

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, APRIL, 24 2008, AT 9:00 A.M., NOTICE HAVING**
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH APRIL 3, 2008**
6 **AND APRIL 10, 2008.**

7
Members Present: Richard Kirkland CBZA, Chairman
Elizabeth G. Dwyer, Vice-Chairman
Helen E. Harris
James W. Nunnally
R. A. Wright

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

8
9 Mr. Kirkland - Ladies and gentlemen, welcome to April 24, 2008,
10 Board of Zoning Appeals meeting. Before we get started, could we please stand
11 for the **Pledge of Allegiance to the Flag of Our Country**. Before we get started,
12 we'll have our secretary read the rules.

13
14 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
15 ladies and gentlemen. The rules for this meeting are as follows. Acting as
16 Secretary, I will announce the case—there's only one on this morning's
17 agenda—and while I'm speaking, the applicant should come down to the podium.
18 We will then ask everyone who intends to speak on that case to stand and be
19 sworn. The applicant will present their case and anyone else who wishes to
20 speak will be given the opportunity. After everyone has spoken, the applicant
21 and only the applicant, will have an opportunity for rebuttal. Normally, this is
22 where I would say the Board will make of their decisions at the end of the
23 meeting, but since there's only once case, I guess we'll do it right after that case.
24 There's a binder in foyer that contains the staff report for the case and you're
25 welcome to review that. We will ask everyone who speaks to speak directly into
26 the microphone on the podium and to state your name clearly and spell your last
27 name so that we get it correctly in the records.

28
29 We have one withdrawal, Mr. Chairman. A-001-08, Emerald Land Development.

30
31 **A-001-08 EMERALD LAND DEVELOPMENT** requests a
32 variance from Section 24-95(b)(7) to build a one-family dwelling at 3921 Grayson
33 Street (Providence Park Annex) (Parcel 793-737-0345), zoned R-5, General
34 Residence District (Fairfield). The lot width requirement and total lot area
35 requirement are not met. The applicant has 35 feet lot width and 3,445 square

36 feet total lot area, where the Code requires 50 feet lot width and 6,000 square
37 feet total lot area. The applicant requests a variance of 15 feet lot width and
38 2,555 square feet total lot area.

39

40 Ms. Dwyer - As I understand it, Mr. Blankinship, it's because they
41 did acquire property next door, so now they have a lot that complies with the
42 zoning requirements.

43

44 Mr. Blankinship - That is correct.

45

46 Ms. Dwyer - Good news.

47

48 Mr. Blankinship - Happy ending.

49

50 The Board **allowed withdrawal** of **A-001-08**, Emerald Land Development, as
51 requested by the applicant.

52

53 Mr. Kirkland - Before we start calling the cases, I hope all the Board
54 members received this letter that's on our desk here about Horses in Service.
55 There was a mistake on a letter we sent out to the applicant, and Mrs. Akers, I
56 believe, stating that we were going to rehear the case. The only thing I can tell
57 you is we had not planned on rehearing the case and it was just an error. Mr.
58 Blankinship probably can explain it to you a little bit more, but VDACS, Virginia
59 Department of Agriculture Consumer Services, questioned the removal of the
60 manure every two weeks. Their recommendation was not to do that.

61

62 Mr. Blankinship - They would rather have it composted on site, but
63 that's just not where we are at this point. There's too much water over the dam
64 already on this case. It's merely a recommendation; it doesn't carry any force of
65 law or anything.

66

67 Mr. Kirkland - Does anyone have any problem with not rehearing
68 the case?

69

70 Mr. Wright - Just let it sit.

71

72 Mr. Kirkland - Okay. I think we get a report in May, don't we?

73

74 Mr. Blankinship - Yes.

75

76 Mr. Kirkland - We get a report in May and we get a report in a year
77 from that case, so we'll see how things have been going. All right. If you will, call
78 the first case.

79

80 **A-007-08** **COMMUNITY HOUSING SOLUTION** requests a
81 variance from Section 24-95(b)(5) to build a one-family dwelling at 5 N Virginia

82 Avenue (Bungalow City) (Parcel 817-726-3654), zoned R-3, One-family
83 Residence District (Varina). The total lot area requirement and lot width
84 requirement are not met. The applicant has 6,500 square feet total lot area and
85 50 feet lot width where the Code requires 8,000 square feet total lot area and 65
86 feet lot width. The applicant requests a variance of 1,500 square feet total lot
87 area and 15 feet lot width.

88

89 Mr. Kirkland - If you would come forward, sir. and speak. Anyone
90 else here on this case who wishes to speak?

91

92 Mr. Blankinship - We just called A-007-08, Community Housing
93 Solution.

94

95 Mr. Kirkland - Are you the applicant? Okay, come up front please.

96

97 Mr. Blankinship - You need to stand and ma'am, if you would like to
98 stand.

99

100 Mr. Kirkland - Anyone that's going to speak on this case, please
101 raise your right hand and we'll swear you in where you stand.

102

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

106

107 Mr. Towns - I do.

108

109 Mr. Kirkland - Please be seated. The applicant, please state your
110 name and tell us what you're requesting.

111

112 Mr. Towns - My name is Wayne Towns. I'm representing
113 Community Housing Solution.

114

115 Mr. Kirkland - What do you want us to do for you?

116

117 Mr. Towns - I'm requesting a variance to build a single-family
118 house at this location. It's an old lot that was subdivided I think back in the 50's.
119 Right now, there's a requirement to have 65 foot of road frontage and we only
120 have 50. So, I'm asking for a variance on that. The area has to be 8,000 square
121 feet and I think we're right about 6,500. We want to build a house roughly 1,200
122 square feet, two stories. So, we're applying for a variance.

