

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRINGS ROADS, ON THURSDAY, DECEMBER 17, 2009, AT 9:00 A.M.,**
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **NOVEMBER 25, 2009 AND DECEMBER 3, 2009.**
7

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

Members Absent: Helen E. Harris, Vice Chairman

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

8
9 Ms. Dwyer - The December meeting of the Henrico County Board
10 of Zoning Appeals will come to order. Please rise for the **Pledge of Allegiance**.

11
12 Good morning, Mr. Blankinship. If you would go over the rules for the Board so
13 that everyone will understand the procedure.

14
15 Mr. Blankinship - The rules for this meeting are as follows. Acting as
16 secretary, I will call each case, and as I'm speaking, the applicant should come
17 down to the podium. We will then ask everyone who intends to speak to that
18 case to stand and be sworn in. We're probably only going to have applicants this
19 morning, so we'll ask the applicants to speak, and then if anyone else wishes to
20 speak, they will be given the opportunity. If anyone else does speak, then the
21 applicant will have an opportunity for rebuttal. After everyone has testified, the
22 Board will take the matter under advisement and they will render all of their
23 decisions at the end of the meeting. If you wish to know their decision on a
24 specific case, you can either stay until the end of meeting, or you can check the
25 Planning Department website this afternoon, or you can call the Planning
26 Department.
27

28 This meeting is being recorded, so we'll ask everyone who speaks to speak
29 directly into the microphone on the podium, state your name, and please spell
30 your last name so we get it spelled correctly in the record. Out in the foyer, there
31 are two binders that contain the staff report for each case, including the
32 conditions that have been recommended by the staff. It is particularly important
33 for the applicants on use permit cases to be familiar with those conditions.

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One other matter. One member of the Board is absent this morning. She had a family medical emergency and cannot be present. Rules of the Board and the State Code require that in order to make an affirmative decision to either grant a variance or grant a use permit, the Board has to have three members voting in favor. So, with one member absent, that could end up being unfair to an applicant, and because of that, if you wish to have all five members present to hear your case, you should request referral.

Ms. Dwyer - So, Mr. Blankinship, just to clarify. If there's a two-two vote, a case cannot be approved.

Mr. Blankinship - A two-two vote would defeat the motion. But even a two-to-one vote—if one member were to abstain, there was a motion to approve and that motion carried on a two-to-one vote, the case would not be approved because you have to have three affirmative votes.

Ms. Dwyer - So it would, in fact, be denied in that case. All right. Are there any requests for referrals or withdrawals? Seeing none, we'll proceed with the agenda. Will you call the first case, Mr. Blankinship?

A-006-09 EMERALD LAND DEVELOPMENT requests a variance from Section 24-95(b) to build a one-family dwelling at 21 Evergreen Avenue (Bungalow City) (Parcel 817-727-6100), zoned R-3, One-family Residence District (Varina). The lot width requirement is not met. The applicant has 50 feet lot width where the Code requires 65 feet lot width. The applicant requests a variance of 15 feet lot width.

Ms. Dwyer - I see the applicant is here. Is there anyone else here to speak to this case? If you think that you might speak to the case, please stand and raise your right hand to be sworn. For those just entering, if you're here to speak to the first case, Emerald Land Development, please raise your right hands.

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 - Thank you. Will the applicant come forward and state your name please.

Mr. Baker - Good morning Madam Chair, members of the Board, County Staff. Happy holidays as well. My name is Mark Baker with Baker Development Resources. I'm here on behalf of Emerald Land Development as contract purchaser. We're here to talk about two cases today, the first of which is

79 21 Evergreen Avenue. This is a request to waive the lot width requirement. It's a
80 variance of 15 feet to permit the construction of a single-family dwelling.

81

82 A little about the background. A similar request was made by the applicant in
83 2008 and that was denied by a three to two vote. This request has been modified
84 and is intended to address the concerns expressed at that time. The exception
85 standards are 8,000 square feet for the lot area and 65 feet for the width. The
86 8,000 square feet is met for the lot area, but rather than 65, they have 50 feet.
87 So they're deficient 15 feet on the lot width.

88

89 The adjacent homes at 19 and 23 were built in 1946 and 1937 respectively.
90 These two intervening lots have been landlocked in the same condition since
91 that time. The lots were sold individually as 25-foot lots in 1946 and they were
92 both buildable lots at that time. So, technically, two single-family dwellings could
93 be built at that time. The lots are now in common ownership and the request is to
94 construct just one single-family dwelling that is consistent with what would have
95 been permitted by right until 1960. It's consistent with what was likely anticipated
96 at the time of the construction of the two adjacent homes, which was prior to
97 1950. Given the existence of other homes built on 50-foot wide lots—though a
98 minority—this is consistent with the intent of the original subdivision.

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100 I know we all know that the BZA is a quasi-judicial body and ruling on the case
101 must be based on laws and rules, ordinances, state statutes, case law, etcetera,
102 as well as facts that are supported by evidence at the hearing. I realize the
103 County is still referring to Cochran for the BZA decision. We do just want to
104 respectfully—well, we will frame our argument in terms of that case, but we do
105 want to respectfully, though, note and put on record that we think we may
106 potentially be held to a test which is now has been replaced by a recent House
107 Bill. Prior to Cochran under the Virginia Code, the BZA could approve variances
108 only if the applicant could show that there was a hardship approaching
109 confiscation. It was a little easier test prior to the Virginia Supreme Court
110 decision with Cochran. With that particular appeal, limited powers to the BZA
111 were emphasized. In Cochran and prior decisions, the court interpreted Virginia
112 statutes to allow variances only when strict application of the zoning ordinance
113 would essentially result in the taking. That's why we now deal with that threshold
114 question of whether it's a taking or not.

115

116 The General Assembly acted earlier this year, House Bill 2326, to make the
117 standard for granting a variance more reasonable. The General Assembly found
118 in practice the former standard—the Cochran standard—made the BZA process
119 an act of futility and the requirement was simply to steep. The new standard
120 allows the BZA process to serve its proper function to alleviate burdens unfairly
121 imposed by strict application of the Zoning Ordinance.

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123 Now I realize that we're still talking bout Cochran, and I've had this discussion
124 with staff. I just wanted to put that out there because I'm obligated to.

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Getting back to the Cochran case and its evaluation criteria as it relates to this case, first is the threshold question. That's whether the effect of the Zoning Ordinance upon the property and consideration as it stands interferes with all reasonable beneficial use of the property taken as a whole. Yes, the language of threshold applies. These properties and the adjacent homes predate 1960 in their current configuration. Taken as a whole, there's no reasonable beneficial use of the property absent the requested variance. The applicant is the contract purchaser. There is no evidence of self-created hardship related to the property.

I did want to note that we do have discussions here from time to time where I hear issues of good faith brought up. I just want to make sure that you understand that the Virginia Supreme Court in *Spence v. Board of Zoning Appeals* in 1998 clarified that the notion of good faith does not mean that the applicant has to acquire the property without knowledge of any defects. Because we're the only contract purchaser in this instance, the good faith standard is met.

We had this somewhat contentious case last time around, so there's a little bit of information in this report. If you'd like, I can stop after each one of the tests and ask if you have any questions, or I can just continue to move through it.

Ms. Dwyer - Thank you, Mr. Baker. We'll ask questions if we—

Mr. Baker - Okay. So you'll just go ahead and throw them in there. Okay, great.

As to the first test, if the property is affected by exceptional narrowness, shallowness, size or shape, topographic condition or other extraordinary situation or condition. Exceptional condition is that the property is narrow. These are two lots that according to staff in last year's report were each technically developable according to the Code in 1946 when they were sold independently. As such, since 1960, when the regs made the lot substandard, there has been no action that the owner could have taken that could have alleviated the hardship, and there's no opportunity to acquire additional lots on either side.

Moving to the second test. It's really a two-part test. We're dealing with substantial detriment, which is very targeted. We're talking about just the adjacent parcels. We're also dealing with character, whether it's changed. That portion of the test is broader; it talks about the district in general. Staff discusses the size of two adjacent properties and the property across the street, but makes no specific position on substantial detriment or district character. They do note in 2008 there was public opposition based on general concerns that developing a narrow lot would be detrimental to character and value.

170 The first part of the second test, which is substantial detriment to adjacent
171 properties, I want to note that this rule, again, applied to adjacent property only. If
172 you look at the definition in Webster, *adjacent*, is close to, it's adjoining. So the
173 test language here is adjacent; it's not the entire district or neighborhood. It's not
174 what's down Evergreen Road to the north; it's not what's on Nine Mile Road. So
175 this is a very tough test for the opposition. Once the threshold question has
176 been met, the bar is set pretty high for the opposition. As evidenced by the use
177 of the word *substantial* in the test, it's a very significant standard. So if we look at
178 *substantial*, if we look at *detriment*, we're really talking about—from a definition
179 standpoint—significant damage. This is a test of value. It's a quantitative test.
180 The test does not use the word *near detriment*. This isn't a feeling issue; it's not
181 an inconvenient issue; and it's not really one of personal opinion. The question
182 is, if the application is approved, will this approval cause significant damage to
183 the adjacent property.

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185 Ms. Dwyer - Mr. Baker, I'm going to direct you to Paragraph 2A
186 where it says, "The exceptional or extraordinary circumstances applying to the
187 property in question do not apply generally to other properties." How would you
188 respond to that?

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190 Mr. Baker - Once again, you're talking about the first test?

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192 Ms. Dwyer - Yes. Go back to how you defined the first test. Under
193 the statute, we're obligated to make a finding that the exceptional circumstances
194 that apply to this property do not apply generally to other properties.

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196 Mr. Baker - I think the exceptional circumstance is that it's not
197 only narrow, but it's landlocked. I think staff recognized that the narrowness
198 was, in fact, exceptional from their perspective. I mean, there are other 50-foot
199 lots in the district, but you have to look at it that generally those 50-foot lots are in
200 pairs or in multiples. There may be situations where they are in common
201 ownership. These are two lots, which are by their very nature landlocked, and
202 there's no ability to acquire property on either side.

203

204 Ms. Dwyer - All the property in this subdivision was originally
205 divided into 25-foot lots, correct?

206

207 Mr. Baker - Yes ma'am.

208

209 Ms. Dwyer - So the vast majority of the lots in the subdivision have
210 been combined so that they form lots that meet the ordinance.

211

212 Mr. Baker - Or they've been yet to be developed.

213

214 Ms. Dwyer - So all the lots in this subdivision were originally 25-
215 foot lots.

216
217 Mr. Baker - Yes.
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219 Ms. Dwyer - So they were exceptionally narrow, but most of the
220 lots are not in this situation, most of them have been combined to form standard
221 lots.
222
223 Mr. Baker - That's correct. Then it sort of dovetails into the idea of
224 the recurring issue, which I talk about a little bit later.
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226 Mr. Nunnally - The only difference on this request you have today is
227 the house you plan on putting on there is narrow, right? Narrower than the one
228 you had in 2008? That was a two-story, right?
229
230 Mr. Baker - Yes sir. The biggest difference is it went from two-
231 story to one-story. One of the specific comments that was made—and I believe
232 the Chairperson made that, Ms. Dwyer—was that it was a two-story. Part of the
233 character argument was that being a two-story in between the ranches—
234
235 Mr. Nunnally - I'm not talking about that one; I'm talking about the
236 one you plan on building now.
237
238 Mr. Baker - Right. I guess my point was that in response to a
239 comment we had heard at the last meeting, we did go to one story.
240
241 Mr. Nunnally - What's the size of this house?
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243 Mr. Baker - This is 1,140 square feet.
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245 Mr. Nunnally - What is the width of it?
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247 Mr. Wright - I believe it shows 30 by 38.
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249 Mr. Baker - This is a—30 by 38 is correct, 30 being the—
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251 Mr. Nunnally - Thirty by thirty-eight?
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253 Mr. Baker - Yes sir.
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255 Mr. Nunnally - You have a 50-foot lot, right?
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257 Mr. Baker - Yes sir.
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259 Mr. Nunnally - What's the width of an automobile? If you have a
260 driveway in there, you wouldn't have enough land for the car in the yard, would
261 you?

