  
3111 hope that they will be followed, it would be an improved situation.

3112

3113 Ms. Dwyer - I have a concern about the case. First of all, there is  
3114 no survey that specifically shows the width. I really hate to approve a case that  
3115 doesn't clearly bring it within the confines of the ordinance. I know there was  
3116 testimony, "I'm sure it's more than 80 feet," but I would really like to have a  
3117 survey that has some sort of stamp of approval on it that produces that. I think  
3118 that's a critical piece of information that should be given to this Board.

3119

3120 Also, when we grant a variance, we're granting an exception to what the  
3121 legislative branch has said is required. I think there have to be no doubts about it.  
3122 My concern about this is the property maintenance agreements for the ingress  
3123 and egress for maintaining that easement. I foresee some problems there that  
3124 give me pause. I also see this as a recurring issue, which is, again, an issue that  
3125 needs to be addressed by the legislative body of the County, and not by us, the  
3126 quasi-judicial body.

3127

3128 Mr. Wright - Only in response to that, which comes up every  
3129 meeting, is the County and the legislature have had 30 or 40 years since I've  
3130 been on this Board to address that issue. It's been brought to the attention of the  
3131 Board of Supervisors at least two or three times, and we've had something  
3132 before the Board here for the last year or so. If the County and the legislature  
3133 have not deemed it appropriate to address it, then I don't think it would be of  
3134 such a recurring issue that they would deem to be necessary to be addressed.

3135

3136 Ms. Dwyer - I understand, and I sympathize. I really would like to  
3137 have some more guidance from the Board on this issue. We have brought it to  
3138 their attention, and they have been silent on it. The only way I can interpret that  
3139 silence is that they have spoken already in terms of what the ordinance requires.  
3140 If they choose not to change the ordinance, their silence in effect speaks to say  
3141 they like it the way it is, and they intend to keep it the way it is. We have a  
3142 difference of opinion on how to interpret the silence.

3143

3144 Mr. Wright - I look at it the other way.

3145

3146 Ms. Dwyer - I don't think that we have the authority to, in the face  
3147 of what is in the ordinance, to change that.

3148

3149 Mr. Wright - I like to look at it in favor of the property owner.  
3150  
3151 Ms. Harris - I think the silence of the Board is an attitude that,  
3152 "You solve it. You, members of the BZA, solve this, rather than bring it before us.  
3153 That's why we have you on this Board."  
3154  
3155 Ms. Dwyer - Well, the question is what do we solve, and we solve  
3156 the issues that are within our jurisdiction. I don't think we have jurisdiction to  
3157 legislate, is my interpretation of that. Anyway, any more discussion on that?  
3158 They're different philosophies. Any other comments on this case?  
3159  
3160 We have a motion. Do we have a second?  
3161  
3162 Mr. Blankinship - Yes. Mr. Witte seconded it.  
3163  
3164 Ms. Dwyer - Mr. Witte seconded it. Okay.  
3165  
3166 All in favor say aye. All opposed say no. The ayes have it; the motion passes.  
3167  
3168 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
3169 Mr. Witte, the Board **approved** application **A-020-08, Robert and Joan Irby's**  
3170 request for a variance from Section 24-9 to reconstruct an existing one-family  
3171 dwelling at 1300 Chaffins Bluff (Parcel 803-679-3332), zoned R-2A, One-family  
3172 Residence District (Varina). The public street frontage requirement is not met.  
3173 The Board approved the variance subject to the following conditions:  
3174  
3175 1. This variance applies only to the public street frontage requirement for one  
3176 dwelling only. All other applicable regulations of the County Code shall remain in  
3177 force.  
3178  
3179 2. Approval of this request does not imply that a building permit will be issued.  
3180 Building permit approval is contingent on Health Department requirements,  
3181 including, but not limited to, soil evaluation for a septic drainfield and reserve  
3182 area, and approval of a well location.  
3183  
3184 3. At the time of building permit application, the applicant shall submit the  
3185 necessary information to the Department of Public Works to ensure compliance  
3186 with the requirements of the Chesapeake Bay Preservation Act and the code  
3187 requirements for water quality standards.  
3188  
3189 4. The applicant shall present proof with the building permit application that a  
3190 legal access to the property has been obtained, and that the access has been  
3191 improved such that it is passable to fire, rescue and other public service vehicles.  
3192 The access shall have a gravel surface at least 12 feet wide with clearance at  
3193 least 20 feet wide. The stream crossing shall be improved with either a bridge or

3194 a culvert designed and constructed in accordance with Department of Public  
3195 Works standards.

3196

3197 5. The owners of the property, and their heirs or assigns, shall accept  
3198 responsibility for maintaining access to the property until such a time as the  
3199 access is improved to County standards and accepted into the County road  
3200 system for maintenance.

3201

3202

3203 Affirmative: Harris, Nunnally, Witte, Wright 4

3204 Negative: Dwyer 1

3205 Absent: 0

3206

3207

3208 **A-021-08 EMERALD LAND DEVELOPMENT** requests a  
3209 variance from Section 24-9 to build a one-family dwelling at 3104 Elmbrook Road  
3210 (Parcel 770-752-0373), zoned R-3, One-family Residence District (Brookland).  
3211 The public street frontage requirement is not met. The applicant has 0 feet public  
3212 street frontage where the Code requires 50 feet public street frontage. The  
3213 applicant requests a variance of 50 feet public feet frontage.

3214

3215 Ms. Dwyer - Is there anyone else here to speak to this case?  
3216 Please stand and raise your hand.

3217

3218 Mr. Blankinship - Will you raise your right hand please? Do you swear  
3219 the testimony you're about to give is the truth and nothing but the truth so help  
3220 you God?

3221

3222 Mr. Baker - I do. Good morning. My name is Mark Baker. I'm  
3223 with Baker Development and Resources, and I'm a consultant who is  
3224 representing Emerald Land Development, who is the contract purchaser. The  
3225 property is 3104 Elmbrook Road, and the request is a waiver of the public street  
3226 frontage requirement of Section 24-9, to permit the construction of a single-family  
3227 dwelling.

3228

3229 Mr. Blankinship, would it be acceptable to put the survey or the plat on the—And  
3230 also, as I speak, is it okay to use the mouse to help point?

3231

3232 Mr. Blankinship - Yes, sure.

3233

3234 Mr. Baker - I wanted to briefly go into some background, and then  
3235 I'd also like follow up with a discussion of the threshold question and three tests,  
3236 and then follow that up with a conclusion.

3237

3238 As far as the background goes, the property is located at the terminus of  
3239 Elmbrook Road, and it's the dumbbell-shaped property, which is right here in this

3240 location. It's located at the existing terminus of Elmbrook Road. Elmbrook Road  
3241 was platted in 1960 as part of the adjacent Wistar Garden subdivision. The  
3242 property contained 1.89 acres. The lot is a legal lot of record, and it meets all R-3  
3243 zoning standard requirements with the exception of the public street frontage  
3244 requirement. There's technically around 30 feet of street frontage right in this  
3245 area, which is located on the terminus, and it has an existing improved  
3246 turnaround. The turnaround, while it is adequate in providing access to the  
3247 existing dwellings, does not meet the County cul-de-sac standards. This was the  
3248 last lot to be developed abutting the stub street, including an adjacent property  
3249 with an identical abutting frontage, which was authorized in 1984 by the BZA.  
3250 There's a discussion of that case in the write-up. This lot was originally a 2.7-  
3251 acre piece of property, which was split in 1984 to permit a roughly .8-acre lot,  
3252 3103—this lot. Again, 3104 is the dumbbell-shaped lot. The BZA case permitted  
3253 this split, and the development of this piece of property. It had the same issue at  
3254 that time with regards to non-conformance with the public street frontage  
3255 requirement, as I understand it.