123

124 Mr. Kirkland - Sir, when did you acquire this lot?

125

126 Mr. Towns - Probably about three months ago.

127

128 Mr. Kirkland - When you acquired it, did you know it was not a
129 buildable lot?
130
131 Mr. Towns - I realized it was not a buildable lot without the
132 variance, right.
133
134 Mr. Kirkland - Before you bought it you knew that.
135
136 Mr. Towns - Well, I wasn't quite—Yes, yes.
137
138 Mr. Kirkland - Okay.
139
140 Mr. Nunnally - You have signed and closed on it. It's your lot, it's
141 just subject to you getting a variance.
142
143 Mr. Towns - I didn't understand the question.
144
145 Mr. Blankinship - Is your contract to buy the property contingent on you
146 getting the variance?
147
148 Mr. Towns - No. I actually own the lot now. At this time, I own it.
149
150 Ms. Harris - Have you tried to secure five feet on either side or
151 both sides?
152
153 Mr. Towns - Well, one of the neighbors, I went by to speak with
154 them and we had a conversation for a while. From that conversation, I didn't think
155 that they were interested in the selling of their lot. The other person, I think
156 where their house is situated right there on their lot, they couldn't afford to sell
157 any. The occupant at 3 North Virginia Avenue, they're on a hundred foot lot. They
158 could have afforded to give up some of it, but I don't think that's what they
159 wanted to do. We had a conversation and what we talked about was they had an
160 issue of thinking maybe the house would be kind of close to them, but where the
161 house is currently situated, even if both of us had identical size lots, the minimum
162 distance would be 24 feet because of the 12-foot side setbacks. Currently, the
163 way it sits, if I get an opportunity to build this new house, we'll have 50 feet
164 between us and that's more than even the current zoning would allow.
165
166 Ms. Harris - Fifty feet between?
167
168 Mr. Towns - Right. Between where his house ends and I'll be
169 eligible to build my own house will be 52 feet, which is more than what the
170 current zoning would allow.
171
172 Ms. Dwyer - The current zoning doesn't measure from to house to
173 house, it measures from your house to your property line.

174
175 Mr. Towns - Right.
176
177 Ms. Dwyer - That's the distance that counts. What you're just
178 saying is their house is far off their property line.
179
180 Mr. Towns - Right. What I'm saying is with the current zoning, you
181 only have to have 12 foot minimum before you can build, so if you add the two
182 12, that's 24 feet. Right now where their house sits and where the closest my
183 house could be, it's roughly like 52 feet.
184
185 Ms. Dwyer - What I'm saying is—
186
187 Mr. Towns - Yes ma'am, I understood that.
188
189 Ms. Dwyer - —the requirement is to your property line.
190
191 Mr. Towns - Right.
192
193 Ms. Dwyer - The distance of their house from their property is not
194 anything that's really relevant to us.
195
196 Mr. Towns - Okay.
197
198 Ms. Dwyer - I understand what you're saying, that there is space
199 there on their property, but what's important to us is the difference between your
200 proposed house and your property line.
201
202 Mr. Towns - Even if they added onto the house at some point, the
203 distance still would be like two feet shorter than what the current zoning allows.
204 I'm proposing 10 feet setbacks on mine, whereas the minimum I think is 7, 7 feet.
205 So, 10 plus their 12, that's still 22 feet, which under the code today would
206 probably be 24 feet.
207
208 Ms. Dwyer - You're a total of 15 feet short on the side yard
209 setbacks.
210
211 Mr. Towns - Yes ma'am.
212
213 Ms. Harris - The photos that we have in our packet of the four
214 homes are, I guess, four different views of the same house. May we have that
215 on the screen please?
216
217 Mr. Blankinship - Those were photos submitted by the applicant. Paul,
218 you want to click on that little plus sign there? I'm not sure whether those are in
219 our packet or not. No, we did not include those in there.

220
221 Ms. Harris - Okay. You're familiar with these photos, right?
222
223 Mr. Towns - Yes ma'am.
224
225 Ms. Harris - What are these houses or this one house?
226
227 Mr. Towns - It's a house that was actually built in 2007 on a 50-
228 foot lot that the Board granted a variance on, just to show some kind of scale of
229 what it would look like. When I talked to one of the neighbors, they had some
230 concern about what kind of house I would be interested in building there and
231 what kind of affect that would have on their property value. At the time, I told
232 them there's a newly constructed house built at 211 North Virginia Avenue and I
233 asked them to go by and look at that. That's the kind of house I was thinking
234 about building because we have to have at least 1,200 square feet and
235 something like that did it. It also shows the scale of that house in relationship to
236 the other house and what it would actually look like on that lot, a 50-foot lot.
237
238 Ms. Harris - In our packet, we really don't have the plans for the
239 house you intend to build on this lot.
240
241 Mr. Towns - Well, it's going be very much like that footprint only
242 because of that fact that in order to get 1,200 square feet, it's going to have to be
243 that rectangular shape.
244
245 Ms. Harris - Do you know the square footage of the homes in that
246 area, the range?
247
248 Mr. Towns - That block is very interesting because it is real varied.
249 It has one old structure, it has a two-story house, and two ranchers. My lot would
250 be in between the two ranchers. Across the street they have a split-level house.
251 Also directly across the street is an old bungalow style house. The house that I'm
252 proposing is not going to make the area look different because it's already
253 varying in different kinds of houses and scale.
254
255 Mr. Kirkland - Any other questions by Board members?
256
257 Mr. O'Kelly - Yes. Sir, the plot plan that you filed with your
258 application shows a 1,680-square-foot house. You say it's 1,200 square feet?
259
260 Mr. Towns - I think 1,200 is the minimum in R-3. That particular
261 floor plan right there would probably give you that. I just put those dimensions. If
262 I use the setback that the County required me to have, that's the maximum size
263 house I could actually have within that footprint. But the minimum I think in that
264 area for R-3 is going to be 1,200 square feet.
265

