

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, MAY 27, 2010, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MAY 6,**
6 **2010 AND MAY 13, 2010.**
7

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

Member Absent: Elizabeth G. Dwyer, 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. Harris - Good morning. The May 27, 2010, session of the
10 Henrico County Board of Zoning Appeals will now come to order. Please rise for
11 the **Pledge of Allegiance**.

12
13 Good morning, Mr. Blankinship. I understand that there is a request for deferral?

14
15 Mr. Blankinship - There is. Shall I begin with reading the rules?

16
17 Ms. Harris - Okay.

18
19 Mr. Blankinship - Good morning, Madam Chairman, members of the
20 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting
21 as secretary, I will call the case and as I'm speaking, the applicant should come
22 on down to the podium. We'll then ask everyone who wishes to speak on that
23 case to stand and be sworn in. Then the applicant will present their testimony.
24 Then anyone else who wishes to speak will be given the opportunity. After
25 everyone has had a chance to speak, the applicant and only the applicant will
26 then have an opportunity for rebuttal. After the Board has heard all the evidence
27 and asked any questions, they will take the matter under advisement and
28 proceed to the next case. They will render all of their decisions at the end of the
29 meeting. So if you wish to know their decision on a specific case, you can either
30 stay until the end of the meeting or you can check the Planning Department
31 website this afternoon, or you can call the Planning Department this afternoon.

32
33 This meeting is being recorded, so we'll ask everyone who speaks to speak
34 directly into the microphone on the podium, state your name, and please spell

35 your last name so we get it correctly in the record. Out in the foyer, there is a
36 binder that contains the staff report for the case, including the conditions that
37 have been recommended by the staff.

38
39 As you mentioned, Madam Chairman, there is one request for deferral, which is
40 UP-007-10,

41
42 **UP-007-10 THE STEWARD SCHOOL** requests a conditional use
43 permit pursuant to Sections 24-52(a) and 24-12(b) to build an athletic field and a
44 conservation area at 2000 Lauderdale Drive (Parcel 732-744-7564), zoned A-1,
45 Agricultural District (Tuckahoe).

46
47 Ms. Harris - A motion is required for this deferral. Is anyone here
48 to speak to this case?

49
50 Mr. Theobald - Good morning, Madam Chair, ladies and gentlemen.
51 I'm Jim Theobald here on behalf of The Steward School. We would like another
52 30 days in an effort to try to further resolve proposed conditions for your
53 consideration with both staff and our neighbors, Lakewood Manor.

54
55 Ms. Harris - Is anyone else here who wishes to speak to the
56 case?

57
58 Mr. Axselle - Madam Chairman, members of the Board, Bill
59 Axselle. I'm representing Lakewood Manor in this matter and we concur and
60 advise the concurrence of this motion.

61
62 **DECISION**

63
64 Mr. Wright - Madam Chairman, I move we defer the case until our
65 next Board meeting.

66
67 Mr. Nunnally - Second.

68
69 Ms. Harris - Motion by Mr. Wright, second by Mr. Nunnally that we
70 defer this matter until the next Board meeting. Are there any questions or
71 discussion on this motion? All in favor say aye. All opposed say no. The ayes
72 have it; the motion passes.

73
74 After an advertised public hearing and on a motion by Mr. Wright, seconded by
75 Mr. Nunnally, **UP-007-10, The Steward School**, has been **deferred** until the
76 June 24, 2010 meeting.

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

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Ms. Harris - Mr. Blankinship, would you call the first case?

UP-008-10 RESOURCE DEVELOPMENT ASSOCIATES
requests a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 1801 Kingsland Road (Parcel 818-676-5915), zoned A-1, Agricultural District (Varina).

Ms. Harris - Anyone who has an interest in this case and thinks that they might speak to the case, would you please stand, raise your right hand, and be sworn in.

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

Ms. Harris - Please state your case, your name first.

Mr. Hooker - My name is Randy Hooker—H-o-o-k-e-r. I'm with Engineering Design Associates and represent the case today. I'm here to request approval of the renewal of the current use permit, UP-002-08. I'd like to state that activity has picked up on this site since the submission of the status report, which is dated March 31, 2009. Mining progress in the rear portion of the property is pretty much complete. The client is ready to proceed towards the front portion of the property and mine that section, as well as begin reclamation towards the rear portion of the site.

Mr. Nunnally - Do you have any idea how long you have left on this?

Mr. Hooker - We're hoping to be able to finish this up by the next approval or extension. Like I said, activity has picked up at this site, even though the economy is pretty slow right now. Hopefully they'd be able to maybe get a minor extension for the reclamation process after the 2012 date. They're hopeful they will complete the mining activity. It's not guaranteed, but hopeful.

Mr. Blankinship - Are they mostly hauling material out or in?

Mr. Hooker - Out. It's all going out. Like I said, they need to begin the reclamation process to the rear of the property. But still, there is a sediment basin at the rear of the property that will have to be maintained until mining is complete.

Mr. Blankinship - They think with what they're going to do in the front portion of the property, which hasn't even been opened yet, right, all that will take less than two years?

Mr. Hooker - Hopefully.

127
128 Mr. Blankinship - I know it depends on the market and the economy.
129
130 Mr. Hooker - Yes. We acknowledge that the mine has been in
131 existence for a good period of time. As I said, activity has picked up, and they
132 are moving materials out of there.
133
134 Mr. Nunnally - It has picked up? Do you have any idea how many
135 trucks you're going to have coming in and out of there each day? Roughly.
136
137 Mr. Hooker - No, not really. I don't know that I can give an
138 educated guess on the amount of the trucks coming in and out of there.
139
140 Mr. Blankinship - There are a lot of very steep slopes and bare soil on
141 the site now. Are they going to be cutting those slopes—the conditions require
142 that any slope that's not being worked for I think it's 30 days is supposed to be
143 cut back to 3 to 1.
144
145 Mr. Hooker - Public Works, environmental inspector has been out
146 to the site and she has commented on some of the issues out there. They are
147 working to address those items. It has been extremely wet. We had so much
148 snow and rain late this winter, so they've struggled to get in there and really try to
149 rectify many things. But things are drying out some so they are able to get in
150 there and start doing some work.
151
152 Mr. Blankinship - I didn't realize they were actively excavating at this
153 point. As long as they're working those spaces, you expect them to stay there.
154
155 Mr. Hooker - Yes.
156
157 Mr. Blankinship - As long as they're aware that as times slow down,
158 they need to roll those slopes back to 3 to 1.
159
160 Mr. Nunnally - The condition says two.
161
162 Mr. Blankinship - Two to one; I'm sorry. The final is 3 to 1.
163
164 Mr. Wright - Mr. Hooker, have you read the suggested conditions?
165
166 Mr. Hooker - Yes sir.
167
168 Mr. Wright - Are you in accord with all these?
169
170 Mr. Hooker - I mean, they're pretty much the same from the last
171 use permit.
172

173 Mr. Wright - We expect the company to comply with these
174 conditions.

175
176 Mr. Hooker - Yes sir.

177
178 Ms. Harris - Mr. Hooker, I noticed—I don't know if you checked
179 this out—in the staff report, the topsoil is a minimum of five inches, the depth of
180 it. And then in the letter, your representative, you have a minimum of six-inch
181 topsoil. Which will it be?

182
183 Mr. Hooker - Sorry?

184
185 Ms. Harris - If you will look on your staff report on page 4 of 4,
186 second line at the top.

187
188 Mr. Blankinship - Final reclamation we required a minimum of five
189 inches of topsoil and your plan shows six.

190
191 Mr. Hooker - Okay, okay. Well, I mean—

192
193 Mr. Wright - That doesn't hurt anything.

194
195 Ms. Harris - No, just want to know which it is.

196
197 Mr. Hooker - The plans show six. I mean, if the plan shows six,
198 that's what it should be.

199
200 Ms. Harris - Okay. I had a question about page 2 of 4. The five-
201 foot-high metal post. It's five inches in diameter. How far are they placed from
202 each other? Are they like a fence or?

203
204 Mr. Hooker - I believe they're just markers.

205
206 Mr. Blankinship - They're usually at the corners. And if there's a very
207 long line, they'll put one along the line to guide the operators of the equipment so
208 they don't go behind.

209
210 Ms. Harris - There might be more than one. Are there any other
211 questions from the Board? Anyone else who wishes to address this case? Is
212 there any opposition to this case today? Then that concludes this case.

213
214 **[After the conclusion of the public hearings, the Board discussed this case**
215 **and made its decision. This portion of the transcript is included here for**
216 **convenience of reference.]**

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218 Ms. Harris - May I have a motion?

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DECISION

Mr. Wright - I move that we approve this request for a conditional use permit in that it does not adversely affect the health, the safety, or welfare of persons in the area and it's in accordance with the conditions set forth in the Henrico County Code

Ms. Harris - Is there a second?

Mr. Nunnally - Second.

Ms. Harris - Motion by Mr. Wright, second by Mr. Nunnally. Is there any discussion on this motion? 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 Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application **UP-008-10, Resource Development Associates'** request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 1801 Kingsland Road (Parcel 818-676-5915), zoned A-1, Agricultural District (Varina). The Board approved the variance subject to the following conditions:

1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. Throughout the life of this permit, the applicant shall maintain letter of credit # LC874-095978 in an amount of \$47,400.00, guaranteeing that the land will be restored to a reasonably level and drainable condition, consistent with the elevation of the land prior to the beginning of excavation. In the event of termination of that letter of credit, this permit shall be void, and excavation shall cease. Within the next 90 days of termination, the applicant shall restore the land as provided for under the conditions of this use permit. Termination of such financial guaranty shall not relieve the applicant from its obligation to indemnify the County of Henrico for any breach of the conditions of this use permit.
3. Throughout the life of this permit, the applicant shall continuously satisfy the Department of Public Works (DPW) that erosion control procedures are properly maintained, and shall furnish plans and bonds that DPW deems necessary.
4. Throughout the life of this permit, the applicant shall maintain a mine license from the Virginia Department of Mines, Minerals and Energy.
5. Throughout the life of this permit, the areas approved for mining under this permit shall be delineated on the ground by five-foot-high metal posts at least five inches in diameter and painted in alternate one foot stripes of red and white.

265 These posts shall be so located as to clearly define the area in which the mining
266 is permitted.

267
268 6. Throughout the life of this permit, the applicant shall comply with the
269 Chesapeake Bay Preservation Act and all state and local regulations
270 administered under such act applicable to the property, and shall furnish to the
271 Planning Department copies of all reports required by such act or regulations.

272
273 7. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Saving
274 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

275
276 8. No operations of any kind are to be conducted at the site on Saturdays,
277 Sundays, or national holidays.

278
279 9. All access to the property shall be from the established entrance onto
280 Kingsland Road.

281
282 10. The applicant shall maintain gates at the entrance to the property. These
283 gates shall be locked at all times, except when authorized representatives of the
284 applicant are on the property.

285
286 11. The applicant shall maintain the sign at the entrance to the mining site
287 stating the name of the operator, the use permit number, the mine license
288 number, and the telephone number of the operator. The sign shall be 12 square
289 feet in area and the letters shall be three inches high.

290
291 12. The applicant shall maintain "No Trespassing" signs every 250 feet along
292 the perimeter of the property. The letters shall be three inches high. The
293 applicant shall furnish the Chief of Police a letter authorizing the Division of
294 Police to enforce the "No Trespassing" regulations, and agreeing to send a
295 representative to testify in court as required or requested by the Division of
296 Police.

297
298 13. Standard "Truck Entering Highway" signs on Kingsland Road on each side
299 of the entrance to the property shall be maintained at the applicant's expense.

300
301 14. The applicant shall maintain a standard stop sign at the entrance to
302 Kingsland Road.

303
304 15. The applicant shall provide a flagman to control traffic from the site onto the
305 public road, with the flagman yielding the right of way to the public road traffic at
306 all times. This flagman will be required whenever the Division of Police deems
307 necessary.

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309 16. All roads used in connection with this use permit shall be effectively treated
310 with calcium chloride or other wetting agents to eliminate any dust nuisance.

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17. The operation shall be so scheduled that trucks will travel at regular intervals and not in groups of three or more.

18. Trucks shall be loaded in a way to prevent overloading or spilling of materials of any kind on any public road.

19. The applicant shall maintain the property, fences, and roads in a safe and secure condition indefinitely, or convert the property to some other safe use.

20. If, in the course of its operations, the applicant discovers evidence of cultural or historical resources, or an endangered species, or a significant habitat, it shall notify appropriate authorities and provide them with an opportunity to investigate the site. The applicant shall report the results of any such investigation to the Planning Department.

21. If water wells located on surrounding properties are adversely affected, and the extraction operations on this site are suspected as the cause, the effected property owners may present to the Board evidence that the extraction operation is a contributing factor. After a hearing by the Board, this use permit may be revoked or suspended, and the operator may be required to correct the problem.

22. Open and vertical excavations having a depth of 10 feet or more, for a period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the public safety.

23. Topsoil shall not be removed from any part of the property outside of the area in which mining is authorized. Sufficient topsoil shall be stockpiled on the property for respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled within the authorized mining area and provided with adequate erosion control protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime as recommended by the County after soil tests have been provided to the County.

24. The operator shall submit a quarterly report stating the origin, nature and quantity of any off-site generated material deposited on the site, certifying that no hazardous material was included. The material to be deposited on the site shall be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any hazardous materials as defined by the Virginia Hazardous Waste Management Regulations.

25. A superintendent, who shall be personally familiar with all the terms and conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms and conditions of this use permit, shall be present at the beginning and

356 conclusion of operations each work day to see that all the conditions of the Code
357 and this use permit are observed.

358
359 26. A progress report shall be submitted to the Board on June 1, 2011. This
360 progress report shall contain information concerning how much property has
361 been mined to date of the report, the amount of land left to be mined, how much
362 reclamation has been performed, when and how the remaining amount of land
363 will be reclaimed, and any other pertinent information about the operation that
364 would be helpful to the Board.

365
366 27. Excavation shall be discontinued by June 1, 2012 and restoration
367 accomplished by not later than June 1, 2013, unless a new permit is granted by
368 the Board of Zoning Appeals.

369
370 28. The reclamation of the property shall take place simultaneously with the
371 mining process. The final grading of the site shall be consistent with the
372 elevation of the land prior to the beginning of excavation as shown on the
373 approved reclamation plan. Reclamation shall not be considered completed until
374 the mined area is covered completely with permanent vegetation.

375
376 29. All drainage and erosion and sediment control measures shall conform to
377 the standards and specifications of the Mineral Mining Manual Drainage
378 Handbook.

379
380 30. All excavation shall take place above the water table.

381
382 31. Failure to comply with any of the foregoing conditions shall automatically void
383 this permit.

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

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391 **[At this point, the transcript continues with the public hearing on the next**
392 **case]**

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394
395 **UP-009-10 MAMDOUH SALEH** requests a conditional use permit
396 pursuant to Section 24-12(d) to allow a pigeon loft at 6900 Miami Avenue
397 (Crestview) (Parcel 765-742-6941), zoned R-4A, One-family Residence District
398 (Three Chopt)

399
400 Ms. Harris - Is there anyone who would like to speak to this case,
401 please stand and raise your right hand.

402
403 Mr. Blankinship - Anyone who thinks they might speak. Raise your
404 right hands, please. Do you swear the testimony you're about to give is the truth
405 and nothing but the truth so help you God?
406
407 Mr. Saleh - Yes.
408
409 Ms. Harris - Please state your name.
410
411 Mr. Saleh - My name is Mamdouh Saleh.
412
413 Ms. Harris - Spell that, please.
414
415 Mr. Saleh - First name, M-a-m-d-o-u-h. Last name, S-a-l-e-h.
416
417 Ms. Harris - State your case, please.
418
419 Mr. Saleh - I am requesting to have pigeons for my pets in my
420 yard. When an inspector came to my yard, he gave me some advice, so I
421 listened to him. Some like this and I don't have it any more. I remove it. But I
422 still have [unintelligible] the ground on the eggs. Give me permission to give
423 them one month to hatch their eggs and remove them. But if you want me to
424 remove them right now, I'll remove them right now. But just like a pregnant
425 woman, you know, have babies. The person he said his name [unintelligible]. I
426 have a hedge. I don't know, somebody dropped rabbits in my yard or they're wild
427 rabbits. I see them sometimes. I saw them last week. They're there and I have
428 no control over them. So I'm sorry about that. Anything else you recommend, I
429 will do.
430
431 Mr. Blankinship - You're saying that you intend to remove all the
432 pigeons from the site?
433
434 Mr. Saleh - No, the pigeons under my house.
435
436 Mr. Blankinship - Oh, the ones under the house.
437
438 Mr. Saleh - Yes. I have three that lay eggs on the ground. You
439 know with an animal, when you take their babies away, they get upset. So I give
440 them a chance to hatch the eggs and they grow in a week or two weeks. If you
441 want me to remove them now, I'll remove them.
442
443 Mr. Blankinship - But the rest of them—
444
445 Mr. Saleh - All of them are gone. This one, [unintelligible]
446 [0:13:50]*, I removed it already.
447

448 Mr. Wright - Mr. Saleh, let me ask you a couple of questions.
449
450 Mr. Saleh - Yes sir.
451
452 Mr. Wright - I'm trying to understand what you're saying. Staff
453 says if this were to be approved, and I'm not saying it will be, you could not have
454 pigeons under your crawlspace.
455
456 Mr. Saleh - Yes, yes. That's what I'm working on now.
457
458 Mr. Wright - That's number one. Secondly, your loft does not meet
459 the County requirements. It's not located the required two feet above the level of
460 the ground. Do you understand that?
461
462 Mr. Saleh - Which one exactly, the one outside? I can raise it up.
463
464 Mr. Wright - Let Mr. Blankinship explain to you what that means.
465
466 Mr. Saleh - I misunderstood when the—community rules, we
467 have requirements for the shed. I built the shed [unintelligible] the requirement.
468 When I get my application, I read the papers and I misunderstood where it said
469 does not exceed two feet over the ground. So I said I have a foot and a half a
470 month ago. I can raise it up another half a foot. That's the shed. That's what you
471 want.
472
473 Mr. Blankinship - Yes, what you see on the screen there.
474
475 Mr. Saleh - Oh, the big one. I can do that.
476
477 Mr. Blankinship - Everything except that would have to be removed.
478
479 Mr. Saleh - Yes. The other side is gone.
480
481 Mr. Wright - How many pigeons do you have?
482
483 Mr. Saleh - I have seven inside there and—
484
485 Mr. Wright - How many?
486
487 Mr. Saleh - Ten. Ten pair.
488
489 Mr. Wright - You have ten pigeons.
490
491 Mr. Blankinship - Ten pairs.
492
493 Mr. Wright - Ten pairs.