262
263 Mr. Baker - Well, we'd be able to accommodate a drive in front of
264 the house. It's shown on the submission materials. It's on the survey. It shows
265 the proposed location.
266
267 Ms. Dwyer - You would have eight feet on one side and eleven
268 feet on the other.
269
270 Mr. Baker - 8.1 and 11.9, yes.
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272 Mr. Witte - So you could get an automobile down the right side
273 but not down the left side.
274
275 Mr. Baker - That's correct, if it was desired to try to put parking to
276 the rear.
277
278 Mr. Witte - If you did that, you'd have to move the driveway from
279 the left side to the right side.
280
281 Mr. Baker - Right. Although I don't think the variance ties us to the
282 location of the driveway, does it?
283
284 Ms. Dwyer - It says only improvements shown on the plan. It may
285 be relevant if you needed to—
286
287 Mr. Baker - If that were an issue, we certainly would be agreeable
288 to moving the driveway.
289
290 Ms. Dwyer - I guess the only issue is when you have such a
291 narrow area between the house and the property line, if you needed equipment
292 to go into the backyard for work that needed to be done back there, you probably
293 couldn't do that.
294
295 Mr. Baker - Eleven feet is a substantial width to get most
296 equipment that we would require for any improvement to a single-family home
297 into the rear yard.
298
299 Should I move on or?
300
301 Ms. Dwyer - Mr. Nunnally, did you have any more questions?
302
303 Mr. Nunnally - I don't think so.
304
305 Mr. Baker - Okay. We talked about property values and the
306 applicant contends that the proposed home would be an enhancement to the
307 adjacent property. A new construction will add value to a neighborhood with

308 older housing, some of which needs repair and some which are actually vacant.
309 If you look at the property value at 23 Evergreen, which is to the north, it was
310 assessed in 2007 at \$76,600. 19 Evergreen Avenue, which is to the south—and
311 again, we're talking about the adjacent—is \$101,500. That sold for \$85,000 in
312 March of 2008. 18 Evergreen Avenue, which is across the street, is \$169,006.
313 So those are adjacent properties. The average assessment of the neighborhood
314 is \$106,456. At a target price of \$149,950, the proposed new dwelling will
315 increase values rather than being a detriment. It's 40% greater than the average
316 assessment. It's just over \$130 a square foot. In terms of the adjacent
317 properties, it compares favorably with assessed values. If you look at 23
318 Evergreen, that's \$86 a square foot, based on assessment; 19 is \$103.15; 18 is
319 just over \$93. This is \$130 a square foot compared to those assessed values.
320 The market price and the price per square foot that we're quoting is backed up
321 by letter and comparative market analysis from the applicant's real estate broker,
322 which is in your package. Based on the evidence provided—again, evidence—
323 the application is an economic benefit to the adjacent properties.

324
325 The second part of that second test is the character issue. We've heard some
326 discussion about that. Again, the character with regard to this test is of the
327 neighborhood or the district and that it will not be changed. From a design
328 standpoint, the design has been modified to address the concerns expressed by
329 both the BZA and the public. The submitted home design is now architecturally
330 compatible with the adjacent homes and you see them here. It's one story, a
331 similar roofline, similar materials. We're using a front porch. The front yard
332 setbacks are compatible. They're consistent with the adjacent setbacks. Side
333 yard setbacks are compatible. From a zoning perspective, the side yard
334 requirement is met, so we're not asking for that. I'm certain the required
335 setbacks were designed with compatibility and proper spacing in mind. From a
336 zoning perspective, we're not bunching the housing up. So, in other words, this is
337 the standard that's included in the Zoning Ordinance, which is supposed to
338 protect properties from that issue.

339
340 Now, we do talk about the rhythm of the development. Where there's been a
341 consistent side-by-side development in a neighborhood, distance between
342 homes ranges from 22 to 30 feet. So, we have 33 through 45 Evergreen, six
343 homes in a row that were 22 to 30 feet apart. 38 through 46 Evergreen, four
344 houses that are around 30 feet apart. And 36 and 28, just up the street,
345 approximately 22 feet between them. The combined side yard setbacks, the
346 distance between buildings for this proposal is consistent with those lots, the
347 ones that are actually developed on a side-by-side basis without a missing piece
348 between them.

349
350 Again, with approximately 28.5 feet to the north and over 40 feet to the south.
351 Again, I know we're talking about 8.1 and 11.9 as our actual setbacks, but these
352 are the distances between buildings. The rhythm that's established when you're
353 driving down the street, the feel that you get in terms of distance between

354 buildings. Just to demonstrate that, this is 33 through 45 Evergreen. You get a
355 sense of the setback that we're dealing with between the buildings. Here we
356 have 38 through 46 Evergreen. These are four houses with approximately 30
357 feet between each. Here we have 35 through 45, six houses with approximately
358 22 to 30 feet between them. This is the type of spacing that we're talking about,
359 and in fact, exceeding on one side of the house.

360
361 Ms. Dwyer - Mr. Baker, you're exceeding it because the next
362 house has 20-some feet between the property line and that house. So that could
363 easily change if someone purchases that house and builds additions, for
364 example. You're counting on these relatively house numbers of spacing here
365 relying on someone else's property, where their house is located. That could
366 easily change.

367
368 Mr. Baker - Well, these houses have been existence since the
369 '40's and '50's, and that addition has not been typical. If you look at these
370 houses, that's not been the typical case that people have come in after the fact
371 and put on additions. I do agree that what you say does have some value.

372
373 Okay. If you look at lot area, we're compatible in meeting the zoning standard. If
374 we look at dwelling size, 22, which is to the north, is 888 square feet; 19, which is
375 to the south, is 984 square feet. These are small for the vicinity. If you look at the
376 27 others that are on Evergreen, Second Avenue, and Nine Mile, you have an
377 average of 1,127—the smallest is at 888; the largest is at 2,000. The overall
378 neighborhood average is 1,144 and the proposed size is 1140 square feet. So
379 this is actually in the middle of the range.

380
381 I think the most important item with regard to character is that the neighborhood
382 or district has had homes on 50-foot lots for numerous lots. These 50-foot lots
383 are embedded into the makeup or the character of the district, and have been for
384 a very long time. There are eleven 50-foot lots on which homes have been
385 constructed. So the character of the district, without question, includes homes on
386 50-foot lots. It cannot be reasonably argued that homes on 50-foot lots don't play
387 a part in the district character. The applicant is not asking for anything new,
388 nothing new to the district. We're not asking for a 25-foot lot, 35 foot, 40, 45.
389 The applicant is not changing what already exists. The applicant has provided
390 evidence that the character and the makeup of the neighborhood or district will
391 not be changed.

392
393 Mr. Nunnally - I drove down there yesterday and looked at
394 Evergreen Avenue and I didn't see any house built on any 50-foot lot. I doubt if
395 there was any built on a 65- or 75-foot lot. No house down there on Evergreen
396 Avenue all the way down, and there are some nice houses on that street. None
397 of them are on a 50-foot lot.

398

399 Mr. Baker - First, if we go back to the test—and this is what we're
400 trying to meet, the actual test that is associated with Cochran—it's not the
401 character of the street or the character of the block, it's the character of the
402 district. Staff has indicated in their remarks, as well, that there are 11 homes that
403 have been built on 50-foot lots. So when we get to the character of the actual
404 district, which is what the test contemplates, there are, in fact, 11 houses on 50-
405 foot lots. So we're not introducing something new. When we're introducing the
406 idea of a taking as the result of not getting the variance, there's a pretty
407 significant test that has to be met from the opposition in terms of saying that's
408 not part of the character.

409
410 Mr. Blankinship - Weren't you saying the opposite just a minute ago?
411 Weren't you saying that we should focus just on the adjacents and not on other
412 houses?

413
414 Mr. Baker - Actually, it's a two-prong test. What I'm saying is that
415 if you read the actual language, and if you look at the language that's been
416 supplied to us in the application process and also that's come directly from
417 Cochran, is that where it references substantial detriment, it says to adjacent
418 property. Substantial detriment to adjacent property and that the character of the
419 district will not change. These are two separate changes. When we're talking
420 about substantial detriment, we're showing proof that as far as the adjacents
421 go—of course we've taken it further to show the entire district, that we wouldn't
422 cause a detriment. When we're talking about character, we're talking about
423 district-wide. It's a fact that there are other 50-foot-wide lots that are developed
424 with single-families in the district.

425
426 Ms. Dwyer - The staff report says that 6% of the homes are on 50-
427 foot lots and those primarily were built before the 1960 change.

428
429 Mr. Baker - Yes, I would agree with that. I would also go on to say
430 that moving forward, there are very few opportunities for this to be contemplated
431 in the future. There are other 50-foot lots out there. My assumption is because
432 they're in twos and threes, and under common ownership, many of those are
433 going to come back in and will be wider lots. But that's not a possibility here.

434
435 Okay. Moving to the third test. If the condition or situation of the property
436 concerned is not of so general recurring a nature as to make reasonably
437 practical the formulation of a general regulation to be adopted as an amendment
438 to the ordinance. Now, a year ago, two members expressed a concern over this
439 item as a recurring issue. Once the threshold question is met, the bar is placed
440 fairly high. The law puts the burden of proof on the opposition as a presumption
441 in favor of the property owner. The case law related to the third test supports
442 this.

443

444 We looked a Prince William County versus the Board of Zoning Appeals—rather
445 *Prince William County Board of Zoning Appeals v. Spence* in 1981. There, the
446 Virginia Supreme Court states that the formulation of a general regulation, a
447 legislative enactment, is thought to be reasonably practical if the piecemeal
448 granting of variances could ultimately nullify a zoning restriction throughout a
449 zoning district. And we've looked at three additional cases that state that the test
450 applies to the zoning district or the same vicinity. So we're talking about these
451 cases in general make it clear that this is a district issue, essentially this R-3
452 zoning district of Bungalow City, rather than a County-wide issue.

453
454 Now, the test is whether or not the piecemeal granting of variances in this district
455 would nullify the actual zoning district regs related to R-3. That's a significant
456 burden for the opposition to prove. Staff notes that the Board occasionally sees
457 requests for lot variances in this neighborhood. Now, we Goggled it, and we
458 might be incorrect, but our results found that there were four cases since 2002,
459 and that included ours. We think that's evidence that this isn't a recurring issue,
460 not to the extent that it challenges the validity of the R-3 regulations as they
461 apply to this. Furthermore, there are only a handful of landlocked 50-foot vacant
462 parcels without adjacent owners. So it shouldn't be a big issue moving forward.

463
464 Two similar cases were approved with width and area variances, so the BZA has
465 already approved this type of case in the neighborhood twice. There's no
466 evidence to support that the approval of the previous variance, or this request,
467 would nullify the current R-3 zoning district or its lot width standard according to
468 the case law. This is an R-3 use, we're dealing with R-3 setbacks, and they are
469 met. The exception standard area is met. The problem is you simply cannot
470 legislate to address all conceivable scenarios.

471
472 I think if you look at the Zoning Ordinance, you could actually argue that with that
473 issue in mind—which I think we're all well aware of—legislation has already dealt
474 with the issue. The existing regulation, the exception standard, Section 24-95,
475 actually anticipates these types of requests for existing older lots, and specifically
476 refers them to the BZA. This isn't a general zoning district requirement that says,
477 oh, by the way, if you don't like this particular code section, or any particular
478 code section, you can appeal to the BZA. This is a code section that defines a
479 unique scenario: small lots. We need to give them some relief by providing for
480 small lots areas, smaller side yard setbacks. But they take it a step further and
481 say we realize this is challenging, we realize we have older neighborhoods in the
482 County. We can't contemplate all the possible scenarios, so we're going to
483 specifically say in the text of the Zoning Ordinance that those instances, the BZA
484 is who you're supposed to go talk to. So I think the legislation has already been
485 enacted and it's pretty clear that we're in the right forum in terms of having this
486 discussion. There's no evidence to suggest a general regulation might be
487 appropriate based upon the case law and the facts provided here. So it's our
488 opinion, again, that that BZA is the correct forum to be in.

489

490 Finally, I'll do a little bit of a summary. We're sensitive to the concerns of the
491 community members and the Board, and we apologize for bringing the
492 community out twice based on our deferral last month. We amended the request
493 to the extent possible in order to address concerns. We've demonstrated
494 without a doubt that absent a variance, this will be a regulatory taking; that's not
495 in question here. The owner has reasonable expectations for the beneficial use
496 of the property. The applicant has met their burden of proof with evidence
497 presented on all three tests. Presenting to a quasi-judicial Board, it's the
498 applicant's charge to meet the burden of proof by providing evidence showing
499 the three tests are met. Again, we've done that. Likewise, the opponents need
500 to provide evidence to the contrary. Decisions need to be made based on
501 evidence rather than opinions, something that can be proven, has a basis in fact.
502 This is not a political process. With a regulatory taking in the balance, any denial
503 has to be based on clear evidence to the contrary, not opinion, despite however
504 sympathetic the Board may be to the opposition's concern.
505

506 Thank you. I'll take any questions at this time.
507

508 Ms. Dwyer - Are there any other questions that the Board has for
509 Mr. Baker? Mr. Baker, you referenced the letter from the appraiser and I notice
510 that's from Emerald Real Estate Advisors. Is that related to Emerald
511 Development?
512

513 Mr. Baker - Do you want me to explain whether there's a
514 relationship there?
515

516 Ms. Dwyer - You need to come to the podium, please.
517

518 Mr. Rempe - Mark Rempe. There is a relationship between
519 Emerald Land and Emerald Real Estate Advisors. That letter has been backed
520 up with a sales analysis. It's called a Comparative Market Analysis and it's based
521 upon comps. But to answer your question, there is.
522

523 Ms. Dwyer - What is the relationship?
524

525 Mr. Rempe - He's a broker that works in our office. He's a licensed
526 broker. There's an ownership relationship in the two companies.
527

528 Ms. Dwyer - Thank you.
529

530 Mr. Rempe - You're welcome.
531

532 Ms. Dwyer - That comparative analysis has been included in our
533 packets. Any questions for either Mr. Baker or Mr. Rempe?
534

535 Mr. Blankinship - I have one comment. It concerned me just a little bit.
536 Just want to make sure everybody's looking at this the same way. Mr. Baker said
537 a couple of times that there was a substantial burden of proof on the opposition.
538 I don't know if it's just a semantic difference, but I disagree with that statement. I
539 think the entire burden is on the applicant. I agree with what you said, that the
540 opposition needs to be based in fact, it needs to be based in evidence, it
541 shouldn't just be nebulous or emotional. But I do believe the only burden of proof
542 here is on the applicant, and it's a fairly substantial burden.