3256

3257 Getting into the evaluation criteria, and talking about the Virginia Supreme Court  
3258 with the threshold question, the Supreme Court in Cochran versus Fairfax  
3259 County sets forth the threshold as whether the effect of the zoning ordinance  
3260 upon the property under consideration as it stands interferes with all reasonable  
3261 beneficial use of the property taken as a whole. I want to just stress that it's, "as  
3262 the property stands." Yes, the language of the threshold applies. The property  
3263 under consideration as it stands—and again, that's Supreme Court language—is  
3264 3104 Elmbrook Road, the subject property. Taken as whole, the existing  
3265 property as it stands today is not suitable for any other reasonable beneficial use  
3266 absent the variance.

3267

3268 Staff does an evaluation in their report with regards to the threshold question. I  
3269 apologize, I haven't had a chance to talk with Mr. Blankinship about the  
3270 comments, so if I'm misunderstanding in my discussion of them, I apologize for  
3271 that. When I read the comments, I sort of get the feeling that staff is suggesting  
3272 that the threshold question might not be met here. They spent much of their time  
3273 discussing the previous property configuration, meaning prior to the 1984 split,  
3274 rather than discussing as it stands today as the threshold suggestion would  
3275 suggest. I would refer to the staff comment that if there was an unconstitutional  
3276 restriction on the use of Ms. Coles' original non-conforming 2.7-acre parcel, it  
3277 would have been remedied by the granting of the first variance in 1984. This  
3278 suggests perhaps that you should be considering the property only as it stood in  
3279 1984, and perhaps the opportunity to claim hardship on 3104 passed with the  
3280 1984 BZA approval granting approval of a lot split in access to 3103. However,  
3281 according to the threshold language, the property as it stands today is 3104  
3282 Elmbrook Road. It is not 3103 and 3104 considered collectively, particularly prior  
3283 to 1984.

3284



3285 Staff does go on to recognize that as a result of the BZA-authorized split, the  
3286 owner retained a lot with an unresolved issue. That Board-authorized split  
3287 allowed for an issue to persist on the subject property, 3104. They state that  
3288 although she received approval from the Board to create the second lot—3103—  
3289 the variance nonetheless left unresolved the original lot's non-conforming status,  
3290 thus the request for the second variance. It appears as though based on that  
3291 previous BZA access, it's not a surprise that this variance request has come  
3292 forward with the development of the second piece of property.

3293

3294 3104 is the property with, according to staff, an unresolved, non-conforming  
3295 status with regard to frontage. I'm not sure what test was utilized in 1984 to allow  
3296 the split; that was before Cochran. But the split was authorized, nonetheless.  
3297 The BZA approval only relieved, in our opinion, the hardship that existed at that  
3298 time for the portion of the lot which would become 3103. Based on that split,  
3299 3104 was legally created as it stands today. Based on the County's approval of  
3300 that action, with or without the resolution of the frontage issue at that time, the  
3301 owner retained a reasonable expectation for the future beneficial use of the  
3302 property, in this case the development of a single-family dwelling.

3303

3304 We believe this expectation is realistic on a couple of levels. If the County had  
3305 no intention of allowing for future beneficial use of the property by virtue of a  
3306 similar BZA approval, which we're asking for today, why did the BZA permit the  
3307 split resulting in the unresolved frontage issue, as noted by staff on 3104?  
3308 Knowing that the owner was going to transfer 3103 to another party, as was the  
3309 case, I believe, with the previous BZA case, why would the owner not be  
3310 discouraged from keeping a useless lot, a lot that would not have a reasonable  
3311 beneficial use absent this subsequent action? If the County anticipated requiring  
3312 a cul-de-sac to allow 3104 to be developed in the future, why would the BZA  
3313 authorize a lot split that effectively bisected the right-of-way, the terminus of the  
3314 right-of-way with this property line, and allowed insufficient frontage of 30 feet on  
3315 the subject property to allow for the future creation of the cul-de-sac on the  
3316 property taken as it stands today? In that context, that expectation for future  
3317 beneficial use of the property is reasonable, and absent the variance, the lot is  
3318 not suitable for reasonable beneficial use. It's essentially just a vacant lot that  
3319 can't be developed despite its technical 30 feet of frontage.

3320

3321 I do want to go, again, in the same section under the threshold question. There is  
3322 a bit of a recommendation from staff that says given the desire to further develop  
3323 this terminus, the cul-de-sac should be constructed as required by the zoning  
3324 ordinance and recommended by the Department of Public Works. Of course, we  
3325 go on and maintain that same argument, that the property as it stands and taken  
3326 as a whole cannot accommodate this recommendation. There are a couple  
3327 reasons for that, and I'd refer to Richard Baird, Civil Engineer. We submitted a  
3328 letter from him, that he's analyzed the site and analyzed the possibility for the  
3329 existing situation, the existing turnaround, and the possibility for constructing a  
3330 cul-de-sac. His points are, essentially, that the existing right-of-way of Elmbrook

3331 is of insufficient width to allow for the development of the County-standard cul-  
3332 de-sac within the existing right-of-way. So, within this existing right-of-way along  
3333 Elmbrook there is simply 60 feet. You can't meet the standards. I may be  
3334 quoting this incorrectly, but I believe you're talking about a 50-foot radius, which  
3335 is 100 feet of width, and a 40-foot radius in terms of pavement. So, improvement  
3336 of just the pavement wouldn't fit in, let alone the actual required right-of-way in  
3337 that area.

3338

3339 Ms. Dwyer - Mr. Baker, normally when a developer is required to  
3340 make a road improvement, if they need to use part of their own property in order  
3341 to fulfill that road requirement, that's what they do. So, in this case, even though  
3342 the existing right-of-way couldn't accommodate a cul-de-sac, couldn't a cul-de-  
3343 sac be constructed using the client's property?

3344

3345 Mr. Baker - That is a very good question. That is the substance of  
3346 the second issue that we are going to discuss, and Mr. Baird also verified. The lot  
3347 line between 3103 and 3104 bisects the terminus, again reducing the frontage on  
3348 Elmbrook for the subject property to 30 feet. So, you need, again, 60 feet.  
3349 Presumably, you'd be exceeding 60 feet of right-of-way onto the site, which  
3350 wouldn't fit through the 30-foot window. Then once you got on the site, you'd  
3351 need to accommodate the 80 feet of pavement and 100 feet of right-of-way for  
3352 the cul-de-sac.

3353

3354 Ms. Dwyer - The time to have addressed that would have been in  
3355 '84.

3356

3357 Mr. Baker - Well, it would have been, but despite that we still tried  
3358 to address that today. We did, in fact, go and talk with the owner—at staff's  
3359 suggestion—of 3103. We had indicated that staff thought it might be appropriate  
3360 to extend the cul-de-sac onto the property utilizing a portion of his lot. Again,  
3361 you'd have 60 feet at that point, and it would likely be something that potentially  
3362 could happen. Again, the response from that adjacent property owner, Mr. Sikes,  
3363 I submitted a letter in which he states that he does not want to participate in the  
3364 construction of the cul-de-sac. He does not want to lose any of his land by  
3365 dedicating it for such purposes, that extending the cul-de-sac would disrupt the  
3366 existing access which, in his opinion, he's satisfied with. A cul-de-sac would also  
3367 needlessly remove existing trees and vegetation that add to the current  
3368 neighborhood character, and would otherwise provide a buffer between the  
3369 proposed house and his dwelling. His seeing 80 feet of paved right-of-way and  
3370 then a house on the other side of it, which is what he'd be looking at instead of a  
3371 home, which utilizes the same access that he's satisfied with. So, the cul-de-sac  
3372 just doesn't work. It can't be accommodated, and we weren't able to work with  
3373 the neighbor on it.