494
495 Mr. Saleh - Of course the ten, they have babies.
496
497 Mr. Wright - That's what I'm saying. So you could have more.
498
499 Mr. Saleh - They don't tell me how many.
500
501 Mr. Wright - Are these pigeons allowed to fly?
502
503 Mr. Saleh - No, I don't. I don't let them fly. Only [unintelligible].
504 And I'm unable to lose any more. I cannot let them out.
505
506 Mr. Wright - If you don't allow them to fly, they lose their capacity
507 to fly, don't they? They're cooped up 24 hours a day, 7 days a week?
508
509 Mr. Saleh - I let them out to have sun outside.
510
511 Mr. Wright - But your testimony is that you never—they are never
512 allowed to leave the coop?
513
514 Mr. Saleh - Do you want me to leave the pigeons inside all the
515 time?
516
517 Mr. Wright - No, I just want to know what the facts are. Do you
518 permit these pigeons to fly from time to time?
519
520 Mr. Saleh - Do, I don't let them out. But the hawk, it was attacking
521 them, kills them right away so. There are too many hawks around this area. I
522 have a guy in front of me, he wired the pigeon. He used to have 20 and now
523 there are like two left. The hawk keeps picking them every day.
524
525 Mr. Wright - How often do you clean this so-called coop?
526
527 Mr. Saleh - Every day, three times a day. I change the water, and
528 take care of the food, and everything. I'm home 24 hours; I'm not working.
529
530 Ms. Harris - Are you aware of the noise complaints against you?
531
532 Mr. Saleh - I have a hedge 15 feet wide and 5 feet tall, and I can
533 let it go up another 5 feet, 9 feet. It's far away from every home. The current
534 pigeon that I have, it is [unintelligible]. Their voice, you can't hear anything from
535 this. It's not loud. It is not king size pigeon, it is [unintelligible], small size.
536
537 Mr. Wright - Do you have any ducks on your property?
538
539 Mr. Saleh - No, I don't.

540
541 Mr. Wright - Have you had ducks on your property?
542
543 Mr. Saleh - A long time ago.
544
545 Mr. Wright - How long ago?
546
547 Mr. Saleh - A year.
548
549 Mr. Wright - Was it 2009, 2005?
550
551 Mr. Saleh - It was 2009.
552
553 Mr. Wright - 2009.
554
555 Mr. Saleh - I don't know about—
556
557 Mr. Wright - That's just a year; that's not so long ago.
558
559 Mr. Saleh - Well, the guy who came, he told me it's not allowed,
560 so I removed them right away. So I don't have ducks anymore.
561
562 Mr. Wright - You're not going to try to raise any ducks anymore.
563
564 Mr. Saleh - No, no, no.
565
566 Mr. Wright - How about any other kind of fowl?
567
568 Mr. Saleh - No, I don't have anything else. I just suffer from the
569 wild rabbits. The person that lives in front of me, he said the guy behind me, he
570 raises rabbits. And I think the rabbits escaped from this guy and come under my
571 hedge. I don't have rabbits.
572
573 Mr. Wright - Are you aware that neighbors are complaining about
574 an offensive odor emanating from this property?
575
576 Mr. Saleh - Yes. He told me about that. I found a squirrel there
577 and I had to move it. It's gone now. I look under my hedges everywhere for
578 rabbits and everything. I use [unintelligible] to kill the bacteria. In my backyard
579 there's a squirrel now. I'm at the end of the street. When the rain comes, all the
580 water stays there. The grass gets muddy and starts to smell. But I spray to kill all
581 the bacteria.
582
583 Mr. Blankinship - You don't think the odor they're smelling has anything
584 to do with the pigeons.
585

586 Mr. Saleh - No, no, no, no. I clean the pigeons daily. I don't want
587 the pigeons to get sick.
588
589 Mr. Wright - You state without equivocation that you do not allow
590 these pigeons to fly, to get out of the coop. We have—
591
592 Mr. Saleh - If you want me to release them, I will release them.
593
594 Mr. Wright - That's not the question. I said do you allow them to
595 fly. We have some information that they are permitted to fly, that they roost on
596 houses around the neighborhood and have droppings all over the place.
597
598 Mr. Saleh - No, I don't release them. I don't. I will lose them. The
599 pigeons, [unintelligible]. So I don't let them fly at all. All the time. I keep them
600 inside. They're on the outside of the fence just to enjoy the sun. And
601 [unintelligible] outside. You want to make it bigger [unintelligible] the hedge, a
602 hundred feet. And that's 36. I can add another 24 to make it wider. Can enjoy
603 more exercise if you want it to become a hundred—hundred [unintelligible].
604
605 Mr. Nunnally - Does anyone else in the neighborhood have pigeons?
606
607 Mr. Saleh - The one in front of me, he feeds wild pigeons.
608
609 Mr. Nunnally - Droppings on people's houses are coming from
610 pigeons.
611
612 Mr. Saleh - The house beside the one in front of me has pigeons
613 all the time, wild pigeons. They're on top of the house all the time. And the guy
614 beside there, he feeds them every day.
615
616 Ms. Harris - Mr. Saleh, you were given a permit by the community
617 group to have a loft for shade?
618
619 Mr. Saleh - Yes. Yes ma'am.
620
621 Mr. Wright - It was to build a coop.
622
623 Mr. Saleh - To build the shed. I told them about the coop. I had a
624 meeting with them last week. I told them it was a coop for this reason and they
625 said okay. But I told them Henrico County has given me this limit, 150 feet,
626 square feet. And this wire for pigeons' exercise that is outside. He said okay.
627
628 Mr. Blankinship - Did they give you anything in writing?
629
630 Mr. Saleh - No. I had the meeting and I sat there with them. I told
631 them I'm filling out an application and I paid the fee.

632
633 Mr. Blankinship - So you did fill out an application.
634
635 Mr. Saleh - Yes. I discussed everything with them.
636
637 Mr. Blankinship - Do you have a copy of that?
638
639 Mr. Saleh - They sent me a letter telling me about it, that they
640 wanted to discuss it. So I went to the meeting and I explained it to them. They
641 said okay, okay. She said, "Okay, we'll wait for your decision or a decision for
642 the outside."
643
644 Ms. Harris - Thank you, Mr. Saleh. Do you have anything else you
645 want to share with us?
646
647 Mr. Saleh - No. Any recommendation for it, I will do it. I will go
648 with the rules, but the only thing I did to upset the community rules, they told me
649 we are above the Henrico County, what they do. So I told them [unintelligible], it
650 is not from the law. I told them to write me a letter about what you said. Then
651 they stop talking. They said your pigeons have to be 2,500 feet from your—or
652 something like that, you know.
653
654 Ms. Harris - Mr. Saleh, thank you so much. After we hear the
655 opposition, we'll give you a chance to come back and address anything that you
656 may hear from the opposition.
657
658 Mr. Saleh - Sure, sure, sure.
659
660 Ms. Harris - Anyone else who wants to speak in favor of this
661 case? Okay, now the opposition. Come down to the microphone, please.
662 Please state your name and spell your name.
663
664 Ms. Hare - Good morning, my name is Terry Hare—H-a-r-e. I'm
665 here on behalf of the Estates at Horsepen Apartment Communities and The
666 Village. We work very hard to maintain a neat and orderly area. We have very
667 manicured lawns. It is our opinion that pigeon droppings are lethal to humans,
668 treated as biohazardous material. We're not in favor of having a coop in that
669 area.
670
671 Mr. Wright - Are these droppings coming from the pigeons on Mr.
672 Saleh's property?
673
674 Ms. Hare - We don't know where the pigeons—
675
676 Mr. Wright - You don't what the—
677

678 Ms. Hare - No. In general, to attract more pigeons or to have
679 more pigeons in that area, we just don't see a need for it or a want for it.
680
681 Mr. Wright - Have you determined any odor emanating from this
682 property?
683
684 Ms. Hare - Not specifically from this property.
685
686 Mr. Wright - Where do you live?
687
688 Ms. Hare - I don't live on Miami. I work for Gumenick Properties.
689
690 Mr. Wright - Oh, you work for Gumenick.
691
692 Ms. Hare - We are the management company.
693
694 Mr. Wright - You don't live in this neighborhood.
695
696 Ms. Hare - No.
697
698 Mr. Blankinship - You're representing the apartments, which are on the
699 east side of Charles and the north side of Miami?
700
701 Ms. Hare - It's 550—yes, you see them right here. So there are
702 two apartment communities that are right on Miami.
703
704 Mr. Wright - Do you think a pigeon loft there would have any
705 bearing on the value of your property or your ability to obtain tenants for these
706 apartments?
707
708 Ms. Hare - Pigeon droppings are unsightly, absolutely.
709
710 Mr. Wright - Where are these apartments located with respect to
711 this property, Mr. Blankinship?
712
713 Mr. Blankinship - Well, the subject property is right on the corner, 6900
714 Miami. The apartments are directly across Charles.
715
716 Mr. Wright - So their apartments are directly across the street from
717 the applicant's.
718
719 Ms. Hare - So it's on both sides of Miami, right on Horsepen.
720
721 Mr. Wright - I see.
722

723 Ms. Harris - Are you familiar with the species of pigeon he
724 described?

725
726 Ms. Hare - No, not that species. But pigeons I've had dealings
727 with in removal processes and so forth.

728
729 Ms. Harris - Are there any more comments?

730
731 Ms. Hare - No, thank you.

732
733 Ms. Harris - Thank you so much. Anyone else want to speak to
734 this case in opposition? Please state your name and spell it, please.

735
736 Mr. Bryant - Good morning, Madam Chairperson. My name is
737 Rodney Bryant—B-r-y-a-n-t. I'm here in opposition of the pigeon loft. A couple
738 of comments. The homeowners' association did approve a storage shed at 6900
739 Miami and I have a snippet of an e-mail from Mr. Floyd Cybulski—and I
740 apologize; I cannot spell his last name—from an e-mail that I had sent to Ms.
741 Margie Langston, who is with Community Group, stating that he was unsure if a
742 submittal had be approved or even given to the homeowners' association at that
743 time, and what the homeowners' association's criteria were for approving that.

744
745 Mr. Blankinship - While he's handing that to me, let me call the
746 attention of the Board members to the packet that was left on the table for you
747 this morning. That's Mr. Bryant's submission.

748
749 Mr. Bryant - In addition, if we quickly go through the package here,
750 you'll notice that there are quite a number of photographs that show that Mr.
751 Saleh does have more than the three maximum of adult animals on his property
752 as pets. There are several pictures that actually show the pigeons out on the
753 ground. They also show the pigeons that are on neighbors' homes, on their
754 rooftops. And it also shows a couple of the pens themselves, which Mr. Saleh
755 was instructed to remove earlier.

756
757 Mr. Wright - Are these pigeons from Mr. Saleh's coop?

758
759 Mr. Bryant - Yes they are, absolutely.

760
761 Mr. Wright - How do you know?

762
763 Mr. Bryant - You can tell by the coloring. For instance, if you look
764 at this photograph here and this photograph here, you can tell the colors are very
765 distinctive. This photograph here actually shows the very distinctive coloring of
766 the pigeons. While this is little bit more difficult to see, you can see very clearly
767 the three pigeons on a neighbor's home. There are children who reside in this
768 home as well and the pigeons have been seen on the children's playground.

769
770 Mr. Wright - Has anyone actually seen the pigeons fly from his
771 property, leave his property and fly about?
772
773 Mr. Bryant - Yes sir. They buzz our house on almost a daily basis.
774
775 Mr. Wright - You've seen them come from his property?
776
777 Mr. Bryant - Yes sir.
778
779 Mr. Wright - You have yourself?
780
781 Mr. Bryant - I have, yes sir.
782
783 Mr. Blankinship - You live immediately next door.
784
785 Mr. Bryant - Yes sir. I'm at 6902 Miami.
786
787 Ms. Harris - Mr. Bryant, does Mr. Saleh have this packet so that
788 he can verify those pictures?
789
790 Mr. Bryant - I'm not sure; I can provide him one here.
791
792 Ms. Harris - He's going to have to rebut and I think it would be
793 wise to give him a packet.
794
795 Mr. Bryant - In addition to that, the hedge that's surrounding Mr.
796 Saleh's rear yard is under strict homeowners' association regulation, so he is at
797 the maximum height for that. In addition to that, Mr. Saleh—I've actually called
798 the police on a couple of occasions for the noise concerns at approximately 5:30
799 a.m. from the pigeons themselves and Mr. Saleh being in the coop. I don't know
800 what he was doing, but it did wake me and my family on a couple of different
801 occasions. I don't have the actual police report from that today.
802
803 Mr. Blankinship - The noise of pigeons cooing or was there something
804 else?
805
806 Mr. Bryant - That was a portion of it, as well as it seemed like
807 there was almost—there was a lot of noise, and ruckus, and cooing, and all
808 types of—it was not human; it was something from the pigeons themselves.
809
810 Mr. Wright - How often has this occurred?
811
812 Mr. Bryant - It occurs about once a week.
813

814 Ms. Harris - Do you think it's because of the number of pigeons
815 that he has in the pigeon loft?

816
817 Mr. Bryant - I believe that, as well as just having pigeons on the
818 site. As a matter of fact, this past weekend, the pigeons were out loose. They
819 were across the street on Miami at I believe it's 6903 Miami. They were on the
820 rooftop there and you could actually hear the pigeons cooing from the rooftop.
821 This was the middle of the afternoon, so it wasn't too disturbing, but it was
822 something we definitely heard.

823
824 Mr. Witte - Mr. Bryant, I rode through there a couple of times. I
825 noticed that there are more than a couple of pigeons in the area. They're in the
826 apartments, they're down Charles Street. They're even down towards Broad
827 Street. I also noticed, what I could see in his yard, was that his pigeons were in
828 the pen. Obviously I couldn't see it all because of the hedge. I'm having trouble
829 believing that his are the only pigeons in the area. Now whether the others are
830 wild or whether they're maintained in another coop somewhere. I'm just having
831 trouble with this situation that this entire problem is caused just by his pigeons.

832
833 Mr. Bryant - No sir, I don't believe it's caused by just his pigeons,
834 but I do believe that his pigeons are attracting additional wild pigeons, which is
835 compounding the issue.

836
837 Mr. Witte - All right.

838
839 Mr. Bryant - In addition to that, the odor that's emanating from the
840 property has gotten stronger and stronger as the weather has warmed up. I think
841 if you go back to one of the photographs of the actual enclosure on the
842 crawlspace, you'll see very clearly that there are numerous pigeon droppings.
843 We have one that's almost straight on. Yes sir, there. See, there are numerous
844 pigeon droppings here across the portion of the enclosure, as well as all types of
845 feathers and debris here. I sincerely doubt that Mr. Saleh has actually been
846 crawling under his crawlspace to clean that area.

847
848 Ms. Harris - When your organization met with Mr. Saleh a few
849 weeks ago, or was it last week—

850
851 Mr. Bryant - No ma'am, I'm not a part of the Board of the
852 homeowners' association. As a matter of fact, the homeowners' association,
853 when they—initially, Mr. Selah did it on just a plain blank sheet of paper that he
854 wanted to put up a shed. That's what was conveyed to me from Ms. Margie
855 Langston who was contracted by the homeowners' association from the
856 organization she works for called the Community Group. She told me they
857 explicitly went around to other neighbors and requested their approval for this or
858 not, and I was explicitly singled out to not be asked if I would approve a shed on
859 Mr. Saleh's property.

860
861 Ms. Harris - Any other comments?
862
863 Mr. Bryant - Are there any additional questions I can answer?
864
865 Ms. Harris - Any questions from the Board? Thank you so much,
866 Mr. Bryant.
867
868 Mr. Bryant - Thank you.
869
870 Ms. Harris - Anyone else who wants to address this issue in
871 opposition? Please state your name and spell it, please.
872
873 Ms. Burden - Good morning, Madam Chair, ladies and gentlemen.
874 My name is Kathleen Burden—B-u-r-d-en. I am the Vice President of the
875 Charles Glen Homeowners' Association. Frankly, I'm not coming here in either
876 opposition or support; I just want to clear up some of the record. According to our
877 homeowner declarations, Mr. Saleh is not expressly prohibited from having a
878 pigeon coop on his property, provided the birds are not kept for any business or
879 commercial purposes, and that the animals do not become an annoyance or
880 nuisance, nor interfere with the quiet enjoyment of his neighbor's property. If the
881 County approves this request, we have noted that the pigeon coop itself is not
882 within the community architectural guidelines. And if the County does approve it,
883 we will work with him to make sure that it does come within compliance. I can
884 confirm to you that we did have a hearing last week with Mr. Saleh because of
885 the coop that did not meet the architectural guidelines. The shed was approved.
886 We have worked with him to make sure that is in compliance. But the keeping of
887 the coop next to that was expressly not approved. What we did is defer action on
888 that until after this hearing because if you decide that the coop is acceptable,
889 then we can work with him to make sure that it complies with our community
890 architectural guidelines. If the coop is not approved, then clearly he'll have to
891 remove it and we don't have any further action.
892
893 Just to let you know, Mr. Cybulski's last name is spelled C-y-b-u-l-s-k-i, in case
894 you're interested. That's all I have at this time. Any other questions for me?
895
896 Ms. Harris - Any questions from members of the Board?
897
898 Mr. Blankinship - You mentioned the standard is whether the animals
899 are—could you repeat that part?
900
901 Ms. Burden - I have a copy of the declarations and the architectural
902 standards, if you would like. As I was reading through these yesterday, we do not
903 see any expressed prohibition on keeping a pigeon coop. What the guidelines do
904 say—and bear with me a second as I flip through here—is no animals, livestock,
905 or poultry of any kind shall be raised, bred, or kept on any lot except household

906 pets, provided they are not kept, bred, or maintained for any commercial
907 purposes. Notwithstanding the foregoing, no animals or fowl may be kept on
908 any lot which results in any annoyance or is obnoxious to other residences in the
909 vicinity, and each owner shall be absolutely liable to each and all remaining
910 owners or family guests, etcetera, for any and all damage to person or property
911 caused by any pets brought upon or kept upon the lots. Etcetera.

912
913 Mr. Blankinship - How do you determine if there's an annoyance to the
914 neighbors?

915
916 Ms. Burden - I supposed based on the complaints that we have
917 received.

918
919 Mr. Wright - But you don't permit that neighbor to come before
920 your Board.

921
922 Ms. Burden - Which neighbor, sir?

923
924 Mr. Wright - Mr. Bryant.

925
926 Ms. Burden - I don't think there's a prohibition that he can't come
927 before the Board, no.

928
929 Mr. Witte - Ms. Burden, according to your association, is there a
930 limit to the number of birds that he can have on the property?

931
932 Ms. Burden - Not an expressed limit, no. Typically we follow the
933 Henrico County guidelines that I think says three animals unless—and as long as
934 they're not kept for any business or commercial purposes. Typically we will defer
935 to the County guidelines. So if the County guidelines said that he could have 40
936 pigeons, for example, then we will presume that he has received the proper
937 permission to be able to do so.

938
939 Mr. Witte - And your association has enforcement powers in your
940 community?

941
942 Ms. Burden - Yes. There is a fine. There is a violation charge that
943 we can levy and eventually if it's severe enough, we can lien the house.

944
945 Mr. Witte - Okay, thank you.

