

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

7  
Members Present: Elizabeth G. Dwyer, Chairman  
Helen E. Harris, Vice Chairman  
Robert Witte  
R. A. Wright

Members Absent: James W. Nunnally

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  
Angela Edmondson, Recording Secretary

8  
9 Ms. Dwyer - Good morning. The April 23, 2009 meeting of the  
10 Board of Zoning Appeals will now come to order. Let's begin our meeting with  
11 the **Pledge of Allegiance**.

12  
13 Mr. Blankinship, we are missing one member of our Board today. Mr. Nunnally  
14 will not be with us this morning due to illness. We do have four members of the  
15 Board here and we do have a quorum, so we'll proceed. Will you please read  
16 the rules of the Board for the people in the audience.

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

34 Finally, there is a binder out in the foyer that contains the staff report for each  
35 case, including the conditions that have been recommended by the staff. It's  
36 particularly important for the applicant on a use permit case to be familiar with  
37 those conditions.

38  
39 Ms. Dwyer - Thank you, Mr. Secretary. Are there any deferrals or  
40 withdrawals?

41  
42 Mr. Blankinship - No ma'am.

43  
44 Ms. Dwyer - All right, we'll proceed with the first case.

45  
46 **UP-005-09 REITHOFFER SHOWS** requests a temporary  
47 conditional use permit pursuant to Section 24-116(c)(1) to hold a carnival at 4869  
48 Nine Mile Road (Parcel 812-723-1692), zoned B-2, Business District (Fairfield).

49  
50 Ms. Dwyer - Is anyone here to speak to this case?

51  
52 Mr. Blankinship - I don't see Mr. Miller. I haven't spoken to him in the  
53 last week or two.

54  
55 Ms. Dwyer - Reithoffer Shows? Okay. So he is aware. We'll  
56 postpone this case, then, to later in the meeting. [Inaudible-blank] at the end of  
57 the meeting when we finish the other cases. All right. Next case, please.

58  
59 Mr. Wright - Have we talked to him?

60  
61 Mr. Blankinship - Yes, we've talked to him.

62  
63 Mr. Wright - Do they still want to go forward with it?

64  
65 Mr. Blankinship - Oh, I'm sure they do.

66  
67 Mr. Madrigal - [Off mike.] Actually, he called me [inaudible].

68  
69 Ms. Dwyer - If they want to hold it in May after the date of our next  
70 meeting—

71  
72 Mr. Wright - Unless they're going to change the date.

73  
74 Mr. Witte - Is there a requirement that they be here?

75  
76 Mr. Blankinship - I don't know that it's an absolute requirement, but in  
77 my experience, the Board's never approved a variance or a use permit for an  
78 applicant who wasn't here.

79

80 Mr. Witte - This is a one-time use permit, correct?  
81  
82 Mr. Blankinship - Yes.  
83  
84 Mr. Wright - And we need to ask questions to ensure that they  
85 comply with safety concerns.  
86  
87 Mr. Blankinship - Yes. He has to specifically accept the conditions,  
88 doesn't he.  
89  
90 Ms. Dwyer - If it's a use permit.  
91  
92 Mr. Blankinship - On a use permit.  
93  
94 Mr. Wright - Yes. We would not approve it without those  
95 conditions to protect the neighborhood.  
96  
97 Mr. Blankinship - Right.  
98  
99 Mr. Wright - If he's not here to accept them, it wouldn't be binding  
100 upon him.  
101  
102 Ms. Harris - Mr. Blankinship, did you get the operations plan that  
103 you mentioned in our packet?  
104  
105 Mr. Blankinship - No ma'am. I haven't received anything further. I put  
106 him in touch with Police and Health and everyone else, but I haven't received  
107 any feedback from anyone.  
108  
109 Ms. Harris - So, we needed that, too, right, in order to—  
110  
111 Mr. Blankinship - Yes ma'am.  
112  
113 Ms. Harris - —approve.  
114  
115 Ms. Dwyer - Do I have a motion on the case?  
116  
117 Ms. Harris - I guess I'm going to have to move that we deny the  
118 application in view of the fact that he did not conform to the required procedure.  
119  
120 Mr. Wright - Well, we could defer it.  
121  
122 Ms. Harris - Until when, though.  
123  
124 Mr. Wright - Next meeting. And then he may want to change the  
125 date.

126  
127 Ms. Harris - Could he?  
128  
129 Mr. Blankinship - He'd have to change his date, yes.  
130  
131 Ms. Harris - Then I do retract that motion.  
132  
133 Mr. Wright - Do you see what I'm saying? Give him the benefit of  
134 the doubt. He might be able to change the date and wouldn't waste the whole  
135 effort here.  
136  
137 Ms. Dwyer - It would save him refiling the—  
138  
139 Mr. Wright - You can notify him that he has to refile.  
140  
141 Mr. Blankinship - Yes.  
142  
143 Mr. Wright - At least he wouldn't lose by 30 days.  
144  
145 Mr. Blankinship - Right. We'll do that today.  
146  
147 Mr. Wright - He may have gotten sick or had an accident; you  
148 never know.  
149  
150 Ms. Harris - The date is May the what?  
151  
152 Mr. Blankinship - Seventh.  
153  
154 Ms. Harris - Seventh.  
155  
156 **DECISION**  
157  
158 Mr. Witte - I'll make a motion we defer.  
159  
160 Ms. Harris - I second the motion.  
161  
162 Ms. Dwyer - Motion by Mr. Witte, seconded by Ms. Harris to defer.  
163 Any discussion on the case? All in favor say aye. All opposed say no. The ayes  
164 have it; the motion passes to defer the case to our May meeting.  
165  
166 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
167 Ms. Harris, case **UP-005-09, Reithoffer Shows'** request for a temporary  
168 conditional use permit pursuant to Section 24-116(c)(1) to hold a carnival at 4869  
169 Nine Mile Road (Parcel 812-723-1692), zoned B-2, Business District (Fairfield),  
170 has been **deferred** until the May 28, 2009 meeting.  
171

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

175  
176

177 **A-002-09** **GOOD SHEPHERD UNITED METHODIST CHURCH**  
 178 requests a variance from Section 24-104(d)(2) to replace a sign at 9155 Hungary  
 179 Road (Parcel 759-760-4582), zoned A-1, Agricultural District (Brookland). The  
 180 sign area requirement is not met. The applicant has 31 square feet total sign  
 181 area where the Code allows 20 square feet total sign area. The applicant  
 182 requests a variance of 11 square feet total sign area.

183

184 Ms. Dwyer - Is there anyone here to speak to this case? If you're  
 185 here to speak to this case either for or against, please stand and raise your hand  
 186 to be sworn in.

187

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

191

192 Mr. Ray - Yes sir.

193

194 Ms. Dwyer - Good morning. Please state your name.

195

196 Mr. Ray - Good morning, I'm Sonny Ray. I'm the trustee of  
 197 Good Shepherd United Methodist Church. I have a prepared statement I'd like  
 198 to hand to the panel, if I may, and I'll read it for you.

199

200 Mr. Blankinship - Is it the one they already—Okay. All right. I'll call to  
 201 your attention the package left on the table this morning.

202

203 Mr. Ray - First of all, I'd like to thank you for taking the time to  
 204 hear and consider Good Shepherd's variance request. Also, I want to thank Mr.  
 205 Blankinship, Mr. Gidley, Mr. Crouch, and Mr. Atkinson for their patience,  
 206 professionalism and courtesy, and assistance in this matter.

207

208 Numerous procedural errors over the years have brought us to this point today.  
 209 Good Shepherd United Methodist Church acknowledges these unintentional  
 210 errors, and recognizes that only by the mercy and understanding of the Board  
 211 will our new sign be allowed to remain in its current form. It is the desire of Good  
 212 Shepherd United Methodist Church to be and remain in good standing with the  
 213 County and the community.

214

215 As Chairman of the Trustees, I stand before the Board to try and answer  
 216 questions you may have pertaining to our request. I earlier presented Mr.  
 217 Blankinship a formal letter addressing the issues with our sign, which staff

218 accurately summarized in the Board of Zoning Appeals' case report. I also  
219 provided pictures of numerous churches in Henrico County, which apparently are  
220 unable to adequately and effectively communicate to the public with just one 20-  
221 square-foot sign. Good Shepherd makes no complaints about these other  
222 churches and does not seek any action against them. We merely seek County  
223 approval for our one professionally-designed sign.

224  
225 Additionally, we offer any assistance we can provide to assist the County in  
226 amending the Code as the Board of Zoning Appeals in 1985 stated it was a more  
227 appropriate means of dealing with this type of recurring problem.

228  
229 Thank you for your attention, and now I stand ready to answer your questions.

230  
231 Ms. Dwyer - Thank you, Mr. Ray. Any questions by Board  
232 members? Mr. Ray, have you reviewed the law relating to variances and  
233 variance requests?

234  
235 Mr. Ray - Yes ma'am, I have. In fact, with this case, I've  
236 become very involved with the Code and procedures, more so than I ever was  
237 before.

238  
239 Ms. Dwyer - Can you point to any particular exception standards  
240 that occurred that would permit us to grant a variance?

241  
242 Mr. Ray - No ma'am, but I can mention two cases back in 1985.  
243 One was Saint James Baptist Church, case A-89 of 2005, in which a variance  
244 was granted for exceeding the 20-square-foot sign limit. Also, A-16-2005, which  
245 was New Bridge Baptist Church. Again, they were granted a variance on the size  
246 of the sign.

247  
248 Mr. Blankinship - Size or on the number of signs? I remember we  
249 approved the second sign for them.

250  
251 Mr. Ray - That's true, and it was over the size as well. One of  
252 the points I brought out earlier was the fact that our church sits so far back up off  
253 of Hungary Road. There's a lot of foliage and trees up front, so we're not readily  
254 visible. Some of the pictures that I submitted are of the other churches in  
255 Henrico County, which sit pretty much on the road, or at least are very, very  
256 recognizable as being a church facility. These churches also are unable to get  
257 their messages across with just one sign. You can see numerous banner-type  
258 signs and [unintelligible] posts that seem to be more permanent than temporary.

259  
260 Ms. Dwyer - Mr. Blankinship, could someone from staff address  
261 the signs being presented by the applicant in this case?

262

263 Mr. Blankinship - Mr. Gidley did some research into some of those. We  
264 have not been exhaustive in that research, but at least a couple of them are in  
265 B-1 zoning districts, so, of course, a different set of regulations applies in a  
266 different zoning district.

267  
268 Ms. Dwyer - So their signs, though larger, are within the—

269  
270 Mr. Blankinship - They're permitted to have larger signs. I don't believe  
271 we found any of those permanent signs that did not have permits. Is that  
272 correct?

273  
274 Mr. Gidley - [Off mike.] All the ones I checked had permits.

275  
276 Mr. Blankinship - All the permanent signs. Now, there are a lot of  
277 banners, and there are restrictions on how long those can stay up. I'm certainly  
278 not going to argue that people are abiding by those restrictions. There was at  
279 least one sign in a case—I believe it was the Staples Mill Baptist Church—that  
280 had a sign from prior to 1960 that was 32 square feet in area. That was a non-  
281 conforming sign, and all they did was reface that non-conforming sign. So, that  
282 one was also permitted. As I say, we have not exhaustively researched all of  
283 these signs, and there may be another one in there that is not lawful.

