

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, JULY 23, 2009, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH JULY 2,**
6 **2009 AND JULY 9, 2009.**
7

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

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
10 Ms. Dwyer - Good morning. The July 23rd session of the Henrico
11 County Board of Zoning Appeals meeting will now come to order. Please stand
12 for the **Pledge of Allegiance**.

13
14 Good morning, Mr. Blankinship. Would you like to read the rules for the meeting?
15

16 Mr. Blankinship - The rules for this meeting are as follows. Acting as
17 Secretary, I will call each case, and while I'm speaking, the applicant should
18 come down to the podium. We will then ask everyone who intends to speak on
19 that case to stand and be sworn in. The applicant will present their testimony,
20 and then anyone else who wishes to speak will be given the opportunity. After
21 everyone has spoken, the applicant, and only the applicant, will have an
22 opportunity for rebuttal. After the Board has heard all the evidence and asked
23 any questions, they will take the matter under advisement, and they will render
24 all of their decisions at the end of the meeting. If you wish to know their decision
25 on a specific case, you can either stay until the end of the meeting, or you can
26 check the Planning Department website this afternoon, or you can call the
27 Planning Department later this afternoon. This meeting is being recorded, so I
28 will ask everyone who speaks to speak directly into the microphone on the
29 podium, state your name, and please spell your last name so we get it correctly
30 in the record. Finally, there is a binder out in the foyer that contains the staff
31 report for each case, including the conditions that have been recommended by
32 staff. It's very important, particularly for the applicants on use permit cases, that
33 you be familiar with the conditions that have been recommended by the staff.
34

35 Madam Chairman, we have two or three, depending on how you count, requests
36 for deferral or withdrawal this morning. One case that had been advertised and
37 noticed was withdrawn before we printed the agenda. So that case will not be
38 heard this morning.

39

40 Ms. Dwyer - Which case is that? Is that the one we deferred from
41 last month?

42

43 Mr. Blankinship - Yes ma'am. It was UP-011-09, Thomas P. Meade.
44 That case has been withdrawn by the applicant. That's the one the applicant did
45 not show up last month. It was because he'd already decided to withdraw.

46

47 The other withdrawal request I was notified of this morning is A-005-09. The
48 applicant has asked to withdraw that.

49

50 **A-005-09 7706 STAPLES MILL, LLC** appeals a decision of the
51 director of planning pursuant to Section 24-116(a) regarding the property at 7706
52 Staples Mill Road (Wistar Heights) (Parcel 772-750-1282), zoned R-3, One-
53 family Residence District (Brookland).

54

55 Ms. Dwyer - Is there anyone here to represent?

56

57 Mr. Paone - That's correct. I am Tony Paone. That's P-a-o-n-e. I
58 am the attorney for the applicant. I spoke with Mr. Tokarz yesterday, and with my
59 client, and as a result, I called Mr. Tokarz late in the day. I didn't know whether
60 or not that would get to you all, so I decided to come on down here. So, yes, we
61 move to withdraw.

62

63 Ms. Dwyer - Thank you.

64

65 Mr. Paone - You're welcome.

66

67 Ms. Dwyer - Mr. Secretary, no action is required?

68

69 Mr. Blankinship - No ma'am, not for just a straight withdrawal.

70

71 The next case is a deferral, A-006-09. This is the case the Board denied back in
72 November. The applicant refilled. We notified him that his case couldn't be
73 heard until November, but he wanted to forge ahead anyway. Then we
74 communicated some more this past week, and he has now agreed to defer the
75 case until November, at which time a year will have passed and the case can be
76 heard again.

77

78 **A-006-09 EMERALD LAND DEVELOPMENT** requests a
79 variance from Section 24-95(b) to build a one-family dwelling at 21 Evergreen
80 Avenue (Bungalow City) (Parcel 817-727-6100), zoned R-3, One-family

81 Residence District (Varina). The lot width requirement is not met. The applicant
82 has 50 feet lot width where the Code requires 65 feet lot width. The applicant
83 requests a variance of 15 feet lot width.

84
85 Mr. Rempe - Good morning Board. Good morning Henrico staff.
86 Yes, we would like to defer this until November when that year lapses, and we'll
87 have our day in court at that time.

88
89 Ms. Dwyer - Please state your name.

90
91 Mr. Rempe - Mark Rempe. R-e-m-p-e.