3374

3375 On a side note, I do want to continue to note that there is a turnaround. It's  
3376 substandard in terms of County standards, but it's suitable for everyday use. I

3377 have a full-size truck, and the engineer has a full-size truck, and we were both  
3378 able to go in there and easily negotiate. The type of vehicle I think that you'd see  
3379 in a residential situation, residential application is not going to have a problem.  
3380 The traffic is minimal. This would be the fourth house accessed off that stub  
3381 street. Typically, localities design cul-de-sac turnaround standards for  
3382 maneuvering emergency vehicles, and that's the reason for the larger radii.  
3383 Oftentimes, you'll also see jurisdictions—City of Richmond being one—that will  
3384 limit that, or set that requirement at terminus of streets which exceed 150 feet in  
3385 length. I think that refers back to—I think that comes from the International Fire  
3386 Code, but there's 150 feet—there's a discussion on 150 feet, and I think that  
3387 comes from Fire and Emergency Services' general willingness to back up 150  
3388 feet, but they don't like to go any further than that.

3389  
3390 Mr. Blankinship - That's correct.

3391  
3392 Mr. Baker - Again, that's usually the standard, and I would note  
3393 that this stub street is approximately 150 feet in length. In other jurisdictions, you  
3394 might be able to accommodate this. But that's neither here nor there, as that's  
3395 not the regulation here.

3396  
3397 Getting into the three tests. The property is affected by exceptional narrowness.  
3398 The first test is, is the property affected by exceptional narrowness, shallowness,  
3399 size, or shape, topographical conditions, or other extra ordinary situation or  
3400 condition. Staff, again, refers to the property in the configuration in terms of its  
3401 original lot prior to 1984, but in truth the lot is as it stands. While the lot itself isn't  
3402 narrow, the access point at 30 feet is narrow. I would call that exceptionally  
3403 narrow in that, in fact, it is of insufficient width to accommodate the need for the  
3404 cul-de-sac. So, that is a definite noteworthy constraint. The lot is otherwise of  
3405 sufficient size to meet County setback requirements, and permit the development  
3406 of a single-family dwelling.

3407  
3408 Item number two, or test number two, is the variance will not be a substantial  
3409 detriment to the adjacent property, the character of the district will not be  
3410 changed. We agree with staff here. The use is consistent and compatible with the  
3411 surrounding single-family dwellings. The size and wooded nature of the lot will  
3412 mitigate any impacts on the adjacent property owners. The adjacent property  
3413 owner at 3103 has indicated he prefers the variance to the cul-de-sac in order to  
3414 preserve his land, existing vegetation and screening buffer, and that sort of thing.

3415  
3416 The third test is that the condition or situation of the property concerned is not so  
3417 general or recurring in nature as to make reasonably practical the formulation of  
3418 a general regulation be adopted as amendment to the ordinance. Staff has  
3419 indicated in their staff report that from time to time the Board does hear these  
3420 cases. I think we've heard a couple cases prior to this one today where we were  
3421 talking about street frontage requirements. I think this request is actually unique  
3422 among those, based on the past BZA action and the unresolved status of the lot.

3423 It's also unique in that it's at the terminus of an existing right-of-way. It actually  
3424 has frontage. We're not dealing with a piece of property that has to rely on an  
3425 access easement or something of that nature.

3426  
3427 We would definitely not suggest a general regulation may be appropriate. I got  
3428 online, did a little research looking at past cases. I did notice that street frontage  
3429 waivers appear from time to time. I would suggest based on what I saw that  
3430 more often than not they're granted. The most recent denial I did see I think was  
3431 in June, and that was on Valentine Road. I think part of the test that you analyzed  
3432 there was that the piece of property had a reasonable use, and that it was being  
3433 farmed, and there were some other considerations as well. I would suggest that  
3434 that's not the case here. Again, this case is somewhat unique. The previous BZA  
3435 case and the split make this case a little more complicated, but at the end, as  
3436 with the previous approvals that I saw, it appears that this meets the threshold  
3437 and tests that are necessary for approval.

3438  
3439 In summary, the threshold question is met, in our opinion. We're dealing with a  
3440 single lot, taken as a whole, for which there is no use without a variance. The  
3441 owner has a reasonable expectation for the beneficial use of the property, which  
3442 as the lot stands today—not in 1984—cannot be accommodated. The lot as it  
3443 stands cannot support the staff's request for the development of the cul-de-sac.  
3444 Again, we provided support from an engineer, Richard Baird, and also from the  
3445 neighbor. We also feel the three tests are met. I see that there are some  
3446 neighbors here today. We have not received or heard of opposition from staff.  
3447 Also, I would note that the applicant is satisfied with the conditions that were  
3448 suggested by staff.

3449  
3450 I thank you for your consideration. I'd urge you to rule in favor of the applicant  
3451 based on demonstrated hardship. I'll take any questions you may have.

3452  
3453 Ms. Dwyer - Any questions by Board members?

3454  
3455 Ms. Harris - Can we see the aerial photo please? Okay. Can you  
3456 point out where this house will be located?

3457  
3458 Mr. Baker - The house will be located here where the hand is.

3459  
3460 Mr. Witte - In my visit to the site the other day, I noticed there  
3461 was a drive that goes behind 3100 Elmbrook, and it comes off the end of the  
3462 existing roadway. Will the new driveway in any way hamper the ingress and  
3463 egress to that driveway?

3464  
3465 Mr. Baker - For 3103? Is that the drive you were speaking of?

3466  
3467 Mr. Witte - No, 3100.

3468

3469 Mr. Baker - Right here?  
3470  
3471 Mr. Witte - No, the other side.  
3472  
3473 Mr. Wright - 3100.  
3474  
3475 Mr. Baker - Over here.  
3476  
3477 Mr. Witte - Right there, yes.  
3478  
3479 Mr. Baker - No. We're showing it—and if you could go back to the  
3480 plat—located, the access is located right here adjacent to the property line.  
3481  
3482 Mr. Witte - Okay. So, it won't come over to the edge of the road  
3483 there.  
3484  
3485 Mr. Baker - No. No sir.  
3486  
3487 Ms. Dwyer - Is that important? Would you like another condition?  
3488  
3489 Mr. Witte - I don't know who lives there, but there was an elderly  
3490 gentleman out in the yard, and his vehicles parked back there. I wouldn't want to  
3491 impede his ingress or egress.  
3492  
3493 Ms. Dwyer - It says only the improvements shown on the plot plan,  
3494 which, I guess, locates the access to the right. I'm not sure which direction this is.  
3495 Okay. To the south.  
3496  
3497 Mr. Baker - I'm being told there is a sewer manhole right here,  
3498 which could require it to be moved slightly to the left, but it certainly wouldn't  
3499 impact—I mean, it wouldn't be a substantial move. I would say that would be  
3500 substantially in compliance with what we're saying.  
3501  
3502 Mr. Witte - So, as we're looking at the lot from Elmbrook, the  
3503 sewer manhole would be moved to the left.  
3504  
3505 Mr. Baker - The driveway would actually move slightly to the left in  
3506 order to accommodate that.  
3507  
3508 Mr. Witte - Closer to the driveway at 3100.  
3509  
3510 Mr. Baker - Right. Moved in this direction. But still within the  
3511 property and abutting the right-of-way of the terminus.  
3512

3513 Ms. Dwyer - In 1984, why was this piece of property carved up in  
3514 such an odd way where we have the barbell shape, and you've now created a  
3515 potentially buildable lot that does not have access on the other side.  
3516