946
947 Ms. Harris - Ms. Burden, you said that the pigeon loft or the
948 building shed conforms to your guidelines? I thought in our Code we expressed
949 that it could not be less than two feet above the ground. The storage shed. Yes,
950 this. Is this two feet about the ground?
951

952 Ms. Burden - Are we speaking of the coop or are we speaking of
953 the shed?
954
955 Ms. Harris - We can see that the coop is not; I think it's resting
956 right on the ground. This building that was approved by the Board.
957
958 Mr. Blankinship - The shed is the coop, right?
959
960 Ms. Burden - Personally, I am not clear on exactly where the birds
961 are living at this point. Mr. Saleh was approved for a storage shed. If he is using
962 that as a bird coop, then I do not think that is permitted. I will double check the
963 guidelines to make sure, but I do not consider a storage shed for lawnmowers,
964 etcetera, to be a storage shed for birds.
965
966 Mr. Wright - His pictures showed the—
967
968 Mr. Blankinship - That's his testimony as well, that the birds are living in
969 that.
970
971 Mr. Wright - The picture shows the birds living—
972
973 Ms. Burden - Are living in there?
974
975 Ms. Harris - —in the shed.
976
977 Ms. Burden - That was—I was not present at—there are two
978 separate portions of this Board. There's obviously the association Board and
979 there's also an Architectural Review Committee that reviews the applications for
980 the shed. I am not part of that committee; I did not receive any information
981 regarding the shed or what its intended use was, so I really can't speak to that.
982
983 Mr. Blankinship - Is that Mr. Cybulski's role?
984
985 Ms. Burden - Mr. Cybulski is the president of the Board. His wife is
986 chairman of the Architectural Review Committee. So it's possible that they had
987 some communications. I'm not privy to any of that and I can't speak to it.
988
989 Mr. Witte - Okay. So the shed is the coop and the shed has to be
990 two feet off the ground. Is that my understanding?
991
992 Mr. Blankinship - Yes sir, by the County Code.
993
994 Mr. Wright - But she's saying that the shed cannot be used as a
995 coop. Isn't that what you just said?
996

997 Ms. Burden - I'm double checking our guidelines. My understanding
998 is that shed was approved as a storage building.
999

1000 Mr. Wright - So it cannot be used as a pigeon coop.
1001

1002 Ms. Burden - I do not believe so. I'm continuing to look just to make
1003 sure. Again, I am not on that committee so I'm a little bit out of my element here.
1004

1005 Mr. Wright - Of course that's your Board. This Board makes its
1006 decision based on the County ordinance and it really doesn't have a whole lot to
1007 do with that.
1008

1009 Ms. Burden - Fair enough.
1010

1011 Mr. Blankinship - He has to have the approval of both bodies.
1012

1013 Ms. Burden - Correct, correct.
1014

1015 Ms. Harris - And we know the crawlspace is against the Code. Is
1016 there anything else you'd like to state, Ms. Burden?
1017

1018 Ms. Burden - Not at this time, thank you.
1019

1020 Ms. Harris - Anyone else who wishes to speak in opposition,
1021 would you come forward please, state your name, and spell it.
1022

1023 Ms. Stone-Bryant - Good morning. My name is Erica Stone-Bryant.
1024 That's S-t-o-n-e hyphenated B-r-y-a-n-t. I live at 6902 Miami Avenue, next door.
1025 Two concerns that I have. I know the Board's decision is different from the
1026 articles that are in the community group, but these are two of my concerns. And
1027 I am going by the Charles Glen Homeowners' Association, which we did provide
1028 some information. It's Section 6.10. No animals, livestock, or poultry of any kind
1029 shall be raised, bred, or kept on any lot, except for household pets. They may
1030 be kept in a lot provided, but they are not kept, bred, or maintained for any
1031 commercial purposes.
1032

1033 I have had several conversations with Mr. Saleh about the pigeons, when he was
1034 going to get them. And I had specifically asked him; is this approved by the
1035 homeowners' association. He did tell me that they were. And he did specifically
1036 tell me that he was buying these pigeons, and he was going to train them as
1037 homing pigeons, and he was going to sell them and make money with them.
1038 That was a specific conversation that I did have with him. Because I asked him
1039 what he was going to do with these pigeons, because as a neighbor, I was
1040 curious.
1041

1042 The other article, Section 6.6, is that no noxious or offensive activity shall occur
1043 on any lot, nor shall anything be done therein which may be or become an
1044 annoyance or nuisance, public or private, to the neighborhood, or shall in any
1045 way interfere with the quiet enjoyment of the owner of any lot. No use shall be
1046 made of any lot which will depreciate or adversely affect the value of the
1047 surrounding lots of the neighborhood as a first class residential property.

1048
1049 My biggest concern is when it comes time that we want to sell our house, this is
1050 going to be a depreciation of our property. I'm looking at the pictures. I'd have to
1051 question would I want to live next door to something like that. If we had
1052 somebody looking at our house, that would be the first thing that they would see.
1053 That is my concern.

1054
1055 Any questions?

1056
1057 Ms. Harris - Any questions from Board members? Thank you.

1058
1059 Ms. Stone-Bryant - Thank you very much.

1060
1061 Ms. Harris - Anyone else speaking to this case in opposition?
1062 Come forward, please. State your name.

1063
1064 Ms. Woten - Good morning. My name is Ally Woten. I live at 6904
1065 Miami Avenue.

1066
1067 Ms. Harris - Spell your last name, please.

1068
1069 Ms. Woten - W-o-t-e-n. Our concern, my husband and I, is that if
1070 exceptions are made for things like pigeons, it could lead to other things like
1071 chickens and other livestock being raised.

1072
1073 Mr. Wright - How close do you live to this?

1074
1075 Ms. Woten - I'm on the other side of the Bryant's. I'm the third
1076 house up on Miami. 6904.

1077
1078 Mr. Wright - Okay, I see.

1079
1080 Ms. Woten - Okay. I do know that my neighbors have had some
1081 problems. It doesn't affect me as much as them because I am one house away,
1082 but I do want to say that I have seen the pigeons flying and roosting on the
1083 houses.

1084
1085 Mr. Wright - But have you seen them come from his property?

1086

1087 Ms. Woten - Yes, I have. I hear him calling them, trying to get
1088 them.
1089
1090 Ms. Harris - Does the noise and odor—
1091
1092 Ms. Woten - Not directly me because, like I say, I'm one house
1093 away. I don't hear the noise or the odor like my neighbors do, but I do know that
1094 they fly and they do roost. Okay, thank you.
1095
1096 Mr. Witte - I have a question, please. You said that Mr. Saleh
1097 was calling the pigeons, trying to get them back. Is there a regular interval that
1098 he turns them loose or?
1099
1100 Ms. Woten - I don't know if it's a regular interval. I mean, I've just
1101 been out on my back deck and seen it a couple of times. And I know he's sitting
1102 in the backyard whistling, trying to get them back.
1103
1104 Mr. Witte - Trying to get them back. He testified that occasionally
1105 they do get out when he leaves the door open. But he's concerned about the
1106 hawks killing them, as they have some others in the area.
1107
1108 Ms. Woten - I've never seen a hawk. I don't know whether there
1109 are any around there or not. But I have seen the birds flying.
1110
1111 Mr. Witte - As he stated, they have gotten out.
1112
1113 Ms. Woten - Yes.
1114
1115 Mr. Witte - Okay, thank you.
1116
1117 Ms. Woten - Thank you.
1118
1119 Ms. Harris - Is anyone else speaking in opposition who has been
1120 sworn in? Mr. Saleh, you may speak to address these concerns.
1121
1122 Mr. Saleh - I respect you all, all of you. I have problems with my
1123 neighbors and my community group, too. There is Mr. Bryant and his wife. I get
1124 a permit twice. Still a fence. My house, 65. Mr. Bryant attacked the fence and
1125 broke it twice and I reported it to the police. They forced me to have a hedge.
1126 Mr. Bryant and his wife, they have a dog and cat. The cat is outside. First when I
1127 start my pigeon, it was under my house. And the wife's cat outside—you're not
1128 supposed to have a cat and dog at the same time, so they left the cat outside
1129 and the dog in the yard. The cat attacked my pigeon and killed more than once.
1130 I called the animal control. They said they can make a report. I did not
1131 [unintelligible]. I thought I locked it, but I missed locking it, so the door was open.
1132 It got in and killed the four.

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1177

I asked about the hedge. I think Henrico said the hedge in the back can go to 15 feet high. Outside in the street, it can go to nine feet. Second, I had one when I built my coop. There was a hole in the wire that I did not see. It was a mistake from the manufacturer. I had four pigeons sneak out. I did not see the hole, but I found them on my ground. I got upset. They are very expensive. They did not go in my yard—in my house. What goes in my house will go [unintelligible]. So I left some. It does not go in my house, it is gone forever. It will go back to where I come from. The other one was a baby, he was confused. He keeps flying for three days around the house. I usually [unintelligible] them inside the house to know my voice. After three days, he comes back. I locked them and found where they were getting out. They never come out anymore. I do not want a cat to attack them and kill them. I do not want the hawk to kill what I love.

About the shed, the president of the community group, I told him the whole story, so I'm not going to repeat it. [Unintelligible] shed, are you going to use it for the pigeons and I said yes. You choose that location, I have said yes. That's a nice location. So I thought that I was going to make the door [unintelligible] Mr. Bryant and his wife on the side. When I started building the shed, he called the police to stop me from building the shed. I have the permit from the community group, they're charging day by day. Pigeon, if you ask for it, I will do it. I'm not saying anything. He said move and put it there, I put it there. So I hold papers for everything. The president of the community group knows this.

When I went to the meeting, they had like five, six, seven from the community group sitting there. And they ask me how many pigeons I have. Do you have one pigeon for all of these cages? We know from where you are. Of course, it's not this meeting. [Unintelligible] far from me. We don't see a door there. When the door I open, I just—I try to avoid something like that. Just keep on, a lot of work is like that. Before I had a hedge of roses and after 40 years, they said remove—move it. And I remove it. And then they say no, you can keep it. They lost me money. It is like every day the community group is acting like that. They say so today, next day they say another thing.

Ms. Harris - Mr. Saleh? We just wanted you to address the issues that were brought out by the opposition group and I think you've done that. We just wanted you to—if you disagree with anything the opposition said, you could give us your side of that and I think you've done that.

Mr. Saleh - Yes. The picture he took of the pigeons on the ground, that was like four days ago when they snuck out from the wire. And I closed the hole and all of them are inside. Nothing is outside anymore. The only one came back and I opened it for him. He was flying around the house. When he came back, I locked him. So I don't have any pigeons.

1178 Ms. Harris - All right. I think that is—unless you having something
1179 that we have not heard before.

1180
1181 Mr. Saleh - There are just lots of wild pigeons. The lady was
1182 complaining about pigeons. There are wild pigeons on the house in front of me.
1183 They were there all the time before I got my pigeons. There were around 10 or
1184 15. My pigeons do not go outside anymore. I cleaned up everywhere.

1185
1186 Ms. Harris - Thank you so much, Mr. Saleh. We will be voting on
1187 this at the end of the meeting. If you decide to hang around, we will be voting on
1188 this case.

1189
1190 Mr. Saleh - And another thing I will tell her. It's allowed for me to
1191 have the pigeons [unintelligible]. Thank you.

1192
1193 Ms. Harris - Thank you so much. That concludes this case.

1194
1195 **[After the conclusion of the public hearings, the Board discussed the case**
1196 **and made its decision. This portion of the transcript is included here for**
1197 **convenience of reference.]**

1198
1199 **DECISION**

1200
1201 Mr. Wright - I move we deny this case. The basis for that motion is
1202 that I think shown through the evidence and what would happen, I think it
1203 adversely affects the health, safety, and welfare of persons residing in that
1204 neighborhood, especially the health. I think that it impairs the character of the
1205 district. That's a fairly brand new subdivision. It used to be Crestview. They came
1206 in, bulldozed it, and built some nice houses in a nice area. Also, I think it is likely
1207 to reduce or impair the value of adjacent properties and the surrounding areas.

1208
1209 Ms. Harris - Is there a second to this motion?

1210
1211 Mr. Nunnally - I second it.

1212
1213 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Nunnally that
1214 we deny this case. Is there any discussion on this motion?

1215
1216 Mr. Witte - I do have one concern. It seems like the homeowners'
1217 association doesn't prohibit this activity and they do have voice and power in the
1218 neighborhood. They didn't speak against it so I do have some concerns there.
1219 But I also see the point of the neighbors who are having problems with it.

1220
1221 Mr. Wright - Mr. Witte, my point on that is that doesn't have
1222 anything to do enforcing the ordinance.

1223

1224 Mr. Witte - I agree.
1225
1226 Mr. Wright - I've been on the board of a homeowners' association
1227 and they do strange things.
1228
1229 Mr. Witte - Right, I agree. But I was just making that point, the
1230 point that that was the situation.
1231
1232 Ms. Harris - Do you think that if the homeowners got rid of the
1233 pigeons in the crawlspace and brought the pigeon loft up to snuff, locating it at
1234 least two feet from the ground, would that make any difference?
1235
1236 Mr. Wright - It doesn't make any difference in my opinion because
1237 I think you have to take these cases on a case-by-case basis. There may be
1238 some residential areas where they are so situated that you could have
1239 something like this. But this is a right crowded area and I think it badly impacts
1240 the neighborhood.
1241
1242 Ms. Harris - Anymore discussion on this motion? All in favor say
1243 aye. All opposed say no. The ayes have it; the motion passes. The case has
1244 been denied.
1245
1246 After an advertised public hearing and on a motion by Mr. Wright seconded by
1247 Mr. Nunnally, the Board **denied** application **UP-009-10, Mamdouh Saleh's**
1248 request for a conditional use permit pursuant to Section 24-12(d) to allow a
1249 pigeon loft at 6900 Miami Avenue (Crestview) (Parcel 765-742-6941), zoned R-
1250 4A, One-family Residence District (Three Chopt).
1251
1252
1253 Affirmative: Harris, Nunnally, Witte, Wright 4
1254 Negative: 0
1255 Absent: Dwyer 1
1256
1257
1258 **[At this point, the transcript continues with the public hearing on the next**
1259 **case.]**
1260
1261
1262 **A-005-10 JOHN W. GIBBS, JR.** requests a variance from
1263 Section 24-94 to build a one-family dwelling at 5450 Axe Handle Lane (West
1264 Ridge) (Parcel 731-773-5875), zoned A-1, Agricultural District (Three Chopt).
1265 The lot width requirement is not met. The applicant has 100 feet lot width where
1266 the Code requires 150 feet lot width. The applicant requests a variance of 50 feet
1267 lot width.
1268

1269 Ms. Harris - Anyone who has an interest in this case, please stand
1270 that you may be sworn in. Raise your right hand.

1271
1272 Mr. Blankinship - Do you swear the testimony you're about to give is
1273 the truth and nothing but the truth so help you God?

1274
1275 Mr. Condlin - I do.

1276
1277 Ms. Harris - Will you state your name?

1278
1279 Mr. Condlin - Good morning, Madam Chair, members of the Board.
1280 My name is Andy Condlin—C-o-n-d-l-i-n—from Williams Mullen. I'm
1281 representing Mr. John Gibbs. I have with me Tom Kinner, who works with Mr.
1282 Gibbs and has knowledge of the case, as well as Mr. Gibbs himself. I wanted to
1283 provide that.

1284
1285 I wanted to first apologize. We did provide the memo in time for the package, but
1286 I don't think in time for Mr. Blankinship to review. I'm going to point out in part of
1287 my presentation some inconsistencies between at least our position and a memo
1288 with respect to the—versus the staff report, which again, Mr. Blankinship didn't
1289 have the benefit of those, I guess, having had to send that out based on the
1290 information. So I just wanted to at least make the global statement as I go
1291 through the provision of that timing.

1292
1293 I have a fax sheet with respect to the dates on this property because I do think
1294 it's important given some of the history of this. This is at the end of Axe Handle
1295 Lane. It's Lot 8 within West Ridge Subdivision, which is a 39-lot single-family
1296 residential subdivision. It's 95% built out. There are three lots, including this one,
1297 that have not been built.

1298
1299 This has gone through a little bit of a soap opera and it has some details of
1300 certainly an unusual situation. As you'll see on the timeline, on December 15,
1301 1977, Goochland County approved the subdivision plat for this subdivision. The
1302 reason for that was because at the time of that subdivision, the line ran generally
1303 about a quarter of this lot in Henrico and the rest of it—three-quarters of it—was
1304 in Goochland County. So they had to do a subdivision in both Goochland and
1305 Henrico. So on December 15th, there was an approval by Goochland County.
1306 Then for some reason, the owner of that, the developer of the subdivision sold
1307 50 feet, a 50-foot lot strip right along this lot, Lot 8, to Mr. Mason Alvis, who
1308 owned a large tract in Goochland County behind this. And this is basically his
1309 only access to get to that. That's why they purchased the 50 feet. That 50 feet
1310 was part of the 150-foot-wide lot, Lot 8. So he got it approved by Goochland
1311 County. He sold 50 feet of that Lot 8 to Mr. Alvis, and then seven days later he
1312 got approval from Henrico County for the subdivision. The next day, December
1313 29, 1977, they recorded the subdivision plat in both Goochland and Henrico.
1314 Then on January 5th, Mr. Alvis then recorded the deed for the 50-foot strip in

1315 Henrico. About a month later—February 10, 1978—he recorded the deed in
1316 Goochland. So you see a little bit of a nuance. We went through the title and got
1317 all of this. I have copies of the various documents if you need them.

1318

1319 Mr. Blankinship - I have one question about that, if it's okay to interrupt
1320 you.

1321

1322 Mr. Condlin - Absolutely, please do.

1323

1324 Mr. Blankinship - The 50-foot strip was sold the 21st; the subdivision
1325 was approved the 28th in Henrico County.

1326

1327 Mr. Condlin - That is correct. It was not recorded though.

1328

1329 Mr. Blankinship - Did that approved subdivision of the 28th reflect the
1330 change that had been made on the 21st?

1331

1332 Mr. Condlin - No, it did not. From a technical real estate term, when
1333 I sell you my property, when I give you my deed, between you and me the
1334 conveyance has occurred. But until you record it as a purchaser, the rest of the
1335 world is not put on notice and that's why you record it. So between you and me, I
1336 sold you the property, the subdivision happened, but the rest of the world didn't
1337 know. Certainly Henrico County and Goochland County didn't know about it.
1338 After the subdivision plat got approved and then recorded, then the deed got
1339 recorded. When I sell you my property, you record the deed; I don't record the
1340 deed. I think that's what's happened here. Don't know what the developer was
1341 thinking, whether there was fraud involved, whether it was unintentional, whether
1342 he didn't realize what he was doing or did. But regardless of that, that is what
1343 happened.

1344

1345 To complicate matters further, the developer, which was a limited partnership,
1346 West Ridge Limited Partnership, had a general partner. Limited partnerships are
1347 required to have at least one general partner. The general partner in this case
1348 was Simmons Realty Corporation, whose sole shareholder was Mr. D. T.
1349 Simmons, who died and his two children took over. And they couldn't figure out
1350 how to run this corporation, to run this development. This was after the sale of
1351 the lot. There were disputes that arose involving fraud. One of the siblings
1352 petitioned the court to involuntarily dissolve the corporation and asked for a court
1353 appointment of a receiver to sell the corporations assets. So in 1990, the court
1354 appointed a receiver to sell all the assets of this corporation. Those assets
1355 included this property, so in 1993, the court specifically drafted an order that
1356 says you the receiver must do a sealed bid process to sell the remainder of the
1357 property and sell this property by quitclaim deed. It was a court order. There
1358 wasn't a decision as to why or anything else, but it was a court order. So on May
1359 25, 1993, the applicant in this case, Mr. Gibbs, won the sealed bid process and
1360 then received the deed.