92
93 Mr. Wright - Is this a withdrawal?

94
95 Mr. Blankinship - No. It's a deferral until November, whatever the third
96 Thursday of November is. Is it the 19th?

97
98 Ms. Dwyer - They had been denied last November. We are in
99 agreement on that. Thank you.

100
101 Mr. Nunnally - I move that it be deferred until November 2009.

102
103 Mr. Wright - I second it.

104
105 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. All
106 in favor to defer until November, please say aye. All opposed say no. The ayes
107 have it; the motion passes.

108
109 After an advertised public hearing meeting, **A-006-09, Emerald Land**
110 **Development**, has been **deferred** until the November 19, 2009 meeting at the
111 request of the applicant.

112
113 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

114 Negative: 0

115 Absent: 0

116
117 Ms. Dwyer - Did you say there was another—

118
119 Mr. Blankinship - No ma'am, those are the three. The one from last
120 month, the appeal, and this one.

121
122 Ms. Dwyer - All right. We're ready for our first case.

123
124 **UP-012-09 WEST END ASSEMBLY OF GOD** requests a
125 temporary conditional use permit pursuant to Section 24-116(c)(1) to allow a

126 temporary box office trailer and a tent at 401 N Parham Road (Parcel 753-736-
127 0655), zoned R-1, One-family Residence District (Tuckahoe).

128
129 Ms. Dwyer - Is there anyone here to speak to this case? Please
130 raise your right hand and be sworn.

131
132 Mr. Blankinship - Do you swear the testimony you're about to give is
133 the truth and nothing but the truth so help you God?

134
135 Mr. Ruhlen - I do. Last name is R-u-h-l-e-n, Ruhlen.

136
137 Ms. Dwyer - R-u-h-l-e-n?

138
139 Mr. Ruhlen - L-e-n, yes ma'am. Terry is the first name.

140
141 Ms. Dwyer - Please state your case.

142
143 Mr. Ruhlen - We're about to embark on I think our 30th or so
144 annual Christmas production at West End Assembly of God. In the last several
145 years, we have needed to expand a little bit outside—I guess we don't have
146 enough room inside—for a box office for sales. Most of our sales now are online,
147 and fax, and so forth, which is great, but we still find that we need to do
148 exchanges and that sort of thing leading up to the actual show itself. Once the
149 show begins, we move a small contingent inside who can handle exchanges and
150 that sort of thing. The box office is on the side of the church. It's not visible from
151 neighbors or from the road. It's what we've done in the past. We put it right next
152 to the church. It actually takes a couple of handicapped spaces, which are really
153 not very good because it's really steep. But what we do, we double the number
154 that we—I think we take out three, but we incorporate six additional, and that
155 adds to the 20 or so that we already have.

156
157 The tent is around back, and that we use for storage of our props. Sometimes
158 we have so many props during our show that we have to move them in and out.
159 That's in a winged area that is not visible, but we know we have a subdivision
160 moving in. There's one house built there, and we've talked to the owner, who's
161 the builder. The senior pastor's talked to him and walked him through our
162 facilities. He's really comfortable. He said, "I've heard about what you do."
163 We've even invited him to come aboard, but he has his own facilities he's
164 committed to. But he's on board. And we know as houses get built, we'll still
165 need to do our PR and due diligence in that area. We've had no complaints, and
166 we really work hard. There's a privacy fence also, an eight-foot privacy fence
167 there.

168
169 The time period for these, it's stated in the request, but about the middle of
170 October. I think September to December is when we look at the box office, but
171 we don't actually bring it in until late September, and we have it out by December

172 3rd. The tent in the back we put in a little bit later. Actually the show begins the
173 first week of December and runs for two weeks. So our tent comes in the middle
174 of October, and we have it out by the end of the year.

175
176 Mr. Wright - Have you read the conditions?

177
178 Mr. Ruhlen - Yes sir, I have.

179
180 Mr. Wright - Are you in accordance with them?

181
182 Mr. Ruhlen - Yes sir, we are.

183
184 Mr. Nunnally - You mentioned the size of the tent up here. What is
185 it, 30' by 30'?

186
187 Mr. Ruhlen - Yes sir, it is, 30 by 30. It's a white tent.

188
189 Ms. Dwyer - Have you read the police statement on this?