3517 Mr. Baker - There are a couple things I can say about that. I don't  
3518 know a lot about the previous case. If you look at the staff comments in the  
3519 report, apparently there was a mother who carved off a piece to provide to the  
3520 daughter, and they received a BZA variance at the time, which allowed access to  
3521 the smaller piece that was provided to the daughter. That was subsequently built  
3522 on. The dumbbell-shaped lot was retained, and the BZA case at that time didn't  
3523 address the resolution of the access issue for 3104. I really can't speak to why  
3524 that happened.  
3525

3526 Now, as far as the shape of the lot, the current owner really has no desire in  
3527 terms of keeping that piece of property, the right-hand side of the dumbbell. The  
3528 adjacent owner at 3103 has actually expressed interest in acquiring that. We  
3529 have submitted a plat requesting that—as a part of his, if it should be granted—  
3530 that they be allowed to do a lot line adjustment that would just make that lot part  
3531 of 3103, and remove any loose ends that are still hanging, that would be  
3532 perceived to be still hanging.  
3533

3534 Ms. Dwyer - What about the narrow section in the rear? Would  
3535 that be part of—  
3536

3537 Mr. Baker - Well, what we showed was basically bringing it right  
3538 here, doing a lot line adjustment. This lot line, basically, that goes like this just  
3539 extends over here instead.  
3540

3541 Ms. Dwyer - Okay.  
3542

3543 Mr. Baker - So, you have this as one line.  
3544

3545 Ms. Dwyer - That would be part of this case?  
3546

3547 Mr. Baker - Well, we've asked to be able to do that. Again, the  
3548 adjacent property owner has expressed an interest in that, and we do have—  
3549 There is a condition that would allow for it.  
3550

3551 Mr. Blankinship - Yes. We mentioned it in Condition #2, just to make  
3552 sure it was on the record.  
3553

3554 Ms. Dwyer - Right. Good. We don't want to compound problems.  
3555

3556 Mr. Wright - Does the daughter still own 3103?  
3557

3558 Mr. Baker - As I understand it, it is the—and I don't want to turn it  
3559 into As the Board Turns, but I think it's the ex or the ex-husband of the daughter  
3560 who now owns the property.  
3561  
3562 Mr. Witte - The ex-husband?  
3563  
3564 Mr. Baker - I believe so. I can't say with 100% certainty, but I think  
3565 that's the case.  
3566  
3567 Ms. Dwyer - As I read the variance ordinance, the first basis for  
3568 granting a variance reads, "by reason of exceptional narrowness, shallowness,  
3569 size or shape of a specific piece of property at the time of the effective date of  
3570 this chapter." If we consider that as a whole reading the Cherrystone case, it  
3571 seems to me that the property under consideration would be the entire piece,  
3572 including the piece that was separated out in '84.  
3573  
3574 Mr. Baker - What's the effective date of the chapter?  
3575  
3576 Mr. Blankinship - 1960. That's where staff was going in our comments.  
3577 This Board has discussed that just about every month since Cherrystone, I think.  
3578 There are differences of opinion on that.  
3579  
3580 Mr. Wright - That's the shape, but that doesn't have anything to do  
3581 with the road frontage.  
3582  
3583 Ms. Dwyer - That has to do with the property under consideration  
3584 for the variance.  
3585  
3586 Mr. Wright - Yes, but the 50-foot road frontage ordinance doesn't  
3587 say at the effective date of the ordinance.  
3588  
3589 Ms. Dwyer - No, this ordinance says that.  
3590  
3591 Mr. Wright - I know that.  
3592  
3593 Ms. Dwyer - 116 says that. Then you look and you see when was  
3594 the road frontage ordinance enacted, and that was in 1960. So, at the time that  
3595 that ordinance existed, this property had not been divided yet.  
3596  
3597 Mr. Wright - Had not, but what—  
3598  
3599 Ms. Dwyer - Had not been.  
3600  
3601 Mr. Wright - What was the date the ordinance was adopted in  
3602 1960?  
3603

3604 Mr. Blankinship - If was effective January 1<sup>st</sup>. It was actually adopted  
3605 late December of '59.  
3606  
3607 Mr. Wright - Fifty-nine.  
3608  
3609 Mr. Baker - But with an effective date of January 1, 1960.  
3610  
3611 Mr. Wright - Okay.  
3612  
3613 Mr. Baker - I guess I might just argue that certainly, then, in 1984  
3614 the existing lot wouldn't have met that test that was in place in 1984. Based on  
3615 the action and the unresolved nature of the non-conforming feature of access for  
3616 3104—it was left unresolved. I've not seen that before, let's put it that way.  
3617  
3618 Ms. Dwyer - Any more questions for Mr. Baker? Do we have any  
3619 other people who would like to speak in favor of the case? No. We'll hear  
3620 opposition then. Please come forward.  
3621  
3622 Ms. Luck - My name is Jean Luck, and my husband and I own  
3623 Lot B, which is adjacent to this property.  
3624  
3625 Mr. Wright - What was your last name, please ma'am?  
3626  
3627 Ms. Luck - Luck. L-u-c-k.  
3628  
3629 Mr. Wright - Yes ma'am, thank you.  
3630  
3631 Ms. Dwyer - So, the one closest to—We were talking about your  
3632 driveway?  
3633  
3634 Ms. Luck - Yes.  
3635  
3636 Mr. Witte - You're at 3100.  
3637  
3638 Ms. Luck - Yes. That's the elderly gentleman.  
3639  
3640 Mr. Witte - Oh, okay. He looked like he was working with some  
3641 building materials in the backyard when I was there. Okay.  
3642  
3643 Ms. Luck - We do have some concerns about this. The dwelling  
3644 as proposed will certainly devalue our property in that the front yard would abut  
3645 our side yard. The front of their house will face the end of our house, and of  
3646 necessity will require removal of a good many of the trees there. That is all  
3647 wooded property now. With only a small driveway going into that property, there  
3648 won't be a place to park many cars there, so we can reasonably assume that  
3649 there will be cars parked in the street in front of our house, since they have no



3650 street frontage. The property, as already noted, already received one variance,  
3651 and we believe a second variance should not be allowed where you would have  
3652 two driveways off a terminus street.

3653

3654 I can give you a little bit of the background. You were wanting to know why this  
3655 lot is like that. In 1984 when the daughter was married, there was a right-of-way  
3656 to that property from Wistar Road, which was their family property. There was a  
3657 right-of-way at that time, but they've chose to come off the back of it. It was not  
3658 divided into those two lots at that time. It's my understanding from Mrs. Cole that  
3659 it was not divided until the divorce of their daughter. That's when they carved out  
3660 the house and lot that's the square piece in the middle. They didn't intend for  
3661 anything else to be there. This was not initiated by Mrs. Cole. The builder or the  
3662 developer here contacted her, and asked for permission to see if you could build  
3663 on it. She did not think they could, but she gave them permission to do this. This  
3664 is not something that she is particularly concerned about.

3665

3666 The present dwelling, the Sikes property, as you heard he said that he would like  
3667 to have that property. His property is up for sale. He's built a house in  
3668 Goochland County. I think probably before his house is sold he will be moving  
3669 away, so that's not a consideration for him either. That house is almost totally  
3670 not visible from the street. It's in a wooded area, so from the street, you can't see  
3671 the property. Where this house will be on the new lot where he's talking about  
3672 putting the new house, it will be totally visible, and totally out of character, I think  
3673 for our neighborhood since it will be turned the opposite way—well, not totally  
3674 opposite, but a different way. We think that will be a detriment to our property as  
3675 well.