543
544 Ms. Dwyer - Please respond.

545
546 Mr. Baker - I think it sort of floats both ways. I think once you're
547 past the threshold question, then it's clear there's a taking in the balance. So
548 that's where it's ratcheted up. I think the bar is set high. Obviously, the applicant
549 needs to meet the burden of proof, but in terms of opposition, if you were to
550 suggest that there is substantial detriment, if I'm to come here and say that my
551 neighbor cannot develop his property, those property rights are going to be
552 taken, I need to support that with satisfactory evidence to suggest that those
553 tests are met in the other direction. It's not an inconvenience; it's not a situation
554 where I prefer a vacant property adjacent to me. I need to be able to come in
555 and say with regards to those tests, this is a substantial detriment to my property
556 and here are the facts as to why, or this is changing the character of the
557 neighborhood substantially, and not just as it impacts my property, but the entire
558 neighborhood's character. So that's what we were getting at.

559
560 Ms. Dwyer - By meeting the threshold question, you don't mean
561 just meeting Cochran, you mean the—

562
563 Mr. Baker - If we were to apply Cochran, which we do, it's that
564 threshold question of whether it's a taking or not. Once we've met it that we have
565 good faith, that by virtue of not getting a variance, in this instance, we're not
566 going to get the relief we need to be able to develop the property with anything.
567 Once we've established that, we go into those three tests, and those three tests,
568 from our perspective, those are fairly stiff tests for the opposition as well. It's not
569 just for the applicant to come up here and give details, and then the opposition to
570 come in and say, based on emotion or opinion, that we don't like it.

571
572 Mr. Blankinship - That's where I think I disagree and it may just be
573 semantics. Once you meet the Cochran threshold, then the next point is no such
574 variance shall be authorized by the Board unless it finds that all of the following
575 facts and conditions exist. So I think the burden still remains on you to carry
576 those three arguments. I'm not saying at all whether I believe you have or have
577 not this morning. It troubled me that you seemed to be putting a burden of proof
578 on the opposition. I think the opposition presents their testimony of how they feel
579 this case is going to affect them, but I don't think they bear any burden. They are

580 free to make whatever statements they think are appropriate for them to make.
581 The other burden rests, of course, on the Board to adjudicate the matter.

582

583 Mr. Baker - I guess I won't comment anymore.

584

585 Mr. Wright - It's my view that the opposition testifies in a way that
586 would indicate that you haven't met that. I don't know whether that's a burden or
587 not. Burden of proof is upon the applicant. There's no question here you've met
588 the Cochran test. I don't think there's any question about that at all. You've met
589 that. So we're down to the tests.

590

591 Ms. Dwyer - Is there anyone else here to speak to this case? In
592 favor? Anyone opposed to the case? Please come forward and state your
593 name. If there are others who may want to speak, please make your way, if you
594 would, down to the front of the room.

595

596 Mr. Burrell - Good morning Chairman, Board members. My name
597 is William Burrell.

598

599 Ms. Dwyer - Could you spell your last name, please, sir?

600

601 Mr. Burrell - B-u-r-r-e-l-l.

602

603 Ms. Dwyer - Thank you.

604

605 Mr. Burrell - I'm a resident of Bungalow City subdivision in the
606 County of Henrico. I come today to oppose the granting of this variance at 21
607 Evergreen Avenue. Being a resident for over 50+ years, I have seen the
608 community grow tremendously. One year ago, this variance was denied, and
609 again, I thank the Board for doing so. But we are here today on a second attempt
610 on this property requesting a variance.

611

612 Mr. Wright - Excuse me, sir, where did you say you lived?

613

614 Mr. Burrell - 5716 Nine Mile Road.

615

616 Mr. Wright - Oh, you're on Nine Mile Road.

617

618 Mr. Burrell - Yes sir. Bear with me a minute. Those three photos
619 are of the property in question. As you can see the driveway, the space that he
620 anticipates on the right-hand side, and the actual growth on the property, which
621 is a violation of Chapter 10 Code 10-153 about the weeds and the growth or
622 whatnot. This has been like this over a year and they have done nothing to it to
623 clean it up or enhance the neighborhood.

624

625 Mr. Wright - He doesn't own the property.

626
627 Mr. Burrell - I understand.
628
629 Mr. Wright - He's the contract purchaser.
630
631 Mr. Burrell - I understand.
632
633 Mr. Wright - It's not his responsibility to clean that up.
634
635 Mr. Burrell - Yes sir, I understand. Okay. This project is an
636 encroachment of the neighborhood property at 19 and 23 with less than a 20-
637 foot-wide house regardless of how the house will set on the property, whether
638 they will have the door facing the street or the house is sitting on the side.
639 Bungalow City has been grandfathered at being 21 feet wide. Granting a
640 variance for this property will create a traffic concern, adding more traffic flow to
641 the neighborhood, and parking, as he indicated. With the setback off the street,
642 the lady can't get more than one car in her driveway. If she had neighbors or
643 whatnot, she'd have to park on the street. The street is 21 feet wide, so if an
644 emergency vehicle needs to come through, then it jeopardizes the community as
645 a whole.
646
647 The picture there is of 311 North Virginia Avenue, which was the property that
648 was approved by a variance. As you see on the left-hand side of the picture, that
649 is open space there and there's no encroachment. That's another one as well.
650 It's not an encroachment of neighboring properties. There's a house on the south
651 of that, but it's open area on the north of that 311 North Virginia Avenue, which
652 was approved. As you know, there is open space, as I indicated, and it does not
653 encroach on the neighbor's property.
654
655 This picture here shows that they're owned by Henrico County and being
656 developed by the school technical center. They have built six houses in
657 Bungalow City; this is the sixth one. The County could have clustered homes in
658 the said space where the old playground used to be, but chose to not ask for a
659 variance and build on the 65 feet required by the County.
660
661 That is a picture of where I live. It is on a corner lot and does not encroach on
662 5714 Nine Mile Road, my neighbor's home. This dwelling was built in 1998 with a
663 continuous improvement.
664
665 This project being built with a variance will limit the property owners by tying their
666 hands to future improvements to the property. As you indicated, there are 11 feet
667 on one side and 8-1/2 feet on the other. If the property owner wanted to improve
668 their rear of their property, it would be hard, really hard to improve their home
669 because of the difficulty of trying to get from the front of the property to the rear.
670 Therefore, the developer has created a negative effect on the community.
671

672 There is a petition that was circulated to the people on Evergreen Avenue
673 opposing the granting of this variance. As indicated, Bungalow City was plotted
674 in the post-war days, creating 821 25-foot lots.

675

676 Mr. Blankinship - That's post-World War 1.

677

678 Mr. Burrell - Post-World War 1, yes sir. Okay. And the need for
679 indoor plumbing called for a well and a septic tank, requiring three 25-foot lots.
680 In 1978, public water and sewer was put into play reducing the 75-foot-
681 requirement lots to a 65-foot building site. So it started off with 75 feet with a
682 water and septic tank. Then they relaxed the conditions in 1978 when we got
683 water and sewer in the neighborhood.

684

685 There are approximately 200 homes in Bungalow City now and we are at pretty
686 much 95% capacity. There is some shrink/swell soil in the community, so some
687 of the property cannot be developed.

688

689 This is 5 Virginia Avenue. An attempt was made to grant a building site there, but
690 the variance was denied.

691

692 This is, again, the third variance, which is creating a domino effect by these
693 developers. As I close, there is not a compelling reason why the variance should
694 be granted. This project at 21 Evergreen Avenue has no positive effect on the
695 character of Bungalow City. I know he indicated that there are some houses
696 built in 50-foot lots, but those are older homes. Since 1978, they've started
697 building on the 75-lots, amended down to 65-foot lots. Thank you.

698

699 Ms. Dwyer - Are there any questions for Mr. Burrell by Board
700 members? Thank you, sir.

701

702 Mr. Burrell - One other thing. This is just a picture of the street,
703 which is 21 feet wide. When I was talking about parking, if a neighbor were to
704 come to her house and she had a car in her driveway, another car would have to
705 park on the street. If an emergency vehicle comes, it would be hard to get by
706 because of that. Thank you.

707

708 Ms. Dwyer - Is there anyone else to speak to this case before we
709 close the case? If you have anything to say, please come forward. All right, no
710 one else to speak to the case. Mr. Baker, I did have one question. Certainly,
711 we'll give you an opportunity to rebut. I notice on the right elevation to the house
712 you have French doors planned for the house.

713

714 Mr. Baker - You're wondering about the first step.

715

716 Ms. Dwyer - Right. I wonder what your plans are for the side yard.

717

718 Mr. Baker - We're putting a stair there.
719
720 Ms. Dwyer - Putting stairs there. Mr. Blankinship, what limitations
721 are there for a deck, or stoop, or a stairway?
722
723 Mr. Blankinship - If it's not covered and it's at or below the level of the
724 main floor of the dwelling, they would be allowed to extend into the side yard, but
725 no closer than I believe it's five feet from the property line. They might have
726 room for it.
727
728 Ms. Dwyer - But no deck.
729
730 Mr. Blankinship - Right, no. Well, for much of a deck.
731
732 Ms. Dwyer - All right. Any other questions for Mr. Baker? Mr.
733 Baker, did you want to close or?
734
735 Mr. Baker - Yeah, I guess I'd like to talk about a couple of things.
736 We mentioned concern over overgrowth and weeds. Thank you for indicating
737 that he does not own the property, but I would note that the variance would solve
738 that issue. From a traffic concern standpoint, this has been reviewed by staff and
739 we have not heard any issues. It's obviously use and similar conditions to what's
740 in the neighborhood. Parking is proposed. As far as limited future improvements,
741 I think we discussed that. We feel comfortable that 11, 12 feet—11.9 feet is
742 significant, or enough to allow for improvements to the rear yard.
743
744 The petition that's been submitted. Again, we're talking about a quasi-judicial
745 board. We're talking about facts in evidence. It's not so much a political process.
746
747 With regards to sewage and shrink/swell, these things aren't really related to the
748 variance process. We've not heard any concerns from staff.
749
750 Finally, with 5 North Virginia, he mentioned that was denied. There was some
751 discussion. I've looked at this case. There was discussion of character and
752 detriment, but the ultimate motion was that it didn't meet good faith. There was
753 concern over the purchase of the property and knowing about the issue.
754
755 211 North Virginia and 221 Westover Avenue were both approved. Those both
756 had lot area in addition to width.
757
758 Again, interpretations, when we're talking about the Cochran case and the tests,
759 they need to be made based on plain, ordinary interpretation of the law rather
760 than opinions. The decision needs to be objective not subjective. Also, the
761 decision needs to be made based on evidence rather than personal feelings,
762 despite however sympathetic the Board may be to the opposition's concerns.
763 With substantial detriment, we're talking about the adjacent owners, not

764 detrimental to them. That's the rule with regard to the test. We provided ample
765 evidence the substantial detriment will not occur to the adjacent property. With
766 regards to the character, the test here is clear. The rule is not what are the most
767 predominant features of the district and the applicant has to be the exactly the
768 same as those predominant features. In Bungalow City, you can't only take the
769 larger lots into consideration and exclude the smaller lots as though they played
770 no part in the makeup of the district. That's clearly not the language of the test.
771 This is not a cookie-cutter situation where we're trying to slip in a single smaller
772 lot. The neighborhood character is diverse in terms of lot size, including 50-foot
773 lots. The applicant is not changing what already exists. The applicant has
774 provided evidence that the character and the makeup of the neighborhood or
775 district will not be changed.

776
777 Again, it's a non-recurring issue. We talked about the case law, which
778 establishes this is a zoning district issue not a County-wide concern. There is no
779 evidence that would suggest that the County would enact an ordinance that
780 would account for all the conceivable infill lot requests. They haven't done it in 50
781 years. No evidence has been provided today to demonstrate the possibility of
782 that. I think you're more likely me to show up with a full head of hair at the next
783 hearing that I attend than that happening in the near future. The Zoning
784 Ordinance specifically refers to the BZA in these cases to make a decision on
785 lots that do not meet the minimum exception lot width requirement.