190
191 Mr. Ruhlen - Yes, we have. And we have several policemen who
192 are tied with this, from Henrico.

193
194 Ms. Dwyer - Do you comply with everything that they've
195 suggested? I know it's advisory, but.

196
197 Mr. Ruhlen - I read through it, and I talked this morning again to
198 the lady who runs the box office, just to go over some of those suggestions about
199 movement of the money. One thing they suggested was to bolt down a safe
200 deposit box in the trailer, but it's a rented trailer. We move money in and out.
201 We take it into the church because we do have a facility in there that takes care
202 of that. So, we're on top of that.

203
204 Ms. Harris - Mr. Ruhlen, are there any plans for future expansion
205 to incorporate a permanent box office.

206
207 Mr. Ruhlen - We hope so. We've thought about that, and we
208 have to look at the property and what's around us. We're hoping that we can do
209 that because we want to grow, obviously. We would like to have that inside at
210 some point.

211
212 Ms. Dwyer - Mr. Blankinship, I have a question. In your
213 conditions, it states the end dates for the trailer and the tent, but not the
214 beginning dates. Under *Application* it says, "Use will begin in August." So I just
215 wanted to make sure. Where do we have the begin date on our records, our sort
216 of official records?

217

218 Mr. Blankinship - Yes, you're right, it's not there. If this were approved
219 as drafted, they would have the authority to put the tent up as soon as they could
220 get a building permit. If you want, we can put a starting date in there.

221
222 Mr. Witte - Is there a preferred starting date? Do you have a
223 deadline that you're going to get the tent up by?

224
225 Mr. Ruhlen - About the 15th of October is what's in the back of my
226 mind. We wouldn't need it before then because we don't really start moving stuff
227 in until the end of October.

228
229 Ms. Dwyer - I don't think we need to specify. In the past the
230 County's received no complaints.

231
232 Mr. Blankinship - Yes. If they put it up in August or September, we're
233 not going to have any problems with it.

234
235 Mr. Witte - Well, it's going to take a little while to get a building
236 permit.

237
238 Mr. Blankinship - Right.

239
240 Ms. Dwyer - Any other questions of this applicant? Thank you, sir.

241
242 Mr. Ruhlen - Okay, thank you.

243
244 **DECISION**

245
246 Mr. Wright - I move we approve UP-012-09. It's an annual use. I
247 don't think it will cause any detriment to the general public; it will not affect the
248 neighborhood. I think it will be in accordance with our ordinance.

249
250 Ms. Harris - I second the motion.

251
252 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. All in
253 favor say aye. All opposed say no. The ayes have it; the motion passes.

254
255 After an advertised public hearing and on a motion by Mr. Wright, seconded by
256 Ms. Harris, the Board **approved** application **UP-012-09, West End Assembly of**
257 **God's** request for a temporary conditional use permit pursuant to Section 24-
258 116(c)(1) to allow a temporary box office trailer and a tent at 401 N Parham
259 Road (Parcel 753-736-0655), zoned R-1, One-family Residence District
260 (Tuckahoe). The Board approved the temporary conditional use permit subject
261 to the following conditions:

262
263

308 Mr. Parker - I'm asking for a shed to be put in my yard. The
309 County feels that the way my house is situated that it's my front yard, but really
310 it's my back yard the way my house is.
311
312 Ms. Dwyer - Your house is oriented toward Chillie Lane.
313
314 Mr. Parker - Yes.
315
316 Ms. Dwyer - But your official front yard is along Scaffold Court.
317
318 Mr. Parker - That's the way the County sees it.
319
320 Ms. Dwyer - Right. We've run into this before.
321
322 Mr. Wright - Ironically, you could put that shed legally up there off
323 Chillie Lane.
324
325 Ms. Harris - Mr. Parker, the lot that abuts your property, the large
326 lot, the shed would be closer to that lot, right? The lot behind.
327
328 Mr. Parker - Yes, right there. Not quite that far down; it's closer to
329 the house. Yes, right along in there.
330
331 Mr. Witte - Scaffold Court, does that dead end at the end of
332 your property?
333
334 Mr. Parker - Yes.
335
336 Mr. Witte - And that's where you're going to put the shed, on
337 that end?
338
339 Mr. Parker - Yes.
340
341 Mr. Witte - Okay. Thank you.
342
343 Ms. Dwyer - Of course, that's a stub road and could lead to
344 additional development.
345
346 Mr. Witte - Yes, I agree. Additional development would—The
347 shed's there when they start it.
348
349 Ms. Dwyer - Have you read the conditions that have been
350 presented? Are you in agreement with those?
351
352 Mr. Parker - In what respect?
353