1361
1362 The last item I'll tell you, if you remember, I said that the property was located in
1363 both Henrico and Goochland. There was some dispute, some concern as to
1364 where the line was. Part of the lots were in Goochland, but their kids were going
1365 to school in Henrico. There was an agreement that was effective on January 1,
1366 2005, which put this entire subdivision with that line you see now in Henrico
1367 County.

1368
1369 Mr. Wright - I just wanted to clear up some things.

1370
1371 Mr. Condlin - Yes. This is a soap opera, so I wanted to make sure
1372 we got it all.

1373
1374 Mr. Wright - On December the 15th of 1977, what was the status
1375 of the lot?

1376
1377 Mr. Condlin - What was approved was a 150-foot-wide lot.

1378
1379 Mr. Wright - And that complied with both Goochland and Henrico
1380 County's requirement for a lot at that time. It was a conforming lot.

1381
1382 Mr. Condlin - Correct.

1383
1384 Mr. Wright - Under the Zoning Ordinances of both Goochland and
1385 Henrico.

1386
1387 Mr. Condlin - If I may clarify. Henrico County, yes. Goochland
1388 County—and I have an e-mail here and it is grandfathered in Goochland County.
1389 I was talking with Goochland County, an Anita Barnes, who is with the Planning
1390 Office, and she remembers. It's dangerous when they remember something that
1391 happened in 1977. She said, "I remember it exactly." Because this was in both
1392 Henrico and Goochland, and there was even a question as to exactly where the
1393 line was, because there was a line that Goochland felt was farther into Henrico
1394 than Henrico felt. Goochland said because it's on street frontage on Axe Handle
1395 Lane, we will allow a development to occur that matches Henrico's requirements.
1396 Goochland actually requires a wider lot under their zoning, but they said because
1397 the road frontage is in Henrico, we'll allow it to be grandfathered and to meet—
1398 you can see on the plat it says, "Must meet side yard setback and requirements
1399 of Henrico County." So yes, it complied with all the requirements. But only in
1400 Goochland because it was partly in Henrico.

1401
1402 Mr. Wright - But it still complied.

1403
1404 Mr. Condlin - They could build a house.

1405
1406 Mr. Wright - Without a variance.

1407
1408 Mr. Condlin - Without a variance they could build a house, yes sir.
1409
1410 Mr. Wright - You want to keep that in your mind.
1411
1412 Mr. Condlin - I've got it, yes sir. My next point was that the property
1413 was, in fact, grandfathered; it could be built in Goochland. Until January 1, 2005,
1414 a home could be built.
1415
1416 Mr. Blankinship - A 150-foot lot could.
1417
1418 Mr. Condlin - I have an e-mail and I might as well get it out right
1419 now. I gave you the whole e-mail, but you only have to read the top part of this.
1420 According to Ms. Barnes, before January 1, 2005, when this was still in
1421 Goochland County, as long as the home was not in Henrico County, but was
1422 placed in Goochland County—on the 100-foot lot, because it was grandfathered,
1423 it was already grandfathered—as long as it met the side yard setbacks and could
1424 perk—were the only requirements—There are two pages to that, Mr. Wright; I
1425 didn't staple them together. I apologize. I just wanted you to have the full e-mail.
1426 Because it was already grandfathered, Goochland County took the position that
1427 until January 1, 2005, as long as the home was located entirely in Goochland
1428 County, and the access drive and no home was built within Henrico County, as
1429 long as the driveway went out to Axe Handle Lane, they could build a house in
1430 Goochland County and they would not be precluded. That's what this e-mail
1431 says; that's what our conversation was with Ms. Anita Barnes. We asked that
1432 question specifically. The reason for that was because it was originally
1433 grandfathered. It was grandfathered as to lot area and lot width. Until the
1434 boundary line adjustment between Goochland and Henrico.
1435
1436 Unfortunately, a home was not built prior to that time in Goochland County. In
1437 the application—which I don't know if you have the survey that showed the
1438 building lot—the building lot goes all the way back to the rear yard line. And this
1439 exact same house that we're proposing here can meet the setback requirements
1440 of Goochland County without any problem. So as long as the home was in
1441 Goochland and not in Henrico, they could build the home without getting a
1442 variance from Goochland. Would Henrico have agreed? I don't think they'd
1443 preclude it. I don't know the answer to that. Maybe Mr. Blankinship or Mr. O'Kelly
1444 would know better than I, but certainly Goochland County didn't have an issue
1445 with that.
1446
1447 Our position is, quite frankly, that this request for a variance of 50 feet from the
1448 Henrico County lot width requirements meets all the prerequisite requirements.
1449 We purchased the property in good faith. We meet the strict application. The
1450 Henrico County Code interferes with all beneficial uses of the property. It creates
1451 a hardship by not being able to use the property. This hardship is not generally
1452 shared by other properties and it won't be a substantial detriment to the adjacent

1453 property, nor change the character of the district. I will be showing that through
1454 my presentation.

1455
1456 This case is distinguished from the case last year in April of 2009 which came
1457 before you for the same lot because that request not only was for lot width but it
1458 was also for setbacks. Obviously we can meet the setbacks. And because of
1459 that, I think you were right in denying that case because that didn't meet the
1460 Cochran test, it didn't meet the requirements to say there's no other alternative.
1461 There was an alternative to meet the setbacks. So I think that was a correct
1462 decision. I certainly read through the minutes. But from that standpoint, I think
1463 that this case is distinguished because we're not asking for a setback variance.
1464 We're meeting all setback requirements. We're only asking for a lot width
1465 variance because we can't meet it. There's no way to meet it.

1466
1467 We already addressed the grandfathering issue. We just found this out by e-mail
1468 yesterday or the day before, being able to piece together everything as to why it
1469 was grandfathered and could be built in Goochland County. Certainly it could not
1470 be built in Henrico County without a variance, but in Goochland County, it was
1471 grandfathered.

1472
1473 Next I want to get into good faith. I know on the last case there was a lot of
1474 discussion and in the staff report there's a lot of discussion about a quitclaim
1475 deed. I'd be happy to show it to you; I have it here, a copy for everyone, the
1476 order from the court that said it must be sold by quitclaim deed. It has nothing to
1477 do with the request for a variance. I'm going to state it right now that legally there
1478 is no connection between whether this was a quitclaim deed and whether a
1479 variance should be granted. A quitclaim deed is simply a question of who owns
1480 the property. A quitclaim deed, a special warranty deed, a general warranty
1481 deed, a no warranty deed—all it does is transfer the property and it's a question
1482 of do I own the property as a seller and who else has good title to it. A quitclaim
1483 deed has nothing to do with can you build on the property. It gives no
1484 assurances if you meet the County codes. It gives you no assurances to
1485 anything other than who owns the property. We use a quitclaim deed, quite
1486 frankly, because there's either a question, or it's often used in times of estate
1487 sales where they either give a specialty warranty deed or a quitclaim deed, or in
1488 this case, a special receiver with an order from the court.

1489
1490 At any time, Mr. Gibbs could convey the property to another entity that he
1491 controls, an LLC, by general warranty deed. You can get title insurance with a
1492 quitclaim deed and give a general warranty deed. If that's a dispositive issue, we
1493 can resolve that and come on back at a later time. But it's a dispositive issue.
1494 Under Spence, which I provided in my memo, knowledge had nothing to do with
1495 good faith. He received a quitclaim deed because it was required by the court.
1496 Does that mean he had knowledge? Doesn't matter. It doesn't matter that he
1497 might have knowledge that this is either a low purchase price, that there might be

1498 a title issue, or that he needs a variance. Under Spence, that has absolutely
1499 nothing to do with the good faith argument.

1500

1501 The last thing I'll say about that issue is what would be different if we had a
1502 general warranty deed? A general warranty deed would say the seller had good
1503 title and I, the seller, warrant that you have good title. They did that before they
1504 had title insurance. Now we get title insurance. What would be different?
1505 Absolutely nothing. I'd be standing right here in front of you in any case, whether
1506 it was a general warranty or a quitclaim deed. All it is is a method or an
1507 instrument of conveyance of title.

1508

1509 As to Spence—and I provided this in my memo—I would respectfully disagree
1510 with the staff report that the fact that he received a quitclaim deed, the fact that
1511 Mr. Gibbs had—whether he did any amount of due diligence, whether he
1512 purchased the property for a very low purchase price, or whether he received a
1513 quitclaim deed or something else has nothing to do with good faith.

1514

1515 First let me deal with the price. In Spence, it couldn't be clearer. It specifically
1516 states the amount paid for the property has nothing to do with good faith. I'll say
1517 contrarily, this was done with a sealed bid process, in essence, through an
1518 auction. That certainly represents some sort of fair market value, the fact that he
1519 bought it at that price. Regardless of that, it doesn't matter in Spence.

1520

1521 With respect to due diligence, the staff report says that in its evaluation
1522 additional due diligence by the applicant would have revealed the non-
1523 conforming nature of the lot. It doesn't matter. Under Spence, the applicant in
1524 that case actually knew that a prior variance had been denied and they knew that
1525 they would have to get a variance to build, and the court said it doesn't matter;
1526 it's still good faith. That goes to the knowledge issue.

1527

1528 The real issue on the good faith problem is did the applicant cause the need for
1529 the variance. Certainly this applicant did not. The original developer did, for
1530 whatever reason. He had a 150-foot-wide lot approved through a subdivision and
1531 sold 50 feet of it. Don't know why that was or what occurred in that case. But
1532 this applicant did not cause that fact. When this property was three-quarters in
1533 Goochland, this applicant had notes certainly at the time that they went through
1534 the boundary line adjustment when they first considered it, but he also had notes
1535 in his file that specifically said that this was grandfathered and could be built in
1536 Goochland County. He did his due diligence. He was told he could build on it.
1537 And only because of the boundary line agreement can we not build on it today.

1538

1539 So good faith hinges on what the applicant has done. In this case, the developer,
1540 not the applicant, created the non-conformity. The instant the subdivision plot
1541 was recorded, Lot 8 became non-conforming, not because of the applicant, but
1542 because of the developer. So it's not a self-imposed hardship. The fact that he
1543 bought the property is not a self-imposed hardship. If he had sold the 50 feet,

1544 certainly that would be the case. So the applicant bought the property in good
1545 faith from the court-appointed receiver by quitclaim deed, as required by the
1546 order. Purchase price doesn't matter. The type of deed doesn't matter.
1547 Knowledge of the need for a variance does not matter. It only matters whether
1548 the applicant caused the need for the variance. Certainly the applicant in this
1549 case, pursuant to the staff report, did not cause that. So I think that covers the
1550 good faith issue.

1551
1552 I'll move forward, then, with really the three questions and Cochran. I'm going to
1553 merge a couple of them together. The question of extraordinary shape and size;
1554 does that effectively prohibit the utilization of the property, so that no other
1555 reasonable use can be made of the property? That strict application of the
1556 ordinance produces an undue hardship. Pretty simple. The code requires 150
1557 feet; we have 100.

1558
1559 As the property sits now without a variance, he cannot build a home on it.
1560 Actually, as it probably sits now, they can't do anything with the property because
1561 the Code requires 150-foot lot width for dwellings, 400-foot lot width for
1562 churches, 200 feet for clubs, and 400 feet for other permitted uses. The only
1563 thing you can use the property for is leaving it vacant, used as really a
1564 neighborhood dump of sorts, and farming, as long as there's no structure on
1565 there. So I think that's really the only thing. So certainly the property at 1.4 acres
1566 is not appropriate for farming, particularly with a subdivision of 30 lots in the
1567 area. Just north of this there are going to be another 30-lots that are already
1568 going to be in subdivision, that's already been recorded. Maybe it hasn't been
1569 recorded, but it's certainly been approved. This whole area is intended for
1570 residential use. And it should be residential. But the applicant cannot use the
1571 property for a residence, a single-family use, because of the narrowness of the
1572 lot, because we're missing those 50 feet. Without a variance, no reasonable use
1573 can be made of the property. We don't think that there is any real use as a farm
1574 on this property. And quite frankly, when you look at the Comprehensive Plan for
1575 Henrico County, you look at the plats, you look at the intent—generally, it all calls
1576 for residential use, particularly the Comprehensive Plan.

1577
1578 The second test is that the hardship is not generally shared by other properties in
1579 the zoning district and in the same vicinity. The staff report provides that the
1580 subdivision is approximately 95% built out. Those are the three lots that I was
1581 talking about. Staff does not anticipate any similar variance requests in the future
1582 for this subdivision, according to the staff report. So certainly it's not shared by
1583 other properties. And certainly it's an unusual situation. The 623 Landfill, as a
1584 matter of fact, uses the 50-foot access. It's located right here. They use it for
1585 access to the 623 Landfill. I'm actually handling the case in Goochland County
1586 with respect to the landfill. We're required to have emergency access. It's not full
1587 access, but they want emergency access because they come off of 623 and they
1588 want another way for access for emergency inspection.

1589

1590 Interesting. With a large piece of property in this area, a lot of dirt bikes, they had
1591 to put a fence up to keep people out. So I have a lot of knowledge of the area.
1592 They want to be able to inspect the property to make sure people aren't using it
1593 and the fence is still up, but also for emergency purposes, for emergency
1594 vehicles. We're limited to that. There's another access off of Kain Road just to
1595 the south of here and this access off Axe Handle. Both of them are for
1596 emergency only and because of the wetlands to be able to get to the north and
1597 south of that property. The property to the north, as I said, is owned by HHHunt
1598 as a 50-acre tract with about 34 lots. The staff report correctly concludes that
1599 the property is the only lot in the entire subdivision that does not conform to the
1600 agricultural district's 150-foot lot width requirements.

1601
1602 Interestingly, in the next statement, under the discussion of whether or not it
1603 would be a substantial detriment, they called this an anomaly. It is an anomaly.
1604 I think the anomaly goes to it's not shared by anybody else. I think certainly
1605 we've met that standard as well. Lot 8 is unique and it is the only lot having this
1606 issue. It certainly has a unique story.

1607
1608 So finally, the last criterion that the Code and the Supreme Court have set out is
1609 that the authorization of the variance will not be a substantial detriment to
1610 adjacent property and that the character of the district will not be changed. This
1611 is for a residential house in a residential subdivision. That's what we're asking
1612 for. The proposed dwelling on Lot 8 conforms to all of the setback requirements
1613 of the Henrico County Code. It will look exactly like and is the same size as all
1614 other lots, 36 single-family dwellings developed on the lots in the area. The
1615 applicant could put the proposed dwelling on the lot as it is situated. Whether
1616 the lot was 150 or 100; it's the exact same house. It would meet the standards.
1617 As a matter of fact, with the 50-foot emergency access, if you drive down—this
1618 lot is at the end of Axe Handle Lane, which goes nowhere else at this point; it's a
1619 temporary cul-de-sac, next to a landfill access road, not a lot of people are going
1620 down there. But in any case, it will look, I would say, almost indistinguishable
1621 from other lots in the area. You won't know the difference other than we're going
1622 to have a lot with a house on it and an access road that's rarely used that's right
1623 next door. It will look like 150. It will look just like everything else and it'll be used
1624 just like all the other lots in the area.

1625
1626 The staff report states that the variance of 50-foot lot width may adversely affect
1627 the property values of the remaining lots in West Ridge Subdivision. With all due
1628 respect, I think that's pure speculation and I don't think there's any basis for that.
1629 I don't know where that statement comes from. In fact, most lots—and I'll say in
1630 the West End of Henrico County, I practice a lot in this area, certainly within the
1631 Pouncey Tract area—there's been limited development west of Pouncey Tract,
1632 but most of the lots are of the 80- to 90- to 100-foot lot widths. I would say most,
1633 if not all of those lots are within the general assessed value of what this has
1634 been assessed for over the years. Based on existing subdivisions within the
1635 area, lots with widths less than 100 feet have equal or higher assessed value.

1636 To give you Gray Oaks as an example, where lot widths are 80, 90, and 100
1637 feet, the average lot value is \$185,000. That's well above the lot value
1638 assessments that are provided for in this subdivision.

1639
1640 This is my last handout, I promise. This one is stapled and there are two pages
1641 to it. There are two sheets on this one. I found it interesting that beginning in
1642 2005 when the boundary line adjustment occurred, Henrico County assessed
1643 this very lot at \$73,500. Every other year—I guess actually every year—it
1644 bumped up another percentage to 97,900, to 101,000, until 2008 when it was
1645 assessed at \$111,000. Even though it technically couldn't be built on. If you flip
1646 the page, what we did was an assessment, our assessment—our analysis, I
1647 should say—of the assessed values of the five homes that are closest to this
1648 property. You can see on the very top chart, the third column, there are the land
1649 assessments as of 2009. Ours is at 111, then there's one at 126, one at 119,
1650 one at 121, and then two at 90. An empty lot is actually assessed higher than the
1651 average of the five lots around them. I don't think putting a home on it is going to
1652 reduce the value of the lots around it. Generally speaking, from a developer's
1653 rule of thumb, a lot will be about 25 to 30% of the entire home value. That's what
1654 we're looking at, being able to use this home in the \$300,000 to \$400,000 range.
1655 That's what this would sell for. This is very consistent with the assessed values
1656 that you have. Finally, the bottom chart there just shows again that certainly the
1657 assessed values of many lots in the area are equal or just around that number
1658 that Henrico County has assessed this property for.

1659
1660 So in conclusion, we've requested a 50-foot variance from the 150-foot lot width
1661 requirement. We purchased the property as the highest bidder of a sealed bid
1662 sale from a court-appointed receiver in a sale sanctioned and directed by the
1663 Circuit Court. It was required to have a quitclaim deed. We didn't create the
1664 hardship; it's not self-imposed. We're seeking a variance in accordance with the
1665 procedures required by the County Code. We were actually grandfathered and
1666 could build this very house until 2005, but for the agreement between Goochland
1667 and Henrico County.

1668
1669 Good faith is not contingent upon due diligence, good faith is not contingent
1670 upon knowledge of the need for a variance, good faith is not contingent on the
1671 purchase price or the type of deed received. It's only a question of did you, the
1672 applicant, cause the need for the variance. In this case, as shown on the staff
1673 report, the answer is no. Without a variance, there is no reasonable beneficial
1674 use of the property. The only use we could make of it, the narrowest use in A-1,
1675 is for a home site. Otherwise it remains vacant, it gets timbered, it continues to
1676 be used as a dump, and is still assessed—and quite frankly I can't figure out why
1677 this property is currently assessed at \$30,000 after the denial of the variance. I'm
1678 not sure where the 30 comes from. Certainly there seems to be by the County
1679 some value here. The hardship is not shared by any other lot.