786
787 We talked about the fact that there were four cases in 2002, there were only
788 four. That's evidence this is not consistently reoccurring. And, of course, that
789 there are only a handful of landlocked 50-foot vacant parcels without adjacent
790 owners makes this not a pervasive problem moving forward. You've already
791 blessed this action twice. Both cases had the same two variances—width and
792 area. There's only one in this case. The BZA needs to treat us in a similar
793 manner. We'd like to be treated in the same similar manner. We have the right to
794 be treated in the same or similar manner; we're in the same situation. It's equal
795 protection.

796
797 In summary, we have demonstrated without a doubt that absent a variance, this
798 would be a regulatory taking; that's not in question here. We have reasonable
799 expectation for the beneficial use of the property. The applicant's charge,
800 again—we talked about it—to meet the burden of proof, providing evidence
801 showing the three tests. We won't talk about the opponent burden of proof that
802 was debated earlier, but decisions do need to be made based on the evidence
803 that is provided rather than opinions. Something needs to be proven and it has
804 basis in fact. And again, this is not a political process. With the regulatory taking
805 the balance, denial has to be based on clear evidence to the contrary; it's not
806 opinion.

807
808 Ms. Dwyer - Thank you, Mr. Baker. I have one more question
809 about the letter in your submittal that indicates that you did inquire about

810 acquiring an extra 15 feet. So it is possible to do that, it's just the \$30,000 was
811 deemed to be excessive?

812

813 Mr. Baker - Yes. That would have put the cost of the lot out of the
814 market in terms of trying to construct something.

815

816 Ms. Dwyer - Any other questions? No one else to speak to the
817 case? The case is closed.

818

819 Is there a motion on the case?

820

821 DECISION

822

823 Mr. Nunnally - I move to deny it for the reason that I think it would be
824 detrimental to the neighborhood and also it would be out of character with the
825 other houses in that block. That's a complete street, really. That's my reason.

826

827 Ms. Dwyer - Is there a second? I'll second it. The motion for
828 denial has been made and seconded. Any discussion?

829

830 Mr. Witte - I personally think this borders on confiscation
831 because the property is landlocked.

832

833 Mr. Wright - And it was there prior to—it's been there all along. It
834 was not just created.

835

836 Mr. Witte - That's right.

837

838 Ms. Dwyer - My concerns are the same as they were for the prior
839 case [*See Lines 1110 to 1125 for Ms. Dwyer's reasoning in the prior case that*
840 *she is referencing*], with the addition that I think the exceptional circumstances,
841 you can't say that they don't apply to all the properties in the subdivision because
842 all the properties in the subdivision were divided into 25-foot lots, the vast
843 majority of which have been combined so that the lots do meet the code. Only
844 6% of the lots, apparently—and most of those were built prior to the 1960
845 zoning—are on 50-foot lots. Again, it's a situation of a recurring nature. The
846 legislature has made an exception for the substandard lots that were brought into
847 existence before the Zoning Ordinance. There's an exception that permits lots to
848 be 65 feet instead of 80. I believe the piecemeal granting of variances, if we
849 continue to grant them, will certainly impair [blank section on recording].

850

851 The other situation here is that there is the option to purchase the additional 15
852 feet; the applicant simply decided that that's not in his best business interest. But
853 that would be an option.

854

855 All right. Any more discussion? All in favor of the motion to deny the case say
856 aye. All opposed say no. The ayes have it; the motion passes.

857

858 Two to two. No decision on the case and Mr. Blankinship will research the
859 impact of that and what options are available to the applicant.

860

861 After an advertised public hearing and on a motion for denial by Mr. Nunnally
862 seconded by Ms. Dwyer, the Board **did not approve** application **A-006-09**,
863 Emerald Land Development's request for a variance from Section 24-95(b) to
864 build a one-family dwelling at 21 Evergreen Avenue (Bungalow City) (Parcel
865 817-727-6100), zoned R-3, One-family Residence District (Varina).

866

867 The vote for denial:

868

869 Affirmative:	Dwyer, Nunnally,	2
870 Negative:	Witte, Wright	2
871 Absent:	Harris	1

872

873

874 **A-015-09** **EMERALD LAND DEVELOPMENT** requests a
875 variance from Section 24-95(b) to build a one-family dwelling at 1003A N
876 Concord Avenue (Garden City (West)) (Parcel 784-756-7575), zoned R-3, One-
877 family Residence District (Fairfield). The lot width requirement is not met. The
878 applicant has 50 feet lot width where the Code requires 65 feet lot width. The
879 applicant requests a variance of 15 feet lot width.

880

881 Ms. Dwyer - Is there anyone here to speak to the case either
882 opposed or in favor of the case? No one here to speak to the case. All right.
883 Please raise your hand to be sworn, all those who may speak to the case.

884

885 Mr. Blankinship - He's still under oath so we can dispense with that.

886

887 Ms. Dwyer - All right.

888

889 Mr. Baker - Again, I'm Mark Baker, Baker Development
890 Resources. I'm here on behalf of Emerald Land Development. This is the second
891 property we'll be discussing today and it's 1003A North Concord Avenue. It's a
892 waiver of the lot width requirement. Again, 15 feet with the construction of a
893 single-family dwelling.

894

895 The exception standards are 8,000 square feet and 65 feet of lot width. The
896 area is met, the 15,700 square feet. The lot width is not; we have 50 instead of
897 65, so it's a 15-foot variance request. The adjacent homes at 1005 and 1003
898 were built in 1956 and 1937 respectfully. This request is to construct one single-
899 family dwelling. This is consistent with what would have been permitted by right
900 until 1960; consistent with what was likely anticipated at the time of the

901 construction of the two adjacent homes—which was prior to 1950—one of which
902 was built on a 50-foot lot; and given the adjacent 50-foot lot, this is consistent
903 with the intent of the 1926 re-subdivision that created the lots.

904
905 We did go on record last time and I want to do that again without having a full
906 discussion with regards to House Bill 2326 and that the Code change deletes the
907 phrase, "approaching confiscation." Under the new provision, the BZA need only
908 find that the variance will alleviate a clearly demonstrated hardship.

909
910 Getting back to the Cochran case and its evaluation criteria, the threshold
911 question as to whether the effect of the Zoning Ordinance upon the property
912 under consideration as it stands interfere with all reasonable beneficial use of the
913 property taken as a whole. Yes, the threshold language does apply. The
914 properties and the adjacent homes predate 1960, and taken as a whole, there's
915 no reasonable beneficial use of the property without the variance. The applicant
916 is the contract purchaser. There's no evidence of a self-created hardship related
917 to the property. The lot has existed in the same condition since 1956. And we
918 had talked about *Spence v. the Board of Zoning Appeals* which clarified good
919 faith and suggested that even if he had bought it with the knowledge of a
920 restriction on it, that wouldn't necessarily constitute bad faith.

921
922 With regard to the first test, is the property affected by exceptional narrowness,
923 shallowness, size or shape, topographic condition or other extraordinary
924 situation. In this case, we're again dealing with the fact that the property is
925 narrow. The condition, which is narrowness of the lot, has existed since 1956
926 when the construction of the adjacent houses was completed. As such, since
927 1960 when the regulations made the lots substandard, there's been no action
928 that the owner could have taken that could have alleviated the hardship. There's
929 no opportunity to acquire an additional lot on either side.

930
931 Looking at the second test. Again, this is two tests in one. We're dealing with
932 substantial detriment. This is very targeted to adjacents. We're dealing with
933 neighborhood character, which is more general. Looking at that in terms of
934 district, staff discusses the lot, size, and building materials in the report. While
935 they use the word *detriment*, we feel their comments speak more to the
936 neighborhood character, so we'll be addressing those comments accordingly.

937
938 We look at the first half of that second test, the substantial detriment. We note
939 that the rule applies to adjacent property only because the test language is
940 adjacent, not the entire district or neighborhood. Once the threshold question
941 has been met, the law places the burden of proof. While we said that, we don't
942 necessarily agree with that from the first case. At any rate, the bar is set high in
943 terms of having to establish that a substantial detriment would occur if this were
944 allowed to move forward. And this is evident by the use of substantial. We talked
945 about the definition of substantial; we talked about the definition of detriment. So
946 we're talking about a significant damage to adjacent properties. This is a test of

947 value; it's a quantitative test. The test does not use the wording, *mere detriment*,
948 so this isn't a feeling; it's not an inconvenience test. The question is if the
949 application is approved, will this approval cause significant damage to the
950 adjacent properties. The applicant contends the proposed home would be an
951 enhancement to the adjacent property. The new construction will add value in
952 the neighborhood in a neighborhood with older housing stock. Just as we did in
953 the previous case, we're showing property values. If you look at 1005 Concord
954 Avenue, which is to the east, they're assessed—I'm sorry, that's to the west.
955 They're assessed \$146,005. 1003, which is to the east, is assessed at
956 \$138,002. The average assessment on Concord Avenue is \$177,000. The
957 median assessment is \$170,250. The target price is \$192,000. The proposed
958 investment in a new single family will increase the values rather than being a
959 detriment. It's greater than the average and the median assessments. It's \$120 a
960 square foot. It compares favorably with the assessed values of the adjacents. I
961 will note that the highest value house on a price-per-square-foot basis on the
962 street is 1004, and that's at \$49 per square foot, and it has vinyl siding.

963
964 We also took all the brick and stucco houses on the street. We took all the vinyl
965 houses on the street. The average per-square-foot assessment of the brick and
966 stucco is \$108; the average per-square-foot assessment for the existing siding or
967 vinyl is \$110. Now, market price and the price per square foot are backed up by
968 a letter and comparative market analysis from the applicant's real estate broker.
969 Based on the evidence provided, this application is an economic benefit to the
970 adjacent properties.

971
972 When we look at the second part of that test, which is character—here are the
973 pictures. This is 1005 and 1003 North Concord, they're adjacent properties. I
974 think what we're going to show here is that adjacent properties are two-story
975 homes. There is diverse housing design in the neighborhood. Again, you see
976 1003 North Concord, which is actually on a 50-foot lot as well. Some more
977 examples of Garden City homes. Again, these are no longer dealing with two
978 stories; we now have a Cape and a ranch. You see the use of siding. At 907, we
979 have an existing house on a 50-foot lot. Here are two more homes. These are
980 both one story; one brick, one sided. There's diverse housing design with the
981 use of siding. And again 905 North Concord is on a 50-foot lot. Once again,
982 diverse housing design.

983
984 The vinyl siding is part of the character of the makeup of the neighborhood. We'll
985 not be changing anything there. There are two-story houses, Capes, and
986 ranches. The two adjacent houses are both two-story. The character of the
987 district consists of vinyl, stone, brick, and stucco. We'll not be changing the
988 makeup of the district since the makeup of the district already consists of these
989 features. The applicant is willing to commit to a brick foundation, as depicted on
990 the plans. They would be comfortable with that as a condition. They are not
991 comfortable with the proposed condition by staff which has suggested the entire

992 front of the building needs to be brick, as their opinion does not work in this
993 market, that they're priced where they need to be at.

994
995 Front yard setbacks are compatible. They're consistent with the adjacent
996 setbacks. The side yard setbacks for the proposed building area are compatible
997 with the neighborhood. Zoning perspective for the side yard requirement is met;
998 so we're not asking for that. We're certain that the required setbacks were
999 designed with compatible and proper spacing in mind. From a zoning
1000 perspective, we're not bunching up the houses. Again, there's a 50-foot lot
1001 adjacent to the property.

1002
1003 Okay. When we look at dwelling size, we're compatible there as well. We've
1004 proposed 1,400 to 1,800 square feet. 1003 to the east is 1,263 square feet. To
1005 the west at 1005 is 1,724 square feet. The overall average is 1,711 square feet.
1006 The range is 1,044 to 2,964. The proposed size at 1,400 to 1,800 square feet is
1007 consistent with the adjacents and it's consistent with the neighborhood.

1008
1009 I think most importantly the neighborhood or the district has had homes on 50-
1010 foot lots. Fifty-foot lots are embedded into the makeup and character of the
1011 district; they have been for a very long time. The adjacent home was constructed
1012 on a 50-foot lot, which is smaller in area. The character of the district, without
1013 question, includes homes on 50-foot lots. You cannot reasonably argue that
1014 homes on 50-foot lots play no part in the district character. The applicant is not
1015 asking for anything new. Again, we're not talking about a 25-foot, a 35, or 40.
1016 The applicant is not changing what already exists. The applicant has provided
1017 evidence that the character of the makeup of the neighborhood or district will not
1018 be changed. We move to the third test.