284  
285 Ms. Harris - Mr. Blankinship—I'm sorry—and Mr. Ray, in your  
286 research, have you been able to find any church with message board signs?

287  
288 Mr. Ray - Oh, yes ma'am. In Sandston, their Corinth United  
289 Methodist Church I believe there might be—Did that picture make it in, Mr.  
290 Blankinship?

291  
292 Mr. Blankinship - I'm not sure.

293  
294 Mr. Wright - No, I don't see it.

295  
296 Mr. Ray - I have a picture here, if you'll permit me to show you  
297 that.

298  
299 Mr. Blankinship - Saint Paul's Baptist out on Creighton Road also has a  
300 changeable message sign.

301  
302 Ms. Dwyer - Well, as I understand it, this case is not about the  
303 changeable message; that's permitted.

304  
305 Mr. Blankinship - Right, as long as they program it so it only changes  
306 three times a day.

307  
308 Ms. Dwyer - Right. So, the only issue here is the sign's total area.

309  
310 Mr. Blankinship - Area.  
311  
312 Ms. Dwyer - —square footage and not the changeable message.  
313  
314 Mr. Blankinship - That's correct.  
315  
316 Ms. Harris - Well, that's possible with what I'm trying to—I think  
317 you wanted a sign that had a message since you sit so far back. According to  
318 the latest letter we have, April 15<sup>th</sup>, you wanted a sign that would cause visibility  
319 for your church and its activities. If we have one here that does this, does this  
320 conform to the square footage?  
321  
322 Mr. Blankinship - That one confirms to the regulations in the district that  
323 it's located, but I think that's in a Business District, so they're allowed larger  
324 signs. Saint Paul's is zoned A-1, so they're at the 20 square feet. They have a  
325 changeable message sign and the total sign area is 20 square feet.  
326  
327 Mr. Ray - If I may, I understand that in different zoned districts.  
328 Ours is agricultural, so we're limited to one sign, 20 square feet. In Business  
329 Districts, I believe it goes up to 32 square feet. That's the size of the sign, but  
330 what I'm trying to show is that other churches, even if they have a larger sign, still  
331 are unable to communicate effectively their message to the public with just one  
332 sign. Now, I understand if you have a school attached with your church, then  
333 you are allowed one additional sign that identifies that school.  
334  
335 Mr. Blankinship - Right.  
336  
337 Mr. Witte - Are you aware of the conditions that the staff has  
338 recommended?  
339  
340 Mr. Ray - Yes sir, I have seen the report.  
341  
342 Mr. Witte - Number 3: "Make sure the sign is entirely on their  
343 property. Outside street right-of-way and sight distance shall be maintained  
344 entering onto Hungary Road."  
345  
346 Mr. Ray - I believe we are within Code on that.  
347  
348 Mr. Witte - It was so near to the road, and I did have some  
349 reservations as to whether or not it blocked the view of drivers pulling out onto  
350 Hungary Road, so I did it myself. I think the safety feature for the distance is all  
351 right, but I'm concerned as to whether or not it's in the right-of way.  
352  
353 Mr. Ray - I can't answer that offhand; I'm sorry.  
354



355 Mr. Blankinship - I believe part of the testimony here, part of the  
356 evidence is that just a few years ago, the County actually paid the bill for  
357 someone to move the sign out of the right-of-way.

358

359 Mr. Ray - That is correct.

360

361 Mr. Blankinship - I guess we could go back into that file and double-  
362 check.

363

364 Mr. Witte - So, it's not in the right-of-way?

365

366 Mr. Blankinship - I would bet that it's not because we just paid  
367 somebody to move it out of the right-of-way. It's probably at the edge. They  
368 probably moved it right to the edge of it.

369

370 Mr. Ray - Yes sir. Back when they widened Hungary Road, they  
371 had to move the sign. The County paid almost \$800 for us to move the sign to its  
372 current location.

373

374 Mr. Witte - Thank you.

375

376 Mr. Ray - Yes sir.

377

378 Ms. Harris - You also paid—was it Carousel Sign Company—

379

380 Mr. Ray - Yes ma'am.

381

382 Ms. Harris - —to upgrade the sign to fit within existing signposts.  
383 That was in the regulations? Do they check the regulations for the County? Did  
384 they check the ordinance for the County?

385

386 Mr. Ray - That's one of the problems we had. Moore Sign  
387 Company moved the sign to its present location and had this current size we  
388 have. We thought that there was a permit at that time. We have searched the  
389 records, the church records, the County records, Moore Sign Company. We  
390 cannot find anything that says we have a permit for that sign. However, when  
391 Carousel came in, they said that you have an existing sign that was put up by the  
392 sign company. They assumed there was a permit already as well. And if we kept  
393 the sign within the same footprint that we currently had, we would be fine. We  
394 relied on their knowledge and expertise, and here we are today.

395

396 Mr. Wright - When was this electronic addition put on?

397

398 Mr. Ray - This was put on back in September of last year, sir.

399

400 Mr. Wright - I go down that road all the time; I live at Wyndham.

401 Before you put this one up, I could see the sign acknowledging—I'm interested in  
402 churches.

403

404 Mr. Ray - Yes sir.

405

406 Mr. Wright - I never drove back into the church, but the sign was  
407 there, and I knew the church was there. It's clearly visible. There's no curve.  
408 There are certain factors or certain things that can have some impact on it, but  
409 this is a straight road, no curve, no hill going back there. I was able to see the  
410 sign well before I got to it.

411

412 Mr. Ray - Yes sir.

413

414 Ms. Dwyer - What's the square footage of the changeable  
415 message part of the sign, and then what is the square footage of the name of the  
416 church, the sign that just has the name of the church on it?

417

418 Mr. Blankinship - The changeable message portion is 14.625, and the  
419 Good Shepherd United Methodist Church is 16.25.

420

421 Ms. Dwyer - Clearly, they could maintain one or the other and be  
422 within Code.

423

424 Mr. Blankinship - Yes, or they could keep the changeable message  
425 sign and have a considerably smaller permanent sign.

426

427 Mr. Ray - Our concern with that is that one, it would look very  
428 odd to just see an electronic sign out there without any association to who that  
429 sign belonged to or what it was for. In order to reduce the top portion of the sign  
430 to fit the 20-square-foot limit, we would have, basically, an eight-inch banner  
431 going across the top of the sign, which would hardly be readable going down the  
432 highway.

433

434 Ms. Dwyer - Any other questions by Board members of Mr. Ray?

435

436 Ms. Harris - Mr. Ray, are you aware that if we do change this for  
437 you, we would really be changing an ordinance that would affect churches all  
438 across the County of Henrico?

439

440 Mr. Ray - Yes ma'am, but that may not be bad. The Board of  
441 Zoning Appeals back in 1985 recognized that this would be a recurring type  
442 problem, and that an amendment to the Zoning Ordinance was the more  
443 appropriate action to take. In today's world with all the electronic things, I  
444 wouldn't think that not too far down the road you'd see these nice, new billboards  
445 that have digital video on them. I think you're going to see that in churches  
446 coming up in the not too distant future. Churches are having trouble getting their

447 message out, as you can see by the pictures of the other churches with the  
448 multiple signs out there. I think it would be a fair consideration for the County,  
449 and for the country overall, to look at their zoning codes and maybe come up  
450 with a little bit better size limit for signs for churches.

451

452 Ms. Harris - But you are also aware that we don't write the zoning  
453 code from this Board.

454

455 Mr. Ray - I am. And I honestly think that's part of the reason  
456 we're here today. Back in 1985, we had requested a variance for our sign, and  
457 that was when the Zoning Appeals Board said that no, an amendment to the  
458 Code was the more appropriate avenue. I don't know. I don't have anything in  
459 writing, but I seem to believe that the church thought that the County might be  
460 taking that action, and that the sign would be allowed. That's where we are  
461 today.

462

463 Mr. Wright - That's not our prerogative. You, as a citizen, can go  
464 to your supervisor and push that sort of thing to get the County Board of  
465 Supervisors to take that into consideration.

466

467 Mr. Ray - Oh, yes, I understand, sir. I wasn't involved with the  
468 church back in 1985. I am offering any assistance that you seek of me, or the  
469 church, to help in that endeavor.

470

471 Ms. Dwyer - That, again, would not originate with this Board. Your  
472 supervisor or maybe even your state legislator would be a person to address  
473 that.

474

475 Mr. Ray - Okay. Yes ma'am.

476

477 Ms. Dwyer - Mr. Blankinship, there was a statement made that this  
478 Board has approved two other increases in sign square footage beyond what is  
479 permitted by the ordinance. One of those was Saint James Baptist Church on  
480 Route 5. That was 2005?

481

482 Mr. Blankinship - Yes ma'am.

483

484 Ms. Dwyer - What was the increase?

485

486 Mr. Blankinship - I believe we went up to 40, yes.

487

488 Male - It was 38, I believe.

489

490 Mr. Wright - That was because of location and the way the road  
491 was, the speed, and the curves and so forth before you got to the church.  
492 Several differences in that situation and this situation.

493  
494 Ms. Dwyer - I don't really see. I think [inaudible]. The other vote  
495 that we have made is the New Bridge Baptist Church that we increased the  
496 square footage on?  
497  
498 Mr. Blankinship - Yes, on Elko Road. There they have two widely-  
499 separated entrances with a wooded stretch in between. You couldn't see one  
500 sign from both entrances, so the Board allowed them to put a second sign up at  
501 the other entrance.  
502  
503 Ms. Harris - Mr. Ray, are you familiar with the complaint that was  
504 registered against that sign?  
505  
506 Mr. Ray - I know a complaint was lodged. I understand that  
507 those were anonymous complaints. I don't know who made the complaint or the  
508 exact wording of the complaint. It occurred right after we had the sign installed.  
509 At the time, we were learning how to use the sign to control the brightness, the  
510 intensity, and the effects of it. I don't know if the citizen happened to ride by  
511 when it may have been flashing, or may have been on high intensity, or what  
512 happened. Anyhow, a complaint was lodged, and the County took appropriate  
513 action to investigate and resolve that complaint.  
514  
515 Ms. Harris - You are really at an intersection, right, as opposed to  
516 Saint James Church on New Market Road.  
517  
518 Mr. Ray - We're kind of in between intersections. Is it West End  
519 Drive that comes down, and it's about probably I'd say maybe 300 feet east of  
520 us, and then the next intersection is down to our left, or west, which is  
521 Francistown Road. You can see up here on the diagram where Francistown  
522 comes down and intersects Hungary, and then West End is actually off the page.  
523 Across the street from us is a swimming pool and tennis courts. Then we have  
524 two homes on property that has been rezoned R-3.  
525  
526 Ms. Harris - The sign is closer to Hungary Road, right?  
527  
528 Mr. Ray - Oh, yes ma'am. It sits right on Hungary Road.  
529  
530 Ms. Harris - Across from the—you have a residential section?  
531  
532 Mr. Ray - Yes ma'am. One of the houses there, right there  
533 where this hand is, the cursor, is occupied. The other house has been  
534 unoccupied for I'd say probably at least four years or more.  
535  
536 Ms. Harris - Okay, I'm going back to Hungary Road. Would you  
537 think this not be a distraction for motorists? It's an attractor for Good Shepherd,  
538 but I'm concerned about distracting motorists who must keep their eyes on this

539 intersection. Have you thought about that?