1680

1681 The facts of Lot 8 create an extraordinary situation where the lot cannot be
1682 developed to achieve the goal of the West Ridge Subdivision or the County's
1683 Comprehensive Plan calling for residential. This is not a farm lot; it's 1.4 acres.
1684 It's unique in the West Ridge Subdivision; it's unique in the West End. Granting a
1685 50-foot variance on the lot width requirement will not have an adverse effect on
1686 neighboring properties, as the dwelling proposed conforms to the setback
1687 requirements. It will be situated on the lot as if it were a conforming lot.
1688

1689 Lot 8 is currently a vacant dumping ground. The approval of the variance will
1690 most likely, quite frankly, increase the assessed values, increase the value of the
1691 properties surrounding the area. The applicant has met all jurisdictional
1692 prerequisites pursuant to the Code of Virginia, pursuant to Henrico County Code,
1693 pursuant to the requirements set forth by the Virginia Supreme Court in both
1694 Cochran and Spence. We ask you to approve this variance. At this time, I'll be
1695 happy to answer any questions.
1696

1697 Mr. Wright - Mr. Condlin.

1698
1699 Mr. Condlin - Yes sir.

1700
1701 Mr. Wright - You will agree with me that the first requirement your
1702 applicant has to satisfy is that the property was purchased in good faith.
1703

1704 Mr. Condlin - Absolutely, yes sir.
1705

1706 Mr. Wright - If you can't prove that under Virginia Law, then your
1707 argument fails, right?
1708

1709 Mr. Condlin - I think I have to meet every standard and that
1710 includes that one. I have to meet that standard, in good faith, yes sir.
1711

1712 Mr. Wright - We have this case that you refer to—and by the way,
1713 I think your argument is cogent. As somebody said 2,000 years ago, it almost
1714 persuaded me.
1715

1716 Mr. Condlin - I never like it when you start with a compliment; that's
1717 never a good sign.
1718

1719 Mr. Wright - We've been wrestling with this case for some time,
1720 staff, the Board. We've read it, we've analyzed it. The bottom line is, if what you
1721 say regarding the Spence case is correct, the question of good faith is moot.
1722

1723 Mr. Condlin - Only to the extent that—well, two points. One, it's only
1724 to the extent that the applicant has caused the need for the variance.
1725

1726 Mr. Wright - Okay, now, that's the point.

1727

1728 Mr. Condlin - Okay, I will let you go with that point.

1729

1730 Mr. Wright - When I received these papers, I studied them and
1731 thought. I said there's something wrong with this, we've missed something in our
1732 interpretation and we have missed it. Spence. The lots which were platted in
1733 1928, the plats that were in question in the Spence case, they were platted in
1734 1928. They were rendered non-conforming by the change in the City ordinance,
1735 not by anything the owner did. What Spence is saying, is in that situation where
1736 the owner, the original owner of the property, did not cause the property to be
1737 non-conforming, then any subsequent purchaser of that lot would stand in the
1738 shoes of that owner and therefore would not be considered in bad faith, he would
1739 satisfy the good faith requirement.

1740

1741 Now if you go on to see how they applied that in certain instances, they give you
1742 some examples in here where owners—and there are two cases they had. They
1743 talked about self-inflicted hardship. At the time, the owner of that property tried to
1744 apply for a variance. The owner himself had changed the situation or the
1745 requirement so that he did not meet the County requirements. The only way that
1746 Spence makes any sense at all is to say that where the prior owner caused the
1747 non-conformity, you can't bind that owner, you can't deny that owner the right to
1748 sell that property down the road and the purchaser of that property would stand
1749 in the shoes of the prior owner and therefore would be deemed to have self-
1750 inflicted the hardship, brought it upon himself. This is the case here, as you
1751 admitted early on when I asked you the question. In this case, the prior owner
1752 himself, by conveying off the 50 feet, caused the property to become non-
1753 conforming. Therefore, my take on that is in the light of Spence, the only way it
1754 makes any sense, is anybody down the line should have checked it to find out
1755 how that came about. Therefore, your purchaser is not in good faith.

1756

1757 Mr. Blankinship - So "self-imposed" means that if Mr. Gibbs, the current
1758 owner of the property didn't impose it, it's not a self-imposed hardship. But if you
1759 see Mr. Gibbs as standing in the shoes of a previous owner, the lot owner that
1760 did cause the hardship, Mr. Gibbs therefore is still in his shoes and can't claim to
1761 be in good faith.

1762

1763 Mr. Wright - I've taken this position all the time I've been on this
1764 Board. Something is wrong when the County comes in and changes—
1765 somebody has a legal lot they could build on. The County comes in and changes
1766 that designation so they cannot build on it. Then I think that person has got a
1767 right to come before this Board and at least get by the good faith argument, and
1768 then go through the other tests that we have to review to see if the property can
1769 be approved for a variance.

1770

1771 Mr. Condlin - How long have you been on the Board, 35 years? A
1772 precedent in your mind right at this very second. I know you're excited because I

1773 certainly am. It's a big uphill battle, you know that. My respect for you and yours.
1774 Certainly you know from a Supreme Court case, they only answer the questions
1775 that are before them. They do not go beyond the questions, typically—
1776 sometimes they do—but typically and certainly in Spence I would argue that they
1777 didn't go beyond. The only questions proposed to them were does the purchase
1778 price or prior knowledge have any impact—and the failure to due diligence—
1779 have any impact on the question of good faith. And they said no. I'm going to
1780 address your point right here. They actually referenced three cases: Steele v.
1781 Fluvanna County, Alleghany Enterprises v. Board of Zoning Appeals, and BZA v.
1782 Combs. And they specifically referenced those cases as self-imposed hardships.
1783 In each and every one of those cases, the applicant that came before the BZA
1784 was approved—

1785
1786 Mr. Wright - I agree, I understand.

1787
1788 Mr. Condlin - —the Supreme Court said you don't get the benefit of
1789 the variance because you, the applicant, caused the hardship under those three
1790 cases. Is it a gray area? I would say until they argue otherwise, in Spence, we
1791 have a situation where they say the County caused the hardship. They don't
1792 really even address that too much in Spence other than the factual situation. It
1793 gets into the purchase price. They don't address the question whether to say
1794 only good faith comes from the standpoint of when the County causes the
1795 hardship. They do say in those other three cases that certainly—in support of my
1796 position—when the applicant comes before the BZA—in one case where they
1797 built a garage or addition above the height and it came before the BZA, the
1798 Supreme Court said you caused the hardship, you can't get the benefit of
1799 causing the hardship.

1800
1801 Now let me address two other points. If the County changes an ordinance—I had
1802 a case out in Innsbrook. It was a hotel in Innsbrook. The neighbors objected
1803 because I think it was O-3 property, in which a hotel is allowed. The County
1804 changed the setback line. The Code of Virginia actually covers the situation and
1805 said I can continue to use my property, I don't need a variance. If you change my
1806 lot, requirements otherwise, I don't need to come before the BZA because I'm
1807 already up and going.

1808
1809 I also say that I think from a policy standpoint—let's take this lot as an example. I
1810 think the Supreme Court is saying we want to make effective use of properties.
1811 The Henrico County Comprehensive Plan says use this property for residential.
1812 The subdivision plot says use this lot for residential. There should be one home
1813 built on a 150-foot wide lot. We're saying, do you really want to leave a piece of
1814 property fallow when Mr. Gibbs bought the property because of the court order
1815 through quitclaim. If he doesn't get it, nobody gets it. And this property will be
1816 sitting here. From a policy standpoint, I don't think the Supreme Court has ever
1817 said because you stand in the shoes—I understand what you're saying and
1818 certainly you can interpret it, and I respect you, and say, but they've never come

1819 out and said you are standing in the shoes of a prior bad act. Therefore you don't
1820 get the variance. As a matter of fact, they've only said if you're in the shoes of a
1821 prior bad act and you knew it and you paid a lot purchase price, you can still get
1822 a variance. Well, the prior bad act being from the County; I apologize.

1823

1824 Mr. Wright - All right, all right.

1825

1826 Mr. Condlin - And in the other cases it said it's the applicant. They
1827 specifically cited cases where it was the applicant. So we're in a little bit of gray
1828 area here. I guess I'm saying if we don't get this one, there is no use of this
1829 property. It's going to be timbered and we're done. I think from a policy
1830 standpoint, I think that's where the Supreme Court, I think that's the where the
1831 Code of Virginia, I think that's where the County of Henrico should be coming
1832 down to say in the Comprehensive Plan, we want it residential. In the subdivision
1833 plat we want it residential. It should be residential.

1834

1835 Mr. Wright - Are you familiar with the Cherrystone case?

1836

1837 Mr. Condlin - No. I don't recognize it off the top of my head.

1838

1839 Mr. Wright - Cherrystone. That's one of the major cases that we
1840 operate under. Virginia Beach. It's where there was a lot—

1841

1842 Mr. Blankinship - Eastern Shore.

1843

1844 Mr. Wright - They tried to get a variance to build multiple lots on
1845 the property. This is the point of that. I'm not getting into all the legal issues, but
1846 the Supreme Court decided because of the legal issues involved and the
1847 application of the ordinance, they couldn't have it. They got around this
1848 argument that you're making that the property couldn't be used for anything. We
1849 had a house sitting on about six acres and the Supreme Court says that's too
1850 bad. You'll have beautiful property fronting—

1851

1852 Mr. Blankinship - Valuable waterfront.

1853

1854 Mr. Wright - A valuable waterfront lot which is six acres with a
1855 house sitting in the middle of it. That's the argument, same argument you're
1856 making. My problem with your argument is I take the case as it is. In this case,
1857 the original owner did not cause the property to be non-conforming. If you read it
1858 carefully and the way I did it. That's the only way it makes any sense. I think
1859 there is a burden on a property owner to go back and check it. He's got that
1860 responsibility. If you don't permit the owner, it could be a constitutional issue.
1861 Where the County has come in and taken up something for a road or changed
1862 the zoning, if you don't permit that property owner to come before this Board for
1863 a variance, then I think that's an unconstitutional taking. I appreciate your

1864 bringing this to my attention because I hadn't understood that case before.
1865 That's the way I see that case.

1866
1867 Mr. Condlin - On Cherrystone, that was not—the court didn't decide
1868 at that point, they said you're standing in the shoes of the applicant. It certainly
1869 addressed the policy issue that I was talking about.

1870
1871 Mr. Wright - What I'm trying to say is this person has this
1872 humongous lot and the comment of the Supreme Court was you've got a
1873 beautiful waterfront lot. And here you could say you have a beautiful piece of
1874 acreage with timber on it.

1875
1876 Mr. Condlin - The point on that one was that was our only argument
1877 to get around. They didn't meet the other good faith requirements in that case.
1878 They were saying you should be able to let us use it and that was the Supreme
1879 Court's decision to say you don't get it just because you should be able to use it,
1880 in Cherrystone, in memory on that and how it goes. Spence never decided the
1881 only way you can get a variance, the only way you can meet good faith is if the
1882 County caused the need for the variance.

1883
1884 Mr. Wright - I think it did.

1885
1886 Mr. Blankinship - I'm not sure he's arguing that that's the only way you
1887 can get a variance.

1888
1889 Mr. Condlin - How else could you meet the good faith then? Mr.
1890 Wright said if you had checked. It doesn't matter. In Spence they checked. They
1891 knew there was a prior variance that had been denied. In this case, we have no
1892 ability.

1893
1894 Mr. Wright - This is Spence. They reject the argument that it was
1895 not in good faith. We reject that argument upon Spence's analysis that non-
1896 conforming property could never be developed by obtaining a variance after the
1897 property is sold. My point is they're basing that on the fact that the property
1898 became non-conforming because the County changed the zoning. That's just as
1899 clear to me now.

1900
1901 Mr. Condlin - But almost at the very end, the case also said Mr.
1902 Beagle, who was the applicant but did not cause the need for the variance,
1903 unlike the property owners in Steele, Alleghany, and Combs, Beagle, the
1904 applicant, did not violate a zoning ordinance provision and then seek relief. It
1905 doesn't say Beagle or his prior owners. It specifically says that applicant. And it
1906 specifically says we hold that Beagle's purchase of the property at a low price
1907 with the intent to seek a variance does not constitute an absence of good faith.
1908 The very purpose of the statute is afford any property owner the opportunity to
1909 seek a variance when the strict application would effectively prohibit or

1910 unreasonably restrict the owner's use of the property would cause a
1911 demonstratable hardship.

1912
1913 Mr. Wright - I don't think Spence makes any sense until you apply
1914 that.

1915
1916 Mr. Blankinship - Let me ask one other just sort of hypothetical. What if
1917 Mr. Steele, after his house was built in violation, sold the house to a limited
1918 liability corporation in which he was a partner, reapplied and said the LLC did not
1919 cause this?

1920
1921 Mr. Condlin - He's still in control, but I would certainly argue that
1922 that's trying to present a façade. Was there an intent, was there knowledge.
1923 Certainly at that point there was knowledge and intent to try it. What if no one
1924 noticed and he went and he sold it to a new person, and then they sold it to a
1925 new person, and someone drove by from the County and said hey, that's no
1926 good. Well, here is someone that bought the property and should they have
1927 known? Yeah, I guess so. Maybe not. But in Spence it says it doesn't matter.

1928
1929 Mr. Blankinship - If I could just clarify the staff's position on the
1930 question of the quitclaim and the purchase price. I agree with you that they do
1931 not go directly to good faith. Here's the reason that it's significant to me, though,
1932 and I think it does bear mentioning. Because we became aware of it in our
1933 research, I think it's our duty to make the Board aware. When the Code first
1934 authorizes a variance, when a property owner can show that his property was
1935 acquired in good faith, whereby reason of the exceptional narrowness,
1936 shallowness, size, or shape of the specific piece of property at the time of the
1937 effective day of this Chapter, or whereby reason—you know, all of that. And it
1938 ends up with, "substantial justice done. Provided that the spirit of this Chapter
1939 shall be observed and substantial justice done." I think when we ask ourselves
1940 what are the equalities here, if an individual goes out and buys a building lot for
1941 \$40,000, comes in to get his building permit, he's been assured all the way along
1942 the line that the lot's buildable, and all of a sudden finds out that it's not—

1943
1944 Mr. Condlin - Assured by whom?

1945
1946 Mr. Blankinship - The seller, whoever. I think it goes to the equities of
1947 the situation.

1948
1949 Mr. Condlin - Does it not make a difference that a court ordered this
1950 as a quitclaim at this point?

1951
1952 Mr. Blankinship - I'm just saying, you run into the phrase, "reasonable
1953 investment backed expectation." I think that's our interest there.

1954
1955 Mr. Condlin - Spence says purchase price doesn't matter.

1956
1957 Mr. Wright - That's Spence.
1958
1959 Mr. Condlin - We could pay 500,000 for this lot and lose money.
1960
1961 Mr. Wright - I think Spence cleared that issue up.
1962
1963 Mr. Blankinship - One of the Board's duties is to make sure that
1964 substantial justice is done. One of the things that you have to consider in the
1965 question of substantial justice is what are the reasonable—I'm not saying that it
1966 automatically disqualifies.
1967
1968 Mr. Condlin - So if Mr. Gibbs sells me this lot for \$111,000, does
1969 that give me better position? I don't think so. I certainly have knowledge of it, but
1970 that doesn't give me a better position.
1971
1972 Mr. Blankinship - I'm not saying that it automatically disqualifies him
1973 that he bought it at a lower price. I'm saying that it changes the question of what
1974 is substantial justice.
1975
1976 Mr. Condlin - Talking about substantial justice, with this Board I've
1977 seen many cases—could have even been mine—where there's been a mistake
1978 by staff. Someone comes and does due diligence. Yeah, it gets into the equity
1979 of the situation. In this case, Goochland County had said, and still says to this
1980 day, if it were in Goochland, build away. But because of the boundary line
1981 agreement, you can't build. There's substantial justice. That's almost very
1982 equivalent to that situation in that case. And that's a little unusual. You talk
1983 about good faith, Mr. Wright, in this case, the good faith was they did the due
1984 diligence and they did find if the house was built and but for this agreement, now
1985 we can't build it. That goes to good faith, too, and that's an unfortunate situation
1986 that was caused by an agreement between Goochland and Henrico that this
1987 applicant had no control over. But for that agreement, we wouldn't be here today
1988 and we could build that house in Goochland and run the driveway out to Axe
1989 Handle Lane. That goes to good faith, too.
1990
1991 Mr. Blankinship - I just want to clarify the staff's position is not that it
1992 automatically disqualifies the applicant. That's an important piece of information
1993 for the Board.
1994
1995 Mr. Condlin - Okay, I got going there.
1996
1997 Mr. Wright - This information that you produced about the
1998 Goochland situation, [unintelligible].
1999
2000 Mr. Condlin - Not a lot.
2001

2002 Mr. Wright - Let me put it this way. If this property had been solely
2003 in Henrico County and the owner at that time had a 150-foot lot upon which he
2004 could have built a house with a variance, then he sold off 50 feet, which
2005 rendered the lot non-conforming, hands down under Spence I think you're dead.
2006
2007 Mr. Condlin - Well, you and I will disagree with that.
2008
2009 Mr. Wright - We may disagree. And I hope some day the Supreme
2010 Court will address that.
2011
2012 Mr. Condlin - I'm going to dig hard and see what I can find.
2013
2014 Mr. Wright - I have to read these things very carefully.
2015
2016 Mr. Condlin - I agree.
2017
2018 Mr. Wright - You have to base the decision in Spence on the facts.
2019 With what I just said, your facts would not be on all fours with Spence, right?
2020
2021 Mr. Condlin - No.
2022
2023 Mr. Wright - Now you've added something else, which we need to
2024 consider.
2025
2026 Mr. Condlin - Mr. Wright, you know that there are a lot of facts that
2027 are involved and you're picking one which is County caused it versus a prior
2028 owner. That wasn't dispositive of the issue. I mean it could have been an LLC
2029 versus an individual. We've got an estate and a special receiver. We have a lot
2030 going on here that Spence didn't have. You want to set aside Goochland
2031 County? We can't.
2032
2033 Mr. Wright - All this other stuff you have good arguments on.
2034
2035 Mr. Condlin - Thank you.
2036
2037 Mr. Wright - You agreed with me at the outset. If we don't get by
2038 the good faith requirement, you're dead.
2039
2040 Mr. Condlin - I have to get them all, yes.
2041
2042 Mr. Wright - Dead in the water. If what I said had been the case, if
2043 this property had been in Henrico County from day one, you would be dead in
2044 the water. I mean no question in my mind under Spence.
2045
2046 Mr. Condlin - We disagree on that, but that's okay.
2047

2048 Mr. Wright - I know you're going to disagree because you're
2049 representing your side. But I'm sitting up here and you're down there. Now, let's
2050 talk about the Goochland situation and how that colors the non-conformance.
2051

2052 Mr. Condlin - Ben, do you have a copy of the Goochland line? It's
2053 in the staff report.
2054

2055 Mr. Blankinship - It's in your package.
2056

2057 Mr. Wright - I think that may be your saving factor. If I can be
2058 convinced that it was not rendered non-conforming by your previous owner at the
2059 time and it was non-conforming when the counties got together and put all in
2060 Henrico, then—
2061