1019
1020 The condition or situation or the property concerned is not of so general or
1021 recurring a nature as to make reasonable and practical the formulation of a
1022 general regulation to be adopted as an amendment to the ordinance. Again, we
1023 talked about the fact that we have some case law related to this very test. We
1024 talked about *Prince William County Board of Zoning Appeals v. Spence* in 1981.
1025 Again, the test is that by virtue of approving variances we're going to be
1026 ultimately potentially nullifying a zoning restriction throughout a zoning district.
1027 We discussed three additional cases that state that the test applies to the zoning
1028 district or this very same vicinity. So we're talking about his R-3 zoning district in
1029 this vicinity. These cases make it clear that it's a district not County-wide. The
1030 test is whether or not the piecemeal granting of a variance in the Garden City R-
1031 3 district would nullify the R-3 district regs. Again, that's a significant test to show
1032 that we would be doing that by approving this variance.

1033
1034 Okay. There's no evidence to support that the approval of this request would
1035 nullify the current R-3 zoning district or its lot width standard according to the
1036 case law. It's an R-3; R-3 setbacks are met; the lot area is met. And again, we
1037 talked about the fact that you simply can't legislatively address all the

1038 conceivable instances that could come up, particularly in these older
1039 neighborhoods with smaller lots. We talked about the existing regulations, the
1040 exception standards, that they actually anticipate these types of requests for
1041 existing older lots. They specifically refer to the BZA to make the decision on
1042 lots that do not meet the minimum lot width requirement. Basically, you could
1043 argue that it's already been legislated, it's already been outlined by the Board of
1044 Supervisors that the Board is the appropriate place for this discussion to take
1045 place.

1046
1047 Because these requests are infrequent and they cannot be addressed through
1048 legislation, the R-3 district regulations are nullified through the provision of relief
1049 in this unique case. The BZA making a decision on a case-by-case basis
1050 according to the merits of each case is consistent with existing regulations and
1051 legislation as we see it. Furthermore, staff notes the subject block is built out
1052 with the exception of this parcel and two others to the east. The two others to
1053 the east are under the same ownership; they are 50-foot-wide lots. But they are
1054 under the same ownership and they would not be subject to the same type of
1055 request; we're dealing with a landlocked parcel. This cannot be a recurring
1056 event, as this is the only landlocked lot that would be subject to a variance in the
1057 Garden City R-3 district, as we saw it. So there's definitely no evidence to
1058 suggest a general regulation might be appropriate based upon the law.

1059
1060 Finally in summary, we're sensitive to the concerns of the community members
1061 and Board. We've amended the request to extent possible in order to address
1062 the concerns that we had heard from staff prior to the previous meeting. We've
1063 demonstrated without a doubt that absent a variance this would be a regulatory
1064 taking; that's not in question. The owner has reasonable expectation for the
1065 beneficial use of the property. The applicant has met their burden of proof with
1066 the evidence presented for all three tests. This is not a political process; this is a
1067 quasi-judicial body. With the regulatory taking in the balance, any denial has to
1068 be based on clear evidence to the contrary, not opinion, despite however
1069 sympathetic the Board may be to opposition and concerns.

1070
1071 That's essentially it. I'll take any questions at this time.

1072
1073 Ms. Dwyer - Questions of Mr. Baker by Board members.

1074
1075 Mr. Wright - This lot was of record prior to 1960.

1076
1077 Mr. Baker - Yes sir.

1078
1079 Ms. Dwyer - Questions?

1080
1081 **DECISION**

1082
1083 Ms. Dwyer - Do I hear a motion on the case?

1084
1085 Mr. Wright - I move we approve this application for a variance on
1086 the grounds that this lot was in existence prior to the adoption of the Code in
1087 1960, and without the variance, there would be no reasonable beneficial use of
1088 the property. I think it would produce an undue hardship relating to the property.
1089
1090 Mr. Witte - I'll second that.
1091
1092 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Witte. Any
1093 discussion.
1094
1095 Mr. Witte - Yes.
1096
1097 Mr. Wright - One thing I would add. I agree with the staff. I think
1098 based on the information or the evidence, the other houses in the area are
1099 different, stucco or brick, and the staff recommends that we have a brick front on
1100 the property, which I think is in the condition. My motion would include the
1101 conditions as they are.
1102
1103 Ms. Dwyer - Mr. Witte, did you have some comments to make?
1104
1105 Mr. Witte - Yes. It appears to me that this is the only possible lot
1106 that this will apply to in the three-block area there, so I think it's very isolated. I
1107 agree that the front elevation should be brick because of the proximity to the
1108 brick homes right next door.
1109
1110 Ms. Dwyer - My concern on this case is the detriment of permitting
1111 a 50-foot lot in a neighborhood with potentially wider lots. I believe that it would
1112 be a detriment to the adjacent properties. I also have a concern that this is a
1113 recurring issue that can be subject to a formulation of a regulation or a law to
1114 address. I think the legislature has addressed it for these substandard lots that
1115 were in existence at the time of the 1960 ordinance. They have provided an
1116 exception, that is rather than requiring the lots to be 80 feet, they have
1117 diminished the requirement to 65 feet. I don't think it's required that this Board
1118 approve every substandard lot that comes before us because to do otherwise
1119 would deprive a person of the ability to build on it. I think we do have some
1120 standards put in place and I think the 65-foot accommodation for the lot width in
1121 this case addresses that particular issue. I also have a concern that the
1122 continued permission granted by this Board to develop and build on 50-foot
1123 lots—and there are two other 50-foot lots in this neighborhood—would be
1124 detrimental to the character of the zoning district. Those are my concerns on
1125 this.
1126
1127 Mr. Wright - The lot next door is 50 feet.
1128
1129 Ms. Dwyer - And was built upon prior to 1960.

1130
1131 Mr. Wright - They have certain property rights that should be
1132 upheld.
1133
1134 Ms. Dwyer - All right, any more discussion? We have a motion by
1135 Mr. Wright, seconded by Mr. Witte. All in favor say aye. All opposed say no.
1136
1137 So, the vote of 2 to 2 is a denial of the case. Is that correct, Mr. Blankinship?
1138
1139 Mr. Blankinship - Yes ma'am. No action has been taken. I suppose
1140 normally what we would do is have a second motion to deny, and that motion
1141 would be voted on. But if it is 2 to 2...
1142 Ms. Dwyer - Correct.
1143
1144 Mr. Blankinship - It's certainly not been approved.
1145
1146 Mr. Wright - In that case, they could carry it over?
1147
1148 Mr. Blankinship - I'll have to do some research.
1149
1150 Ms. Dwyer - You have to require some counsel with the County
1151 Attorney.
1152
1153 Mr. Blankinship - I'll have to do some research. We have a record of
1154 what happened. There was a motion to approve and it was defeated.
1155
1156 After an advertised public hearing and on a motion for approval by Mr. Wright
1157 seconded by Mr. Witte, **the Board did not approve** application **A-015-09,**
1158 **Emerald Land Development's** request for a variance from Section 24-95(b) to
1159 build a one-family dwelling at 1003A N Concord Avenue (Garden City (West))
1160 (Parcel 784-756-7575), zoned R-3, One-family Residence District (Fairfield).
1161
1162 The vote for approval:
1163
1164 Affirmative: Witte, Wright 2
1165 Negative: Dwyer, Nunnally 2
1166 Absent: Harris 1
1167
1168
1169 **A-016-09** **MELODY JOHNATHAN** requests a variance from
1170 Section 24-9 to build a one-family dwelling at 7912 Battlefield Park Road (Parcel
1171 807-689-5929), zoned A-1, Agricultural District (Varina). The public street
1172 frontage requirement is not met. The applicant has 0 feet public street frontage
1173 where the Code requires 50 feet public street frontage. The applicant requests a
1174 variance of 50 feet public street frontage.
1175

1176 Ms. Johnathan - Good morning, my name is Melody Johnathan.
1177
1178 Ms. Dwyer - Good morning. If you could just hold on just a
1179 minute. Is there anyone else to speak to the case? Anyone else here to speak
1180 to case A-016-09? Please raise your hand to be sworn.
1181
1182 Mr. Blankinship - Raise your right hand, please. Do you swear the
1183 testimony you're about to give is the truth and nothing but the truth so help you
1184 God?
1185
1186 Ms. Johnathan - Yes sir.
1187
1188 Ms. Dwyer - Thank you. Now please state your name and your
1189 case.
1190
1191 Ms. Johnathan - Melody Johnathan. My last name is spelled J-o-h-n-a-
1192 t-h-a-n. I'm here today requesting a variance to build a one-family dwelling. I
1193 don't have road frontage, 50 feet public road frontage. I would like to build
1194 behind my brother, Donald Johnathan. I'm hoping I will be able to meet the
1195 requirement.
1196
1197 Ms. Dwyer - This is a family subdivision?
1198
1199 Ms. Johnathan - It's not a subdivision.
1200
1201 Ms. Dwyer - It's a family division of property.
1202
1203 Ms. Johnathan - Yes ma'am.
1204
1205 Ms. Dwyer - I see from the record that this is a portion of Lot 5.
1206 What is intended for the rest of Lot 5? Why was a portion carved out of an
1207 existing lot?
1208
1209 Ms. Johnathan - Do you want to answer it?
1210
1211 Ms. Dwyer - State your name please.
1212
1213 Mr. Johnathan - Donald Johnathan.
1214
1215 Ms. Dwyer - Okay.
1216
1217 Mr. Johnathan - When she came to me and asked me for a piece of
1218 property and she stated she only needed an acre or two to build on, that's what I
1219 gave her, an acre to build on.
1220

1221 Ms. Dwyer - What is your intent for the remainder of Lot 5?
1222 Carving this rectangular section out does leave a rather awkward remainder.
1223
1224 Mr. Johnathan - I own the property on both sides of her. I'm just going
1225 to keep it. If she wasn't my sibling, she probably wouldn't be building there.
1226
1227 Mr. Nunnally - In other words, you have no plan of building a house
1228 of that Lot 5.
1229
1230 Mr. Johnathan - Had I?
1231
1232 Mr. Nunnally - You're not planning to build a house on it.
1233
1234 Mr. Johnathan - No sir.
1235
1236 Ms. Dwyer - It does create an awkward lot with the remaining
1237 portion of Lot 5, so I do have a concern about that, about what use this property
1238 might be put to. Do you see how it appears on the screen?
1239
1240 Mr. Johnathan - It's a parcel, right?
1241
1242 Ms. Dwyer - Right.
1243
1244 Mr. Johnathan - What is that, two acres?
1245
1246 Mr. Blankinship - It's about 2.3 acres, I believe.
1247
1248 Ms. Dwyer - Lot 5?
1249
1250 Mr. Johnathan - Do you have a sketch of where my house is? I'm
1251 7922.
1252
1253 Mr. Blankinship - Point to his house, Paul. Right there. Her parcel is
1254 outlined in yellow here.
1255
1256 Mr. Johnathan - The rest of her parcel would be on the right or the left
1257 of that?
1258
1259 Mr. Blankinship - That skinny little portion to the left and then along the
1260 bottom.
1261
1262 Mr. Johnathan - So it would be the property behind my house, right?
1263
1264 Mr. Blankinship - Yes.
1265

1266 Mr. Johnathan - Right now, I farm and all. I have my farm equipment,
1267 my tractors and stuff back there. That's something I just won't use for my
1268 doings. I wouldn't want a house or anything right behind me.
1269
1270 Ms. Dwyer - All right. Any other questions by Board members?
1271 Tell me about access to this lot, how you plan to access it?
1272
1273 Ms. Johnathan - There's an existing road. Yes. That road is existing
1274 and has been used many times. Maybe not lately, but it is existing.
1275
1276 Ms. Dwyer - What is the width of the easement for this road, do
1277 you know?
1278
1279 Ms. Johnathan - The width?
1280
1281 Mr. Blankinship - The old plat refers to a 10-foot road, but it doesn't
1282 actually—it says *per plat*. I'm not sure whether that's a recorded easement or
1283 not. Have you spoken to the Park Service about getting permission?
1284
1285 Ms. Johnathan - Yes I have. I got permission; I have a letter.
1286
1287 Mr. Nunnally - You have a letter for access to the property?
1288
1289 Ms. Dwyer - Is the access road on Donald Johnathan's property?
1290
1291 Ms. Johnathan - Yes.
1292
1293 Ms. Dwyer - All of it?
1294
1295 Mr. Wright - Have you read the conditions that have been
1296 proposed for this case?
1297
1298 Ms. Johnathan - Yes.
1299
1300 Mr. Wright - You have? You've read them?
1301
1302 Ms. Johnathan - Yes. The letter that you all sent me?
1303
1304 Mr. Wright - There are six conditions proposed by the staff, if this
1305 is approved, that you have to comply with. I want to make sure that you've read
1306 those and understand them.
1307
1308 Ms. Johnathan - Yes.
1309

1310 Ms. Dwyer - Mr. Blankinship, I believe we had some input from
1311 Public Works about these access roads. Was it a minimum of 20 feet that Public
1312 Works—

1313

1314 Mr. Blankinship - Fire likes to have a 20-foot road. (If you could get a
1315 copy of that, that would be great.) Fire requires a 20-foot-wide access—12 feet
1316 of surface and 3 feet of clearance on each side. It's between 18 and 20. I'm
1317 sorry; I don't remember the exact details. It might be a challenge for Fire to get
1318 their apparatus back to this house.