3676

3677 Another piece of information, if you're interested. That whole property at one  
3678 time was brought before the County to be bought by North Gate. I think they  
3679 have it on here as North something else. But there's North Gate property at the  
3680 corner of Staples Mill and Wistar Road, and they were—It was a commercial  
3681 property, and they were going to buy all of the land all the way up to the end of  
3682 Elmbrook Road there. As it turned out, they did not buy it all; they developed in  
3683 three phases, and they only developed the first. I think they bought some of the  
3684 property up to that line there where the barbell shape is, up to that line. They did  
3685 buy the property. One of the conditions on them developing that was that they  
3686 would leave a 50-foot buffer behind all of those houses on Birchbrook Road.  
3687 That's lots 1, 2, and 3 that you see on the map there. There would be a 50-foot  
3688 buffer left. But, of course, they never developed the rest of it, so they didn't buy  
3689 that. That's why that piece of 2.9-whatever acres it was, was left there. Since  
3690 that time, the Cole property has been sold on Wister Road. Another house was  
3691 built on another lot there beside their home property, and that did away with the  
3692 access off Wister Road to this property. That's some of the history of it.

3693

3694 Ms. Dwyer - Thank you ma'am. Any questions by Board  
3695 members?

3696

3697 Mr. Wright - Can I ask Ms. Luck one question? If the house were  
3698 moved further back away from the street—I guess it would be northwardly—so it  
3699 wouldn't be in front of your house, would that make any difference to you?

3700

3701 Ms. Luck - I don't believe it can because it's the floodplain.

3702

3703 Mr. Wright - I notice there's a floodplain, but there seems to be 30  
3704 or 40 feet before you get to the floodplain, based on this plat here. It looks like it  
3705 could be moved 40 feet, roughly 40 feet. I was just curious to know would that  
3706 make any difference to you.

3707

3708 Ms. Luck - I think it would still be the nature of the—The fact that  
3709 there's no street frontage and no parking. That would be a problem for us.

3710

3711 Mr. Wright - Well, if they move their house back away from that,  
3712 they could have a longer driveway. That would also permit more cars to be  
3713 parked in there. That's just an observation. I was just wondering.

3714

3715 Mr. Witte - What if they turned the house so that the front wasn't  
3716 facing your yard, if they turned it more like a cul-de-sac would normally be?

3717

3718 Ms. Luck - I don't think they can. I'm a little bit familiar with the  
3719 floodplain, because we built a house right behind the creek that runs behind our  
3720 lot last year. It took us 14 months to get a building permit because we lacked 242  
3721 feet that was outside of the floodplain out of 11,000-some feet. The County  
3722 vacated the right-of-way that goes beside our lot. It doesn't show on this map, but  
3723 it's Birchbrook Road. Birchbrook and Elmbrook end right there at the corner of  
3724 our property. The County vacated that land to give us the extra footage that we  
3725 needed. I made 12 to 15 trips to the County about this, so I know the floodplain  
3726 has been changed. FEMA and the County had two different floodplains, and they  
3727 were supposed to somehow conform the two, or put them together. It's my  
3728 understanding that it has probably changed since then. I know there is a  
3729 floodplain, and I don't think there's enough footage there. We're also paying  
3730 property taxes on the vacated right-of-way now, too.

3731

3732 Ms. Dwyer - Thank you, Ms. Luck. Any other questions? Thank  
3733 you very much. Is there anyone else who wishes to speak to this case?

3734

3735 Ms. Vye - Dorothy Vye. I'm the property owner of Lot 1. When  
3736 we were talking to the Planning Commission, I discussed turning the house  
3737 around. There is minimal side, back, and front yardage involved here for the  
3738 County ordinance requirements in our zoning area. What they feel could be  
3739 done with the house, we don't know, but I didn't get the impression that there  
3740 was a whole lot that could be done. I do know that the way the house sits now, I  
3741 was told there is maybe an extra foot or two from the requirement to the edge of

3742 the floodplain. In order to construct that house, I would guess all those trees will  
3743 go down so that what is put in here as a condition, mitigating condition for Lot 2,  
3744 the Luck's property, it would be the tree characteristics. Those trees will all be  
3745 gone when that house is constructed. That's the way it works. You have to have  
3746 access to get your construction vehicles in there.

3747  
3748 I also would mention, that the Sikes on that small piece of property that was  
3749 originally divided, have a lot of property in the back of their house. They have a  
3750 narrow driveway, and they do some backing down if they have a lot of company.  
3751 The construction vehicles back down also, and used to get mired in the mud, you  
3752 know. They also have a turnaround, a good turnaround area up beside their  
3753 house. I do not know that this house has that much property to have a  
3754 turnaround around the house itself. So, that would be a definite consideration  
3755 because if they didn't, then it's true that all the parking will be out on our street.

3756  
3757 That's just a couple of points I wanted to bring out.

3758  
3759 Ms. Harris - What's your name again, please?

3760  
3761 Ms. Vye - Dorothy Vye. V as in Victor-y-e.

3762  
3763 Ms. Harris - Ms. Vye, where is your house? What's your address?

3764  
3765 Ms. Vye - Lot 1.

3766  
3767 Ms. Harris - Is that 3015?

3768  
3769 Ms. Vye - That's right, Birchbrook.

3770  
3771 Ms. Harris - Thank you.

3772  
3773 Ms. Dwyer - Any other questions for Ms. Vye? Thank you very  
3774 much. Is there anyone else who would like to speak?

3775  
3776 Mr. Johnson - Good afternoon.

3777  
3778 Ms. Dwyer - Good afternoon.

3779  
3780 Mr. Johnson - It is.

3781  
3782 Ms. Dwyer - Did you bring lunch?

3783  
3784 Mr. Johnson - Not this time. I hope I can get out and get some. My  
3785 name is Ronald Johnson. I found out a lot of information just by being here this  
3786 afternoon. My property, I guess, created the problem that you can't get access to

3787 yours. I own the property on 4206 Wister Road, which I can't see on this map  
3788 here. It's a triangular-shaped piece of property. Yes.

3789  
3790 Mr. Blankinship - Go left.

3791  
3792 Mr. Johnson - When I go up my property and had my home built  
3793 there, I was under the impression that was wetlands behind us, that nobody  
3794 could build there. Now I'm finding out that it's not totally, and I'm also finding out  
3795 that the owner of the piece of property that's right behind mine also owns the  
3796 piece of property, that dumbbell. Really, I have no objections that I can see. It  
3797 doesn't affect me at all, as far as his property. The knowledge that I gained in  
3798 taking up your time was the fact that you can build on those wetlands, and that  
3799 property is owned by the same person that's directly behind me where all the  
3800 trees fall down on my property and I have to clear them.

3801  
3802 Like I said, I have no objections. It was more of an educational experience for  
3803 me. I thank you for your time.

3804  
3805 Ms. Harris - Two things here. Can we see the site map?

3806  
3807 Ms. Dwyer - Did you have any questions for Mr. Johnson?

3808  
3809 Ms. Harris - Yes.

3810  
3811 Ms. Dwyer - Okay.

3812  
3813 Ms. Harris - I want to compare two things. On the site map, can  
3814 you point out your property? I see 4206.

3815  
3816 Mr. Johnson - I think it's R-3.

3817  
3818 Ms. Harris - Okay. So, that line kind of going through the blue line,  
3819 those are wetlands, but I'm not sure just how close it is to your property. When  
3820 we see those blue lines—

3821  
3822 Mr. Johnson - Those small blue lines indicate the wetlands area?

3823  
3824 Ms. Harris - Normally, yes. Right?

3825  
3826 Mr. Blankinship - The wetlands have to be field-located. We can't really  
3827 look at the map and know where there are or are not wetlands.

3828  
3829 Mr. Johnson - Okay.