2062 Mr. Condlin - Are we on all fours on Spence on that case? That's a
2063 government-caused action at that point.
2064

2065 Mr. Wright - Yes, I agree.
2066

2067 Mr. Witte - My point exactly. I've been trying to get in here. It
2068 seems to me like it was government action that took away—
2069

2070 Mr. Wright - That's what I'm trying to get very clear in my mind.
2071

2072 Mr. Witte - Up until the point where they reassessed or relocated
2073 the boundary line, this was a buildable lot. It has access in Henrico County, but
2074 the buildable area was actually in Goochland County.
2075

2076 Mr. Wright - That was two thousand—
2077

2078 Mr. Witte - Two thousand and five.
2079

2080 Mr. Condlin - The agreement was signed in 2005 effective January
2081 1, 2005.
2082

2083 Mr. Wright - So he could have built on that lot up until 2005.
2084

2085 Mr. Witte - And then it was government action that took away the
2086 buildable lot.
2087

2088 Mr. Condlin - Right.
2089

2090 Mr. Witte - That's the way in understand it.
2091

2092 Mr. Wright - I just want to get clarified on this issue.
2093

2094 Mr. Condlin - Are we going to agree on this one?
2095
2096 Mr. Wright - I'll tell you what I will agree to. If we can say that non-
2097 conformance was caused by the government, then I think you're okay. Then I
2098 think you're on all fours—
2099
2100 Mr. Condlin - Then I'm going to say non-conformance was caused
2101 by the government. That's my argument.
2102
2103 Ms. Harris - Are there any more questions of Mr. Condlin?
2104
2105 Mr. Condlin - The last thing I'll note—and I guess Ben, it has to
2106 warm up.
2107
2108 Mr. Wright - We've explored that.
2109
2110 Mr. Condlin - It's not the best picture, but you can see Lot 8 is on
2111 the top. You can actually see three lines. There was a dispute, by my
2112 understanding, between Henrico and Goochland. That far right line, that
2113 completely puts Lot 8 within the left of it. There was some argument to be said
2114 that that was what Goochland thought the boundary line was. Goochland
2115 actually thought it could be entirely in Goochland. Henrico said at the worst
2116 case, which is the far left line. I said a quarter; it's actually probably less than
2117 that. You can see by that line it's a quarter to less in Henrico County. But
2118 regardless, certainly both agreed that somewhere along the line most of it was in
2119 Goochland and it goes back to—
2120
2121 Mr. Wright - I think what you're saying is if a house had been built
2122 on it while it was in Goochland it would have to be in Goochland.
2123
2124 Mr. Condlin - I agree. Which is easy to do, quite frankly.
2125
2126 Mr. Wright - Okay, all right.
2127
2128 Mr. Condlin - Thank you.
2129
2130 Ms. Harris - No other questions? Okay. Is there anyone who
2131 wishes to speak to this case? In opposition to the case? If not, that closes the
2132 case.
2133
2134 **[After the conclusion of the public hearings, the Board discussed this case**
2135 **and made its decision. This portion of the transcript is included here for**
2136 **convenience of reference.]**
2137
2138 **DECISION**
2139

2140 Mr. Wright - I move that we approve this application. Let me talk
2141 about it a little bit. I had serious concerns about the good faith question because
2142 if good faith is not established, this Board has no authority to do anything else.
2143 The only reason I feel now that the property was acquired in good faith is
2144 because I believe based on all of the information and facts, the fact that the
2145 property was non-conforming was caused by a County action. It is my firm belief
2146 under the Spence case that when that is the case, then you can't say that the
2147 present owner didn't acquire the property in good faith. I would go on to say that
2148 once you get by that, when you apply the strict application of the terms of the
2149 Chapter, it would effectively prohibit the use of the property; there's no question
2150 about that. For those reasons, I move we approve it.

2151
2152 Mr. Witte - I second the motion.

2153
2154 Ms. Harris - Motion by Mr. Wright, second by Mr. Witte that we
2155 approve this case. Any discussion on this motion? All in favor say aye. All
2156 opposed say no. The ayes have it; the motion passes.

2157
2158 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2159 Mr. Witte, the Board **approved** application **A-005-10, John W. Gibbs Jr.**,
2160 request for variance from Section 24-94 to build a one-family dwelling at 5450
2161 Axe Handle Lane (West Ridge) (Parcel 731-773-5875), zoned A-1, Agricultural
2162 District (Three Chopt). The lot width requirement is not met. The Board
2163 approved the variance subject to the following conditions:

- 2164
2165 1. This variance applies only to the reduced lot width request for one dwelling
2166 only. All other applicable regulations of the County Code shall remain in force.
2167
2168 2. Only the improvements shown on the plot plan filed with the application may
2169 be constructed pursuant to this approval. Any additional improvements shall
2170 comply with the applicable regulations of the County Code. Any substantial
2171 changes or additions to the location of the improvements may require a new
2172 variance.
2173
2174 3. Approval of this request does not imply that a building permit will be issued.
2175 Building permit approval is contingent on Health Department requirements,
2176 including, but not limited to, soil evaluation for a septic drainfield and reserve
2177 area, and approval of a well location.
2178
2179 4. At the time of building permit application, the applicant shall submit the
2180 necessary information to the Department of Public Works to ensure compliance
2181 with the requirements of the Chesapeake Bay Preservation Act and the code
2182 requirements for water quality standards.

2183
2184
2185

2186	Affirmative:	Harris, Nunnally, Witte, Wright	4
2187	Negative:		0
2188	Absent:	Dwyer	1

2189
2190

2191 **[At this point, the transcript continues with the public hearing on the next case.]**
2192

2193
2194

2195 **UP-010-10 SIMONS HAULING COMPANY, INC** requests a
2196 conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract
2197 materials from the earth at 2655 Lacywood Lane (Parcel 840-722-1635), zoned
2198 A-1, Agricultural District and C-1, Conservation District (Varina).
2199

2200 Ms. Harris - Is there anyone who wishes to speak to this case?
2201 Please raise your right hand and be sworn in.

2202

2203 Mr. Blankinship - Do you swear the testimony you're about to give is
2204 the truth and nothing but the truth so help you God?

2205

2206 Mr. Cochran - Yes.

2207

2208 Ms. Harris - Would you state your name?

2209

2210 Mr. Cochran - My name is John Cochran. I'm an engineer with
2211 Youngblood, Tyler, and Associates. Unfortunately, my case is not going to be
2212 nearly as interesting as the previous one.

2213

2214 We are here to renew our permit to extract materials from the earth on this
2215 property. This is an on-demand borrow pit for Simons Hauling Company. When
2216 they have a need for the material, they move equipment to the site and load the
2217 material onto trucks. This has been an operating pit for a number of years. Mr.
2218 Greenwood can testify to this. We do have a need for this material. We have
2219 used some of the material in the last year. There is no processing on the site.
2220 There is no storage on the site. There are no buildings on the site. This is strictly
2221 material used as needed with equipment. And it's all used by Simons Hauling
2222 Company. We have reviewed the conditions and are in agreement with them. I
2223 would be happy to answer any questions you may have.

2224

2225 Mr. Nunnally - You don't have any other contractors coming in there
2226 to pick up anything?

2227

2228 Mr. Cochran - That's correct.

2229

2230 Mr. Wright - I had a question about the entrance road. Do we have
2231 a map that shows it better?

2232
2233 Mr. Blankinship - The aerial is the only one.
2234
2235 Mr. Wright - I just wanted to see. Is that the entrance road? The
2236 information I had—you get into Grapevine Road, right?
2237
2238 Mr. Cochran - Grapevine Road is the main public road which leads
2239 to—
2240
2241 Mr. Wright - That you go into. You end up on Grapevine.
2242
2243 Mr. Cochran - That's correct. The site is accessed off Lacywood
2244 Lane.
2245
2246 Mr. Blankinship - Which is a private road.
2247
2248 Mr. Cochran - A private road which is shared by the homes.
2249
2250 Mr. Wright - Maybe this makes it a little clearer. I was concerned
2251 about the angle. Lacywood came in like this and Grapevine, it comes in this way
2252 and you have to turn to go back. Does that present a problem?
2253
2254 Mr. Cochran - We addressed that many years ago with a traffic
2255 engineer. It has never presented a problem.
2256
2257 Mr. Wright - You got it worked out.
2258
2259 Mr. Cochran - It's been worked out, yes.
2260
2261 Mr. Blankinship - Do you have a requirement about which way the
2262 trucks haul on this?
2263
2264 Mr. Cochran - Yes. So in other words, if you are a truck driver and
2265 you come out Lacywood Lane and you are approaching Grapevine Road, you
2266 are not able to take a right. You have to take a left and go out that way. That
2267 keeps the traffic away from the other residences on Grapevine Road.
2268
2269 Mr. Blankinship - That's our solution.
2270
2271 Ms. Harris - Have we had any complaints about odors from this
2272 site?
2273
2274 Mr. Cochran - No. It's extraction of dirt. There would not be any
2275 odors. It's like a farming operation; there's no waste material here.
2276

2277 Mr. Gidley: [Off microphone] Mr. Cochran. On your narrative you
2278 submitted, in numbers 1(e) and 5(c), you refer to a 1:10 slope; I believe that
2279 should be 10:1. Is that correct?

2280

2281 Mr. Cochran - Okay. We can correct that, yes. Thank you.

2282

2283 Ms. Harris - So you have some reclamation going on now?

2284

2285 Mr. Cochran - It's an active pit right now and we do have several
2286 jobs for which we will be needing the material. So we're not in a reclamation
2287 mode at this time, but we will be when we're finished extracting the material.

2288

2289 Ms. Harris - Which will be?

2290

2291 Mr. Cochran - I can get Mr. Greenwood to be more specific.

2292

2293 Ms. Harris - We have Condition 28 about where the mining
2294 process is.

2295

2296 Mr. Greenwood - Yes. Actually the northwest portion of the pit has been
2297 reclaimed. It is seeded. We actually have a growth of trees on it already.

2298

2299 Ms. Harris - Any more questions from the Board? Thank you. Is
2300 there anyone who wishes to speak in opposition to this request? If not, that
2301 closes the case.

2302

2303 **[After the conclusion of the public hearings, the Board discussed this case**
2304 **and made its decision. This portion of the transcript is included here for**
2305 **convenience of reference.]**

2306

2307 DECISION

2308

2309 Mr. Nunnally - I move we approve it. I don't think there will be any
2310 detriment to the neighborhood or the health, safety, and welfare. They have a
2311 clean operation there, don't they, Mr. Blankinship?

2312

2313 Mr. Blankinship - Yes sir, they do.

2314

2315 Mr. Nunnally - I think they've been operating since about 1990.

2316

2317 Ms. Harris - Is there a second to this motion?

2318

2319 Mr. Witte - Yes, I second it.

2320

2321 Ms. Harris - Motion by Mr. Nunnally, second by Mr. Witte that we
2322 approve this case. Is there any discussion on this motion? All in favor say aye.
2323 All opposed say no. The ayes have it; the motion passes.
2324

2325 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
2326 Mr. Witte, the Board **approved** application **UP-010-10, Simons Hauling**
2327 **Company, Inc.**, request for a conditional use permit pursuant to Sections 24-
2328 52(d) and 24-103 to extract materials from the earth at 2655 Lacywood Lane
2329 (Parcel 840-722-1635), zoned A-1, Agricultural District and C-1, Conservation
2330 District (Varina). The use permit was approved subject to the following
2331 conditions:
2332

2333 1. This use permit is subject to all requirements of Section 24-103 of Chapter
2334 24 of the County Code. The operation shall be conducted in accordance with the
2335 plans and narrative submitted with the application, except as noted below.
2336

2337 2. Throughout the life of this permit, the applicant shall maintain surety bond #
2338 30325299 in the amount of \$111,000, guaranteeing that the land will be restored
2339 to a reasonably level and drainable condition, consistent with the elevation
2340 before the beginning of excavation. In the event of termination of the bond, this
2341 permit shall be void, and excavation incident thereto shall cease. Within the next
2342 90 days the applicant shall restore the land as provided for under the conditions
2343 of this use permit. Termination of such financial guaranty shall not relieve the
2344 applicant from its obligation to indemnify the County of Henrico for any breach of
2345 the conditions of this use permit.
2346

2347 3. Throughout the life of this permit, the applicant shall continuously satisfy the
2348 Department of Public Works (DPW) that erosion and sedimentation control is
2349 performed and maintained in accordance with the approved plan, and shall
2350 furnish plans and bonds that DPW deems necessary.
2351

2352 4. Throughout the life of this permit, the applicant shall maintain a mine license
2353 from the Virginia Department of Mines, Minerals and Energy.
2354

2355 5. Throughout the life of this permit, the areas approved for mining under this
2356 permit shall be delineated on the ground by five-foot-high metal posts at least
2357 five inches in diameter and painted in alternate one foot stripes of red and white.
2358 These posts shall be so located as to clearly define the area in which the mining
2359 is permitted.
2360

2361 6. Throughout the life of this permit, the applicant shall comply with the
2362 Chesapeake Bay Preservation Act and all state and local regulations
2363 administered under such act applicable to the property, and shall furnish to the
2364 Planning Department copies of all reports required by such act or regulations.
2365

- 2366 7. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Saving
2367 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
2368
- 2369 8. No operations of any kind are to be conducted at the site on Saturdays,
2370 Sundays, or national holidays.
2371
- 2372 9. All means of access to the property shall be from the established entrance
2373 onto Grapevine Road.
2374
- 2375 10. The applicant shall maintain the gate at the entrance to the property. The
2376 gate shall be locked at all times, except when authorized representatives of the
2377 applicant are on the property.
2378
- 2379 11. The applicant shall maintain a sign at the entrance to the mining site stating
2380 the name of the operator, the use permit number, the mine license number, and
2381 the telephone number of the operator. The sign shall be 12 square feet in area
2382 and the letters shall be three inches high.
2383
- 2384 12. The applicant shall maintain "No Trespassing" signs every 250 feet along
2385 the perimeter of the property. The letters shall be three inches high.
2386
- 2387 13. Standard "Truck Entering Highway" signs shall be maintained on Grapevine
2388 Road on each side of the entrances to the property at the applicant's expense.
2389
- 2390 14. The applicant shall maintain a standard stop sign at the entrance to
2391 Lacywood Lane.
2392
- 2393 15. The applicant shall provide a flagman to control traffic from the site onto the
2394 public road, with the flagman yielding the right of way to the public road traffic at
2395 all times. This flagman will be required whenever the Division of Police deems
2396 necessary.
2397
- 2398 16. The paved entrance road shall be maintained from its intersection with
2399 Lacywood Lane for a distance of 300 feet and a width of 24 feet. All roads used
2400 in connection with this use permit shall be effectively treated with calcium
2401 chloride or other wetting agents to eliminate any dust nuisance.
2402
- 2403 17. The operation shall be so scheduled that trucks will travel at regular intervals
2404 and not in groups of three or more.
2405
- 2406 18. Trucks shall be loaded in a way to prevent overloading or spilling of
2407 materials of any kind on any public road.
2408
- 2409 19. The applicant shall maintain the property, fences, and roads in a safe and
2410 secure condition indefinitely, or convert the property to some other safe use.
2411

2412 20. If, in the course of its operations, the applicant discovers evidence of cultural
2413 or historical resources, or an endangered species, or a significant habitat, it shall
2414 notify appropriate authorities and provide them with an opportunity to investigate
2415 the site. The applicant shall report the results of any such investigation to the
2416 Planning Department.

2417
2418 21. If water wells located on surrounding properties are adversely affected, and
2419 the extraction operations on this site are suspected as the cause, the effected
2420 property owners may present to the Board evidence that the extraction operation
2421 is a contributing factor. After a hearing by the Board, this use permit may be
2422 revoked or suspended, and the operator may be required to correct the problem.

2423
2424 22. Open and vertical excavations having a depth of 10 feet or more, for a
2425 period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to
2426 protect the public safety.

2427
2428 23. Topsoil shall not be removed from any part of the property outside of the
2429 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the
2430 property for respreading in a layer with five inches of minimum depth. All topsoil
2431 shall be stockpiled within the authorized mining area and provided with adequate
2432 erosion control protection. If the site does not yield sufficient topsoil, additional
2433 topsoil shall be brought to the site to provide the required five-inch layer of cover.
2434 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as
2435 recommended by the County after soil tests have been provided to the County.

2436
2437 24. No offsite-generated materials shall be deposited on the mining site without
2438 prior written approval of the Director of Planning. To obtain such approval, the
2439 operator shall submit a request stating the origin, nature and quantity of material
2440 to be deposited, and certifying that no hazardous material will be included. The
2441 material to be deposited on the site shall be limited to imperishable materials
2442 such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like materials,
2443 and shall not include any hazardous materials as defined by the Virginia
2444 Hazardous Waste Management Regulations.

2445
2446 25. A superintendent, who shall be personally familiar with all the terms and
2447 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
2448 terms and conditions of this use permit, shall be present at the beginning and
2449 conclusion of operations each work day to see that all the conditions of the Code
2450 and this use permit are observed.

2451
2452 26. A progress report shall be submitted to the Board on June 30, 2011. This
2453 progress report shall contain information concerning how much property has
2454 been mined to date of the report, the amount of land left to be mined, how much
2455 reclamation has been performed, when and how the remaining amount of land
2456 will be reclaimed, and any other pertinent information about the operation that
2457 would be helpful to the Board.

2458
2459 27. Excavation shall be discontinued by June 30, 2012, and restoration
2460 accomplished by not later than June 30, 2013, unless a new permit is granted by
2461 the Board of Zoning Appeals.

2462
2463 28. The reclamation of the property shall take place simultaneously with the
2464 mining process. Reclamation shall not be considered completed until the mined
2465 area is covered completely with permanent vegetation.

2466
2467 29. All drainage and erosion and sediment control measures shall conform to
2468 the standards and specifications of the Mineral Mining Manual Drainage
2469 Handbook. Any drainage structures in place prior to October 14, 1992 and which
2470 do not conform to the Mineral Mining Manual Drainage Handbook may remain in
2471 place until such time as any reconstruction is required at which time said
2472 structures shall be brought into conformance with the Mineral Mining Manual
2473 Drainage Handbook.

2474
2475 31. Failure to comply with any of the foregoing conditions shall automatically
2476 void this permit.

2477
2478
2479 Affirmative: Harris, Nunnally, Witte, Wright 4
2480 Negative: 0
2481 Absent: Dwyer 1

2482
2483
2484 **[At this point, the transcript continues with the public hearing on the next**
2485 **case.]**

2486
2487
2488 **[BOARD TAKES A FIVE-MINUTE RECESS.]**

2489
2490 **[BOARD MEETING RESUMES.]**

2491
2492 **UP-011-10** MARTHA WAGNER requests a conditional use
2493 permit pursuant to Sections 24-12(b) and 24-52(a) to operate a private
2494 noncommercial riding club at 6301 Hines Road (Parcel 853-692-4325), zoned A-
2495 1, Agricultural District (Varina).

2496
2497 Ms. Harris - Is there anyone who would like to speak to this case,
2498 please stand and raise your right hand.