266 Ms. Harris - You did build these homes shown in the photos that
267 we have in our packet?
268
269 Mr. Towns - I was involved with that. I used to own that lot and I
270 sold that lot to a builder who built that home.
271
272 Ms. Harris - Do you plan to use the same builder?
273
274 Mr. Towns - I'm going to build it myself, so this time around I think
275 I'm going to give it a shot.
276
277 Ms. Harris - Have you built any other homes in that area?
278
279 Mr. Towns - Yes. I bought a few of these tax properties before.
280 Since 2001, we've built or been involved with building probably eight houses on
281 these lots that were surplus in the County.
282
283 Ms. Harris - Why did you purchase the land if you knew they were
284 not buildable lots?
285
286 Mr. Towns - To be perfectly honest with you, I was of the opinion
287 that an empty lot always has some possibilities to be built on. People are looking
288 for lots all the time. I felt there would be some kind of improvement made if I had
289 to chance to build on it. That's just the state of things right now. You find an
290 empty lot, you try to secure it.
291
292 Mr. Wright - Can I ask Mr. Blankinship a question? Mr.
293 Blankinship, how many houses are built on 50-foot lots in this block? Do you
294 know?
295
296 Mr. Blankinship - If we could put the aerial back up, Paul.
297
298 Mr. Wright - Looks like most of them are—
299
300 Mr. Blankinship - Number 15 I think is built on a 50-foot lot and number
301 13. Now, 13 owns that 25 feet next to it. There is a property line there, but they
302 own that, so you could look at that as a 75-foot lot.
303
304 Ms. Dwyer - Do we know when 15 was built?
305
306 Mr. Blankinship - Actually looking at that, I'm not even sure that's a
307 house. That might just be a garage.
308
309 Ms. Dwyer - Maybe the neighbors could enlighten us.
310

311 Mr. Blankinship - There is one lot here and I think it's—One of these
312 lots is owned by that same charity that owned the lot for the other case that was
313 withdrawn this morning, Richmond Christian Charities. They own a lot on this
314 block as well. I just thought that was a curious coincidence.
315
316 Ms. Harris - Is 14 also a 50-foot lot?
317
318 Mr. Blankinship - That does appear to be, yes ma'am.
319
320 Ms. Dwyer - There's nothing on it, right?
321
322 Mr. Blankinship - Right.
323
324 Ms. Harris - But 13 has some structure, right?
325
326 Mr. Wright - Thirteen is a 50-foot lot.
327
328 Ms. Dwyer - It could be an older house, though.
329
330 Mr. Nunnally - Which lot is the one you said was built on in 2007, a
331 50-foot lot?
332
333 Mr. Towns - There's a 50-foot lot at 211 North Virginia Avenue.
334
335 Mr. Nunnally - It's like three blocks down, isn't it?
336
337 Mr. Towns - Yes sir. In this area, they have some of everything—
338 50, 75, 100. The houses reflect that because they're kind of built like that. They
339 have some shotgun style houses, two-story, ranchers.
340
341 Mr. Blankinship - They are mostly 75's and 100's.
342
343 Mr. Towns - Right.
344
345 Mr. Blankinship - There are some 50's, but not very many.
346
347 Mr. Kirkland - Any other questions? Anybody else? All right, sir,
348 we'll hear from the opposition and then you will have a few moments to rebut.
349
350 Mr. Towns - Okay.
351
352 Mr. Kirkland - Okay, sir, first one up. If you would, state your name
353 for the record.
354
355 Mr. Cook - Good morning. My name is Harry Cook.
356