540

541 Mr. Ray - Yes ma'am, we have. I don't feel like it's any more of  
542 a distraction than any of the other signs out on the highways. We understand  
543 that we can't flash the sign; we can only change the message on it three times in  
544 a 24-hour period. There are Code limitations on what you can with the sign for  
545 safety reasons.

546

547 Ms. Dwyer - Any other questions for Mr. Ray by Board members?  
548 Is there anyone else to speak to the case? Please come forward.

549

550 Rev. Walker - My name is Ed Walker. That's W-a-l-k-e-r. I'm the  
551 pastor of Good Shepherd United Methodist Church. I want to thank Mr. Ray. He  
552 knows all of the code stuff. I just wanted to share a little view of the congregation  
553 and some of the responses that we have had for this sign.

554

555 When I came to Good Shepherd five years ago, I noticed that it was set back so  
556 far off Hungary Road, and with the buffer of trees, the church was in many ways  
557 invisible. Good Shepherd is very much a community-oriented church. We  
558 support the Lamb's Basket and we host CARITAS several times a year. We  
559 work with Coal Pit Learning Center and a number of other organizations as well.  
560 The church was hidden, so we tried to find ways that we could somehow bring  
561 the church out to Hungary Road, or at least the church's ministry, and a new sign  
562 was one of the ways to do that. We worked with Carousel Signs. We were led to  
563 believe that working within the constraints of the current-size sign at the time,  
564 that we would be well within the Code. It was a struggle to raise the \$23,000 to  
565 replace that sign, and we worked on that for a good 18 months to raise that  
566 money. We did, put the sign up, and it was just a matter of weeks before a  
567 complaint was lodged. It was my understanding that the complaint was that the  
568 church was proselytizing, not that the sign was too large. We're a church; I can't  
569 apologize for that.

570

571 The sign is professional in design. It is professionally installed. It looks very good  
572 in appearance. In regard to Ms. Harris' question about being an obstruction as  
573 you near that intersection, there is a buffer of trees there between the sign and  
574 the few houses before you get to the West End Drive intersection. That helps to  
575 prevent what I think would be any kind of confusion for the driver who passes by.

576

577 The main thing I wanted to share, though, was ever since we put that sign up, we  
578 have been in a recession as a country. One of the things Good Shepherd prides  
579 itself on is communicating hope to the community. When we first put the sign  
580 up, we had the message, "Hope Rising." During Lent, we had, "Hope Lives."  
581 Since Easter, we have had, "Hope Alive," on the sign. One of the three  
582 messages that we have in a 24-hour period. Back in December, my secretary  
583 came into my office one day in tears and said that a passerby who was not a  
584 member of the church, not anybody we knew, had seen the sign, pulled in, and

585 came into the church office to thank us. She said that she moved to Virginia four  
586 years ago, uprooting her son and herself after living in Ohio for 20 years. Her  
587 son is serving his second tour of duty in Iraq, and is expected home January 1<sup>st</sup>.  
588 She said several times just how much that sign has meant to her, passing it on  
589 her way to and from work, that it has given her hope. We also received a letter  
590 from another person. It's much longer; I'm not going to read through it. It's  
591 somebody who has been going through a very difficult time in this recession, and  
592 the sign has given her a message of hope to get through some very difficult  
593 days.

594

595 Any questions you might have for me?

596

597 Ms. Dwyer - Any questions for Mr. Walker?

598

599 Ms. Harris - I don't know if this is a question, Mr. Walker, but I do  
600 congratulate your church and its ministry. I'm familiar with CARITAS and a few  
601 other things that you're doing. Still, in my mind, I'm wondering about scaling.  
602 Can't the sign be scaled down to conform with the ordinance? What message  
603 do we send when we ask a group to circumvent the law, especially when we are  
604 a religious-based group? What message do we send to those who believe that  
605 hope lives? I like your signs; I see them when I come by.

606

607 Rev. Walker - Thank you. Was that a question, or just—

608

609 Ms. Harris - What message do we send when we—

610

611 Mr. Blankinship - Rhetorical question.

612

613 Rev. Walker - Okay.

614

615 Ms. Harris - So, you may or may not answer, it doesn't—

616

617 Rev. Walker - I guess my response would be working with a  
618 variance is working within the law to find a way to effectively communicate our  
619 message. But, thank you.

620

621 Ms. Dwyer - Thank you, sir. Is there anyone else to speak to this  
622 case? Anyone in opposition? Any more questions by Board members? The case  
623 is closed.

624

## 625 **DECISION**

626

627 Mr. Witte - I'm going to make a motion that we approve this. I  
628 feel like it's an isolated case in the area. I don't see where it adversely affects the  
629 health, safety, or welfare of any of the public. I do see how the lack of visibility  
630 could affect the church due to its setback from the road. Most churches have the

631 visibility of the church itself as actually a sign, usually with a large cross or a  
632 steeple. But this church doesn't have the luxury of the visibility because of its  
633 setback.

634

635 Ms. Dwyer - We have a motion to approve the request for a  
636 variance for Good Shepherd. Do I have a second? No second. Do I have  
637 another motion?

638

639 Ms. Harris - I move that we deny this case because I feel that to  
640 approve it would be rewriting the Code. Also, I have a personal experience in  
641 driving by here, and I enjoy reading the sign. I think people will read or give  
642 attention to that which is a priority in their life. I feel that if we approve this case,  
643 we would definitely open a can of worms for like cases throughout Henrico  
644 County. We would then be bombarded with requests from churches that should  
645 instead be addressed with an ordinance change, if the applicant decides to go  
646 that route. I do move that we deny this case.

647

648 Ms. Dwyer - Denial by Ms. Harris. Is there a second?

649

650 Mr. Wright - I second it.

651

652 Ms. Dwyer - Motion by Ms. Harris to deny, seconded by Mr.  
653 Wright. Any discussion? I will say that I am concerned like you, Ms. Harris,  
654 about approving sign area increases particularly in residential areas. I will say  
655 that I was also concerned about that in Saint James' case. What is even more  
656 of a concern to me is this Board's, what I consider uneven application of our  
657 enforcement of the ordinance. I don't see any difference in the Saint James'  
658 case and in this case. I know that each case is certainly considered on its own,  
659 but I think that both cases should have been denied and one was not. I am  
660 concerned about the message that sends from this Board to the public.

661

662 Ms. Harris - [Unintelligible]—

663

664 Ms. Dwyer - If I may finish. I will say that looking at the ordinance,  
665 I don't see any justification for this case, or in the Saint James' case, for allowing  
666 an increase. The reasonable use of the property of the case does not satisfy the  
667 Cochran decision, and there are no exceptional circumstances that would justify  
668 the ordinance. This is certainly a recurring issue that could be addressed by  
669 legislative action, and I think that is the appropriate forum for this case to be  
670 resolved. I think that this is something that the Board of Supervisors has  
671 established. These are standards that the Board has established, and those  
672 Board standards, if they are to be revised, need to be done by the Board of  
673 Supervisors, and not by piecemeal decisions by the Board of Zoning Appeals.

674

675 Ms. Harris - If I may respond. I think I did vote for the Saint  
676 James case. As we mentioned, in this particular case, the sign is right by the

677 road. In fact, I drive by it all the time and I read the signs because I enjoy reading  
678 them. The Saint James sign was back further, and those thruways are different.  
679 As far as variances are concerned, the very word, "variance," as we know,  
680 comes from the root word, "vary." So, we, by the nature of our setup, are asked  
681 to vary the ordinances. What are we going to use to vary the ordinances except  
682 the Code and our experiences or our knowledge of the various cases? So, I  
683 stand by my motion.

684  
685 Ms. Dwyer - All right. So, we have a motion to deny, and  
686 seconded. Any more discussion? Motion to deny. Seconded. All in favor say  
687 aye. All opposed say no. The ayes have it; the motion passes. Motion to deny  
688 carries three to one.

689  
690 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
691 Mr. Wright, , the Board **denied** application **A-002-09, Good Shepherd United**  
692 **Methodist Church's** request for a variance from Section 24-104(d)(2) to replace  
693 a sign at 9155 Hungary Road (Parcel 759-760-4582), zoned A-1, Agricultural  
694 District (Brookland).

695  
696  
697 Affirmative: Dwyer, Harris, Wright 3  
698 Negative: Witte 1  
699 Absent: Nunnally 1

700  
701  
702 Mr. Wright - I really do think this needs to be addressed. My  
703 problem is this is like some of the other things we've had before us where we've  
704 asked the Supervisors. I think that—I would hope that the applicant would  
705 pursue this with the Supervisors, address this whole issue with churches. I think  
706 they need more space. I don't think we have the authority to give it to them.

707  
708  
709 **A-003-09 JOHN W. GIBBS, JR.** requests a variance from  
710 Sections 24-94 and 24-95(d)(1) to build a one-family dwelling at 5450 Axe  
711 Handle Lane (West Ridge) (Parcel 731-773-5875), zoned A-1, Agricultural  
712 District (Three Chopt). The total side yard setback and lot width requirement are  
713 not met. The applicant has 47 feet total side yard setback and 100 feet lot width  
714 where the Code requires 50 feet total side yard setback and 150 feet lot width.  
715 The applicant requests a variance of 3 feet total side yard setback and 50 feet lot  
716 width.

717  
718 Ms. Dwyer - Is anyone else here to speak to this case? If so,  
719 please stand so you can be sworn.

720  
721 Mr. Blankinship - Raise your right hands, please. Do you swear the  
722 testimony you're about to give is the truth and nothing but the truth so help you



723 God?  
724  
725 Mr. Parker - I do.  
726  
727 Ms. Dwyer - Good morning  
728  
729 Mr. Parker - Good morning.  
730  
731 Ms. Dwyer - State your name and your case.  
732  
733 Mr. Parker - My name is Phillip Parker. I'm the representative for  
734 John W. Gibbs, owner of the property in question. This case simply is the  
735 property was purchased as-is. It was recorded in 1977 as part of an overall  
736 subdivision. Immediately thereafter, 50 feet was sold off. I do not know the  
737 cause for that, but the property has been recorded as a 100-foot lot within the  
738 subdivision since 1977. Mr. Gibbs purchased it in 1993 as a developable lot,  
739 which I believe it's been taxed as throughout the years. The purpose behind this  
740 request is simply to build a residential home on this property as is the intended  
741 use of the property.  
742  
743 Two variances are requested. The first one is primarily the lot width requirement,  
744 which the lot does not meet as recorded. The second is a three-foot variance in  
745 order to build the home that's desired, and maintain standard building practice  
746 setbacks, the setbacks within the ordinance, plus a six-inch factor of safety,  
747 which is typical. A permit typically required three to six inches of additional  
748 setback. They won't let you build a house directly on a building setback line  
749 because it's theoretically wonderful, but practically impossible.  
750  
751 That is the case. That is what we're requesting, simply to build a primary  
752 residence on this property for its intended purpose. The property sat as it is for  
753 the last 32 years almost. I'm happy to answer any questions.  
754  
755 Mr. Witte - Yes sir. I want to ask you first, assuming the width  
756 *problem goes away, could a residence be constructed without the total three-foot*  
757 *side yard?*  
758  
759 Mr. Parker - Yes sir. That's why staff has recommended the two  
760 options that they show in their report. Yes sir, one could. This was the house that  
761 was desired, and trying to fit the desired residence on this property required the  
762 additional three feet.  
763  
764 Mr. Wright - Let me state that another way. If this Board were to  
765 approve the 50-foot lot width, not the three-foot total side yard setbacks, could  
766 he live with that?  
767  
768 Mr. Parker - If it's a yes or no question, I'll have to answer yes. It's