3830  
3831 Mr. Blankinship - We walk the property to determine that.

3832

3833 Ms. Harris - On the aerial photo where we have 4206. The bottom  
3834 of this window that we're seeing here, those lines are not correct, right, because  
3835 it doesn't indicate it's a triangle. It says 4206. You said your property was  
3836 triangular in shape.

3837  
3838 Mr. Johnson - It's not triangular, it's odd. In other words, I think the  
3839 back part of my property, which is where the mouse is right now, is at a different  
3840 angle. In other words, this angle here on my property is equal to the angle of—  
3841 This was the Coles' house at the time that I bought in there. Like I said before, I  
3842 was just concerned about the fact if anyone was going to be able to build here. I  
3843 don't see how they can because there's no access, and I don't know how access  
3844 could be created. I guess if somebody bought this property, they could come  
3845 around the back. Or if Mr. Sikes sold his property. If somebody bought that, they  
3846 could create access to either. Thank you.

3847  
3848 Ms. Dwyer - Any other questions by Board members? That  
3849 concludes the case. Well, excuse me. I'm sorry. That doesn't conclude the case.  
3850 The applicant does have an opportunity to rebut, but the case is closed for the  
3851 opposition. You'll have five minutes for rebuttal.

3852  
3853 Mr. Baker - I hate to even call it rebut. I guess I just want to  
3854 comment. I think there were some good points that were brought up, and we're  
3855 certainly willing to address some of those. I would say that from the standpoint of  
3856 the reasonable beneficial use and Ms. Cole, there is a question there. The  
3857 property is under contract, there's value there for her if it's sold. If the variance  
3858 isn't granted, obviously that goes away. So, that is a consideration.

3859  
3860 Some of the concerns that were brought up as far as the front of the house facing  
3861 the side of the house, if we go back to this site plan or the plat. Obviously, there  
3862 is some room to tweak that. We're talking about a question of whether we want a  
3863 cul-de-sac, or can we access this piece of property at the terminus as the  
3864 frontage currently exists. Clearly, when you have a cul-de-sac, you're into the  
3865 terminus situation, and you're going to have a variety of—it's not a straight  
3866 situation where houses abut side-to-side. We certainly have room to tweak that.  
3867 It could be rotated in such a way that this corner here could be brought a little  
3868 closer to this, potentially. This corner could definitely be brought further away in  
3869 order to create the frontage heading this direction. In terms of the driveway, that  
3870 would open up additional area to provide for another parking space. I would  
3871 suggest that the actual floodplains are shown on here with a dotted line. We've  
3872 had an environmental engineer also walk the site from a wetlands and  
3873 environmental constraint standpoint. We'd feel comfortable being able to tweak  
3874 the location of that house in order to have a different angle.

3875  
3876 We would obviously be meeting the zoning standard from a parking standpoint.  
3877 From the standpoint of removal of trees, we're obviously trying to be sensitive.  
3878 Clearly, developing this lot with the current frontage as opposed to a cul-de-sac

3879 certainly reduces the number of trees that would have to be taken down. I think  
3880 it's important to note that the plat shows the limits of disturbance. In addition to  
3881 that, we would also be willing to—if desirable—perhaps proffer some screening  
3882 trees along that property line, which might help provide better screening. There  
3883 are some things we would be willing to do.

3884

3885 As far as Mr. Sikes goes, and the fact that he's selling his house, he is, in fact,  
3886 selling his house, but despite that fact, we have a contract for—

3887

3888 Mr. Blankinship - Boundary line adjustment.

3889

3890 Mr. Baker - —the boundary line adjustment where he would be  
3891 able to get that piece of property. So, he is still interested in that despite the fact  
3892 that he has built a house in Goochland and is moving out there.

3893

3894 That's essentially it.

3895

3896 Ms. Dwyer - Thank you very much.

3897

3898 Ms. Harris - Would we need to make that a condition, as far the  
3899 preservation of as many trees as possible, or is that understood?

3900

3901 Mr. Blankinship - That would be a good condition to add.

3902

3903 Ms. Dwyer - It does show limits of disturbance on the plat, so that  
3904 has been specified.

3905

3906 Ms. Harris - What about the location of the house turned such—

3907

3908 Mr. Blankinship - We could draft a condition for that, if you'd like.

3909

3910 Ms. Dwyer - What would the condition say?

3911

3912 Mr. Blankinship - I would recommend that is say that the house shall  
3913 face to the south, and shall be moved to the north so that it's set back roughly in  
3914 line with the house next door.

3915

3916 Ms. Harris - Face to the south, and you said move to the north? Is  
3917 that agreeable with the applicant?

3918

3919 Mr. Baker - That would be acceptable.

3920

3921 Ms. Dwyer - If it's moved to the north, then it's closer to the  
3922 neighbor's house. I think we might want it moved to the east.

3923

3924 Mr. Blankinship - No. North is to the left of this plat.

3925  
3926 Mr. Wright - Look on the plat; north is to the left.  
3927  
3928 Ms. Dwyer - Right, I know. That moves it closer to the house at  
3929 3100.  
3930  
3931 Mr. Blankinship - Isn't that house down on this plat? Isn't that Lot 2?  
3932  
3933 Ms. Dwyer - That would be Lot 2, right. It seems to me if you're  
3934 moving it north, you're actually moving it closer to that house, whereas you really  
3935 want it moved away from that house, which would be east.  
3936  
3937 Mr. Blankinship - What I mean to say is parallel to that house. Not  
3938 farther or closer to that house, but back in line with that house.  
3939  
3940 Ms. Dwyer - Oh, I see. I see what you mean.  
3941  
3942 Mr. Wright - It would parallel.  
3943  
3944 Ms. Dwyer - Okay. If you're orienting it toward the south, it's  
3945 almost as if it were a continuation of Elmbrook Road.  
3946  
3947 Mr. Blankinship - Right. That's the look that I would be attempting to  
3948 achieve.  
3949  
3950 Mr. O'Kelly - The only thing I would caution, Madam Chairman, is  
3951 that the Department of Public Works has a minimum setback requirement from  
3952 the floodplain. It's not a code; it's a policy. They try to provide useable area  
3953 outside the floodplain, in conjunction with home construction. In this case, they  
3954 would be looking for the minimum rear yard setback for the district, which is 35  
3955 feet. If they moved it north and the angle was right, they could probably move it  
3956 back—  
3957  
3958 Ms. Dwyer - We're just guessing.  
3959  
3960 Mr. Witte - —maybe 20 feet.  
3961  
3962 Ms. Dwyer - We're really just guessing at this point as to how far it  
3963 could go back. I think what Mr. O'Kelly is cautioning us about is that we might  
3964 think that the house could be moved back and turned, and be in line with Lot 2,  
3965 Block B, but it may not be because of the floodplain.  
3966  
3967 Mr. Baker - Okay.  
3968  
3969 Ms. Dwyer - We can't really determine that at this point.  
3970