357 Mr. Kirkland - Mr. Cook, you're a little tall; could you pull that mike
358 up?
359

360 Mr. Cook - Can you hear me now? My name is Harry Cook. I
361 own 7 North Virginia Avenue and we purchased the land and built on it in 2001.
362 I feel that this house will be too close to my house. When we bought our land, we
363 were told that we at least had to have three or more lots to build on. If that's the
364 case for him, to build a house on 50 feet, I could have put two houses there. I
365 feel it's unfair to me. Like I said, he's building this house, he's not going to live in
366 it. I have to live beside this dwelling that he's going to put there. It may be a nice
367 looking house that he's going to put there, but a two-story house—My house is a
368 rancher, a 2,000-square-foot rancher. It is built on four lots. Like I said, that
369 piece of land that's right there, I've been taking care of it, I've been cutting it.
370 When I first moved there, it had water damage. I had someone come in and put
371 dirt in to fill it in. The County told me I could do that as long as I didn't put
372 anything permanent there. I cut this grass. So, it's not like it's just left there and
373 it's a sore to the neighborhood. It is being tended to by me. I know I don't own it,
374 but I'm taking care of it. It has a little problem with water damage there. That's
375 why I had dirt and stuff put in. I'm speaking on behalf of me and my wife and my
376 three kids. We live there. I have a porch on the front of my house. Depending on
377 where he sets his house, and I guess this is personal, but I like to sit on my porch
378 sometimes and just watch the cars come down the street and see things. If he
379 builds his house too far forward, I'm not going to be able to see anything but the
380 side of his house. There is one two-story house there, which is across the street.
381 The rest of them are one story. Like I said, he's not going to live there. I have to
382 live there with this house that's going to be kind of close to mine and I just don't
383 think it's right.
384

385 Mr. Blankinship - You wrote this letter that's included in the packet.
386

387 Mr. Cook - Yes sir.
388

389 Mr. Nunnally - You tried to buy this land and they wouldn't sell it to
390 you?
391

392 Mr. Cook - They told us that it was un-buildable. When we called
393 and they said it was un-buildable, I said, well, there's no need to purchase it if no
394 one can put anything on it. I'll just continue to cut it and keep it nice and neat.
395 That's why I didn't buy it. At the time when they auctioned it off, to be honest, I
396 didn't have the money to purchase it. I was here at the auction. I did see him
397 purchase the land. But that morning, we called on the way up here and they told
398 us that it was unbuildable. I just wanted to see who was buying it, did it even go
399 up for auction.
400

401 Ms. Harris - You would not consider, Mr. Cook, selling him five
402 feet off your land?

403
404 Mr. Cook - No ma'am.
405
406 Ms. Harris - Fifteen?
407
408 Mr. Cook - No ma'am. My driveway is—I can't point to it. My
409 driveway is where he's thinking about putting his house, it's going to be—My
410 driveway is probably, what, five more feet over my property. The house is just
411 going to be right there up against. I've driven down my street and there are a
412 couple houses there that are kind of close, but I don't think there is one on there
413 that's that close. I haven't taken a measuring tape and went out and measured
414 anything, but I just like my space. I feel cluttered and I just hope that you all will
415 look at and can see how would you feel if someone was trying to put a house
416 right beside you that doesn't have any value to them because they're not going to
417 live in it.
418
419 Mr. Wright - Mr. Cook, how many lots do you own?
420
421 Mr. Cook - I own four lots in there.
422
423 Mr. Wright - You have 100 feet?
424
425 Mr. Cook - Yes sir.
426
427 Mr. Wright - You must own #9.
428
429 Mr. Cook - No, I'm sorry, three lots, three lots. It's four lots? It's
430 four lots.
431
432 Mr. Wright - Your house is on #9, so I guess you own #9, don't
433 you?
434
435 Mr. Cook - I own #7, sir.
436
437 Mr. Wright - How about #9? It looks like the house is on #9 also, if
438 this is accurate.
439
440 Mr. Cook - I cannot answer that question for you, sir. I see
441 exactly what you're saying about the line. It looks like it's going right through my
442 bedroom. When we purchased this land, when the—what do they call it, the—
443
444 Ms. Harris - Surveyors?
445
446 Mr. Cook - Yes ma'am. When the surveyors came out, they put
447 the stakes down and when it was built, it was put over the right amount of feet.
448 So, I cannot answer that one for you.

449
450 Mr. Wright - How about #11? Is there a house on #11?
451
452 Mr. Cook - Number 11? It's an old house right there.
453
454 Mr. Wright - On #11? Looks like it's halfway on #11 and 9, and
455 yours is on the—
456
457 Mr. Cook - Number 11? See where #11 is? There is a house on
458 there. It's in where that looks like the footing has been done on this picture? It
459 does go right between, but there is a house that someone put right there.
460
461 Mr. Wright - You must own #9 also, because it looks like the line
462 goes right through the house, based on this.
463
464 Mr. Kirkland - Mr. Blankinship, how accurate are these lot lines?
465
466 Mr. Blankinship - They're not accurate to the foot, especially in the
467 older subdivisions. They're taken off the old tax maps. They're reasonably
468 accurate. They show which house is on which lot, but they won't show the
469 location of the lot line precisely.
470
471 Mr. Kirkland - So, that line really needs to be moved or the house
472 needs to be shoved back over.
473
474 Mr. Blankinship - Or it could be that he does own #9.
475
476 Mr. Cook - And don't know it.
477
478 Ms. Harris - Is someone living in that house?
479
480 Mr. Cook - Yes ma'am. There's an older lady who lives there.
481 Her and her grandson. The lady who built the house passed before she could
482 move in.
483
484 Mr. Kirkland - All right, sir. Anybody else have any questions? All
485 right. If the next speaker would come up.
486
487 Mr. Cook - Thank you for your time.
488
489 Mr. Kirkland - Thank you.
490
491 Mr. Allen – Good morning. My name is Prince Allen. I was the
492 builder—
493
494 Mr. Nunnally - Could you say your name again, please?