354 Ms. Dwyer - We need to make sure that you have read and agree
355 to the conditions that staff has suggested for this case.
356
357 Mr. Parker - Oh, yes.
358
359 Ms. Dwyer - There are three.
360
361 Mr. Nunnally - Mr. Parker, did you say your first name was Joe?
362
363 Mr. Parker - Clarence.
364
365 Mr. Nunnally - Clarence. Oh, excuse me. How about that shed you
366 have out there now?
367
368 Mr. Parker - That's the shed. They delivered it before—
369
370 Mr. Nunnally - That is the shed?
371
372 Mr. Parker - Yes, that is the shed. Yes.
373
374 Mr. Nunnally - That's where it's going to be located?
375
376 Mr. Parker - Yes.
377
378 Ms. Dwyer - The conditions say that the shed will be set 50 feet
379 back from Scaffold, and you had written in your application that it would be 40
380 feet. And I think on the drawing it was also 40. So, you have something of a
381 conflict there.
382
383 Mr. Parker - It's really further up. It's closer to the house, so it's
384 more than 50 feet from Scaffold.
385
386 Ms. Dwyer - I just wanted to make sure you were aware that the
387 50-foot requirement is what we would vote on, not the 40.
388
389 Mr. Parker - It's more than 50.
390
391 Mr. Blankinship - Even without that condition, the 50-foot front yard
392 setback is the required setback since it is [inaudible; blank].
393
394 Ms. Dwyer - Any other questions by Commission members?
395
396 Mr. Nunnally - You have a beautiful home there, Mr. Parker.
397
398 Mr. Parker - Thank you.
399

400 Mr. Nunnally - And that's a nice subdivision.
401
402 Mr. Parker - Yes, it is. Thank you.
403
404 Ms. Dwyer - Did you have anything else to add?
405
406 Mr. Parker - No.
407
408 Ms. Dwyer - That closes the case. Thank you very much.
409
410 Mr. Parker - Thank you.
411
412 Ms. Dwyer - Let's go ahead and vote on this case if the Board is
413 ready. Do I have a motion?
414

415 **DECISION**

416
417 Mr. Nunnally - I move that it be approved because I'm comfortable
418 it won't be detrimental to the neighborhood, in fact it will enhance it.
419

420 Mr. Wright - I'll second it.
421

422 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. All
423 in favor of the motion say aye. All opposed say no. The motion passes.
424

425 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
426 Mr. Wright, the Board **approved** application **UP-013-09, Clarence Parker's**
427 request for a conditional use permit pursuant to Section 24-95(i)(4) to place a
428 detached shed in the front yard at 4801 Chillie Lane (Csiki's Acres) (Parcel 856-
429 704-1355), zoned A-1, Agricultural District (Varina). The Board approved the
430 conditional use permit subject to the following conditions:
431

432 1. Only the improvements shown on the plot plan and building design filed with
433 the application may be constructed pursuant to this approval. Any additional
434 improvements shall comply with the applicable regulations of the County Code.
435 Any substantial changes or additions to the design or location of the
436 improvements may require a new use permit.
437

438 2. The applicant shall provide a minimum 50 foot front yard setback from
439 Scaffold Court to the proposed utility shed.
440

441 3. The proposed shed shall be clad by horizontal vinyl siding and its
442 architectural design shall compliment the existing home.
443
444
445

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

449
450

451 Ms. Dwyer - The next item on the agenda is approval of the
452 minutes from June. Changes to the minutes.

453

454 Mr. Wright - I move we approve the minutes as submitted.

455

456 Mr. Witte - I second.

457

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

460

461 On a motion by Mr. Wright, seconded by Mr. Witte, the Board **approved** the
462 **Minutes of the June 25, 2009** Henrico County Board of Zoning Appeals
463 meeting.