3971 Mr. Baker - Could we agree to that subject to that constraint, to  
3972 the extent possible subject to that constraint? We would certainly be willing to do  
3973 that.  
3974  
3975 Ms. Harris - The angle of the house subject to—  
3976  
3977 Mr. Baker - To try to achieve that same effect, subject to that  
3978 constraint, to the extent possible.  
3979  
3980 Ms. Dwyer - All right. Any other questions or comments by Board  
3981 members?  
3982  
3983 Mr. Witte - I still have an issue with ingress and egress now that  
3984 I'm aware there's a manhole there. Is there going to be sufficient room to put the  
3985 driveway in within that constraint, and avoid that manhole?  
3986  
3987 Mr. Blankinship - If not, they'll have to move the manhole. This is  
3988 something Mr. Baker will have to work out between Works and Utilities.  
3989  
3990 Mr. Witte - Without hampering or restricting the ingress and  
3991 egress of the people at 3100.  
3992  
3993 Mr. Blankinship - It might be helpful to add some language to the  
3994 conditions that he shall not hamper their ingress and egress.  
3995  
3996 Ms. Dwyer - What does that mean?  
3997  
3998 Mr. Blankinship - I don't know. I was kind of hesitant as I was speaking  
3999 there.  
4000  
4001 Ms. Dwyer - Right. We can see these things that might make us  
4002 feel better, but in the field, we don't know how it's going to work out.  
4003  
4004 Mr. Witte - I would think if the two driveways were relatively close  
4005 together connecting, and one was coming in at a 90-degree angle to the other  
4006 driveway, there could be a restriction or a blockage there that would keep them  
4007 from entering their property.  
4008  
4009 Ms. Dwyer - That's what happens when we have substandard lots.  
4010  
4011 Mr. Witte - That's my concern.  
4012  
4013 Ms. Dwyer - Okay. Well, this is a variance, so we can impose that  
4014 condition as part of our deliberations. The applicant doesn't have to agree to  
4015 those, so we can discuss that later on when we make motions with regard to the



4016 case. Any other questions or comments from the Board at this point? The case  
4017 is now closed, and we'll move on to the next case.

4018

4019 **DECISION**

4020

4021 Ms. Dwyer - Do I have a motion on the case?

4022

4023 Ms. Harris - Just to get it moving, whether we vote it up or down, I  
4024 do move that we say yes, or that we approve this variance. We went through a  
4025 number of conditions that would speak to the opposition that we heard from the  
4026 neighbors. The condition that will address parking, the driveway position, the  
4027 angle of the house, and conditions that we need to be sure are subject to the  
4028 floodplain regulation would make the neighbors more agreeable to the approval  
4029 of this variance. When we deal with the threshold question, I look at the 50 feet of  
4030 public street frontage—and I won't take too much of your time—but I believe they  
4031 have some portion of the 50 feet. We understand that construction vehicles have  
4032 been using this area. They decided to ask for a variance regarding the 50-foot  
4033 public street frontage because they could find no other area that this would fall  
4034 under. I really don't think this is a typical 50-foot public street frontage case  
4035 where we deal with so many of the landlocked parcels in our recent history. I do  
4036 move that we approve this variance.

4037

4038 Ms. Dwyer - Do I have a second?

4039

4040 Mr. Wright - I'll second it.

4041

4042 Ms. Dwyer - Motion and a second. Any discussion?

4043

4044 Mr. Witte - I do have a little concern about the fact it's going to  
4045 result in much less privacy for the property owners, especially the one at 3100. I  
4046 would like to amend it in the area where the clearing takes place along the  
4047 property line that some type of evergreens, or some type of material, permanent  
4048 material be installed so it is consistent with the existing privacy that the people  
4049 have. If additional clearing has to be performed, the people should retain the  
4050 right to their privacy.

4051

4052 Ms. Dwyer - How do you want to word that, Mr. Witte?

4053

4054 Mr. Witte - I would word it for evergreens to be planted in the  
4055 cleared area along the property line to protect the property. Also, I have that  
4056 concern about restricting the access to the driveway.

4057

4058 Mr. Blankinship - How about a #7 that would read, "At the time of  
4059 building permit application, the applicant shall submit a landscape plan to the  
4060 Department of Planning showing a screen of evergreens along the western  
4061 property line to protect the view from the adjoining property."

4062  
4063 Mr. Witte - That would be wonderful.  
4064  
4065 Mr. Wright - I think Mr. Blankinship said that the question about  
4066 the manhole and the access will have to be resolved before they will be permitted  
4067 to—  
4068  
4069 Mr. Witte - Okay.  
4070  
4071 Mr. Blankinship - I'd like to have it addressed somehow, if he goes  
4072 beyond just a manhole. The manhole doesn't worry me, because I think Works  
4073 and Utilities will make them correct that. But I think there are further concerns  
4074 about parking on the street, and not having the driveways come out at the same  
4075 point at right angles. I'm somewhat at a loss as to how to word that condition.  
4076  
4077 Mr. Witte - So am I.  
4078  
4079 Ms. Dwyer - Maybe that's because it can't be fixed in a condition.  
4080  
4081 Mr. Witte - The concern I have is they have shown on the plat  
4082 where the driveway would be located, which would not impede the ingress and  
4083 egress of the existing driveway. But since they brought up the manhole issue,  
4084 they're saying they're going to have to move it more to the east, which very  
4085 possibly could impede the ingress and egress of the existing driveway.  
4086  
4087 Ms. Dwyer - Do you want to just require that the driveway be  
4088 located at the southernmost portion of the property line?  
4089  
4090 Mr. Witte - I think that would be—  
4091  
4092 Ms. Dwyer - Mr. Blankinship?  
4093  
4094 Mr. Witte - —credible.  
4095  
4096 Ms. Dwyer - Regardless of where the manhole is?  
4097  
4098 Mr. Witte - You can drive over a manhole; it just depends on the  
4099 height of it and the road surface.  
4100  
4101 Ms. Dwyer - They might have to pave, or Public Works will—The  
4102 issue is, could they move the driveway because of the manhole, or do we want to  
4103 write a condition that will require them to be at the southernmost point of the  
4104 property line?  
4105  
4106 Mr. Witte - I think I would be more comfortable with, "at the  
4107 southernmost line."

4108  
4109 Mr. Blankinship - All right. Do you want to require—The thought is just  
4110 occurring to me because one of the neighbors was concerned about parking on  
4111 the existing turnaround. The thought occurs to me that you might require that  
4112 they provide adequate parking for at least three vehicles off the street.  
4113  
4114 Mr. Witte - I would amend it to that, absolutely.  
4115  
4116 Ms. Dwyer - There was also discussion about facing the house in a  
4117 southerly direction, and moving it north to be in line with Block B, Lot 2.  
4118  
4119 Mr. Wright - I think he already has that.  
4120  
4121 Ms. Dwyer - Do you have that?  
4122  
4123 Mr. Witte - I think that was in six.  
4124  
4125 Ms. Dwyer - So, we're adding condition 6, 7, 8, and 9?  
4126  
4127 Mr. Blankinship - The way I've done it was amending Condition 3, the  
4128 one that says, "only the improvements shown on the plot plan." I've added a  
4129 sentence there saying, "The house should be oriented to the south, and shall be  
4130 aligned with the existing dwelling on the north side of Elmbrook Road.  
4131  
4132 Ms. Dwyer - All right.  
4133  
4134 Mr. Blankinship - Then adding #6 that reads, "The driveway shall be  
4135 located as far south as possible, and shall accommodate at least parking spaces  
4136 off the public street." I think I'll change that to "public right-of-way," actually. Then  
4137 a #7, "At the time of building permit application, the applicant shall submit a  
4138 landscape plan to the Department of Planning showing a screen of evergreens  
4139 along the western property line to protect the view from the adjoining property."  
4140  
4141 Mr. Witte - I'm agreeable to that.  
4142  
4143 Ms. Dwyer - Any other discussion. I'm just going to say a few  
4144 words, because I, too, have concerns about this lot. I have concerns about the  
4145 shape of it, the barbell shape, which I think is awkward and lends itself to  
4146 possibly another variance down the road if someone wanted to develop that  
4147 other section. As to philosophy, I guess the reason I take the position I do is that  
4148 the Supreme Court has said that we are empowered to act only with standards  
4149 prescribed by the legislative branch, and to hold otherwise would be to substitute  
4150 the will of individuals to the rule of law. For that reason, I think because we have  
4151 to act within the boundaries enacted by the legislation, our authority is limited.  
4152 So, when I look at the statute, I see that if we go under the exceptional  
4153 narrowness exception that allows a granting of the variance, we have to consider

4154 the two lots together, because the two lots were in existence at the time the  
4155 ordinance requiring street frontage was enacted. So, that, under Cherrystone,  
4156 clearly means that this property taken as a whole—that is the two properties  
4157 together—has a reasonable use because the variance has been granted; there is  
4158 a house on that property at this point. So, they do have a reasonable use  
4159 because of the variance that was granted before.