495
496 Mr. Allen - Prince Allen. First name's Prince, last name's Allen.
497
498 Mr. Blankinship - A-I-I-e-n?
499
500 Mr. Allen - A-I-I-e-n, that's correct. I was the builder of that home
501 for my son-in-law.
502
503 Mr. Kirkland - Could you get a little closer to the mike, sir?
504
505 Mr. Allen - Okay. Can you hear me now?
506
507 Ms. Harris - Yes.
508
509 Mr. Allen - Okay. I was the builder of that lot. We purchased that
510 lot—
511
512 Mr. Kirkland - Are you speaking of #7?
513
514 Mr. Allen - Number 7, Mr. Cook's lot. At that lot right there, I
515 asked the question, could you build on two lots because they were only 25 feet
516 wide. They said no, you had to have three or more lots, so that's what we did. I
517 had looked at the lot that this gentleman, Mr. Towns, has purchased. They told
518 me you couldn't build on two lots, you had to have three or more. So, that's what
519 we did. There was some commissioner—I can't recall his name—and they had
520 to go to court. And we won the, we got the opportunity to buy that and that's
521 when I purchased it for my son-in-law and my daughter and I built the house
522 there. You spoke about the line on #9 to 7, there is a question about that
523 because some individual that owned some land in between there and they do
524 have title insurance on that property for Lot 7. We went back and forth with the
525 title insurance company and the surveyors came out. When they set their
526 marking pins down, I set the house so the house could be in the middle of the
527 lots. That's why his driveway is like it is, that he could possibly add a garage on
528 that one side if he wished to. Also, the question was about the line going through
529 the house, it is a question about that. It's something about the subdivision,
530 Bungalow City, that somewhere down the line someone just didn't do the correct
531 surveying. That's what I was told about the whole entire Bungalow City. There's
532 a discrepancy about the property line. If so, Lot 5 where this gentleman, Mr.
533 Towns, is purchasing, it belongs to Lot 7. Nobody can get the true answer which
534 way this thing goes. My son-in-law, his is a 2,000-square-foot house. You're
535 going to set a shotgun house beside that. To me, that would help depreciate the
536 property instead of increasing the property. The question would be, would you
537 want a Jim Walter house—nothing towards Jim Walter—to set beside a \$400,000
538 house and to come in there and depreciate your property. I'm sorry if I made a
539 mistake calling his name, but he is an excellent builder. That's the way I feel
540 about this. It's some problem about that property line. The title insurance

541 company told my son-in-law and we went to their attorney to find out what do we
542 do. They said that person can't prove that he actually owns that so just let things
543 rest. That's my point about that property right there. When I set it there, the
544 surveyor set the four corners and we set the house right in the middle of that
545 survey spot. That's all I have to say about that.

546
547 Ms. Harris - Mr. Allen, you have not seen these photos, have you?
548

549 Mr. Allen - No ma'am, I haven't.
550

551 Ms. Harris - Could we pass these to him? I was wondering when
552 you talked about the homes that you felt should not be built next to your son-in-
553 law and daughter's house, did you have reference to that? Do you consider
554 those sort of depressive to the neighborhood?
555

556 Mr. Allen - No, it's not depressing, but how wide is the house?
557 The question is whether you're going to put a 25-foot rancher there. You need
558 the property line on each side of that to meet the County requirements. The lot is
559 only 50 feet. If you put a 25-foot, I mean, this would really narrow it down from
560 what you see on this picture here. The only thing I could tell is most of the time
561 they put a shotgun house in there. Like I say, my son-in-law and daughter's
562 house is a 2,000-square-foot rancher. I just feel like that would be a depreciation
563 for anyone to come in the neighborhood and say I would want to purchase this
564 house, if they were to sell it.
565

566 Mr. Kirkland - Any questions? All right. Thank you very much, sir.
567

568 Mr. Allen - Thank you.
569

570 Mr. Kirkland - Next person to speak?
571

572 Ms. Cofield - Good morning. My name is Kimberly Cofield. I am
573 the owner of 3 North Virginia Avenue. Mr. Cook pretty much summed up
574 everything I was about to say. My husband and I purchased the property
575 February of 2006. We decided we wanted to start out with a starter home. One
576 of the things that attracted us about this particular house is the fact that it wasn't
577 really close to the house next to us. I can witness and say that Mr. Cook has
578 been taking good care of the lot. Never had any issues. He cuts the grass, he
579 tends to the property. We have a daughter and we plan on expanding our family,
580 and my husband and I have a concern as well about the house being too close to
581 our property.
582

583 Mr. Wright - Which is yours? I didn't catch that.
584

585 Ms. Cofield - Three.
586

587 Ms. Dwyer - The other side, the other neighbor.
588
589 Mr. Wright - You're #5?
590
591 Ms. Cofield - Three.
592
593 Mr. Wright - I mean 3, excuse me.
594
595 Ms. Harris - Did you know about the auction of that lot?
596
597 Ms. Cofield - Yes.
598
599 Ms. Harris - And you, too, did not go to the auction and make an
600 offer on that lot?
601
602 Ms. Cofield - At the time, my husband and I couldn't afford it.
603
604 Ms. Harris - Okay. Have you spoken with your neighbor, the
605 Cook's, to see if you could purchase the land together?
606
607 Ms. Cofield - No, we haven't talked about that.
608
609 Ms. Harris - Okay. I mention that because we did it in our
610 neighborhood to keep a subdivision from being too close to us. The neighbors
611 came together and we purchased the land, so I know that that's doable. What is
612 the square footage of your house, do you know?
613
614 Ms. Cofield - 1,008.
615
616 Ms. Harris - Okay.
617
618 Ms. Cofield - Three-bedroom.
619
620 Ms. Harris - If Mr. Towns had approached you about selling some
621 of your footage, would you have sold some of your land to him?
622
623 Ms. Cofield - No, we're not interested.
624
625 Mr. Kirkland - Ms. Cofield, what is the width of your lot in the front,
626 do you know?
627
628 Ms. Cofield - I'm not sure.
629
630 Mr. Kirkland - Mr. Blankinship—
631
632 Mr. Blankinship - I believe it's 75.