1319

1320 Ms. Dwyer - Because there is other property back there, I have a
1321 concern with just a 10-foot access road for fire and emergency vehicles to get
1322 access to his house and other houses that may eventually be there. Would it be
1323 possible to dedicate a 20-foot right-of-way to your house? Maybe Mr. Johnathan
1324 could speak to that.

1325

1326 Mr. Johnathan - I don't have a problem with that. It would be up to her
1327 to have it cleared off or whatever.

1328

1329 Ms. Dwyer - Right. But we could require in the conditions, then,
1330 that a 20-foot right-of-way be provided to give access to this property.

1331

1332 Mr. Johnathan - Okay.

1333

1334 Mr. Wright - I don't think that means the road has to be 20 feet.

1335

1336 Mr. Blankinship - Right, just the—

1337

1338 Ms. Dwyer - It doesn't mean it has to be paved, but the property
1339 has to be granted in some form, an easement. The property would be reserved,
1340 at least 20-foot wide swath to give you access. That would be an amendment to
1341 Condition 5. All right. Any other questions for this applicant? Anyone to speak to
1342 the case? The case is closed. Thank you, ma'am.

1343

1344 **DECISION**

1345

1346 Mr. Wright - I move we approve the case on the grounds that
1347 without the variance, the property would have no use, no reasonable, beneficial
1348 use. Also, without the variance, I think it would be depriving the owners of the
1349 use of the property. I think it would produce a hardship relating to the property.

1350

1351 Mr. Witte - I'll second that.

1352

1353 Ms. Dwyer - Any discussion? I have a concern that this is a
1354 newly-created lot.

1355

1356 Mr. Wright - I believe we did say that we would want to amend the
1357 condition to provide for a 20-foot access road, which I would be agreeable to.

1358
1359 Ms. Dwyer - That would be condition—

1360
1361 Mr. Blankinship - Five.

1362
1363 Mr. Witte - Yes, #5, 20-foot right-of-way.

1364
1365 Ms. Dwyer - So Condition #5 would require, then, a 20-foot right-
1366 of-way providing access to the property.

1367
1368 Mr. Wright - The applicant agreed to that.

1369
1370 Ms. Dwyer - And this is a family subdivision.

1371
1372 Mr. Wright - Right.

1373
1374 Ms. Dwyer - All right. Any further discussion? Motion by Mr.
1375 Wright, seconded by Mr. Witte. All in favor say aye. All opposed say no. The
1376 ayes have it; the motion passes.

1377
1378 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1379 Mr. Witte, the Board **approved** application **A-016-09, Melody Johnathan's**
1380 request for a variance from Section 24-9 to build a one-family dwelling at 7912
1381 Battlefield Park Road (Parcel 807-689-5929), zoned A-1, Agricultural District
1382 (Varina). The public street frontage requirement is not met. The Board approved
1383 the variance subject to the following conditions:

1384
1385 1. This variance applies only to the public street frontage requirement for one
1386 dwelling only. All other applicable regulations of the County Code shall remain in
1387 force.

1388
1389 2. Approval of this request does not imply that a building permit will be issued.
1390 Building permit approval is contingent on Health Department requirements,
1391 including, but not limited to, soil evaluation for a septic drainfield and reserve
1392 area, and approval of a well location.

1393
1394 3. At the time of building permit application, the applicant shall submit the
1395 necessary information to the Department of Public Works to ensure compliance
1396 with the requirements of the Chesapeake Bay Preservation Act and the code
1397 requirements for water quality standards.

1398
1399 4. At the time of building permit application, the owner shall demonstrate that
1400 the parcel created by this division has been conveyed to members of the
1401 immediate family, and the subdivision ordinance has not been circumvented.

1402 Ownership of the parcel shall remain in the immediate family for a minimum of
1403 five years.

1404
1405 5. [AMENDED] At the time of building permit application, the applicant shall
1406 present proof that she has obtained a legal access to the property at least 20
1407 feet wide. The owners of the property, and their heirs or assigns, shall accept
1408 responsibility for maintaining access to the property until such a time as the
1409 access is improved to County standards and accepted into the County road
1410 system for maintenance.

1411
1412 6. At the time of building permit application, the applicant shall present proof that
1413 access to the property has been approved by the National Park Service.

1414
1415
1416 Affirmative: Dwyer, Nunnally, Witte, Wright 4
1417 Negative: 0
1418 Absent: Harris 1

1419
1420
1421 I think we'll take a 10-minute break.

1422
1423 BOARD RECESSES FOR TEN MINUTES

1424
1425 Ms. Dwyer - The Board is back in session. Mr. Blankinship,
1426 please call the next case.

1427
1428 **UP-020-09 EDWARD AND LAURA VALENTINE** request a
1429 conditional use permit pursuant to Section 24-95(i)(4) to allow a pool house and
1430 a detached garage at 14 Kanawha Road (Chatham Hills) (Parcels 764-731-3702
1431 (part) and 764-730-1782 (part)), zoned R-1, One-family Residence District
1432 (Tuckahoe).

1433
1434 Ms. Dwyer - Is there anyone here to speak to this case, other than
1435 the applicant? If you're here to speak to the case, please stand, raise your hand,
1436 and be sworn.

1437
1438 Mr. Blankinship - Do you swear the testimony you're about to give is
1439 the truth and nothing but the truth so help you God?

1440
1441 Ms. Dwyer - Will the applicant please come forward and state your
1442 name.

1443
1444 Mr. Franko - Good morning. Mark Franko—F-r-a-n-k-o—the
1445 applicant and the contractor for the project. With respect to the report that you
1446 have before you, I really have no big comments on it nor take any big exceptions
1447 to it other than a couple of fine points. One is you do see on the plat before you

1448 a seemingly unusual location for the house and orientation. When you add the
1449 topography for the land, however, it makes a lot more sense why the original
1450 house was sited as it is and why the improvements want to go where they are. I
1451 just wanted to somewhat emphasize that not only in terms of the topography, but
1452 also in terms of the mature trees that currently surround it.

1453
1454 With respect to the suggested conditions, the one thing that we would request is
1455 when it comes to the exact location of the pool house, we feel like we have it
1456 pretty well nailed down. We would look to have a little bit of latitude to adjust
1457 that. The plans, while they are in a high schematic form at this point in time, as
1458 designers want to do, sometimes it may want to adjust a little bit just based on
1459 once we're standing out there and actually looking at the specific location. Along
1460 those lines, we're not talking about anything significant. Currently, we have about
1461 158 feet from the house and close to 140 feet from the road. I couldn't currently
1462 see any situation where we would get closer than 125 feet to the house or 125
1463 feet from the road. So those are the kind of distances which are, as you well
1464 know, that far exceed any of the setback requirements either from property lines
1465 or from existing dwellings.

1466
1467 Ms. Dwyer - Do you have a suggested amendment to the
1468 conditions as proposed?

1469
1470 Mr. Franko - The suggested amendment would be, if it is
1471 amenable to you, to say when it comes to any substantial changes to the design
1472 or location—it's really the location—where we could perhaps say with respect to
1473 location that it be no closer than 125 feet to the existing dwelling and no closer
1474 than 125 feet from the front lot line.

1475
1476 Ms. Dwyer - All right, thank you.

1477
1478 Mr. Franko - Any questions from there?

1479
1480 Ms. Dwyer - Is that your presentation?

1481
1482 Mr. Franko - That's really all I have, yes ma'am.

1483
1484 Mr. Wright - For the record, can you have him just make a
1485 statement of what he's requesting?

1486
1487 Mr. Franko - Oh, I'm sorry. I apologize. I was relying a little bit too
1488 much on staff's report. Basically what we're looking to do is two things, the ability
1489 to build this pool house in the location that's shown. And because of the unusual
1490 lot configuration, what is apparently an area behind the house is technically a
1491 side yard the way these things are determined. You can see the one corner of
1492 the pool house goes into again what's technically the side yard. It's out of the

1493 rear yard and into the side yard. By the regulations, one can, by right, build
1494 these structures in the rear yard, and by special use, we can go beyond that.

1495

1496 The other thing we're trying to do—and I didn't address this at all—is there's an
1497 existing garage there that was there when the Valentine's purchased the
1498 property. It was properly permitted when it was built, but relatively recently built.
1499 It, too, by the ordinance, is in the side yard and not in the rear yard where it's
1500 supposed to be. What we want to do is also clean up this existing condition and
1501 have it properly noted in the use permit for it also.

1502

1503 Mr. Wright - But you're not going to change anything on the
1504 garage, you just want to have approval where it is located.

1505

1506 Mr. Franko - Yes sir.

1507

1508 Ms. Dwyer - The picture that's on the screen I think illustrates what
1509 you were talking about when you mentioned the topography dictating the location
1510 of the house and the garage.

1511

1512 Mr. Franko - Yes ma'am. That's a pretty good ravine that you're
1513 starting to see over there on the side in that area there.

1514

1515 Mr. Witte - I notice there's a floodplain, a flood hazard area. Are
1516 we in danger of encroaching on that?

1517

1518 Mr. Franko - No, we're not, but I'll defer to the civil engineer.

1519

1520 Ms. Shirley - Hello, my name is Claire Shirley and I'm the civil
1521 engineer for the project. The flood plain is well below the elevation of the pool
1522 and pool house. The topography falls way off once you come around the corner
1523 of where we're proposing the development. So the floodplain is much lower on
1524 the property.

1525

1526 Mr. Witte - Distance wise, do you have an estimate?

1527

1528 Ms. Shirley - Distance wise probably 200 feet.

1529

1530 Mr. Witte - Okay. Thank you. This is a total of almost 4-1/2
1531 acres?

1532

1533 Mr. Franko - That's correct.

1534

1535 Ms. Dwyer - You mentioned the forested area between the pool
1536 house and the road way, and I notice you also have some landscaping planned
1537 around the pool. Could you just speak to that?

1538

1539 Mr. Franko - Certainly. Again, not only is there a swath of mature,
1540 primarily hardwood trees between the area to be developed and the road, but in
1541 addition to that, there will be considerable landscape plantings that are more of
1542 an evergreen type nature, be they Magnolia, or true evergreen, or shrubs, so that
1543 the buffer will be enhanced between the road and the improvements.
1544

1545 Ms. Dwyer - Even though the pool does encroach somewhat onto
1546 the technical side yard, it will be screened?
1547

1548 Mr. Franko - It shall, yes.
1549

1550 Ms. Dwyer - By evergreens. Any other questions by Board
1551 members? Are there additional comments that want to be made or anyone else
1552 to speak to the case? Any other questions? Thank you, sir.
1553

1554 **DECISION**
1555

1556 Ms. Dwyer - I'll make a motion on this case since it's in the
1557 Tuckahoe District. I move that we approve this request for a conditional use
1558 permit for the garage, the pool house, and the pool. The plans are quite
1559 detailed. There is substantial distance between the pool and Kanawha Road. In
1560 addition to that, there is tree cover and planned landscaping around the pool
1561 area. The existing garage, while it is technically not in the rear yard, it is
1562 appropriately placed given the topography, given the size of the lot, and given
1563 the unusual shape of the lot.
1564

1565 Mr. Wright - What about the amendment to the condition?
1566

1567 Ms. Dwyer - Right. There is an amendment to the condition that
1568 we're going to make. Let's talk about that for a little bit. It says only
1569 improvements shown on the plot plan filed with the application maybe
1570 constructed, except that the pool house and pool may be—
1571

1572 Mr. Wright - No less than 125 feet from the house and 125 feet
1573 from the road.
1574

1575 Ms. Dwyer - From the road?
1576

1577 Mr. Witte - Right.
1578

1579 Mr. Wright - That's what he said.
1580

1581 Ms. Dwyer - No closer than 125 feet to the road or to the house.
1582 Is that sufficient?
1583

1584 Mr. Wright - I'll second that.

1585
1586
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1629

Ms. Dwyer - Is that sufficient, Mr. Blankinship?

Mr. Blankinship - Yes ma'am.

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

After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr. Wright, the Board **approved** application **UP-020-09, Edward and Laura Valentine's** request for a conditional use permit pursuant to Section 24-95(i)(4) to allow a pool house and a detached garage at 14 Kanawha Road (Chatham Hills) (Parcels 764-731-3702 (part) and 764-730-1782 (part)), zoned R-1, One-family Residence District (Tuckahoe). The Board approved the conditional use permit subject to the following conditions:

1. This use permit applies only to the location of the existing garage in the side yard and the location of the proposed pool house partially within the side yard. All other applicable regulations of the County Code shall remain in force.

2. [AMENDED] Only the improvements shown on the plot plan filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. The pool house shall be at least 125 feet from the right-of-way of Kanawha Road, and at least 125 feet from the dwelling. Any substantial changes or additions to the design or location of the improvements may require a new use permit.