2499
2500 Mr. Blankinship - Do you swear the testimony you're about to give is
2501 the truth and nothing but the truth so help you God?

2502
2503 Ms. Harris - Please state your name.

2504
2505 Mr. Axselle - My name is Ralph Bill Axselle—A-x-s-e-l-l-e. I'm here
2506 as a counsel for Mr. and Ms. Wagner. I would offer that this case does not
2507 involve pigeons. We have more than adequate lot width.

2508
2509 This is a matter with which you are familiar, the Horses in Service operation. We
2510 are requesting three changes to staff's report. A little different than what we had
2511 suggested, but we are in concurrence with what the staff has suggested.

2512
2513 Mr. Wright - You said three?

2514
2515 Mr. Blankinship - Three changes, two conditions.

2516
2517 Mr. Axselle - Three changes and two conditions. Before I go
2518 through those, let me just recap what we are not changing because I think that
2519 will be important as you hear some discussions from perhaps some people who
2520 have a different perspective.

2521
2522 Unchanged is the condition that all the activities on this property have to be
2523 directly associated with the Horses in Service, the same buildings, the same
2524 improvements; nothing can change unless you come back for substantial
2525 changes or modification. Unchanged is Condition 2, the barn, stable, sheds,
2526 riding arena shall be located at least 300 feet from any lot occupied by a dwelling
2527 other than a farm dwelling. That's unchanged. The third is Condition 3, the riding
2528 club shall be operated on a non-profit basis for the purpose of providing therapy
2529 to persons with disabilities. That's what Horses in Service does, so we're not
2530 changing that in any fashion.

2531
2532 Condition 6—again, I'm going through the ones that are not changed—is the
2533 requirement that the applicant will maintain the property so that odors, noise, and
2534 other impacts are controlled. There's a provision in the second sentence that
2535 manure shall be stored and disposed of in compliance with certain standards.
2536 The last sentence is that all manure shall be removed from the property every
2537 two weeks and may be re-deposited only to areas under cultivation during the
2538 growing season and in agronomic rates. That's not changed. You will recall
2539 when we were here in March or May of 2009, there was a show-cause hearing
2540 as basically to whether they were complying with that. The Board concluded that
2541 they were. You will recall the testimony at that time was that for two or three
2542 months prior to that hearing, the County had been going out on a weekly basis
2543 and inspecting the property. There were witnesses like Jerry Peay and other
2544 from the County who came in and said they had not detected any problems with
2545 the manure, disposition, or odor. The last item that's not changed is #7, which
2546 requires that certain reports be submitted to certain state agencies and that is
2547 being done.

2548

2549 So now let me focus on the three changes in the two conditions. First is
2550 Condition 4. The existing condition says that there shall not be more than ten
2551 horses stabled on the premises. We're not asking that that be changed, but we
2552 do ask for the language that's in staff's draft of the condition; "two additional
2553 horses may be brought in by trailer for a period not to exceed three days where
2554 the activities of those days will require more than ten horses or in the alternative,
2555 when one or more of the ten horses stabled on the premises is lame or injured."
2556 It's a small modification because we're basically saying that under those limited
2557 circumstances the additional horses would be there. As the staff report said,
2558 some additional horses, even for a temporary period of time, will create some
2559 additional manure. But the manure conditions and requirements are in the
2560 existing use permit and compliance with those will take care of that issue.

2561
2562 Mr. Wright - Mr. Axelle, a question. These two additional horses
2563 brought in to stable, you bring them for three days and they have to be removed?

2564
2565 Mr. Axelle - Yes.

2566
2567 Mr. Wright - When could they come back?

2568
2569 Mr. Axelle - When it was either needed because of activities.
2570 You'd have to be able to say we need this to have an adequate number of
2571 horses for the activities or because a couple of horses are lame or injured.

2572
2573 Mr. Wright - I understand the lame thing. Three days, if you
2574 brought them in and then took them home that night, could they bring them back
2575 the next day?

2576
2577 Mr. Axelle - Under theory, they could. That's not what's intended
2578 and we may want to address that. We just want some latitude because there are
2579 certain activities. For example, some Saturday activities where you may want to
2580 bring in a couple of additional horses for a period of time.

2581
2582 Mr. Wright - What could you suggest that would ensure that they
2583 didn't bring them in for three days, take them back, bring them in another three
2584 days, take them back? In other words, be like a permanent situation. If this is for
2585 occasional use, like maybe once a week or whatever, I don't know how you
2586 would word it.

2587
2588 Mr. Axelle - I just said to Ms. Wagner that maybe say every three
2589 or—they'd have to be gone at least three or four days. That's not the intent to
2590 have the horses there on a permit basis. And transporting horses in and out is a
2591 little difficult.

2592
2593 Mr. Wright - How about five days?

2594

2595 Mr. Axelle - That would be fine. We can live with that.
2596
2597 Mr. Wright - We'll have to think about that one.
2598
2599 Mr. Witte - So it would be once a week?
2600
2601 Mr. Axelle - Every five days, it would be basically—you could take
2602 them back and bring them back in another five days, which is basically once a
2603 week.
2604
2605 Mr. Witte - So primarily, the additional horses are used on
2606 weekends?
2607
2608 Mr. Axelle - Primarily, but they could be used in the evening under
2609 the evening hours. We are asking for enhanced daytime hours, but it's limited to
2610 six children and 90-minute periods and everything. I don't think they would be
2611 used much. Let me ask Ms. Wagner. Is it primarily weekend and night? Mr.
2612 Wagner, if you don't mind, let's just address this issue. Come on in, Mr. Wagner,
2613 and identify yourself.
2614
2615 Mr. Wagner - Charles Wagner. This is not presented as a way
2616 around a limit on horses. We've been consistently stabling fewer horses that
2617 we're allowed to by your previous limits. Initially, the County was going to grant
2618 us 12; we only asked 10. It was set at 10. We've been running at either all years.
2619 We have two horses that have had abscesses in their hoof. You can't ride them
2620 then. They can't be led around; they don't want to put weight on their foot. This is
2621 merely a way to allow them to continue with their program while these other
2622 horses heal. It's not presented as way to try to get around the limit.
2623
2624 Mr. Wright - I understand that and I didn't mean to say that that
2625 was the intent. When you read the language, you want to make sure it says what
2626 you think it does.
2627
2628 Mr. Wagner - Honestly, potentially even if you set it at week, there
2629 might be a case where a horse was needed for four days. You might not need to
2630 bring in two additional horses; you might need to bring in one horse. I know it's
2631 hard for you—
2632
2633 Mr. Wright - It's not to exceed three days, so you couldn't keep it
2634 for four days.
2635
2636 Mr. Wagner - Yes sir, that's why I'm saying that anyway you write it,
2637 it will not serve the purpose completely, but we'll have to live with whatever way
2638 you decide to handle it. It's not an easy thing to accomplish to say that this horse
2639 will be better in three days; it might be better in a week.
2640

2641 Mr. Wright - So what you're saying is if this is approved, we would
2642 have the latitude to work something out to enforce that, to do what you want to
2643 do without being in a situation where you would be able to get around it. That's
2644 all.

2645

2646 Mr. Wagner - Yes sir.

2647

2648 Mr. Witte - Mr. Wagner, you say you only have eight horses on
2649 the property now?

2650

2651 Mr. Wagner - No. Right at the present time we have nine. We had
2652 one that was brought in as a potential replacement for a therapy horse. As of
2653 Monday, it'll be going back to the person that had donated it. It didn't work out as
2654 a therapy horse, so we'll be back to eight as of Monday.

2655

2656 Mr. Witte - You can have up to ten according to what's already
2657 been approved.

2658

2659 Mr. Wagner - Yes sir.

2660

2661 Mr. Wright - So you wouldn't need to bring in the additional horses
2662 if you can get by with ten, obviously you're saying.

2663

2664 Mr. Wagner - Yes sir. Actually, if this horse is gone, we could bring
2665 in two horses without asking. But we're only asking that if we were at our limit of
2666 ten and even at a limit of ten, you might have one that you couldn't use.
2667 Sometimes you use specific horses for specific riders.

2668

2669 Mr. Wright - This says where the activities require more than ten
2670 horses, so that takes care of that.

2671

2672 Mr. Wagner - Yes sir.

2673

2674 Mr. Witte - Okay, thank you.

2675

2676 Mr. Axelle - With whatever safety time frame you put in there, we
2677 may need to communicate with the staff on what we're doing. I think a 5 or 7-
2678 day period between would probably work out fine there. That's the first of the
2679 changes. That's in Condition 4.

2680

2681 Condition 5 has two changes. Right now during the week, basically the activities
2682 are Monday through Friday, 5:30 p.m. to 7:45 p.m. What we're suggesting is
2683 that—and this language in the third paragraph: In addition, therapeutic riding
2684 lessons may be offered in cooperation with public, private, or homeschool
2685 programs Monday through Friday, 9:00 a.m. to 2:00 p.m. But during these hours,
2686 any activity cannot involve more than six children and could not involve their

2687 being transported in more than two vehicles. This could occur no more than six
2688 times a week and each session is 90 minutes. We had suggested a little broader
2689 and I think Mr. Blankinship made a very good point the way we had suggested it.
2690 This is very consistent with what we intended, but the language I had suggested
2691 did not say that. So this tightens it up and I think appropriately so.
2692

2693 So often these programs are related to school children, school programs, public,
2694 private, home schooling. As you know, Horses in Service only deals with people
2695 with disabilities. Just like Mr. Wagner said, they have to have certain horses. The
2696 horses have to be able to deal with these people. For example, when they're
2697 working with them, they always have two volunteers plus the rider, sometimes
2698 three because these young people or adults have different conditions and safety
2699 is important, including for the horse. The idea is that six times a week you could
2700 bring in students dealing with the Horses in Service from public, private, and
2701 homeschool. Same purposes. Only for a 90-minute period for each of those six
2702 times. Then again, only with six children and two vehicles.
2703

2704 The third change is a change in the hourly times on Saturdays. Right now, the
2705 conditions say that on Saturday and Sunday your activities are from 2:00 p.m. to
2706 5:30 p.m. That's the current condition. The last paragraph in Condition 5 as
2707 presented to you says other activities directly related to Horses in Service—so it
2708 still has to be directly related to that—could take place on Saturdays from 9:00
2709 a.m. to 5:30 p.m., but only six Saturdays a year. Horses in Service has a number
2710 of activities that they now have to do offsite because of the limitations on
2711 Saturday and Sunday. There's a community awareness program where they
2712 invite people from the community in to see what they're doing, to make the
2713 community aware of that. Volunteer appreciation, activities where they—these
2714 people who assist are all volunteers and you want to show your appreciation. A
2715 Board of Directors retreat and training. Training for the volunteers. This would
2716 allow those. We've limited it to six Saturdays a year, which I think is a fairly
2717 limited approach.
2718

2719 That's where we're trying to go. As you can see, we're not trying to do anything
2720 that's inconsistent with the intent and purposes of the Horses in Service. We
2721 think these are fairly modest requests that would allow them to better work with
2722 their population of people they service. It's not causing any additional problems
2723 for the community or the County.
2724

2725 I will be glad to respond to any questions.
2726

2727 Ms. Harris - Are there any other questions from the Board?
2728

2729 Mr. Axselle - I would like to reserve some time for rebuttal. Thank
2730 you.
2731

2732 Ms. Harris - Is there anyone else who would like to speak to this
2733 request? In opposition to the request? Please come forward, state your name,
2734 and spell your last name.

2735
2736 Ms. Akers - Hello, nice to see you again; not under these
2737 circumstances. My name is Carol Akers—A-k-e-r-s. I'm the daughter of Jerry and
2738 Anne Akers, the neighboring property owner. I'm here with my mother today and
2739 I'm speaking on their behalf.

2740
2741 I'd like to start out with the proposed Condition 4. My comments are somewhat
2742 directed to the issues that you were raising. Allowing two additional horses, if
2743 needed, or any existing, or lame, or injured, would only serve to exacerbate
2744 existing odor and fly problems that are supposed to be controlled, which is under
2745 Condition 6 under the existing permit. We are still experiencing excessive odors
2746 and flies. Granted, it is as not as bad as it was for the four years that they
2747 operated without a permit or the year that we were screaming constantly that
2748 they weren't in compliance with the permit. It is better; it is not gone. There are
2749 times where it is extremely nasty outside, especially early morning, late in the
2750 evening. Certain days all day long it's nasty to the point where my father gets
2751 absolutely depressed and goes in the house. And he's upset and won't even
2752 come outside anymore. He has 15 acres of land that he can't even go and
2753 enjoy. So there are still problems. We haven't been constantly calling and
2754 complaining about it because it served us absolutely no purpose that last time
2755 around. Anything we said, we were told no, that doesn't happen; no it doesn't
2756 occur. So it is still there and there are still problems.

2757
2758 Bringing in two additional horses—and again, we contend that two horses, three
2759 days is about 51 additional pounds each horse. That's about 306 pounds extra of
2760 excrement coming from these animals per incident. Along with what Mr. Wright
2761 was talking about, okay, three days on, they leave one day, that means they can
2762 bring them back after four days. That's 91 times a year they could do it.

2763
2764 Mr. Wright - That's not going to happen.

2765
2766 Ms. Akers - I understand that now. So now we look at, okay, they
2767 do it once a week so that's 52 times a year. So that's still the equivalent of
2768 16,000 pounds of excrement in addition to what is currently there, which is
2769 equivalent to about eight tons. We are still having problems, there are still
2770 excessive odors, and there are still excessive flies. The flies are a summer
2771 problem. The odors are more so a summer problem, but it does occur year
2772 around. Bringing in those additional horses will only exacerbate them.

2773
2774 I've brought some handouts for the Board members. These aren't necessarily
2775 anything other than for pure information. The last three times we were here for
2776 the permit issuance and the one time for the show-cause hearing, every time we
2777 said there were odors, every time we said there were flies, people associated

2778 with the facilities said no there weren't. The County employees would say no
2779 there aren't. Not once did they step foot on my parent's property. The odors and
2780 the flies are there and they are coming from that facility. These handouts—and
2781 you can find a multitude of them all over the country on the Internet. I've only
2782 printed out a few, by way of example, talking about the excessive manure, odor
2783 problems, and fly problems impacting neighboring property owners. While the
2784 horse lover and the people enjoying the activities don't see it as offensive, the
2785 neighboring property owner, especially when they're downwind, find it extremely
2786 offensive. The fact that we say there are odors and everybody else says there
2787 are not, they're not on my parents' property. They do not have to smell it, breathe
2788 it, and live in it.

2789
2790 Basically, we would like to request that there be no allowance of any increase in
2791 the number of horses over ten. They're allowed up to ten horses and they're not
2792 even utilizing that, to their own admission, at this point in time. So why would you
2793 need more.

2794
2795 Mr. Wright - Let me ask you, does Mr. Axelle have a copy of this?
2796 I think he should have a copy of something that's submitted.

2797
2798 Ms. Akers - We would ask that there be no increase allowed.
2799 Now, when they talk about sometimes certain activities require more horses or
2800 there are injured or lame horses, every operation deals with those types of
2801 issues at times. They're not prohibited on the number of times per year they hold
2802 classes. They only hold classes a handful of times per year. So if you have more
2803 activities needing more horses, hold more classes. You don't need more horses.
2804 The more horses bring in more excrement and more problems and more odors
2805 and more flies impacting my parents.

2806
2807 As far as a horse is lame or it's injured and we need to replace that horse, again,
2808 you can delay a class and schedule more classes later on, or you could remove
2809 those horses and bring in other horses. Ten is ten. We would like to ask that it be
2810 restricted to ten. At a minimum, if it's not restricted to ten, there needs to be first
2811 and foremost limiting language on exactly what is meant by "no more than three
2812 days." What is the frequency and what are we talking about there.

2813
2814 Two, we still have the policing problem. In the past when we were here and I had
2815 witnessed, my mother had witnessed, my father had witnessed, Ms. Sharp had
2816 witnessed, and we said at times there were 13 to 15 horses on that property. We
2817 were told absolutely not, it never occurred. I'm an engineer with an MBA, I can
2818 count. I was told I can't count. My father laid all the cooling piping at North Anna
2819 Power Plant. He's told he can't count. Ms. Sharp is a teacher; I believe she's
2820 even a math teacher. Essentially she was told she can't count. My mother was a
2821 supply operations procurement person for a military service, and she's told she
2822 can't count. So there's a policing problem. You allow more, who's going to be
2823 there to say yes, they will only allow two and it was only for three days.

2824
2825 Mr. Wright - Do you have a camera?
2826
2827 Ms. Akers - We've tried that before. Anytime we brought in
2828 anything—
2829
2830 Mr. Wright - The horses, if you take pictures, it shows there are
2831 more than ten horses. That speaks for itself, doesn't it?
2832
2833 Ms. Akers - But the issue is if you allow more than ten horses, the
2834 camera is not going to tell you how many days there are more than ten horses.
2835 That's a policing issue I'm talking about.
2836
2837 Mr. Wright - I'm not talking about that. You're saying now they
2838 have more than ten horses under the current—
2839
2840 Ms. Akers - No, I'm didn't say now. I said when we came forth
2841 before this Board for the original permit, at that time when we got up here and we
2842 swore to tell the truth and we stated what was happening, we were told no, it's
2843 not. So I'm saying there's a policing problem because if we report issues,
2844 nobody listens. Nobody cares and all they tell us is it doesn't happen. The same
2845 way the whole thing about needing the permit in the first place. For four years my
2846 parents screamed, and yelled, and begged at the County that they need a
2847 permit. The County blew them off and said no they don't. The only reason they
2848 were forced to get the permit is because I wouldn't let up. I got involved in 2007
2849 and wouldn't let up. So there is a policing problem if you grant them any more.
2850 And also a policing problem regarding the frequency and duration of time that
2851 they would be there. But we maintain any additional horses for any period of
2852 time, when that horse steps on that property, nobody's going to put a plug up his
2853 rear end and the other parts to not allow any waste to come out. It is going to
2854 add more waste, it is going to be a problem, it is going to increase the odors and
2855 increase the flies.
2856
2857 We still maintain that they're not taking out the manure every two weeks.
2858 Nobody's policing that. Present an affidavit that an individual took it off the site.
2859 That affidavit said nothing about I take it off this often. It's over this period of time
2860 he took it off once. We had already said we saw him taking off the last time we
2861 were here, about a month before the show-cause hearing. So the fact that
2862 somebody takes it off at some point in time doesn't demonstrate that they are
2863 actually removing the manure every two weeks and that it's being properly
2864 enforced and policed by the County.
2865
2866 Mr. Nunnally - Excuse me a minute. Mr. Blankinship, didn't we have
2867 men from the County checking that out every so often?
2868

2869 Mr. Blankinship - Yes sir. We did it three times a week for quite some
2870 time. I have all the photographs.

2871
2872 Ms. Akers - Admittedly at the time when that was checked out—
2873 and Mr. Blankinship was pointing to those photographs, and I believe it was Mr.
2874 Wright who may have mentioned, or it could have been you, but basically one of
2875 you pointed out that those photographs do not show that manure leaving that
2876 site every two weeks. The fact that this pile is no longer on this piece of land
2877 doesn't mean it's not now in the back being piled up and stinking up to high
2878 heaven. There was nothing there to confirm that manure was being removed
2879 from that site physically every two weeks in compliance with the permit. But
2880 anyway, you guys already looked at that issue in the show-cause. You said we're
2881 happy that this affidavit saying he took it off with no further explanation about
2882 how often or over what period of time, you were satisfied with that; we aren't.
2883 We're just trying to say now if you add more horses, that's going to add to the
2884 problem, add to the nuisance that it is presenting to my parents.