633
634 Mr. Kirkland - Seventy-five? Okay. Any other questions by Board
635 members?
636
637 Mr. Nunnally - According to this application, Mr. Towns said there
638 are quite a few 50-foot lots on there, but I don't see that. Do you, Mr.
639 Blankinship?
640
641 Mr. Blankinship - No sir. There are a few elsewhere in Bungalow City,
642 but not very many. I only found one or two variances that had been approved in
643 the last 10 years for 50-foot lots in Bungalow City. It's more than zero, but it's not
644 very many. There are a lot of 50-foot lots, but they're not improved.
645
646 Ms. Dwyer - Right. The application says this lot is the same as all
647 the lots in the subdivision which are this size. It's true that the subdivision was
648 originally all 25- and 50-foot lots, but as you say, they've been developed on
649 multiple lots.
650
651 Mr. Blankinship - Again, there are circumstances like 13 here where the
652 house is on a 50-foot lot, but they own the adjoining 25-foot lot. In essence, the
653 house in on a 75-foot lot, but it appears at a glance to be on a 50-foot lot.
654
655 Mr. Wright - Were there any houses built on a 25-foot lot in the
656 beginning?
657
658 Mr. Blankinship - Not that I know of. I wasn't there in 1932, but I
659 suspect they did that so that they could just tell the buyer, "How much land do
660 you want? Do you want 50 feet, do you want 75, do you want a hundred? You
661 can buy as much as you want."
662
663 Mr. Wright - At that time, it was a legal lot.
664
665 Mr. Blankinship - Yes. But, you still couldn't build much on 25.
666
667 Mr. Wright - I know, but it was a legal lot. They could have a built a
668 house 10 feet wide and 40 feet deep.
669
670 Mr. Blankinship - That was before we had any zoning at all.
671
672 Ms. Dwyer - This says 1920 is when it was platted.
673
674 Mr. Blankinship - Okay. It was '32 when I think this lot was sold by the
675 developer to the first owner.
676

677 Mr. Kirkland - All right. Any other questions? Thank you, ma'am.
678 Anyone else wish to speak on this case? Sir, do you have any rebuttal
679 comments?

680
681 Mr. Towns - Like I say, when I first purchased the lot, I didn't
682 purchase the lot with any ill intent to try to just stick a house in there or anything
683 like that. I had some research on it and familiarity with Bungalow City. This will
684 be the third lot that I've had there and built two houses in there already.

685
686 Mr. Nunnally - What size lots did you build on?

687
688 Mr. Towns - The first one was on Evergreen. That was a 75-foot
689 lot. This house that I didn't actually build but I was involved with at 211, that's on
690 a 50-foot lot. So, when I went to the auction to buy the property, I was under the
691 understanding that—I wasn't thinking the Board would automatically give me a
692 variance, but I knew that in Bungalow City, there are right many undeveloped lots
693 and at some point, because of the availability of the land, there will be other
694 people, probably like myself, coming forward to ask for that since when that
695 subdivision was cut out, those were, in fact, legal lots.

696
697 The other thing I wanted to add was the picture that you have in that package,
698 that particular house is 32 feet wide. The two-story house that Mr. Cook says is
699 across the street, that's only a 26-foot wide house. All up along Nine Mile Road,
700 they're building two-story colonials and all those colonials are 28 by like 30. The
701 house that I'm building, I tried to build it so that—I'm having 10 feet on each side
702 of the house, when the code only requires me to have 7. So, I'm giving up six
703 feet, really just to give my neighbors a little bit more distance. When the
704 gentleman says it's a shotgun house, it's not a shotgun house. That house is
705 actually built and is at 211. I think Mr. Cook may have gone down there to
706 actually see the house, the actual size of it. It's more than just a plan on a piece
707 of paper, it's an actual house on a lot.

708
709 The other thing that I had was the fact that when you live next to a lot, no
710 deference to anyone, you live next to an empty lot that's not owned by you—I
711 would like to live in the city myself and not have any neighbors around me, but
712 the truth of the matter is when you have an empty lot like that, there's always the
713 possibility that someone might build something there.

714
715 Mr. Blankinship - But if you call and find out that it's not buildable,
716 then—

717
718 Mr. Towns - Right, right. I don't know whether or not somebody
719 gave the wrong information or the right questions were not asked.

720
721 Mr. Blankinship - Well, it's not buildable.

722

723 Mr. Towns - I'm asking the Board to grant the variance only
724 because of the fact that in 1930-something it was a buildable lot. I'm going to
725 build a nice, attractive house there. I looked this morning before I came here,
726 which is the reason I was actually late, just to see what some of the values were
727 in that area. Last year, the two-story house across the street sold for \$199,000.
728 I think Mr. Cook's house right now is assessed at like 208. The house at 211 was
729 on the market and it's under contract now. That house sold for 210. So, even in
730 today's market—I'll be asking for at least \$200,000 for my house, which puts me
731 right around the values that are already there. There's a whole subdivision up on
732 Nine Mile Road and those houses are selling for 209, 210, 215, depending on the
733 amenities that they add to it. Like I said, this house that I'm building will fit right
734 into the scale of everything else that's in that area.