464

465

466 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

467 Negative: 0

468 Absent: 0

469

470

471 Ms. Dwyer - The next item is our calendar for next year. I hope
472 everyone's had a chance to look at that.

473

474 Mr. Blankinship - The normal procedure here, or the normal rules for
475 the calendar are that we meet the fourth Thursday of every month except
476 November and December when the fourth Thursday conflicts with the holidays.
477 This year, if you lay it out that way, there are six weeks between the September
478 meeting and October meeting, and then four weeks between the October
479 meeting and the November meeting. So, I propose that you move the October
480 meeting up as well, so that we have the five weeks between meetings for each of
481 them.

482

483 Ms. Dwyer - That's reflected on the calendar you presented to us.

484

485 Mr. Blankinship - Yes. That would be the third Thursday of October, as
486 well as the third Thursdays of November and December.

487

488 Mr. Wright - Do we need a motion to approve this?

489

490 Mr. Blankinship - Yes.

491

492 Mr. Wright - I move that we approve proposed schedule.
 493
 494 Mr. Nunnally - Second.
 495
 496 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally. All
 497 in favor say aye. All opposed say no. The ayes have it; the motion passes.
 498
 499 On a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** the
 500 **2010 Calendar** for Henrico County Board of Zoning Appeals.
 501

502			
503	Affirmative:	Dwyer, Harris, Nunnally, Witte, Wright	5
504	Negative:		0
505	Absent:		0
506			

507
 508 Ms. Dwyer - All right, record time. There is one more item, though,
 509 that I would just like to mention briefly. Yesterday, the Planning Commission had
 510 a work session on the 50-foot road frontage amendment to our ordinance. A
 511 copy was made of that ordinance, as well as a copy of Ben's presentation to the
 512 Commission yesterday. So, those are for your review. There wasn't much
 513 discussion yesterday. Ms. Harris and I were there. They had just a few
 514 questions. There is a public hearing scheduled for September the 23rd, so if
 515 anyone wants to attend that to see what kinds of issues might be generated by
 516 that. I don't know when to tell you to come because yesterday, they didn't get
 517 around to this—which is, of course, at the end of agenda—until noon. It's always
 518 hard to tell. We did see some progress made. Obviously, a lot of work has been
 519 done on this. Ben made a very good presentation; fielded a lot of questions.
 520 There were a number of questions by the Commission, mostly to clarify.
 521

522 Mr. Wright - So he's thoroughly familiar.

523
 524 Ms. Dwyer - Yes, he's quite familiar with all of the issues. I
 525 thought it would be good to have a copy of his PowerPoint presentation because
 526 it does list some of the issues, the public policy concerns—it lays all those out for
 527 us. And his maps were very good, too. It shows some of the configurations that
 528 we end up with when we have these lots.
 529

530 Mr. Wright - It will take the heat off of us with respect to family
 531 subdivisions, which normally most of these things are. There are a lot of others,
 532 but this may put us in [inaudible; blank] because it [inaudible; blank] really the
 533 one that you [inaudible; blank].
 534

535 Mr. Blankinship - And then if you have another property that's going to
 536 the Supervisors—
 537

538 Mr. Wright - That may be the—Yes, I've been thinking about this a
539 whole lot. That's what happened to the pool in the side yard. That lady kept
540 calling me and there was nothing I could do. When your hands are tied, that's
541 the result. Put enough oil—If you have enough squeak [inaudible; blank] you
542 have to put the oil on [inaudible; blank].
543

544 Ms. Harris - I thank Mr. Blankinship. One good thing about his
545 presentation is you actually used cases in Henrico County. It was not any type
546 of simulation; they were cases that have come before the Board.
547

548 Mr. Blankinship - They need to see that this is a real issue that you all
549 have struggled with and put a lot of thought into—
550

551 Mr. Wright - A plethora of cases.
552

553 Mr. Blankinship - That was the first comment from the Chairman of the
554 Planning Commission, that she had no idea how many of these came before
555 you.
556

557 Mr. Wright - Tell us about it.
558

559 Ms. Dwyer - The last page of the PowerPoint was some of the
560 features of the proposed amendment. A number of them relate to the street or
561 the access road. I think that's really a good way to approach it.
562

563 Mr. Wright - That's important. I think it's going to probably
564 improve the situation because I'm afraid it may become where access roads
565 [inaudible; blank].
566