769 not the preferred method, obviously, but yes sir.  
770  
771 Mr. Wright - The prerogative is not due to what's preferred, it's  
772 what is within the ordinance.  
773  
774 Mr. Parker - Yes sir, I understand.  
775  
776 Mr. Wright - Now, let's talk about the 50-feet. This lot was  
777 purchased in 1993?  
778  
779 Mr. Parker - 1993.  
780  
781 Mr. Wright - Okay. At that time, the other 50 feet had been sold  
782 off.  
783  
784 Mr. Parker - The other 50 feet was sold off within a year of the  
785 subdivision being recorded. I'm not quite sure of the purpose and why that all  
786 occurred.  
787  
788 Mr. Wright - Why didn't the purchaser check the records to  
789 determine it was not a buildable lot in 1993?  
790  
791 Mr. Parker - I cannot answer that. I do not know that answer.  
792  
793 Mr. Wright - In effect, he created his own hardship.  
794  
795 Mr. Parker - With all due respect, I would argue that, in effect, the  
796 hardship was created when for, whatever reason, the 50 feet was allowed to be  
797 sold off, because at that point in time, the lot no longer met ordinance  
798 requirements.  
799  
800 Mr. Wright - Yes, but he didn't have to buy it.  
801  
802 Mr. Parker - I agree.  
803  
804 Mr. Wright - He purchased it. Normally, when you purchase real  
805 estate—I've worked in this area for 50 years. I would not purchase a piece of real  
806 estate if I didn't go check to see if I could build a house on it. Just a simple call to  
807 the County Planning Office would have taken care of that.  
808  
809 Mr. Parker - I understand. But it's also shown in the tax records  
810 as a recorded lot. I feel he probably did that research, seeing it as a recorded lot,  
811 and purchased it as such. I don't know; this is conjecture. I apologize, but this  
812 would be conjecture.  
813  
814 Mr. Blankinship - May I interrupt you?

815  
816 Mr. Wright - Sure.  
817  
818 Mr. Blankinship - Do you know why the property was purchased with a  
819 Quick Claim Deed in 1993?  
820  
821 Mr. Parker - No sir, I do not.  
822  
823 Mr. Wright - Well, I was going to get to that, too. You know what a  
824 Quick Claim Deed means.  
825  
826 Mr. Parker - I'm familiar with them, yes sir.  
827  
828 Mr. Wright - The thing merely says we're conveying you  
829 something. I could Quick Claim you the Brooklyn Bridge.  
830  
831 Mr. Parker - Yes sir.  
832  
833 Mr. Blankinship - It means the seller knows there's something  
834 defective.  
835  
836 Mr. Wright - I don't have the title, but if I have any interest in it, you  
837 can have it.  
838  
839 Mr. Parker - I recognize that. In all fairness—  
840  
841 Mr. Wright - That's the way I see it because I don't know anybody  
842 that would pay any substantial amount for a lot that is acquired through a Quick  
843 Claim Deed because there's no warranty, there's no nothing. You don't know  
844 what you're getting. You get a pig in a poke.  
845  
846 Mr. Parker - I understand. But in all fairness, the property remains  
847 on the County records as a lot within a subdivision, does it not?  
848  
849 Mr. Blankinship - Well, that's the curious thing, actually, because the  
850 subdivision was approved with Lot 8 being 150 feet wide.  
851  
852 Mr. Parker - Yes it was.  
853  
854 Mr. Blankinship - That 50-foot strip was sold between when the County  
855 staff signed the plat and when the plat was recorded.  
856  
857 Mr. Parker - Well, it was sold prior to recordation? I thought it was  
858 sold—  
859  
860 Mr. Blankinship - Yes. It was, like, two or three days prior to

861 recordation. So, they brought the plats down here, got them signed, sold the lot,  
862 and then recorded it.

863

864 Mr. Parker - In 1977.

865

866 Mr. Blankinship - In 1977, yes.

867

868 Mr. Witte - Has any attempt been made to acquire that 50 feet?

869

870 Mr. Parker - Yes sir, Mr. Witte. They've spoken with the adjoining  
871 owner of the—it's 623 Landfill—and they've not been able to come to any type of  
872 terms on the purchase of that 50 feet to reestablish the lot as it was originally  
873 intended. Now, that 50 feet, it's in your report, but just to describe it a little bit.  
874 The report references it as an access road to the property. It appears to be an  
875 emergency access because it's cabled off. It's not used; it's overgrown. But it  
876 appears to be an emergency access. I don't know if it's for Henrico County to be  
877 able to get in to help should any type of fire or anything occur on that landfill.  
878 This doesn't quite show it. I drove well back in there and you can't travel beyond  
879 what you can see.

880

881 Ms. Dwyer - Who owns that 50 feet now?

882

883 Mr. Parker - It's part of the 623 Landfill property that's actually  
884 accessed off of Route 623 in Goochland County in Rockville. It's sort of a back  
885 emergency type entrance.

886

887 Ms. Dwyer - Goochland owns it?

888

889 Mr. Blankinship - No, it's a landfill company.

890

891 Mr. Parker - It's a landfill.

892

893 Ms. Dwyer - Company.

894

895 Mr. Parker - It's a company, yes ma'am. It's a company that does  
896 business in Goochland and is, I guess, referenced as being a Goochland  
897 business.

898

899 Mr. Blankinship - It's the abutting property owner.

900

901 Ms. Harris - Mr. Parker, do you know if there is any activity at all  
902 on this strip?

903

904 Mr. Parker - Yes. When I went back in there, you could see where  
905 lawn debris has been taken back in there, you know, brush, leaves. Other than  
906 that, there's no—Once you go in about 150 to 200 feet, it kind of closes in on

907 you. In all fairness, too, it had snowed a few days prior, so some of the trees  
908 were leaning over and they may not have been. It pretty well terminates. It's not  
909 accessed daily, weekly, monthly, or anything to that effect other than whoever is  
910 using it as a landfill. Not the company that uses it as a landfill.

911  
912 Ms. Dwyer - Mr. Parker, as I'm looking at the Code that  
913 establishes our jurisdiction—

914  
915 Mr. Parker - Yes ma'am.

916  
917 Ms. Dwyer - —other than the act of the prior owner to sell off 50  
918 feet of a lot that had been approved by the County at 150 feet, are there any  
919 exceptional circumstances that would justify a variance?

920  
921 Mr. Parker - I consider that to be a major exceptional  
922 circumstance. The property cannot be used for its intended purpose as it sits  
923 without a variance.

924  
925 Ms. Dwyer - Because of the actions of the owner which created  
926 the hardship.

927  
928 Mr. Blankinship - Yes.

929  
930 Ms. Dwyer - There's nothing else.

931  
932 Mr. Parker - No. The property, it would perk, it can be used for its  
933 intended purpose provided it's allowed to get a building permit. In order to obtain  
934 a building permit, this variance is required.

935  
936 Ms. Dwyer - Any other questions for Mr. Parker? Thank you, sir.

937  
938 Mr. Parker - Thank you.

939  
940 Ms. Dwyer - Any other people here to speak to the case? If so,  
941 please come forward.

942  
943 Ms. Powell - My name is Sarah Powell. I've lived out on Axe  
944 Handle since the subdivision's inception. I moved into my house in late 1978. I  
945 want to tell you about Lot 8. I'm here also speaking for the neighbor next door,  
946 and two other neighbors that have been there a long time. Lot 8 was—I don't  
947 know what you call them. I guess it's a subdivision construction lot. But that lot  
948 was used for a dump. That lot is a dump. It's a stump dump. At one time, that  
949 was from the beginning of the subdivision. They used that lot to dump logs,  
950 whatever in it. Then sometime after that when the same developer was building  
951 a subdivision on Southside, he came back to that lot and he dug two pits on that  
952 lot and started bringing stuff up from Southside to dump in it. I was talking to my

953 neighbor last night and I said I can't remember who was involved in it, but at that  
954 time that lot, basically, was in Goochland. And we got it stopped. The people  
955 came and they stopped it. One of my neighbors said if you dig down about four  
956 to six feet, you hit trash. I said is that all the way, you think, to the front of the lot.  
957 And he said absolutely. Then, of course, they pushed a lot, at one time, to the  
958 back of the lot, which is a great big—we call it, "the mountain."  
959

960 The little road that was cut off for Pruitt when 623 Landfill bought it, that was a  
961 little road, a little dirt road that went winding back to an old sawmill. It went  
962 straight off of Axe Handle, and back in around and to the right. So, it didn't really  
963 go all the way to the back of the lot. When it was sold, they cut off that whole 50-  
964 foot strip to the back of the lot. Now, 623 Landfill is trying to rezone the land  
965 behind Axe Handle. At first, they wanted to use that road and one at the other  
966 end of Axe Handle as an access road. Of course you know what we said. We  
967 said no. So now they've backed off, and they now want those two little roads for  
968 emergency access only. Well, if you drive down Axe Handle to the end, I don't  
969 know how they could make an entrance onto that little lane for a fire truck. All  
970 those are very heavily wooded. But that remains to be seen, I guess, by  
971 Goochland or—well, no, that's Henrico now, because we're all in Henrico.  
972

973 I always thought you could not build a house on a stump dump. If I were the  
974 person trying to buy that lot, and then found out later, somebody would get sued.  
975

976 Mr. Blankinship - Well, you'd realize why you bought it on a Quick  
977 Claim Deed, wouldn't you.

978  
979 Ms. Powell - Well, I think—Didn't he buy that for back taxes?  
980

981 Mr. Blankinship - I don't believe so. I think he bought it from the  
982 developer.  
983

984 Ms. Powell - I was thinking it was back taxes, because it was dirt  
985 cheap. What price did it sell for? It was dirt cheap.  
986

987 Ms. Dwyer - Do you have that information?  
988

989 Mr. Blankinship - No ma'am, not that I know of. But we should have a  
990 copy of the deed that does, at least, give the date.  
991

992 Ms. Powell - It may have a Quick Claim, but I thought it was back  
993 taxes.  
994

995 Mr. Wright - They can determine how much it was by looking at  
996 the stamps on the deed.  
997

998 Mr. Blankinship - It was bought from the developer. Mr. Gibbs bought it

999 from the developer.  
1000  
1001 Ms. Powell - From Simmons.  
1002  
1003 Mr. Blankinship - But with a Quick Claim Deed, so he probably did not  
1004 pay very much for it.  
1005  
1006 Ms. Powell - Seemed to me when I—We checked the County one  
1007 time and it seemed like it was \$2800 or something. We said we should have  
1008 bought it because we could have made it into a recreation lot for the  
1009 neighborhood. But we didn't even know it was for sale.  
1010  
1011 I was thinking as far as the variances, I would think the stump dump would take  
1012 precedent over the variances. I would say absolutely it should not be built on.  
1013 Thank you very much.  
1014  
1015 Ms. Dwyer - Thank you, Ms. Powell. Any questions?  
1016  
1017 Ms. Harris - Yes. Could we have the area photo? The property  
1018 in question is 5450 Axe Handle Lane. What is your address?  
1019  
1020 Ms. Powell - I'm 5300. You have to understand the numbering out  
1021 there is very strange.  
1022  
1023 Mr. Blankinship - She's right by Redfield Lane.  
1024  
1025 Ms. Harris - Yes, I see it. You're saying that this 5450, as well as  
1026 5470, both of them are stump dumps, as you refer to them?  
1027  
1028 Ms. Powell - 5470, is that that 50-foot road?  
1029  
1030 Mr. Blankinship - Yes ma'am.  
1031  
1032 Ms. Harris - Yes.  
1033  
1034 Ms. Powell - The little road I don't think was disturbed at the time,  
1035 but they dumped it all the way up, you know, the whole lot.  
1036  
1037 Ms. Harris - Up on 5400 onto the end of that line, you think?  
1038 Okay.  
1039  
1040 Ms. Powell - Yes.  
1041  
1042 Ms. Dwyer - Any more questions of Ms. Powell? Thank you,  
1043 ma'am.  
1044

1045 Ms. Powell - Thank you.

1046

1047 Ms. Dwyer - Anyone else?

1048

1049 Ms. Hamilton - Good morning, I'm Karen Hamilton. I live on Kain  
1050 Road about halfway up, so I'm not on Axe Handle. But I can speak for this area  
1051 and say my concern is nature. This happens to be an area where we still have  
1052 migratory birds and box turtles. I have said this to the people who own the 523  
1053 Landfill. We have a battle going on with them because they want to expand the  
1054 landfill, and they also want to do a number of things. Anyway, they basically  
1055 want to ruin the area for the turtles and the birds. You're probably looking at me  
1056 and thinking I'm old enough to be a grandmother, and I am, but I'm not. I've  
1057 never had kids. I thought when I was born, when I was kid, we had too many  
1058 people on Earth. I just don't understand why you allow people to destroy  
1059 habitats. We have so little natural habitat left.