4160

4161 I think that in addition to that, this is a recurring issue. I think that we cannot find  
4162 that it is of no material impact or detrimental—It has no material or detrimental  
4163 impact on the neighbors. I think that it adds another house, it adds another  
4164 driveway that's too close to the house next door. I'm not sure that we can  
4165 actually configure the house the way we're imagining we can, given the  
4166 constraints of the floodplain. That's speculative to me. So, I think having the  
4167 house too close to the neighbors, compounding the problem that I think was  
4168 created in 1984 with a barbell-shaped lot that may lend itself to yet another  
4169 variance—I think all of the things that we discussed today—not having enough  
4170 parking—I mean, we've tried to address these by conditions, but I think the  
4171 bottom line is we have a substandard lot—or we did have one. Now we have two  
4172 substandard lots, if we pass this variance. I think that when we do this, we  
4173 contravene the clear and express intent of the legislature to have lots that meet  
4174 certain standards. I don't think under the ordinance this complies. That's my  
4175 opinion.

4176

4177 All in favor say aye. All opposed say no. The ayes have it; the motion passes.

4178

4179 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
4180 Mr. Wright, the Board **approved** application **A-021-08, Emerald Land**  
4181 **Development's** request for a variance from Section 24-9 to build a one-family  
4182 dwelling at 3104 Elmbrook Road (Parcel 770-752-0373), zoned R-3, One-family  
4183 Residence District (Brookland). The public street frontage requirement is not met.  
4184 The Board approved this variance subject to the following conditions:

4185

4186 1. This variance applies only to the public street frontage requirement for one  
4187 dwelling only. All other applicable regulations of the County Code shall remain in  
4188 force.

4189

4190 2. The applicant shall not further subdivide the property unless the zoning  
4191 ordinance requirements for public street frontage independent of a street terminus  
4192 are complied with. This condition does not prohibit a boundary line adjustment  
4193 between the subject lot and the 0.90 acre lot known as 3103 Elmbrook Road.

4194

4195 3. [AMENDED] Only the improvements shown on the plot plan and building  
4196 design filed with the application may be constructed pursuant to this approval.  
4197 Any additional improvements shall comply with the applicable regulations of the  
4198 County Code. Any substantial changes or additions to the design or location of  
4199 the improvements may require a new variance. The house shall be oriented to

4200 the south and shall be aligned with the existing dwellings on the north side of  
4201 Elmbrook Road.

4202  
4203 4. At the time of building permit application, the applicant shall submit the  
4204 necessary information to the Department of Public Works to ensure compliance  
4205 with the requirements of the Chesapeake Bay Preservation Act and the code  
4206 requirements for water quality standards.

4207  
4208 5. The dwelling shall be connected to public water and sewer prior to the  
4209 issuance of a certificate of occupancy (CO).

4210  
4211 6. [ADDED] The driveway shall be located as far south as possible and shall  
4212 accommodate at least three parking spaces outside the public right-of-way.

4213  
4214 7. [ADDED] At the time of building permit application, the applicant shall submit  
4215 a landscape plan for review and approval by the Department of Planning showing  
4216 a screen of evergreens along the western property line to protect the view from  
4217 the adjoining property.

4218  
4219  
4220 Affirmative: Harris, Nunnally, Witte, Wright 4  
4221 Negative: Dwyer 1  
4222 Absent: 0

4223  
4224

4225 **UP-022-08 LIVING WATER CHRISTIAN FELLOWSHIP** requests  
4226 a temporary conditional use permit pursuant to Section 24-116(c)(1) to hold a  
4227 tent revival at 5108 Richmond Henrico Turnpike (Meadowood) (Parcel 794-744-  
4228 4156), zoned B-1, Business District (Fairfield).

4229  
4230 Mr. Blankinship - The applicant for the next case approached me during  
4231 the break and withdrew the application. The setback required that they could not  
4232 put the tent where they want in the rear of the property, and apparently they  
4233 could not get permission from the owner to put the tent in the front of the  
4234 property. We had spoken to them last week and said that they were going to  
4235 have to move to the front. Apparently, they were not able to get permission from  
4236 the property owner to put it in the front, so they have withdrawn.

4237  
4238 Ms. Dwyer - There's no motion required on that?

4239  
4240 Mr. Blankinship - No.

4241  
4242 After an advertised public hearing, case **UP-022-08, Living Water Christian**  
4243 **Fellowship**, was **withdrawn** by the applicant.

4244

4245 Ms. Dwyer - That concludes the caseload for the day. The next  
4246 item on the agenda is our minutes. Do we have any additions or corrections to  
4247 the minutes?  
4248

4249 Ms. Harris - On page 37, the last line, 1685, "All right, Ms. Harris is  
4250 going to second that nomination to close." In other words, the nomination in  
4251 1679, the nomination to close—In other words, we had a nomination to close.  
4252

4253 Mr. Blankinship - It should be a motion to close the nomination.  
4254

4255 Ms. Harris - A motion to close the nomination.  
4256

4257 Mr. Wright - What page is that on?  
4258

4259 Ms. Harris - It's on page 37.  
4260

4261 Ms. Dwyer - Any other changes to the minutes. Do I have a motion  
4262 on the minutes?  
4263

4264 Ms. Harris - I move the minutes be approved as amended.  
4265

4266 Ms. Dwyer - Second.  
4267

4268 All in favor say aye. All opposed say no. The ayes have it; the motion passes.  
4269 The minutes are approved.  
4270

4271 On a motion by Ms. Harris, seconded by Ms. Dwyer, the Board **approved as**  
4272 **corrected** the **Minutes of the August 28, 2008** Henrico County Board of Zoning  
4273 Appeals meeting.  
4274

4275 Affirmative:	Dwyer, Harris, Nunnally, Wright, Witte	5
4276 Negative:		0
4277 Absent:		0

4278

4279 Ms. Dwyer - Any other business to be brought before the Board  
4280 today? We did have an article that Mr. Blankinship sent to use about ex parte  
4281 communication. Maybe we could talk about that next month if we don't run so  
4282 long. Or do you want to talk about it now.  
4283

4284 Ms. Harris - Depending on cases we have.  
4285

4286 Ms. Dwyer - It's a good issue, and a good issue to discuss  
4287 periodically. Thank you very much.  
4288

4289 Do I have a motion for adjournment?  
4290

4291 Ms. Harris - So moved.  
4292  
4293 Mr. Witte - Second.  
4294  
4295 Ms. Dwyer - Motion by Ms. Harris, seconded by Mr. Witte. All in  
4296 favor say aye. All opposed say no. The ayes have it; the motion passes, the  
4297 meeting is adjourned.  
4298  
4299 Affirmative: Dwyer, Harris, Nunnally, Wright, Witte 5  
4300 Negative: 0  
4301 Absent: 0  
4302  
4303 There being no further business, the Board **adjourned** until the October 23, 2008  
4304 meeting at 9 a.m.  
4305  
4306  
4307  
4308  
4309 Elizabeth G. Dwyer  
4310 Chairman  
4311  
4312  
4313  
4314  
4315 Benjamin Blankinship, AICP  
4316 Secretary