567 Mr. Blankinship - And you have had to deny a couple because they
568 couldn't provide a passable access.
569

570 Mr. Wright - It's going to increase the work of the seller.
571

572 Ms. Dwyer - All right. Anything else?
573

574 Mr. O'Kelly - Just a point of clarification. The Commission did not
575 set a public hearing.
576

577 Ms. Dwyer - They didn't?
578

579 Mr. O'Kelly - Where they left it was they are going to put it on their
580 August 13th agenda to set the date. It wasn't officially set yesterday.
581

582 Ms. Dwyer - I will put it in pencil then. Thank you.
583

584 Ms. Harris - There is some General Assembly legislation that
585 would affect our Board.

586
587 Mr. Blankinship - We are also working on—Tom Tokarz of the County
588 Attorney's office is drafting a very lengthy amendment to incorporate recent
589 changes to the State Code into our County Code. There are a couple things that
590 address the Board of Zoning Appeals. At this point, I don't see either of them as
591 really having any effect on you, but they may indicate something else coming
592 down the road.

593
594 The first one is that this year someone did put in legislation again that would
595 essentially unravel the Cochran Decision; that would revise some of those tests
596 from the requirements of findings for variances. It did not pass in anything like
597 the form that it was originally submitted. They did eventually pass the legislation,
598 but by the time they passed it, the only thing it did was it removed the words,
599 *approaching confiscation*, from the phrase that you have to find a hardship
600 approaching confiscation. So now it just says, "a clearly demonstrable hardship."
601 The reason that's confusing is that when the Supreme Court handed down their
602 opinion in Cochran, they did not cite those two words out of the Code at all. I
603 don't see that that changes the Cochran Decision at all, and I think our advice
604 would be unless this gets litigated again, goes back to the Virginia Supreme
605 Court, and they then say, okay, now that the statute's changed we have a
606 different standard, unless that guidance comes from the Supreme Court, I think
607 the Board should continue as they have been.

608
609 The other issue has to do with the number of votes required to pass a variance
610 or to overturn the Director on an appeal. When we have a member absent, we
611 always have to tell the audience that you have to have three affirmative votes to
612 grant a variance or to overturn the Director on appeal. If there are three
613 members present and the vote is 2 to 1, you'd think that that's—you know, it's a
614 majority vote—that that would carry. But the Code specifically states that you
615 have to have those three votes. Well, that's actually stated in two different places
616 in the State Code. This year they changed one of them, but they didn't change
617 the other one. So, there's now a conflict. There's one paragraph that says a
618 majority of the members present and voting can grant a variance. But the other
619 paragraph still says that you have to have all three, a majority of the membership
620 of the Board. So, we called the County Attorney's Office. They called Legislative
621 Services downtown. They said, oh, we didn't realize that. So, apparently, they'll
622 be another attempt to amend that next year, and next year we may come to you
623 with a change to your rules to say that the majority of members present and
624 voting. So, if there are three members present or four present and one abstains
625 or something, a 2 to 1 vote would approve the variance. But as of now, again,
626 that change is not good.

627

628 Ms. Dwyer - I'm looking at our rules Ben. It says, "If a resolution
629 fails to receive three votes in favor of the applicant or appellant, the action shall
630 be deemed [inaudible; blank]"
631

632 Mr. Blankinship - Yes. When we were reviewing this legislation, we
633 were looking at completely rewriting that paragraph, actually. It's kind of
634 confusing.
635

636 Ms. Dwyer - It sounds like by our rules we require three votes.
637

638 Mr. Blankinship - Right, three affirmative votes.
639

640 Ms. Dwyer - Already.
641

642 Mr. Blankinship - Right. So if the Code changed to say a majority of the
643 members present and voting, then we would have to change that rule.
644

645 Ms. Dwyer - Are we just not clear about what the State law says?
646

647 Mr. Blankinship - There's a conflict now. The two paragraphs of the
648 State Code are in conflict, so we're not going to change anything until they figure
649 that out. It'll be changed before we know it.
650

651 Ms. Dwyer - In the meantime, though, we just stay put. Okay.
652

653 Mr. Wright - I move we adjourn.
654

655 Ms. Harris - Second.
656

657 Ms. Dwyer - Motion by Mr. Wright, seconded by everyone (Ms.
658 Harris). All in favor say aye. All opposed say no. The ayes have it; the motion
659 passes.
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661 There being no further business, the Board adjourned until the August 27, 2009
662 meeting at 9 a.m.
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Elizabeth G. Dwyer
Chairman



Benjamin Blankinship, AICP
Secretary

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