1060

1061 Are any of you familiar with the laws concerning migratory birds? Probably not,  
1062 but just four years ago when I first went to the Board of Supervisors, they didn't  
1063 know this law. The Migratory Bird Act was established in 1914, and it says that  
1064 you cannot destroy a bird's nest, you can't—This law goes so far as to say that if  
1065 you disturb the nest—Let's say you're making construction noise and you're 50  
1066 feet away, but you scare the parents and they've abandoned those eggs, you  
1067 have still killed those birds, you killed those eggs, and that is still violating the  
1068 federal Migratory Bird Act. It's a federal law. Likewise, box turtles are protected  
1069 by federal law. But you people are all that these developers and homeowners  
1070 ever see. They don't ever see the Fish and Wildlife Department because they tell  
1071 me they only have five workers throughout the state of Virginia to help. Also,  
1072 they're not very active. You're the last frontier. You're my last hope because the  
1073 last [unintelligible]. They don't pay attention to the fish and wildlife; they don't  
1074 care. They know that nobody's going to see. The problem with birds' nests is that  
1075 they're often either high up in the trees, or very tiny like a hummingbird's nest,  
1076 which is extremely tiny and hard to see, or birds' nests in cavities in the trees.  
1077 So, it's quite easy to destroy their habitats without ever knowing that they're  
1078 there.

1079

1080 Box turtles, poor things, they bury their eggs under the ground. I'm not saying I  
1081 know for a fact that they're on that particular acreage, but I'm telling you they're  
1082 in this area. If I were to go down there with my binoculars, I'm sure I would find  
1083 some. I'm just asking you to please consider habitat. Please consider that this  
1084 area is known as being the habitat of box turtles. Neighbors who live on Axe  
1085 Handle have told me that they do have box turtles in their yards. Box turtles in  
1086 the winter, they hibernate in hollow logs, they hibernate under brush piles, so  
1087 they're hard to find. It's spring now and pretty soon they will be reproducing, they  
1088 will be burying those eggs. I'm just asking you, please, don't make an exception.  
1089 I really appreciate what Mr. Wright said, that he realizes that this guy bought it  
1090 knowing that the 50 feet had already been cut off. So, he bought a piece of



1091 damaged goods, so he has to accept that.

1092

1093 Thank you very much.

1094

1095 Ms. Dwyer - Questions?

1096

1097 Ms. Harris - Did you bring us some photos of evidence of box  
1098 turtles and these birds in this area?

1099

1100 Ms. Hamilton - No, I didn't, but if you want me to, I can go get some.  
1101 I'm sure I can take pictures of migratory birds in this area. I stopped taking  
1102 pictures years ago because I feel like film and the developing and all those  
1103 chemicals are bad for the environment. I'm not like everybody else here. I walk  
1104 probably 40 to 50 miles a week. I'm guessing most of you don't. I take the bus  
1105 as often as I can. I commute with other people as often as I can. I do gardening  
1106 work, which is why I'm dressed like this. When I leave here today, I'll take the  
1107 bus to where I'm going to do gardening work and dig in the soil. I'm very much  
1108 into nature and so no. I can get you some pictures, I'm sure. And I'm sure that  
1109 neighbors have pictures. The point is I'm not lying. I swore to tell the truth. This is  
1110 the habitat, this whole area. That's what I told the people at 623 Landfill. They  
1111 have a bald eagle, which is not protected, it's not endangered. It is protected in  
1112 that it's not endangered. But box turtles are endangered, and they do exist on  
1113 Axe Handle. I'm just saying that I've been told by the neighbors they're seen  
1114 them, and I've have seen. I've seen more then four dozen varieties of birds on  
1115 this street. Sally will tell you that she has seen migratory birds. Hummingbirds  
1116 are here now. I already have them on Kain Road at my feeders; they're here. So,  
1117 I know that the migratory birds are back. I can name all the warblers, and I can—  
1118 The last meeting I went to for the Board of Supervisors, I listed all the varieties of  
1119 birds. You can look it up on the Internet. I listed all the varieties of birds that I've  
1120 seen lately. I'm quite serious about this. This is not an area where you should  
1121 make an exception just because a man bought a piece of damaged goods.

1122

1123 Ms. Dwyer - Thank you, Ms. Hamilton. Any questions by Board  
1124 members? Anyone else to speak to the case?

1125

1126 Female - [Off mike – inaudible.]

1127

1128 Ms. Dwyer - Well, actually, no. You've had your opportunity, and  
1129 now it's the opportunity for the applicants to rebut.

1130

1131 Mr. Parker - Regarding Ms. Powell's concerns, we had done some  
1132 preliminary soil studies and do recognize that there is a layer of unsuitable soil.  
1133 That's why if you look in the application package, there's actually a basement  
1134 that's being proposed for this residence so that as we went through that layer of  
1135 unsuitable material to get down to suitable material for normal construction.

1136

1137 Ms. Dwyer - Any other questions by Board members? That closes  
1138 the case.

1139

1140 **DECISION**

1141

1142 Mr. Wright - I move we deny A-003-09 on the sole basis that the  
1143 applicant created his own hardship. I think that would be sufficient for denial.

1144

1145 Ms. Harris - I second the motion. I feel that the applicant needs to  
1146 be more diligent in acquiring the 50-foot right-of-way or access road.

1147

1148 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. Any  
1149 other discussion on the motion? I would just say that I agree with what's been  
1150 said, and also would state that this is a recurring issue and [inaudible] required  
1151 statutory statement that it is [inaudible]. Any more discussion? The motion's  
1152 been made to deny the case. All in favor say aye. All opposed say no. The ayes  
1153 have it; the motion passes.

1154

1155 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
1156 Ms. Harris, the Board **denied** application **A-003-09, John W. Gibbs, Jr.'s**  
1157 request for a variance from Sections 24-94 and 24-95(d)(1) to build a one-family  
1158 dwelling at 5450 Axe Handle Lane (West Ridge) (Parcel 731-773-5875), zoned  
1159 A-1, Agricultural District (Three Chopt).

1160

1161

1162 Affirmative: Dwyer, Harris, Witte, Wright 4

1163 Negative: 0

1164 Absent: Nunnally 1

1165

1166

1167 **A-004-09 HILTON RUBIN** requests a variance from Section 24-  
1168 94 to build a one-family dwelling at 9312 Three Chopt Road (Parcel 752-749-  
1169 7078 (part)), zoned R-3, One-family Residence District (Three Chopt). The lot  
1170 width requirement is not met. The applicant proposes 62 feet lot width where the  
1171 Code requires 80 feet lot width. The applicant requests a variance of 18 feet lot  
1172 width.

1173

1174 Ms. Dwyer - Is there anyone here to speak to the case? Please  
1175 stand and raise your hand to be sworn.

1176

1177 Mr. Blankinship - Do you swear the testimony you're about to give is  
1178 the truth and nothing but the truth so help you God?

1179

1180 Mr. Baker - Yes.

1181

1182 Ms. Dwyer - Good morning.

1183

1184 Mr. Baker - Good morning. My name is Mark Baker. It's Baker  
1185 Development and Resources. I'm here on behalf of Hilton Rubin, Inc., who is the  
1186 property owner. The property is 9312 Three Chopt Road. I think you'll find this is  
1187 a very interesting case. It was a very unique case. I want to thank right off the  
1188 top, staff, both from a Planning perspective and from a Recreation and Parks'  
1189 perspective. It has really been a collaborative effort on the part of both the  
1190 owner and the County in terms of trying to achieve the goals for both.

1191

1192 The request is a waiver of lot width requirement; 80 feet is required, 62 is  
1193 provided for an overall variance of 18 feet. It would permit the construction of a  
1194 single-family dwelling.

1195

1196 Talking about the background of the case. The property is located on the  
1197 northeast side of Three Chopt Road. It's between Dresden Road and  
1198 Sweetwater Lane. It's approximately an acre in size. It's occupied by the  
1199 Blackburn House, which is a 19<sup>th</sup> Century pre-Civil War dwelling of historic  
1200 significance. There's a small I guess from a zoning perspective it's called a  
1201 graveyard—gravesite, graves—on the property located near the front of the  
1202 property. The owner controls the property to the west, which he intends to  
1203 divide, and a landlocked parcel to the north. Beyond that parcel to the north and  
1204 to the east is a property that's owned by the Westhampton Masonic Lodge.

1205

1206 The owner bought the property with no knowledge that the existing home is  
1207 historic. He had no knowledge at the time of the purchase that the existing  
1208 home is historic. It's called the Blackburn House. He also bought it with the  
1209 intention of building two homes on the site. The owner can develop the two lots  
1210 under normal zoning. This would require the demolition of the Blackburn House.  
1211 The authorization to perform the split was authorized in a Code Conformance  
1212 letter from staff in January of 2009. That letter strongly recommended that the  
1213 owner contact the Department of Recreation and Parks prior to removing the  
1214 home. Since that time, the owner has consulted with Recreation and Parks. He's  
1215 also consulted with other state and local historic resources, and it's revealed that  
1216 the existing dwelling is very significant from a historic standpoint. The dwelling  
1217 was built in the 1830's or 1840's. It's the only remaining example of an  
1218 antebellum working class frame home in Henrico County. It's recognized in the  
1219 Virginia Department of Historic Resources Archives; it's recognized in the  
1220 Inventory of Early Architecture and Archeological Sites, County of Henrico,  
1221 Virginia. This was prepared by Jeff O'Dell. Also the Inventory of Early  
1222 Architecture, County of Henrico, Virginia, by Christopher Gregson.