735
736 Ms. Harris - I have two questions for you, Mr. Towns. Mr. Cook
737 mentioned that he likes sitting on his porch and that he felt that your proposed
738 house would obstruct his vision. Can you address that?

739
740 Mr. Towns - The County's building permit would regulate that
741 because the front setbacks would be required to be 35 feet. I believe that's where
742 Mr. Cook's house sits, about 35 feet. Actually, our houses will be perfectly in line.
743 If you go down Bungalow City, currently they don't have that situation. As you
744 can see on the picture there, most of the houses are actually lined up. At any
745 rate, the minimum front setback is 35 feet and we plan to honor that if we go
746 forward.

747
748 Ms. Harris - The second question I have, are you familiar with the
749 ruling, the Cochran versus Fairfax County? Have you picked up the copy of the
750 agenda for today? There was a question there that we have to subject this
751 property to. Are you familiar with that?

752
753 Mr. Towns - Not so much.

754
755 Ms. Harris - All reasonable, beneficial uses of the property taken
756 as a whole. Is it on this application? It says, "The BZA can grant a variance only
757 if the applicant demonstrates that the zoning ordinance interferes with all
758 reasonable, beneficial uses of the property."

759
760 Mr. Towns - Yes ma'am, I read that. When you cited the case
761 about Cochran, I wasn't familiar with that. I haven't read any of that. But if I don't
762 get this variance, there's very little I can do other than sell it to the adjacent
763 property owner, if they're interested. The way it looks, if Mr. Cook's been taking
764 care of it with no cost to him, I wouldn't see a reason why they would be
765 interested in buying it.

766
767 Ms. Harris - What was the auction price?

768

769 Mr. Towns - I think I paid like \$2,200 for it, which is a point I didn't
770 really want to bring up.
771
772 Ms. Harris - \$2,200 for it?
773
774 Mr. Towns - Yes ma'am.
775
776 Ms. Harris - Okay.
777
778 Mr. Towns - I didn't really want to bring that part of it up.
779
780 Ms. Dwyer - Mr. Blankinship, I wonder if you could clarify
781 something. Mr. Towns said that he's only required to have a 10-foot side yard
782 setback and that he's giving 10. I don't read the statute that way. What's his
783 minimum side yard?
784
785 Mr. Blankinship - It would 10% of the lot width on the least side and
786 30% of the lot width on the sum of the two sides, but with a minimum of 7. These
787 are the exception standards for lots that were developed prior to 1960.
788
789 Ms. Dwyer - Okay. So, because it's an exception the normal 12/30
790 doesn't apply.
791
792 Mr. Blankinship - Right.
793
794 Ms. Dwyer - It's a minimum of 7 and a total of?
795
796 Mr. Blankinship - Thirty percent of the lot width, which is 15 in this case.
797
798 Ms. Dwyer - That is minimal. So, the side yard setback is met, it's
799 just the lot width is not.
800
801 Mr. Blankinship - Yes. The lot width and lot area are not met.
802
803 Ms. Dwyer - Okay, thank you.
804
805 Mr. Kirkland - All right, sir. Any other questions by Board members?
806 Thank you. That concludes the case.
807
808 Ms. Dwyer - Which one shall we take first?
809
810 Mr. Kirkland - Let's start from the end.
811
812 Ms. Dwyer - This is so unusual.
813

814 Mr. Blankinship - Your workload is going to go up 600% next month.
815 Sorry about that. We have six cases.
816
817 Mr. Kirkland - Ms. Dwyer won't be here.
818
819 Mr. Nunnally - We'll have to put them off until Ms. Dwyer gets back.
820
821 Mr. Kirkland - Do I hear a motion for A-007-08?
822
823 Mr. Nunnally - I move we deny it because I think it's a self-imposed
824 hardship. I've been by there a couple of times looking and they'll be mighty
825 cramped up if we put another house in there at that location. That's my reason
826 for denial.
827
828 Ms. Dwyer - I will second that. Even though the use of the
829 property is restricted, this Board also has to make some other findings under the
830 code, including finding that this issue is not recurring and I think it is a recurring
831 issue. We also have to find that granting the variance would not be detrimental
832 to the adjoining properties and I think it would be detrimental to the adjoining
833 properties. This is an R-3 zoning and I think to allow this much house on a
834 substandard lot would overcrowd the neighborhood and would be detrimental to
835 the neighborhood.
836
837 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Ms. Dwyer. All
838 those in favor say aye.
839
840 Ms. Harris - Do we have a question period?
841
842 Mr. Kirkland - We could have had a question period; I'm sorry.
843
844 Ms. Harris - I notice that Ms. Dwyer talked about it being a
845 detriment to the neighborhood and Mr. Nunnally talked about self-imposed
846 hardship. But I didn't hear anyone talk about Cochran's case, about is there
847 beneficial use of this lot without this variance, which there is not, except as
848 landscaping for the adjacent properties. How do we reconcile that? How do we
849 resolve Cochran with this particular issue? I'd like to hear the explanation for
850 that.
851
852 Mr. Kirkland - Ms. Harris, I think going into this the gentleman knew
853 that it was not a buildable lot and that's the question. He self-imposed a hardship
854 on himself.
855
856 Ms. Harris - I understand that.
857
858 Mr. Wright - I think that overrules—
859

860 Mr. Kirkland - I think "reasonable use" is thrown out because I
861 believe he put the hardship on himself before he even got started. He purchased
862 the property knowing fully well he couldn't build there. Mr. Blankinship
863 commented it has never been a buildable lot.