3. The new construction shall match the existing dwelling as nearly as practical in materials and color.

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

Affirmative:	Dwyer, Nunnally, Witte, Wright	4
Negative:		0
Absent:	Harris	1

1630 UP-021-09 RICHMOND RUGBY FOUNDATION requests a
1631 conditional use permit pursuant to Sections 24-52(a) and 24-12(b) to build a
1632 picnic shelter and restrooms at 514 Whiteside Road (Parcel 833-710-5988),
1633 zoned A-1, Agricultural District (Varina).
1634

1635 Ms. Dwyer - Is there anyone here to speak to this case, Richmond
1636 Rugby? Anyone else to speak to the case? You're here to speak to the case,
1637 sir?

1638
1639 Male - [Off microphone.] No ma'am I'm [inaudible].
1640

1641 Ms. Dwyer - Okay. You may want to comment on the case, in
1642 other words. Possibly. All right. All those who might want to speak to the case,
1643 please stand and raise your hand to be sworn. Sir, if there's a possibility that you
1644 might want to speak, please stand and be sworn.
1645

1646 Mr. Blankinship - Raise your right hand. Do you swear the testimony
1647 you're about to give is the truth and nothing but the truth so help you God?
1648

1649 Ms. Dwyer - Good morning. Please state your name.
1650

1651 Mr. Sweet - Good morning. I'm Pete Sweet. I'm the current
1652 chairman of the Richmond Rugby Foundation.
1653

1654 Ms. Dwyer - All right, please state your case.
1655

1656 Mr. Sweet - We've made an application to add to the original
1657 application, to add picnic shelters and restrooms. I think you have all the
1658 information in front of you. I just have a couple of clarifications I'd like to make to
1659 the staff report. I guess we were confused in the application, but I had also
1660 asked to clarify the event, the number of participants per event, and to try to
1661 clear it up and put maybe a cap on the parking out there. The reason is so that at
1662 some future point we can't abuse the neighborhood.
1663

1664 The parking lot, I went out there during a game this year and counted 150 cars
1665 parked out there, estimated. And if you look at the size of the parking area,
1666 which is about 300 feet by 400 feet roughly, it supports the additional parking.
1667 But we had a cap. In our original meeting, we came up with a cap per event of 60
1668 participants, which you all had asked me how many participants and I answered
1669 60 based on what we were doing at that time. And that's true, but an event could
1670 be any number of things—a game is an event, a tournament is an event, a
1671 practice is an event. And we could have an event followed by another event
1672 followed by another event. Like in any game, you have the people in the
1673 previous game who are parked and the people in the next game park, so you
1674 have an overlap of parking. There's still only 60 people per event, but the
1675 parking comes into question. So I just wanted to point that out and see if maybe

1676 we didn't want to clear it up, because at some point in the future, I don't want the
1677 Board to come back to me and say, wait a minute, you have cars parked all over
1678 the road or you have several hundred cars out there. It's just a way of suggesting
1679 how to clear this up before it happens. So far, they've had no problem out there.
1680 I think we go there on a Saturday and play, and nobody even knows we're there.
1681 The neighbor's right here and he can attest to that. So I just wanted to clear that
1682 up, if you all want anymore clarification. We'll leave it at 60, but it's always going
1683 to be greater in my mind.

1684

1685 Mr. Wright - Have you seen the conditions proposed? Have you
1686 read these conditions?

1687

1688 Mr. Sweet - I have and they help a lot, especially the part with the
1689 recommendation from the police, because that's what we're trying to—

1690

1691 Mr. Wright - It's not in the current conditions. It has the number of
1692 vehicles.

1693

1694 Mr. Blankinship - Right, that's the previous condition that had the
1695 number of persons.

1696

1697 Mr. Wright - But that would be changed. If this is approved, I take
1698 it these conditions would be the ones that would be enforced and we don't
1699 mention 60 persons in here, we talk about 130 vehicles.

1700

1701 Mr. Blankinship - A limit of 60 persons is in their current use permit

1702

1703 Mr. Wright - Yes, but that would be out.

1704

1705 Mr. Blankinship - Right, yes.

1706

1707 Mr. Wright - Do you see what I'm saying?

1708

1709 Mr. Sweet - I do. I could be digging us in a hole I don't want to dig.
1710 If we're required to all of a sudden pave a parking lot to house 130 vehicles, I
1711 don't know why that would be necessary because it'll hold 130 cars easy at this
1712 time. The math will tell you that, and I've seen it, and there's no problem with
1713 that. But if somebody were to say, "Well, you can have 130 cars, but you have to
1714 pave this parking lot," well, we couldn't do it. We don't have the money to pave a
1715 parking lot.

1716

1717 Mr. Wright - That's why I wanted you to address these conditions.
1718 If we approve it with these conditions, that could put you out of business.

1719

1720 Mr. Sweet - Right, I agree.

1721

1722 Mr. Wright - We need to talk about it. First, just give us a brief
1723 description of what you are requesting because there's a lot up in the air in all of
1724 this material that we've got here. What are you asking this Board to approve
1725 today?
1726

1727 Mr. Sweet - A picnic shelter with restrooms.
1728

1729 Mr. Wright - A picnic shelter with restrooms. What size picnic
1730 shelter?
1731

1732 Mr. Sweet - Approximately 26 by 38. Approximately. It's going to
1733 fluctuate four feet or so either way.
1734

1735 Mr. Wright - With restrooms you'd have to put in sewage, a septic
1736 tank.
1737

1738 Mr. Sweet - I have approval from the State Health Department
1739 through the County for a septic system.
1740

1741 Mr. Wright - And also you would want to put a well in.
1742

1743 Mr. Sweet - And we'd have to put a well in to support that.
1744

1745 Mr. Wright - So that's all you're asking for. And to change it from
1746 60 persons to 130 vehicles would accommodate your needs.
1747

1748 Mr. Sweet - In addition to our restrooms, the support facilities with
1749 it, which would be security lighting and minimal parking lot lighting, that sort of
1750 thing.
1751

1752 Mr. Wright - Security lighting, yes.
1753

1754 Mr. Sweet - Yes sir. Again, we're flexible. We already have
1755 permission for 60 participants and we'll leave it like that if it puts a burden on us.
1756 We're just suggesting that it would help the County and this Board govern us if
1757 we had a limit on cars instead of a limit on participants.
1758

1759 Mr. Wright - That's what these conditions do. There's no 60-
1760 person deal here. These conditions say 130 vehicles. Now, if you're
1761 comfortable with these conditions, what you say, then that's what we have before
1762 us. I think you need to address the details of this requirement.
1763

1764 Ms. Dwyer - Have you had conversations with the County about
1765 what would be required if this were passed for 130 vehicles?
1766

1767 Mr. Sweet - I have not.

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Ms. Dwyer - I'm not clear as to if this is approved whether you'd be obligated to pave the parking lot or whether that would be optional depending on the intensity of the use.

Mr. Wright - I'm looking at #5. Two designated onsite parking areas (player and visitor parking) shall comply with Section 24-98. When you start throwing that stuff in there, you're in trouble. I mean, you have to check it out. The Parking Lot Regulations of the Henrico County Code, which may include that the parking area be paved.

Mr. Sweet - That's what I'm hoping maybe Mr. Blankinship could help us with. But what I caught that you just said is *which may include*. If it definitely does include it, we can't do it.

Mr. Wright - It doesn't say it *does* include, it says *may* include. But they could come back later and say you have to do it. If we approve this and you didn't do it, you would be in violation of this permit.

Mr. Blankinship - Maybe I can address this, Madam Chairman. The County Code requires that these regulations apply to all parking lots for more than six vehicles. All public parking lots and all other parking lots within 200 feet of any R district shall be paved. They are not within 200 feet of an R district, so the question is whether this is a public parking lot or a private parking lot. When the club first approached the BZA several years ago, they had a piece of land out there that had never been improved and they had a club that was meeting on County Rec and Park sites. They were asking permission to come here and hold practices a few days a week. It was pretty clear that at that point it was a private parking area. There was no need to have it paved. That was their starting point. But it was also understood from the beginning that the club had plans to improve the property, and to grow and develop, and that more and more activity would take place on this site. I think we made it clear to the club from the very beginning that there would come a day when they had improved the property to the point and had so much activity on the property that it was time to make some other improvements, including paved parking.

So I think the question before the Board this morning—one of several questions—is has this reached the point where this is now a public parking lot, where there are so many people coming to this site on whatever days they have the most people there, that there's really a need for it to be paved to prevent tracking out onto the road, or dust, or noise, or all the other issues that come from having unpaved parking. We worded the condition a little bit ambiguously intentionally because we feel like that's a question that the Board needs to address.

1813 Mr. Sweet - Could I ask you a question, Mr. Blankinship? Is there
1814 a point that we could leave that parking lot as-is unless it indicates otherwise?
1815

1816 Mr. Blankinship - I think the Board needs to make that decision. I think
1817 raising the level of activity from no more than 60 participants at any time to 130
1818 vehicles at a time is a substantial change in the intensity of the site. I think they
1819 need to make that call. I don't think I can make that decision.
1820

1821 Mr. Sweet - Mr. Wright, that's why I brought it up because it's not
1822 a substantial change. We could have an event and then an event and then an
1823 event and we'd be in compliance. As we are, we're in compliance with any
1824 number of events per day. If we put a ceiling on the number of cars, that would
1825 stop that, there would be no more gray area in that regard. We could still be in
1826 compliance with the event. That's what I was just trying to clear up. But again, I
1827 don't want to back us into something we can't do at this point, which is pave that
1828 parking lot. That's a \$50,000 project and we just can't do it. If it was a problem, if
1829 they grow that big, then they would have to do it. But so far there's already been
1830 that many cars there, more than once, and there's been no problem.
1831

1832 Ms. Dwyer - Could you describe the activities that you are involved
1833 in now? Apparently, you have practices, games, and tournaments. If you've had
1834 more than 60 people on the site, how often and under what circumstances?
1835

1836 Mr. Sweet - We have not practiced there yet. I've tried to clear
1837 the way to practice. I keep trying to get them to practice there, but they don't
1838 have lights. They're still practicing on County property most of the time. They
1839 play their games there. They had a youth game and a regular senior men's game
1840 and an old boys' game. So there were actually four games, and that's one of the
1841 times where they had—they were still in compliance with the 60 participants, but
1842 they had a hundred cars there. That sort of thing will happen a couple times a
1843 year. That's why I was suggesting that maybe we clear that up.
1844

1845 Ms. Dwyer - How do you have more than 60 cars if you have only
1846 60 people?
1847

1848 Mr. Sweet - Well, we had a youth game and how ever many cars
1849 that took. There were participants, their parents, and people like myself who just
1850 came to support and watch. And however many cars that would be, there may
1851 have been 50 or so cars; I don't know, I didn't count them. Then you have a
1852 regular club match coming up after that, so those cars all come, those
1853 participants all come. Same as any other at the Y or the softball field or
1854 anything, there's one game after the other.
1855

1856 Mr. Wright - Are some of them leaving when the others are
1857 coming and so forth?
1858

1859 Mr. Sweet - The majority of them would be gone, but the transition
1860 period is what I'm talking about. Maybe I'm just thinking outside of the box. To
1861 me, what we're proposing would be a commonsense answer to clear up anything
1862 like that. If you all disagree, we'll leave it at 60 participants.
1863
1864 Ms. Dwyer - We're just trying to get a handle on the difference
1865 between 60 participants and 130 cars. So you're saying you still never had more
1866 than 60 participants at any one event, but you may have a lot more cars because
1867 you have—
1868
1869 Mr. Sweet - Multiple events.
1870
1871 Ms. Dwyer - Multiple events, you have some overlap.
1872
1873 Mr. Sweet - Correct.
1874
1875 Ms. Dwyer - And you also may have some spectators, so you're
1876 not counting those as participants, but they're brining extra cars in.
1877
1878 Mr. Sweet - Exactly.
1879
1880 Mr. Wright - These events are not going on at the same time now
1881 are there?
1882
1883 Mr. Sweet - No, it's one field.
1884
1885 Mr. Wright - One event at a time?
1886
1887 Mr. Sweet - Yes sir.
1888
1889 Mr. Wright - So you have people coming and going, and that's
1890 what you're talking about.
1891
1892 Mr. Sweet - Yes sir.
1893
1894 Mr. Wright - Overlap.
1895
1896 Mr. Sweet - That's what I'm trying to clear up.
1897
1898 Mr. Wright - Probably some of the ones that come for the first
1899 event may stay for the second event, but not all of them. So you just don't know.
1900
1901 Mr. Sweet - Exactly. I'm not going to be there to watch these guys
1902 forever. When I'm there, everything is in line. If I'm not there, this would be a
1903 clear way to clear it up. Or whoever is wearing my hat in the future.
1904

1905 Mr. Wright - I think you said in this material that one event only
1906 takes 15 minutes. Is that the youth event?
1907
1908 Mr. Sweet - No. They play a summer game. A normal rugby team
1909 is 15 players. In a sevens game it's only seven players, but it's real fast. You'll
1910 see it in the Olympics next summer.
1911
1912 Mr. Wright - I've seen it on TV.
1913
1914 Mr. Sweet - It's a real fast game, so you're sprinting the whole
1915 time. There are only seven people on a side, so it's a fast, short game. But an
1916 event in that case would be a whole day's tournament because you can't go
1917 there for a 15-minute game; nobody would play. But you play four or five games
1918 as part of your event. That's kind of how that goes. Like the little three-man
1919 basketball that Henrico puts on. It's a short, abbreviated version of a game, but
1920 you have to play several games to win the tournament.
1921
1922 Mr. Wright - So they would stay on for a period of time, then,
1923 those people would leave?
1924
1925 Mr. Sweet - Correct.
1926
1927 Mr. Witte - What type of parking is it now, just on grass?
1928
1929 Mr. Sweet - We just have grass parking and it's thick, heavy
1930 grass. We haven't had a car get stuck. And that's my concern with one of the
1931 downpours whether there would be mud out there, but there's so much out there.
1932 There's a view from the parking area. They haven't had any problem with it.
1933
1934 Mr. Wright - Even now with all this rain?
1935
1936 Mr. Sweet - Well, nobody's out there right now. There's a little bit
1937 of gravel in the beginning where the heavy traffic is and there's gravel on the
1938 driveway as you come in and out. But once you get in there and spread out,
1939 there's grass. Right where that trash is.
1940
1941 Mr. Wright - They should clean that up.
1942
1943 Mr. Witte - Not an attractive picture.
1944
1945 Mr. Sweet - I'll address that in a minute.
1946
1947 Mr. Wright - I just want to ensure that if we approve this that you're
1948 comfortable with these suggestions.
1949
1950 Mr. Sweet - I do have a couple of exceptions here.