1223

1224 Based on the historic significance and the condition of the home, Recreation and  
1225 Parks has requested that the owner retain it. Now understanding the  
1226 significance, the owner wishes to do so. Unfortunately, the current zoning  
1227 requirements will not allow it to be saved without restricting the owner's ability to  
1228 construct a second dwelling. Therefore, you have the variance request in front of

1229 you. Looking at the evaluation of the case, we agree with staff's evaluation from  
1230 top to bottom. The applicant has a right to remove the Blackburn House and  
1231 create two buildable lots. The owner is willing to preserve the house, but the  
1232 existence of the historic home its placement on the site, and the County's  
1233 request to preserve it will collectively represent a site constraint, which combined  
1234 with the current zoning regulations, substantially restrict the ability to develop the  
1235 site. The variance would overcome this by allowing the Blackburn House to be  
1236 preserved while also preserving the owner's ability to build a second home.

1237

1238 I want to stress that the owner is not asking for anything more than to be  
1239 permitted to develop as allowed by right. I want to note the existing home is  
1240 substandard in the current market. It would not be retained were it not for its  
1241 historic significance. Retaining without the ability to develop the second home  
1242 would not result in reasonable beneficial use for the owner, particularly in the  
1243 context of what could be done by right in conjunction with its demolition, which is  
1244 the two lots.

1245

1246 Looking at the three tests, which you typically do, we agree with the staff in their  
1247 analysis. In looking at the first test, staff notes the property is affected by  
1248 exceptional narrowness. The location of the existing house toward the center of  
1249 the lot, in conjunction with the agreement on the part of the owner to save it  
1250 causes an inadequate lot width situation.

1251

1252 Looking at the second test, staff notes that there will be no adverse affect on  
1253 neighboring properties or the character of the district. The new dwelling will be  
1254 built to the rear of the lot. Staff noted this placement is not typical, but allows the  
1255 preservation of the graves at the front of the site. Lot width in excess of the  
1256 required feet is provided when the house is placed on the lot to the actual  
1257 setback. The proposed lot is of sufficient size to allow all setback requirements to  
1258 be met. At over 29,400 square feet, the lot would be nearly three times larger  
1259 than the minimum lot area required in the district. This is also larger in area than  
1260 typical platted lots in the vicinity. Finally, the lot is bordered by land owned by  
1261 either the applicant or the Westhampton Masonic Lodge, which further reduces  
1262 the potential for negative impacts on adjacent residential properties.

1263

1264 Then looking at the third test, staff has noted there is nothing to suggest that a  
1265 general regulation might be appropriate. The notion of the County asking for the  
1266 retention of historic property is obviously very unique and not recurring. Staff  
1267 further noted it's really not uncommon for an individual, an applicant, to purchase  
1268 a piece of property, desire to split it, and later find that they have insufficient  
1269 width. That's not the case here. This property owner does, in fact, have sufficient  
1270 width, and absent the commitment to retain the house, would be able to develop  
1271 two lots.

1272

1273 Staff's evaluation suggests a number of conditions, and these include conditions  
1274 which generally ensure protection of the Blackburn House, the gravesite, and a

1275 large walnut tree on the property. They also ensure compatibility of the new  
1276 home with the Blackburn House. The owner accepts these conditions, but  
1277 requests one modification with regards condition number 4. Typically, they were  
1278 looking for—I don't know from a zoning perspective after having our conversation  
1279 this morning, Mr. Blankinship, if this works. But he prefers them to be referred to  
1280 as gravesites rather than a graveyard. He asks that the Parks and Rec's  
1281 requirement for review be removed to essentially remove the need for an  
1282 additional layer of review. He's rather do it on good-faith basis. Along those  
1283 same lines, whereas the condition did not include a monetary value, this actually  
1284 had a minimum commitment of \$500 towards the landscaping, if you're required  
1285 to achieve that.

1286  
1287 In summary, the owner can build two homes on the site by right. He'd originally  
1288 intended to do so. However, the Blackburn House is a historic resource that the  
1289 County, the owner, and others wish to save. The existing zoning will not allow it  
1290 to be preserved without restricting the owner's ability to construct a second  
1291 dwelling. Approval of the variance would allow for reasonable, beneficial use of  
1292 the property for the owner, which would approach that which could be done by  
1293 right. At the same time, it would allow for the retention of a historic dwelling. It  
1294 would add protection of that dwelling, which does not exist today, to provide it for  
1295 future generations. Very simply, it's a win/win situation for the County and the  
1296 owner. It would advance the general welfare of the community.

1297  
1298 Letters in support of the application providing additional historic information have  
1299 been received from the Henrico County Historical Society, the Commonwealth of  
1300 Virginia, letter by the Commonwealth of Virginia Department of Historic  
1301 Resources, the Association for the Preservation of Henrico Antiquities, and the  
1302 Henrico County Department of Recreation and Parks. The owner, Mr. Hilton  
1303 Rubin, will be presenting a more detailed evaluation of the historic Blackburn  
1304 House so that you can better understand its historic significance.

1305  
1306 I'll take any questions.

1307  
1308 Ms. Dwyer - Thank you. Any questions by Board members?

1309  
1310 Mr. Wright - Yes. If this variance application is not approved, then  
1311 the owner could have four buildable lots—is that what you're saying—by adding  
1312 something to it?

1313  
1314 Mr. Baker - Well, sir, he owns the property to the west. In  
1315 conjunction with the development of this property, the idea was to get four lots.

1316  
1317 Mr. Wright - Four lots. Those lots, you could build on them without  
1318 any problem?

1319  
1320 Mr. Baker - Yes.

1321  
1322 Mr. Wright - They meet all the County specifications.  
1323  
1324 Mr. Baker - Yes they do. As for this specific piece of property,  
1325 with the removal of the home, which was initially the desire, as there wasn't a  
1326 recognition of its historic significance—  
1327  
1328 Mr. Wright - Right. That was before—  
1329  
1330 Mr. Baker - It would be two lots on this specific lot in conjunction  
1331 with a lot line adjustment.  
1332  
1333 Mr. Wright - So, the take is, if this is denied, the owner would have  
1334 no other alternative but to destroy this house and have four lots or live with it  
1335 without building a house on this particular lot.  
1336  
1337 Mr. Baker - Yes sir.  
1338  
1339 Mr. Wright - Now, if this is denied and you decide not to destroy  
1340 this house, this historically-significant house, how many homes could be built  
1341 under the current ordinance on the property?  
1342  
1343 Mr. Baker - I will let Mr. Rubin address what he would intend to do  
1344 at that point, but—  
1345  
1346 Mr. Wright - Assuming he did not destroy this house.  
1347  
1348 Mr. Baker - Assuming he did not destroy it, he wouldn't—  
1349  
1350 Mr. Wright - He couldn't build on this other lot.  
1351  
1352 Mr. Baker - No sir.  
1353  
1354 Mr. Wright - But how many buildable lots would be left that he  
1355 could build upon.  
1356  
1357 Mr. Baker - He'd get the two adjacent.  
1358  
1359 Mr. Wright - Yes.  
1360  
1361 Mr. Baker - He'd get the two adjacent, but with regards to this  
1362 property, he would get just the existing Blackburn House.  
1363  
1364 Mr. Wright - So he could build two additional. He'd have two  
1365 additional buildable lots if this is denied and he couldn't build on the lot that's  
1366 here because no variance was granted.

1367  
1368 Mr. Baker - Right. I don't know from a variance standpoint—  
1369  
1370 Mr. Wright - I understand everything. If he destroys the home, he  
1371 could build four, he has four buildable lots.  
1372  
1373 Mr. Baker - Yes sir.  
1374  
1375 Mr. Wright - But if he decided for some good reason or another he  
1376 wouldn't destroy the home even if this variance is denied, my question is how  
1377 many buildable lots would he have with the property. He'd have two. That's the  
1378 way I see it.  
1379  
1380 Mr. Baker - Yes sir.  
1381  
1382 Mr. Wright - I'm just framing the issue.  
1383  
1384 Mr. Baker - Yes.  
1385  
1386 Mr. Witte - I have one question. As far as this amendment to  
1387 item four, what's the purpose of eliminating Department of Recreation and Parks  
1388 in this?  
1389  
1390 Mr. Baker - First of all, it's an additional layer of review. The  
1391 second thing is it wasn't specific as to who in Parks and Rec would necessarily  
1392 review that. I mean, is it the director, is it a staff member, is it someone who is—  
1393 is it a staff member that they met with who was aware of the historic concerns. It  
1394 wasn't tailored. There's a situation where Planning staff is involved in one of the  
1395 conditions and it refers specifically to the Director of Planning.  
1396  
1397 Mr. Witte - My understanding is this is just regarding the fencing.  
1398  
1399 Mr. Baker - Yes.  
1400  
1401 Mr. Witte - So would it really matter if it was—  
1402  
1403 Mr. Baker - I think the issue is, again, it's another level of review.  
1404 We're not sure what that's going to introduce, and we're not sure exactly who  
1405 we're dealing with in terms of making that determination or decision.  
1406  
1407 Mr. Witte - Okay, thank you.  
1408  
1409 Ms. Harris - I have a question. Mr. O'Kelly, you sent a letter to Mr.  
1410 Rubin in January of 2009. I'm looking at the second page, page 2. I thought that  
1411 one of these lots was not buildable. On the very next page in our packet, we  
1412 have four lots subdivided.

1413  
1414 Ms. Dwyer - Is that the January 22<sup>nd</sup> plan that you're looking at?  
1415  
1416 Ms. Harris - Yes.  
1417  
1418 Mr. Blankinship - As they're currently laid out, one of the lots has no  
1419 street frontage, but the one that has the two-story brick-and frame house, 9314,  
1420 you see that, that house has enough width that they could divide the property the  
1421 other way. Instead of dividing them north/south, they divide them east/west and  
1422 they would have the existing house and a new buildable lot.  
1423  
1424 Ms. Harris - Right. On this January 22, 2009 form where we have  
1425 the Blackburn House approximate location, what was the width of that? What is  
1426 the public frontage for that? I'm seeing a difference between what was shown  
1427 on the screen a few minutes ago and what's here.  
1428  
1429 Ms. Dwyer - This is not the plan that they're proposing now.  
1430  
1431 Ms. Harris - I know.  
1432  
1433 Mr. Rubin - Are you referring to this plan?  
1434  
1435 Ms. Harris - Yes.  
1436  
1437 Mr. Rubin - By right, there's a lot line adjustment of about three  
1438 feet that was included in that plan and approved by—  
1439  
1440 Ms. Dwyer - Could you identify yourself?  
1441  
1442 Mr. Rubin - I'm sorry. I'm Hilton Rubin, the owner of the property.  
1443 Sorry about that.  
1444  
1445 Mr. Baker - What he's referring to, and it's discussed in the letter,  
1446 is that free of the Blackburn House, in other words, if it's removed, we would be  
1447 free to then perform a lot line adjustment, which would allow you to create two  
1448 lots and meet your lot width requirements and the property frontages. When you  
1449 throw the Blackburn building into the situation, the lot line adjustment doesn't  
1450 gain you anything because of its location. You'll see a photograph later that  
1451 shows where that lot line—Mr. Rubin's going to show a picture. It shows where  
1452 that lot line on this drawing would end up, and it's right through the building.  
1453  
1454 Ms. Harris - Mr. Rubin only wants to build one house, right?  
1455  
1456 Mr. Baker - One house, yes ma'am. Well, yes, on this particular  
1457 piece of property, yes.  
1458