2885
2886 As far as the proposed change in Condition 5, I would like to—and again, a lot of
2887 this depends on the wording that is ultimately approved, and what is the intent,
2888 and what is being submitted. I can only address right now what has been
2889 included in the file that we were allowed to see.

2890
2891 During the original hearings for UP-024-07, the Board of Zoning Appeals
2892 deferred action in the original case to seek an interpretation on the application of
2893 the distance requirements of 24-10. By way of response dated February 28,
2894 2008, you were advised by Mr. Blankinship that the distance requirements of 24-
2895 10 no longer apply because Mr. Blankinship decided to reclassify the therapeutic
2896 riding facility from being what he had originally classified as a riding stable or
2897 academy to a riding club.

2898
2899 Mr. Wright - We're not asking for any changes.

2900
2901 Ms. Akers - This is where I'm addressing the language. The
2902 language, it's like a back door into what you are really going to ultimately do
2903 here. We wanted to make sure that the language is specific. Now I'm getting
2904 into the main point.

2905
2906 The proposed language in new Condition 5, "therapeutic riding lessons may be
2907 offered in cooperation with public, private, or homeschool programs," is
2908 unnecessary if these are therapeutic riding lessons for disabled children. That is
2909 already allowed. There is absolutely no reason to add in there the wording, "with
2910 public, private, or homeschool programs." My parents are not necessarily
2911 opposed in any way as to the hours in which they have disabled children taking
2912 lessons on their property. Their opposition is what activities are taking place,
2913 and how many horses, and how the waste is being managed. There is absolutely
2914 no need to add that language. It is already a condition in #3 that they be allowed

2915 to have therapeutic riding lessons, so why do you need that language. We want
2916 to make sure that that language is not then later interpreted that, oh, well, you
2917 know, the fact that we're allowing school children on here who aren't
2918 handicapped to do other activities with the horses. That wasn't the intent. The
2919 intent was they were a riding club and not subject to the distance requirements
2920 because this was a riding club for a therapeutic, non-profit, charitable
2921 organization providing therapeutic lessons to disabled children. That is already
2922 allowed by the existing permit, so we object to the inclusion of the language.

2923

2924 Mr. Wright - Hold on for a second. Under #5 in the present state,
2925 they can conduct therapeutic riding Monday through Friday, 5:30 p.m. to 7:45
2926 p.m., Saturday and Sunday from 2:00 p.m. to 5:30 p.m.

2927

2928 Ms. Akers - We don't object to the hours.

2929

2930 Mr. Wright - What this addition does, it doesn't say what's already
2931 done, it adds more hours for this type of operation, from 9:00 a.m. to 2:00 p.m.,
2932 which is not covered.

2933

2934 Ms. Akers - Exactly. And that's what I'm saying. We have no
2935 objection to the addition of hours. What we're objecting to is the addition of the
2936 wording so that you can do this with public, private, or homeschool children.

2937

2938 Mr. Wright - If they do it, what difference does it make?

2939

2940 Ms. Akers - Because they're supposed to be doing therapeutic
2941 riding for disabled children, which is already allowed under Condition 3. So there
2942 is no need for the addition of those words. We don't object to the additional
2943 hours; we object to that wording because now it looks like a backdoor means to
2944 establishing a second club, and then later maybe a third club. The club which
2945 was the therapeutic riding by a non-profit organization giving lessons to disabled
2946 children was the reason why the distance requirements were eliminated as a
2947 requirement they had to fulfill. Okay, now we're doing it in accordance with
2948 educational opportunities for school children, well, what does that have to do with
2949 therapeutic riding for disabled children? If the intent is that it is still only
2950 therapeutic riding for disabled children, that's already allowed in Condition 3. So
2951 you do not need that additional wording.

2952

2953 Mr. Wright - We'll ask Mr. Axelle to address that issue.

2954

2955 Ms. Akers - Okay. And again, like I said, we want to make sure
2956 we don't have a backdoor means into circumventing the reason for their
2957 classification as a club, which gives them an exemption from those distance
2958 requirements. Those distance requirements are very important. In that advice
2959 that Mr. Blankinship provided to you on February 28, 2008, he clearly maintained
2960 that had this facility been classified as a riding stable or academy, they would

2961 have to meet three times the distance requirement—3 times 200 feet, which is
2962 600 feet from the property line. So essentially, they couldn't do any of the
2963 activities on their property except for the far southeast corner. So basically all of
2964 their barns and all their stables and everything they couldn't use. So basically
2965 they couldn't operate at all.

2966

2967 We don't care about the hours. We want to make sure it is kept consistent with
2968 the interpretation that this is the club only and that club is Horses in Service
2969 providing on a non-profit basis therapeutic lessons to disabled children. We don't
2970 care where the disabled children come from. In my mind, when the original
2971 permit was issued, did anybody think these disabled children didn't go to some
2972 kind of school?

2973

2974 Mr. Wright - What you're saying is you want it to read,
2975 "Therapeutic riding may be offered Monday through Friday, 5:30 p.m. to 7:45
2976 p.m., Saturday and Sunday 2:00 p.m. to 5:00 p.m., and Monday through Friday
2977 9:00 a.m. to 2:00 p.m.

2978

2979 Ms. Akers - Mmm-hmm. Yes. Just do not allow the additional
2980 language about, "in cooperation with public, private, or homeschool educational
2981 programs. There's no need for that language if the intent is to keep it consistent
2982 with the reason they're classified a club.

2983

2984 Mr. Wright - We'll address that.

2985

2986 Ms. Akers - Our other objection is when they talk about the other
2987 activities associated and what to extend the hours on Saturday for the other
2988 activities for Horses in Services. Again, we don't object to the hours. Our
2989 objection is the "other activities." We went through three separate meetings for
2990 the issuance of the first permit. We went through this much material to get there.
2991 At that time, we raised objections and concerns about church-related activities,
2992 trail rides, fundraisers—all these other things that weren't therapeutic lessons for
2993 disabled children.

2994

2995 Mr. Wright - I agree with you, I think—

2996

2997 Ms. Akers - That's why that was restricted originally. I object and
2998 we object vehemently to the additional language about adding additional time for
2999 other activities.

3000

3001 Mr. Wright - I agree with you.

3002

3003 Ms. Akers - I'm available for questions.

3004

3005 Mr. Wright - Thank you.

3006

3007 Ms. Harris - Are there any more questions from the Board
3008 members? No questions. Thank you, Ms. Akers. Anyone else who wants to
3009 speak in opposition to this application? Mr. Axselle?
3010

3011 Mr. Axselle - Thank you very much. I think actually the discussion
3012 has been helpful. In response to the points made, one, do keep in mind that the
3013 requirements regarding odor and manure removal, etcetera, remain unchanged.
3014 The affidavit that was presented before was from a gentleman who said that he
3015 had been removing it every two weeks. The County folks were out there very,
3016 very frequently for a number of months and they verified that. They said there
3017 were no problems with odors.
3018

3019 Mr. Wright - That's not before us.
3020

3021 Mr. Axselle - I know. As far as going back through the same
3022 points, I think as far as the number of horses, I would suggest that you consider
3023 adding language that the horses leave and can't come back for seven days,
3024 something of that nature which would help address that issue.
3025

3026 On the hours, I was pleased to hear that the Akers do not have objection to the
3027 additional hours sought. The reason we put in there the hours for the day is
3028 because they're related to school during the day as opposed to night. So we
3029 were trying to request the additional hours but restrict it to educational
3030 therapeutic riding rather than just having it wide open. If you wanted to take out
3031 that criteria, as she suggested, that's fine. I think it's fine the way Mr.
3032 Blankinship—I mean, it does give you some restrictions.
3033

3034 Mr. Wright - Could they make that read, "Therapeutic riding may
3035 be offered Monday through Friday 5:30 p.m. to 7:45 p.m., and Saturday and
3036 Sunday 2:00 p.m. to 5:30 p.m., and Monday through Friday 9:00 a.m. to 2:00
3037 p.m.," period?
3038

3039 Mr. Blankinship - Monday through Friday, 9:00 a.m. to 2:00 p.m. and
3040 5:30 p.m. to 7:45 p.m.?
3041

3042 Mr. Wright - Yes.
3043

3044 Mr. Axselle - That's cleaner.
3045

3046 Mr. Wright - Yes. She's right; it's already in #3 what you can do.
3047

3048 Mr. Axselle - All right. And then the last point, other activities
3049 directly related. This is at the end of paragraph five. I think deleting the word
3050 "other" is fine. All the activities have to be related to Horses in Service.
3051

3052 Mr. Wright - What are they? I think that's too broad, Mr. Axselle. I
3053 think we need to say whatever you wanted to do on Saturday 9:00 a.m. to 5:30
3054 p.m. for six Saturdays. We need to say what they are.
3055
3056 Mr. Axselle - Let me give you four examples.
3057
3058 Mr. Wright - Tell us what you want to put in there and as long as
3059 it's related, we're okay.
3060
3061 Mr. Axselle - If I can just maybe repeat these. Community
3062 awareness programs related to Horses in Service; volunteer appreciation
3063 activities related to Horses—well all of them are. I keep saying related to Horses
3064 in Service, but that's not necessary. So community awareness; volunteer
3065 appreciation; Board of Directors' retreats and training; training for volunteers, and
3066 community activities. Obviously, Horses in Service exists because of community
3067 support, so it's just community support activities. They were the ones that gave
3068 us. They've limited it to five or six per year for those Saturdays. So that's the type
3069 of thing.
3070
3071 Mr. Witte - So it would be community support activities.
3072
3073 Mr. Axselle - Well, that's what I consider support. They're not
3074 going to have fundraisers in the sense of just raising money, but they will bring
3075 people out who are contributors, who would like to contribute, to show what they
3076 do so that they can enable this program to continue.
3077
3078 Mr. Wright - You have no problem with us taking out, "other
3079 activities," and putting these in.
3080
3081 Mr. Axselle - I do not, that's correct. I think that's basically it. Like I
3082 said, I think the discussion helps and I thank you very much.
3083
3084 Mr. Blankinship - Let me just make sure I understood. That's going to
3085 read, "Therapeutic riding may be offered Monday through Friday, 9:00 a.m. to
3086 2:00 p.m. and 5:30 p.m. to 7:45 p.m. and Saturday and Sunday 2:00 p.m. to 5:30
3087 p.m."
3088
3089 Mr. Wright - About limiting it to six children and so forth?
3090
3091 Mr. Witte - It seems to me if you eliminate, "for public, private, or
3092 homeschool education activities," and leave it as #3, "providing therapy to
3093 persons with disabilities," by leaving #3, you're opening it up to more people. It's
3094 limited to school children, but according to #3, it's open to anybody with any type
3095 of disability. So you're actually opening it up to a whole world of people.
3096
3097 Mr. Blankinship - You do have adults, right?

3098
3099 Mr. Wright - So they can have adults.
3100
3101 Mr. Witte - They can have anybody with any type of disability,
3102 according to #3.
3103
3104 Mr. Wright - I think it's mostly for children.
3105
3106 Mr. Witte - That's what they want.
3107
3108 Mr. Axselle - It primarily is for children, but there are adults, people
3109 who've been injured in accidents in war and so forth. It's considered quite an
3110 assist to them.
3111
3112 Ms. Harris - Okay, that closes the case.
3113
3114 Mr. Blankinship - I'm not sure on #4 now. What exactly did you want?
3115
3116 Ms. Harris - Would that be taken care of in a motion?
3117
3118 Mr. Blankinship - Yes ma'am.
3119

3120 **[After the conclusion of the public hearings, the Board discussed this case**
3121 **and made its decision. This portion of the transcript is included here for**
3122 **convenience of reference.]**
3123

3124 DECISION

3125
3126 Mr. Wright - I move we approve this application, but I think we
3127 need to get straight on these conditions. My basis is I don't think the requests
3128 would impact this as long as they comply with the conditions that we imposed.
3129 Mr. Blankinship, can we ensure that we have Condition 4 like we said?
3130
3131 Mr. Blankinship - Yes sir. What would you like to change?
3132
3133 Mr. Wright - The last thing Mr. Axselle said is to have a seven-day
3134 interval. Can we work the language so that would work?
3135
3136 Mr. Blankinship - We could just add a sentence at the end that would
3137 say, "Such three-day periods shall be at least seven days apart."
3138
3139 Mr. Wright - Why not. And also the hours. What do you have for
3140 the hours?
3141
3142 Mr. Blankinship - Hours of operation shall be limited as follows,
3143 paragraph, therapeutic riding may be offered Monday through Friday, 9:00 a.m.

3144 to 2:00 p.m. and 5:30 p.m. and 7:45 p.m., and Saturday and Sunday 2:00 p.m. to
3145 5:30 p.m., paragraph. Community awareness programs, volunteer appreciation
3146 activities, Board of Directors retreats and training, training of volunteers, and
3147 community support activities, comma, directly related to Horses in Service,
3148 comma, Saturday 9:00 a.m. to 5:30 p.m., no more than six Saturdays each year.

3149

3150 Mr. Wright - Did you include 5:30 p.m. to 7:45 p.m.?

3151

3152 Mr. Blankinship - I did, yes sir.

3153

3154 Mr. Wright - May be conducted.

3155

3156 Mr. Blankinship - Yes, may be conducted.

3157

3158 Mr. Wright - I move it be approved with the changes to the
3159 conditions stated by Mr. Blankinship.

3160

3161 Ms. Harris - Is there a second to this motion?

3162

3163 Mr. Nunnally - Second.

3164

3165 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Nunnally that
3166 this case be approved. Is there any discussion on this case? All in favor say
3167 aye. All opposed say no. The ayes have it; the motion passes.

3168

3169 After an advertised public hearing and on a motion by Mr. Wright, seconded by
3170 Mr. Nunnally, the Board **approved** application **UP-011-10, Martha Wagner's**
3171 request for a conditional use permit pursuant to Sections 24-12(b) and 24-52(a)
3172 to operate a private noncommercial riding club at 6301 Hines Road (Parcel 853-
3173 692-4325), zoned A-1, Agricultural District (Varina). The Board approved the
3174 use permit subject to the following conditions:

3175

3176 1. Only activities directly associated with Horses in Service, and the
3177 improvements shown on the plot plan filed with the application, are authorized by
3178 this approval. Any additional improvements shall comply with the applicable
3179 regulations of the County Code. Any substantial changes or additions to the
3180 operation or improvements may require a new use permit.

3181

3182 2. The barn, stables, sheds and riding arena shall be located at least 300 feet
3183 from any lot occupied by a dwelling other than a farm dwelling.

3184

3185 3. The riding club shall be operated on a nonprofit basis for the purpose of
3186 providing therapy to persons with disabilities.

3187

3188 4. [AMENDED] No more than ten horses shall be stabled on the premises. Two
3189 additional horses may be brought in by trailer for a period not to exceed three

3190 days, where the activities of those days will require more than ten horses, or
3191 when one or more of the ten horses stabled on the premises are lame or injured.
3192 Such three-day periods shall be at least seven days apart.

3193
3194 5. [AMENDED] Hours of operation shall be limited as follows.

3195
3196 Therapeutic riding may be offered Monday through Friday, 9:00 am - 2:00 pm
3197 and 5:30 - 7:45 pm and Saturday and Sunday, 2:00 - 5:30 pm.

3198
3199 Community awareness programs, volunteer appreciation activities, board of
3200 director's retreats and training, training of volunteers, and community support
3201 activities, directly related to Horses in Service, may be conducted Saturday, 9:00
3202 am - 5:30 pm, no more than six Saturdays each year.

3203
3204 6. The applicant shall maintain the property so that odors, noise and other
3205 impacts are controlled. Manure shall be stored and disposed of in compliance
3206 with Virginia Department of Agriculture and Consumer Services requirements
3207 and any other applicable standards, including the "Virginia Agricultural
3208 Stewardship Act Guidelines" of June 7, 2004. All manure shall be removed from
3209 the premises every two weeks and may be redeposited only to areas under
3210 cultivation during the growing season, and in agronomic rates.

3211
3212 7. The applicant shall submit to the Virginia Department of Agriculture and
3213 Consumer Services, the Virginia Department of Conservation and Recreation
3214 and the Henrico County Department of Public Works, all necessary information
3215 as required by the Director of Planning, to ensure compliance with the
3216 requirements of the Chesapeake Bay Preservation Act and the code
3217 requirements for water quality standards.

3218
3219
3220 Affirmative: Harris, Nunnally, Witte, Wright 4
3221 Negative: 0
3222 Absent: Dwyer 1

3223
3224
3225 **[At this point, the transcript continues with the rest of the agenda.]**

3226
3227
3228 Ms. Harris - Let's look at the approval of the minutes. Very limited
3229 minutes.

3230
3231 Mr. Wright - I move we approve the minutes.

3232
3233 Mr. Witte - Second.

3234

3235 Ms. Harris - Motion by Mr. Wright, seconded by Mr. Witte that we
3236 approve the minutes of the April 22, 2010 meeting. Any discussion on the
3237 motion? All in favor say aye. All opposed say no. The ayes have it; the motion
3238 passes.

3239
3240 On a motion by Mr. Wright seconded by Mr. Witte, the Board **approved as**
3241 **submitted the Minutes of the April 22, 2010**, Henrico County Board of Zoning
3242 Appeals meeting.

3243
3244
3245 Affirmative: Harris, Nunnally, Witte, Wright 4
3246 Negative: 0
3247 Absent: Dwyer 1

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3249

3250 Ms. Harris - A motion is in order for adjournment.

3251

3252 Mr. Witte - I make a motion we adjourn.

3253

3254 Mr. Nunnally - I second.

3255

3256 Mr. Wright - Before we adjourn, I'd like to commend Ms. Harris on
3257 the way she conducted this meeting.

3258

3259 Mr. Witte - Absolutely.

3260

3261 Ms. Harris - Thank you.

3262

3263 Mr. Wright - Seeing as this is her first crack at it.

3264

3265 Ms. Harris - Thank you so very much.

3266

3267 The motion has been made that we adjourn the meeting by Mr. Witte, seconded
3268 by Mr. Nunnally. All in favor say aye. All opposed say no. The ayes have it; the
3269 motion passes.

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3271
3272 Affirmative: Harris, Nunnally, Witte, Wright 4
3273 Negative: 0
3274 Absent: Dwyer 1

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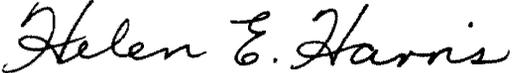
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3277 There being no further business, the Board adjourned until the June 24, 2010
3278 meeting at 9 a.m.

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Helen E. Harris

Helen E. Harris
Acting Chairman



B. Blankinship
Benjamin Blankinship, AICP
Secretary