864
865 Mr. Blankinship - Since 1960.

866
867 Mr. Kirkland - The history was there. Even though you buy them at
868 tax sales or whatever, the history was there that this was not a buildable lot.

869
870 Ms. Dwyer - In addition, Ms. Harris, the way I analyze it is that
871 Cochran is the threshold question. You have to meet Cochran to even be able to
872 come before us and ask for a variance. If you don't meet Cochran, you might as
873 well not come to the door because that's the threshold question you have to
874 meet. Once you meet that, there are still other standards that have to be met in
875 order for us to approve it. Those were the ones that I cited in the code
876 including—it says, "No variances shall be authorized by the Board unless it finds
877 the following things." It lists three things including that granting the variance will
878 not be detrimental to the adjoining properties. The way I look at it is Cochran is
879 the first question, but it doesn't resolve the case. You have to then ask the
880 subsequent questions and make findings.

881
882 Mr. Wright - I think also if you read the cases, which I've done, it's
883 clear—and the Virginia Supreme Court has held many times—that where you
884 have a self-imposed hardship, you don't have any grounds for the case. I think
885 that overrides everything.

886
887 Ms. Harris - Including Cochran?

888
889 Mr. Wright - You have to get past that. If it's self-imposed, you
890 don't satisfy the hardship requirement because you caused it yourself.

891
892 Ms. Harris - Thank you.

893
894 Mr. Kirkland - Do you have anything to say, Ben?

895
896 Mr. Blankinship - Just don't forget to call the question.

897
898 Mr. Kirkland - Oh, the question. Okay. Motion made by Mr.
899 Nunnally, seconded by Ms. Dwyer. All those in favor say aye. All those opposed
900 say no. The ayes have it; the motion passes. The case is denied.

901
902 After an advertised public hearing and on a motion by Mr Nunnally, seconded by
903 Ms. Dwyer, the Board **denied** application **A-007-08, Community Housing**
904 **Solution's** request for a variance from Section 24-95(b)(5) to build a one-family
905 dwelling at 5 N Virginia Avenue (Bungalow City) (Parcel 817-726-3654), zoned

906 R-3, One-family Residence District (Varina). The total lot area requirement and
907 lot width requirement are not met.

908
909 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
910 Negative: 0
911 Absent: 0

912
913 Mr. Kirkland - Any other information need to come up before this
914 Board before we adjourn? We have the minutes, sorry. I forgot the novel.

915
916 Mr. Wright - I have a couple of things. Page 17, line 739. "I've
917 lived there all my," it should be "life." Page 28, line 1252. Mr. Kirkland said, "I
918 thin." I think he meant, "I think." That's all I found. I tried to read them but I kept
919 going to sleep.

920
921 Mr. Kirkland - Ms. Harris, do you have anything?

922
923 Ms. Harris - No.

924
925 Mr. Kirkland - Mr. Nunnally?

926
927 Mr. Nunnally - No.

928
929 Mr. Kirkland - Ms. Dwyer?

930
931 Mr. Wright - I move they be approved as corrected.

932
933 Ms. Dwyer - Second.

934
935 Mr. Kirkland - Motion made by Mr. Wright, seconded by Ms. Dwyer.
936 All those in favor say aye. All those opposed say no. The ayes have it; the motion
937 passes.

938
939 On a motion by Mr. Wright, seconded by Ms. Dwyer, the Board **approved as**
940 **corrected** the **Minutes of the March 27, 2008** Henrico County Board of Zoning
941 Appeals meeting.

942
943 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
944 Negative: 0
945 Absent: 0

946
947 Mr. Kirkland - Any other business? Mr. Blankinship?

948
949 Mr. Blankinship - Mr. Chairman, I'd just like to say that we have been
950 asked several times where we stand on the public street frontage variance
951 question, the letter that the BZA sent to the Board of Supervisors. We have been

952 doing some research on that. I was hoping to have some results from research to
953 present to you this morning. We have not received all the answers back from the
954 other localities, but we will get that back and compile it. I just wanted to let you
955 know that we are actively pursuing that issue and moving forward.

956
957 Mr. Kirkland - I appreciate that.

958
959 Ms. Dwyer - What about the Supreme Court case?

960
961 Mr. Blankinship - The Greenleaf Case? I have not heard anything
962 back. I guess we'll find out whether or not they are going to grant certiorari.

963
964 Mr. Kirkland - All right. If there are no other issues, do I have a
965 motion to adjourn?

966
967 Ms. Harris - I so move.

968
969 Mr. Nunnally - Second.

970
971 Mr. Kirkland - Motion made by Ms. Harris, seconded by Mr.
972 Nunnally. All those in favor say aye. All those opposed say no. The ayes have
973 it; the motion passes. Done.

974
975
976

977
978
979

980 Richard Kirkland, CBZA
981 Chairman

982
983
984

985
986

987 Benjamin Blankinship, AICP
988 Secretary