1459 Ms. Harris - My question is using this plan dated January 22,  
1460 2009, could he have constructed the one house on the 83.70 footage of land  
1461 without the variance?  
1462  
1463 Mr. Baker - He could have constructed two homes, yes ma'am.  
1464  
1465 Ms. Harris - Even if he left the historic piece, the Blackburn House  
1466 remain, could he—  
1467  
1468 Mr. Baker - No ma'am. No. You'll see a photograph in a moment  
1469 where this property line—This 1/22/09 document, the property line, if you look at  
1470 lot 8 and lot 9, the center property line—and you'll see that staked on a picture  
1471 we're going to show you shortly—that actually runs through the house.  
1472  
1473 Mr. Blankinship - Where this has an approximate location, that location  
1474 turned out not to be accurate.  
1475  
1476 Ms. Dwyer - The house is actually on a line. I think that's the  
1477 confusing part.  
1478  
1479 Ms. Harris - Yes, that's what I need to know.  
1480  
1481 Mr. Baker - It's an approximately one-acre lot that we're talking  
1482 about, a one-acre parcel. If we simply split the parcel in a legal fashion, it goes  
1483 through the house.  
1484  
1485 Ms. Dwyer - This house is not accurately represented in its  
1486 location on this particular plat is the point.  
1487  
1488 Mr. Baker - Which plat are you looking at?  
1489  
1490 Ms. Dwyer - 1/22/09.  
1491  
1492 Mr. Baker - It actually is.  
1493  
1494 Ms. Dwyer - Are you saying the property line would go through the  
1495 house, and it's certainly not going through the house.  
1496  
1497 Mr. Baker - It is not going through the house there. Was it a  
1498 setback issue then? Are you showing the setback that you staked out that's  
1499 going through the house.  
1500  
1501 Mr. Rubin - No, I'm showing the property line. You could push  
1502 that house over about—  
1503  
1504 Ms. Dwyer - If this is accurate, what you're saying doesn't make

1505 sense because according to this, you could easily have two lots and avoid  
1506 destroying the old property. So, I think the answer is that this house is not  
1507 properly located on the drawing.

1508

1509 Mr. Baker - On this particular sheet of paper, that's correct.

1510

1511 Ms. Dwyer - Okay. But we're not going by that anyway. You're  
1512 proposing the other one.

1513

1514 Male - [Off mike.] Sorry for the confusion.

1515

1516 Ms. Dwyer - It's good to have that clarified.

1517

1518 Mr. Baker - That was a good catch.

1519

1520 Ms. Dwyer - Any other questions? What about this property to the  
1521 rear that according to the April 9 plan has a notation that says, "Add this land  
1522 later"?

1523

1524 Mr. Baker - The intention is to roll that into the two lots. Staff had  
1525 asked that the property line be continued to the rear.

1526

1527 Mr. Rubin - Basically, the planners recommended that I condemn  
1528 the lot and—

1529

1530 Ms. Dwyer - Could you speak into the microphone, please?

1531

1532 Mr. Rubin - Basically, the Planning Department has requested  
1533 that I just condemn this landlocked parcel and give it to the adjoining pieces,  
1534 which is what we're doing.

1535

1536 Ms. Dwyer - We might want to make that a condition because  
1537 otherwise—

1538

1539 Mr. Blankinship - It is a condition.

1540

1541 Mr. Baker - It is a condition.

1542

1543 Mr. Wright - I was looking at the conditions.

1544

1545 Ms. Dwyer - Oh, I see it, #7.

1546

1547 Mr. Baker - It essentially extends the lot to the rear.

1548

1549 Ms. Dwyer - That's taken care of. Let me ask you about the future  
1550 preservation of the Blackburn House. What is to notify a future purchaser that

1551 this is a historic house that should be preserved in some condition or another?  
1552 Is there anything that would be a part of the deed, or anything that will limit future  
1553 development, changes, amendments to this house?  
1554

1555 Mr. Baker - The BZA variance would run with the property. First  
1556 of all, I'm assuming—I guess Mr. Blankinship could correct me if I'm wrong, but  
1557 I'm assuming any change to the exterior, as is suggested in the conditions, that  
1558 *arise whether it's under the current ownership or two owners in the future would*  
1559 *still be subject to that condition and would be caught at permitting. Now,*  
1560 *obviously, it would be appropriate to reveal that at the time of the sale as well. I*  
1561 *don't know if there would be any—*  
1562

1563 Ms. Dwyer - We've had problems with people purchasing houses.  
1564 There might be something in our condition that relates to the property lot, lot 9  
1565 and someone doing a search on lot 8. We didn't necessarily look at conditions  
1566 related to lot 9 and [inaudible]. I'm thinking would this be something that Board  
1567 members and staff, as well as for you, something that could be on the deed for  
1568 future purchasers?  
1569

1570 Mr. Baker - The deed restriction that reflects the conditions of the  
1571 BZA variance?  
1572

1573 Ms. Dwyer - Something to put the future purchaser on notice.  
1574

1575 Mr. Wright - Is that lot upon which this historic house is now  
1576 located, is that a buildable lot?  
1577

1578 Mr. Blankinship - Yes. I was just going to say the variance doesn't  
1579 strictly speak and pertain to that lot.  
1580

1581 Ms. Dwyer - Right.  
1582

1583 Mr. Blankinship - It's really just on the other lot.  
1584

1585 Mr. Wright - It's on the other lot. Therefore, someone later could  
1586 come in and tear the house down and build on it.  
1587

1588 Ms. Dwyer - Exactly. That's my concern. The whole point of this  
1589 variance is to preserve the Blackburn House.  
1590

1591 Mr. Wright - That's it. Frankly, if I were to recommend approval, it  
1592 would be based on that.  
1593

1594 Mr. Baker - Clearly the intent of the applicant is to provide for that  
1595 preservation.  
1596

1597 Ms. Dwyer - I'm not questioning that. What I'm questioning is—  
1598  
1599 Mr. Wright - How to do it.  
1600  
1601 Mr. Baker - How to make sure it's—  
1602  
1603 Ms. Dwyer - Making sure. Since the variance doesn't pertain to lot  
1604 8, what is going to put any future purchaser on notice that lot 8 has any sort of  
1605 restriction on it. I think we need to address that today since the whole request  
1606 hinges on lot 8.  
1607  
1608 Mr. Wright - Maybe we need an opinion from the County Attorney  
1609 on that.  
1610  
1611 Ms. Dwyer - Another question I have is whether we have the  
1612 authority to put a condition on lot 8 since the case doesn't involve lot 8.  
1613  
1614 Mr. Blankinship - Yes. How enforceable is that going to be anyway?  
1615  
1616 Mr. Wright - If our whole opinion was based on that, would that—I  
1617 don't know; that's an interesting question.  
1618  
1619 Ms. Dwyer - The applicant is willing to put whatever restriction, I  
1620 assume, that would be appropriate on that lot because the whole intent, as far as  
1621 I—  
1622  
1623 Mr. Rubin- If I understand, what we're voting on today does carry  
1624 restrictions about my additions or any building permits that might be taken out on  
1625 the existing home.  
1626  
1627 Mr. Wright - I don't know.  
1628  
1629 Mr. Rubin - There are certainly conditions.  
1630  
1631 Mr. Wright - How do we impose that?  
1632  
1633 Mr. Blankinship - I'm not certain how enforceable that condition really  
1634 is.  
1635  
1636 Mr. Wright - That's my point. If I were to base my decision on that  
1637 fact and then later on it was unenforceable, it would be defeated.  
1638  
1639 Mr. Rubin - Is it not possible for the variance to govern both  
1640 properties?  
1641  
1642 Mr. Wright - No. This has nothing to do with that property.

1643  
1644 Mr. Rubin - It didn't need any zoning relief in order to allow four  
1645 lots.  
1646  
1647 Mr. Wright - That's why I asked if it was a buildable lot. If it's a  
1648 buildable lot, somebody could come in later, tear that house down, and build  
1649 another house on it.  
1650  
1651 Ms. Dwyer - Mr. O'Kelly, did you have a question?  
1652  
1653 Mr. O'Kelly - I was going to ask Mr. Rubin if he might consider  
1654 placing an easement on the house or on this property that would, in essence,  
1655 protect it.  
1656  
1657 Mr. Rubin - In a sense, yes. In the spirit of everything, yes. I'm  
1658 concerned about—I'd like to get it in the National Registry. I'm concerned what  
1659 they would have to say about me bringing it back to a particular era for tax credit  
1660 purposes, that they'd want me to, say, remove the—There's a little piece of the  
1661 building that has a bathroom on it; they might want that removed. Quite frankly,  
1662 if for some reason it burned down, then I have a completely obsolescent property  
1663 where I currently have a technically one-bedroom house. I don't know how we  
1664 solve that problem.  
1665  
1666 Ms. Dwyer - I'm not trying to throw a monkey wrench in it. I just  
1667 don't want to base the whole case on something that's unsupportable.  
1668  
1669 Mr. Rubin - I think within the spirit of it—I haven't talked yet, but it  
1670 would be quite difficult to build anything else there. When you consider the site's  
1671 conditions, the remaining trees, when you consider the utility easements across  
1672 the property, and the fact that there really isn't any room behind those trees and  
1673 behind that utility easement, it really doesn't afford us. I guess somebody  
1674 could—  
1675  
1676 Mr. Wright - It's a buildable lot.  
1677  
1678 Mr. Rubin - It is a buildable lot.  
1679  
1680 Mr. Wright - They won't have to come back to the County. I  
1681 wonder if we shouldn't defer this case to get some legal assistance as to how  
1682 that could be done. Right now, I haven't thought that through. We need to give  
1683 more thought to that.  
1684  
1685 Ms. Dwyer - I think Mr. O'Kelly's idea of an easement on lot 8 is a  
1686 great idea because that makes it clear to all future purchasers what the limits  
1687 are. Another question I have is what exactly are your intentions in terms of  
1688 preserving this house. I'm not sure the International Property Maintenance Code

1689 is going to—  
1690  
1691 Mr. Rubin - No.  
1692  
1693 Ms. Dwyer - —as restrictive enough as you want it to be to  
1694 maintain the historic character.  
1695  
1696 Mr. Rubin - Well, I mean, I have my own personal—I would like to  
1697 restore it in a manner that's similar to the 1920 and 1840 condition that it was  
1698 originally in.  
1699  
1700 Ms. Dwyer - And for it to be maintained.  
1701  
1702 Mr. Rubin - And for it to be maintained like that.  
1703  
1704 Ms. Dwyer - I don't think this condition that we have, #3, actually  
1705 does that.  
1706  
1707 Mr. Blankinship - If it were listed on the National Register, then you—  
1708  
1709 Mr. Rubin - It's not listed yet. I  
1710  
1711 Mr. Blankinship - You would have a lot more restrictions on you, but  
1712 you would also have a lot more benefit. From our point of view, I'm not sure we  
1713 were comfortable imposing those restrictions without being able to offer him  
1714 something in return.  
1715  
1716 Mr. Rubin - Yes. It's legally a one-bedroom house. It's not  
1717 something I can—  
1718  
1719 Ms. Dwyer - It's something that you're going to market as a historic  
1720 property.  
1721  
1722 Mr. Rubin - I'm going to try to hold onto it. It's not something I  
1723 want to give up. I don't know that I can afford to, but—  
1724  
1725 Ms. Dwyer - But its value would be.  
1726  
1727 Mr. Rubin - It's more valuable to me than to anybody else.  
1728  
1729 Ms. Dwyer - Would you consider, then, a deferral just so that we  
1730 can nail down some of our questions about our jurisdiction over lot 8?  
1731  
1732 Mr. Rubin - Yes. I do. I hope you all would be sensitive to the  
1733 timeframe here. This is not something that actually even makes financial sense.  
1734 This is the thing to do and it's costing me money.