1951
1952 Mr. Wright - Have you sat down with Mr. Blankinship and gone
1953 over these? These are right extensive—and they are in these types of cases—
1954 the things that you have to do for this to be carried on.
1955
1956 Mr. Sweet - There are a couple of exceptions I'd like to ask for
1957 here.
1958
1959 Mr. Wright - Sure.
1960
1961 Mr. Sweet - We already talked about the *may include pavement*.
1962 We're not sure about that. Then on #10, they ask for a dumpster. What
1963 happened—this is great timing—is someone knocked our gate down. I talked to
1964 one of the neighbors; they knocked their gate down, too. That was the third time
1965 they've knocked our gate down. We had our gate placed at the back so the
1966 parking—you could drive in and out of the parking unobstructed, and then a
1967 second gate back to the field so nobody could go back there and tear our field
1968 up. Well, people kept coming in our parking lot that shouldn't have been there,
1969 throwing trash out. Hunters were out there using it as a station to trespass on
1970 other people's property.
1971
1972 Mr. Wright - That's not there, they're coming in there.
1973
1974 Mr. Sweet - Correct. Kids from up the street just hanging out. So
1975 we said, all right, this is a problem, let's put our gate closer to the road to keep
1976 them off the parking lot. Well, the third time they knocked that down was when
1977 these pictures were taken. They went there and dumped their trash in the
1978 parking lot. There are bags of trash and all that stuff out there that are normally
1979 not there. It's there because of the time the gate—I didn't know the gate was
1980 down until I got this report. Our last game was the last weekend of October, first
1981 of November. Those piles of trash out there were dumped when they knocked
1982 our gate down last time. Now, we have fixed it back up. That's when I started
1983 clearing off those piles of little pine saplings. I started clearing them off because I
1984 didn't want to totally take them out because then I'd be in violation of keeping the
1985 buffer there. Since then, we have this suggestion from the police showing the
1986 correct way to do that is to limb them four feet up so you can see through there,
1987 which is exactly what I needed to see. I didn't know anything like this existed, but
1988 they gave us a good example of how to secure our area with the lighting, and the
1989 fences, and driveway, and such. So we're in the middle of clearing out. That's
1990 what those little saplings are there. The trash is a one-time thing. We fixed the
1991 gate already and now we have a little professional advice on how to secure it
1992 better. And I'm told by Mr. Nash here that the police have been back on a regular
1993 basis nowadays, keeping patrol in the area. So we can address that.
1994
1995 The request for the dumpster, if we put a dumpster out there, it might get
1996 emptied once a year. The field is spotless where these guys play. They clean up

1997 after themselves every time. This was something that somebody on the outside
1998 brought in. We don't have a trash problem.

1999

2000 Ms. Dwyer - Let me just interrupt you for a minute. It seems like
2001 there a lot of loose ends here that maybe you need to get with the County
2002 planners and iron out. I don't believe we're going to be able to iron all this out
2003 today. Is time of the essence on this case, or could you postpone it for a month
2004 and give you a chance to meet the County folks?

2005

2006 Mr. Sweet - That's no problem.

2007

2008 Ms. Dwyer - I think there is a lot of history here. I think it would be
2009 helpful for you to understand what the requirements may be for paving, how
2010 these conditions might be worded so that the County's interest and yours are
2011 both served. The dumpster is another issue. I'm not sure that we, as a Board,
2012 can resolve all those details today because I, for one, would like some input from
2013 staff on what their assessment of this is. So my suggestion would be to defer the
2014 case to next month to give you a month to sit down and work out these details.

2015

2016 Mr. Sweet - If that's amenable to Mr. Blankinship, that's fine with
2017 us.

2018

2019 Mr. Blankinship - I'm not sure the best way to get the Board's guidance
2020 is through that process, but if that's how the chairman wants it.

2021

2022 Ms. Dwyer - Well, part of it is that I have a sense that Mr. Sweet is
2023 not really clear on what the requirements might be for paving, for example. Have
2024 you met with County staff on this?

2025

2026 Mr. Sweet - No. I'd like to clear that up.

2027

2028 Mr. Wright - Some of these things need to be discussed, I think, to
2029 make sure he understands the full implication of these things.

2030

2031 Mr. Blankinship - When a case like this goes before the Planning
2032 Commission, we'd sit down with the Planning Commissioner and the applicant
2033 and work all that out. But that's not normally the way this Board operates. I'm
2034 not sure exactly what role staff is going to play there. Some of these are
2035 discretionary questions where it's the Board's discretion.

2036

2037 Mr. Sweet - Even if we could clear that one paving question up, I
2038 think I could come back a little more informed.

2039

2040 Ms. Dwyer - I'm not suggesting that the County change their
2041 conditions. I'm suggesting that at least the applicant be better informed about
2042 them.

2043
2044 Mr. Wright - Fully what all this means.
2045
2046 Ms. Dwyer - About the implications of these conditions.
2047
2048 Mr. Wright - Number 12. Maybe he meets that, but he may not
2049 know what Chapter 24 of the Henrico County Code says. It would just be a
2050 shame for us to approve something that they cannot live with.
2051
2052 Mr. Blankinship - I agree. We definitely want these issues ironed out.
2053 I'm just not sure exactly how staff should coordinate with the Board.
2054
2055 Ms. Dwyer - We're not suggesting that you negotiate these
2056 conditions, but there be an information meeting.
2057
2058 Mr. Wright - So we could come back with a way he can address
2059 these conditions, whether they can meet them or not.
2060
2061 Mr. Witte - He may have opposition to some of these and he
2062 may want to change them. Right now, not knowing what the codes are, he may
2063 agree to it and find out he can't meet the requirements.
2064
2065 Mr. Blankinship - Right. We certainly don't want that to happen.
2066
2067 Mr. Sweet - Can we be on the January agenda?
2068
2069 Mr. Wright - Yes.
2070
2071 Ms. Dwyer - Thank you, sir.
2072
2073 Mr. Nunnally - Don't we have to have a motion?
2074
2075 Mr. Wright - Let's see if anybody else what's to say anything.
2076
2077 Ms. Dwyer - Understanding that this case will most likely come
2078 before the Board again in January, is there anyone who would like to speak to
2079 the case today to let the Board know what their thoughts are? Please come
2080 forward if you'd like to speak on behalf or in opposition.
2081
2082 Mr. Nash - My name's Ronald Nash.
2083
2084 Ms. Dwyer - What was your last name, sir?
2085
2086 Mr. Nash - Nash.
2087
2088 Ms. Dwyer - Nash.

2089
2090 Mr. Nash - I believe them to be good neighbors. My concern is
2091 probably the same as his, outsiders coming in who don't necessarily belong
2092 there and just doing whatever.
2093
2094 Ms. Dwyer - Problems with trespassers?
2095
2096 Mr. Nash - Yes.
2097
2098 Mr. Wright - He'll have to take steps. I think they're learning now,
2099 they're finding out that you have to do certain things, work with the police and
2100 whomever to ensure that you protect your property as best you can. Then you
2101 can't do it 100%, as you know.
2102
2103 Mr. Nash - Thank you, sir.
2104
2105 Ms. Dwyer - Thank you, Mr. Nash. Anyone else to speak to the
2106 case?
2107
2108 Mr. Rose - My name is Thomas Rose. I'm a member of the
2109 Richmond Rugby Club. I've been a member for 40 years. The last game I
2110 attended was an interesting game in which the Richmond club played a
2111 Washington-area club. Afterwards, the University of Virginia's Rugby Club came
2112 down from Charlottesville and played Rutgers University after the matches had
2113 concluded for Richmond. They were not permitted to play at University of
2114 Virginia, so they actually asked our permission to come down to Richmond and
2115 play on our field. That's the use and the essential need for this kind of open area
2116 competition field. The club plays in the mud; they play in the weather; they play
2117 in the rain. We're taking that chance with our field in terms of the use of it.
2118 Sometimes it gets muddy, but I think the prominence of this particular ground,
2119 both in the area of Richmond, Virginia, and the State of Virginia is getting
2120 noticed. That's what I'd like to bring forward to the Board's attention and ask that
2121 further consideration be given to the club in terms of its improvements. Thank
2122 you.
2123
2124 Ms. Dwyer - Any questions for Mr. Rose? No questions; thank
2125 you. Do we have a motion on the case?
2126
2127 **DECISION**
2128
2129 Mr. Wright - I move we defer the case until the January meeting.
2130
2131 Mr. Nunnally - Second.
2132

2133 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally to
2134 defer UP-021-09. Any discussion? All in favor say aye. All opposed say no. The
2135 ayes have it; the motion passes.

2136
2137 Mr. Wright - By the way, that will be January the 28th.

2138
2139 Ms. Dwyer - January the 28th is our next meeting, so the case is
2140 deferred to January 28, 2010.

2141
2142 After an advertised public hearing, application **UP-021-09, Richmond Rugby**
2143 **Foundation, has been deferred until January 28, 2010.**

2144
2145
2146 Affirmative: Dwyer, Nunnally, Witte, Wright 4
2147 Negative: 0
2148 Absent: Harris 1

2149
2150
2151 Ms. Dwyer - Any other issues to be brought before the Board?

2152
2153 Mr. Wright - I wish somebody would take this up to the Court.

2154
2155 Ms. Dwyer - They may.

2156
2157 Mr. Wright - I wish they would to clarify this issue about these lots.
2158 I'd like to be on the other side. I'd love to argue that case.

2159
2160 Ms. Dwyer - All right. We have minutes from November. Are there
2161 any amendments to the minutes?

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2163 Mr. Baker - May I make one comment about that two to two vote?
2164 Is it possible?

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2166 Mr. Blankinship - Completely out of order.

2167
2168 Mr. Baker - I apologize.

2169
2170 Ms. Dwyer - We'll chat after the meeting if you'd like.

2171
2172 Mr. Baker - Okay.

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2174 Ms. Dwyer - Motion for the minutes from November 19th?

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2176 Mr. Wright - I move they be approved as submitted.

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2178 Mr. Witte - I'll second it.

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Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Witte to approve the minutes as presented. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

On a motion by Mr. Wright seconded by Ms. Witte, the Board **approved as presented the Minutes of the November 19, 2009** Henrico County Board of Zoning Appeals meeting.

Affirmative:	Dwyer, Nunnally, Witte, Wright	4
Negative:		0
Absent:	Harris	1

Ms. Dwyer - Any other business to be brought before the Board by Board members? Motion for adjournment?

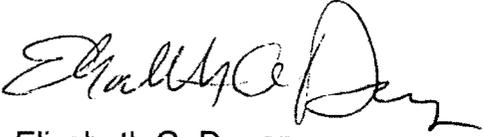
Mr. Witte - I'll make that motion.

Mr. Wright - Second.

Ms. Dwyer - Motion by Mr. Witte, seconded by Mr. Wright. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

Mr. Witte - Everybody have a safe holiday and Merry Christmas.

There being no further business, the Board adjourned until the January 28, 2010 meeting at 9 a.m.



Elizabeth G. Dwyer
Chairman



Benjamin Blankinship, AICP
Secretary