1735  
1736 Mr. Wright - It would cost you 30 days. We would certainly  
1737 resolve it at the next meeting.  
1738  
1739 Mr. Rubin - Okay. Well, I mean, I can do that, I'm just  
1740 uncomfortable with it.  
1741  
1742 Mr. Wright - I just don't feel comfortable ruling on this if the basis  
1743 of my rule would be that that use of this house, this historic house, is what's  
1744 going to be the basis of my recommendation.  
1745  
1746 Mr. Rubin - Is the concern whether you're legally able to condition  
1747 the adjacent lot? We could put conditions on this variance.  
1748  
1749 Mr. Wright - I'd like to have the County Attorney give us some help  
1750 in this.  
1751  
1752 Mr. Rubin - Have you seen on a piece of property like this a  
1753 condition that would suggest a deed restriction on the adjacent property. That  
1754 would be a similar situation. We would still have a question as to whether you  
1755 can enforce him to—  
1756  
1757 Mr. Wright - I don' t know.  
1758  
1759 Ms. Dwyer - Whether we can do anything relating to lot 8. It's a  
1760 separate lot at this point?  
1761  
1762 Male - [Off mike.] No, it's not.  
1763  
1764 Mr. Rubin - It's one lot now.  
1765  
1766 Male - It's one lot right now.  
1767  
1768 Mr. Wright - This lot is included in what?  
1769  
1770 Mr. Rubin - This variance—  
1771  
1772 Mr. Wright - It cannot be part of this lot.  
1773  
1774 Mr. Blankinship - One and two on that lot, on that plat.  
1775  
1776 Mr. Rubin - The variance, when you think about it, is not just  
1777 authorizing the development on a piece of property, it's authorizing the lot split.  
1778 So, in a way, it is dealing with the other lot.  
1779  
1780 Mr. Witte - I think it is.

1781  
1782 Ms. Dwyer - I'm satisfied with that.  
1783  
1784 Mr. Witte - Me, too.  
1785  
1786 Mr. Wright - You're satisfied with what?  
1787  
1788 Ms. Dwyer - The variance really relates to the lot as a whole, we  
1789 could argue. Right now, the lot is one piece. The proposed lot for the new house  
1790 and the existing house's lot are all one lot at this point. So, what they're asking  
1791 for is the right to split that, but they'd have a conforming and a non-conforming  
1792 lot, one that complies and one that doesn't comply. So, I think we could argue  
1793 that the whole is being brought to us.  
1794  
1795 Mr. Wright - As to the lot, they could not build a house on the  
1796 other lot because there's already a house on the lot.  
1797  
1798 Mr. Blankinship - Right, right. Without dividing the property, you  
1799 cannot—  
1800  
1801 Mr. Wright - Yes, yes.  
1802  
1803 Mr. Blankinship - Should we amend the suggested condition to say  
1804 something about recording some sort of statement on both deeds or on the plat  
1805 dividing the property, whether it's an easement or just some other kind of  
1806 declaration so that any future purchaser of this property was to be put on notice.  
1807  
1808 Mr. Rubin - I think a declaration would probably be the most  
1809 appropriate situation.  
1810  
1811 Mr. Blankinship - That any future purchaser of the property is on notice.  
1812  
1813 Ms. Dwyer - For lot 8.  
1814  
1815 Mr. Wright - If this were approved, if we approve this application,  
1816 then this lot would have to split off for a separate deed? Is that the idea?  
1817  
1818 Mr. Rubin - Yes.  
1819  
1820 Mr. Wright - To build another house, it would have to be. In doing  
1821 so, since you're the owner, we could require him to do whatever we wanted  
1822 done, then, in approving this application, couldn't we.  
1823  
1824 Mr. O'Kelly - I think you're correct.  
1825  
1826 Ms. Dwyer - I think we do have to amend, and I'm not quite sure



1827 how to amend, condition three in order to accomplish that.  
1828  
1829 Mr. Rubin - Can I recommend that the recorded plat have a  
1830 declaration that this is a historic property, that they, like myself, should consult  
1831 with Recreation and Parks?  
1832  
1833 Ms. Dwyer - That's not mandatory, the maintenance of this. The  
1834 historic designation would satisfy that, I would think.  
1835  
1836 Mr. Rubin - Well, then I guess we could put on the plat a  
1837 declaration that it's historically designated by Henrico County, essentially by  
1838 other—  
1839  
1840 Ms. Dwyer - What historic designation would limit amendments to  
1841 the house?  
1842  
1843 Mr. Blankinship - It would have to have National Registry.  
1844  
1845 Mr. Rubin - That's only subject to acting on it and taking tax  
1846 credits. You can be in the National Registry and still do whatever you want, but  
1847 the benefit of being in the National Registry is you get tax credits, and then by  
1848 virtue of using those, you are subject to their restrictions.  
1849  
1850 Mr. O'Kelly - Placement on the national register doesn't protect it.  
1851  
1852 Mr. Rubin - No.  
1853  
1854 Ms. Dwyer - What would protect it?  
1855  
1856 Mr. Blankinship - Absolutely nothing.  
1857  
1858 Mr. O'Kelly - A historic easement would protect it.  
1859  
1860 Ms. Dwyer - A historic easement?  
1861  
1862 Mr. Rubin - Yes.  
1863  
1864 Mr. O'Kelly - You might want to hear from Dr. Nelson.  
1865  
1866 Mr. Blankinship - Oh, okay, yes.  
1867  
1868 Ms. Dwyer - Are there any other questions at this point for Mr.  
1869 Baker?  
1870  
1871 Mr. Wright - I see we're talking about the whole lot, so we have  
1872 this before us.

1873

1874 Ms. Dwyer - I think so.

1875

1876 Mr. Wright - Yes.

1877

1878 Mr. Rubin - Okay. Well, you've already met me. My name is  
1879 Hilton Rubin. I'd like to thank the Board for listening to this case today. I hope by  
1880 the end of this meeting you'll be in agreement with me that we should help save  
1881 the historic Blackburn House with a positive vote for the variance proposed.

1882

1883 A little bit about myself. I'm a resident of Henrico County and I've been building  
1884 homes here since 1995. Most of my projects are infill development, but I do  
1885 some remodeling, too. My building background includes working for a handful of  
1886 architects in the Norfolk and Virginia Beach area. More importantly, I have a  
1887 bachelor's of science from UVA School of Architecture.

1888

1889 Here is a history of today's variance. Several months ago, I contracted to  
1890 purchase the property from Mrs. Florence Browning. There are actually three  
1891 one-acre parcels, which include the historic Blackburn House; 9312 Three Chopt  
1892 Road; and Mrs. Browning's residence, 9314 Three Chopt Road. My intention at  
1893 the time was to remodel her residence and simultaneously build three houses on  
1894 the property, thus giving us four building lots, after demolishing the old house. In  
1895 fact, my entire due diligence portion of the contract hinged on receiving a zoning  
1896 confirmation letter from the Planning Department approving these three new lots  
1897 as shown in this picture. Without demolishing the small house and creating two  
1898 new building lots in its place, my building plan did not work whatsoever. In short,  
1899 the land underneath the little house is much more valuable than the house itself.

1900

1901 I had my surveyor stake the future property lines. As you can see, the newly  
1902 proposed lines went right through the structure. In the letter from the Planning  
1903 Department, I was informed that the Blackburn House was on Henrico County's  
1904 Historic Register, and that I needed to contact Chris Gregson at Henrico  
1905 Recreation and Parks before demolishing the property. As a builder, that letter's  
1906 comments just flat out scared me, as you can understand. I immediately picked  
1907 up the phone and I had a long conversation with Chris Gregson. The short  
1908 version of our conversation was that I told him I was bulldozing that house and I  
1909 wanted to make darn sure that in no way anyone could stop me. He assured me  
1910 that he could not stop me, but before demolition, the County requested that they  
1911 be allowed to take pictures and perhaps remove some of the historical details  
1912 from the home for future use in museum displays or future studies.

1913

1914 Now, I'm embarrassed to admit that I, a long-time student from Thomas  
1915 Jefferson University, a student of architectural history no less, had the hubris to  
1916 tell Chris Gregson that the house had absolutely no architectural value  
1917 whatsoever except maybe the fireplace mantle, and that he was free to take it.  
1918 All I wanted was assurance that the bulldozers would not be stopped. Chris

1919 pleaded that I was wrong and that he should meet with me out there, and give  
1920 me an architecture lesson. I figured from a business standpoint it was the  
1921 politically correct thing to do to meet with the County, so I agreed and I met him  
1922 out here. That's where the story changed.

1923  
1924 Chris met me out there and began to explain the architectural significance of the  
1925 home, and Chris changed my mind about demolishing it. Here is the first thing  
1926 that I learned, and perhaps the most important thing that I learned about this  
1927 house. This house, the Blackburn House, is the only remaining 19<sup>th</sup> Century  
1928 frame structure of its social and economic status in all of Henrico County.  
1929 Henrico has numerous old mansions. They have some large farmhouses. It has  
1930 a few slave houses, but absolutely no wooden homes that remain from a working  
1931 class family. I think that's a big deal for our County. Mark Wagner from the State  
1932 of Virginia Department of Historic Resources seconded that motion. I'd like to  
1933 share a few pictures of the 1840 portion of the house.

1934  
1935 The interior of the original home, with the exception of modern carpeting, looking  
1936 nearly as it did 150 years ago. The interior doors are all original. You see 19<sup>th</sup>  
1937 Century forged hardware. You see holes in some of the doors where there was  
1938 originally a leather strap used to pull the door shut instead of a doorknob. We  
1939 have nine-foot ceilings; it's all original plaster. A picture railing. That's the mantle  
1940 that I told Chris Gregson that he could have. The random width flooring that  
1941 you're looking at is the best preserved 19<sup>th</sup> Century floor in all of Henrico County.  
1942 It's fooled a lot of the experts as being a replacement. There's not a speck of  
1943 termite damage in it whatsoever.

1944  
1945 The staircase is all original. It's been hand cut and spiked together. It's unusual  
1946 to see an intact staircase because the wood frequently gets worn with age and  
1947 replaced, but there it is. Upstairs they have two little rooms. They're not legally  
1948 bedrooms, but they are two rooms that were used as bedrooms. We can see the  
1949 two fireplaces were covered over. I'm talking about the blank spaces between  
1950 those two windows. This little window here is completely original. You can see  
1951 how the wood trim is set into the plaster. I feel fortunate that we have located  
1952 the homes' original windows inside a garage on the adjoining property. If I get to  
1953 restoring this house, we'll have the original windows from the 1840's.

1954  
1955 This is an exquisite chimney. Chimneys this old are rarely original. They get  
1956 blown over by wind storms, struck by lightening, the mortar deteriorates over  
1957 time. Mark Wagner—and his letter's in your packet—says that these are the  
1958 original real deal, and we have not one but two of them on this house.

1959  
1960 Good luck finding any house built in the 19<sup>th</sup> Century with any original wood  
1961 siding. Well, you're looking at some right here. The entire house is not original,  
1962 but the carpenters couldn't get their hammers behind the chimney to replace the  
1963 old siding, so there it is.

1964

1965 I could continue with hundreds of other architectural details, but I'm not going to  
1966 do that at this time; I think you get the idea. This plaque belongs to a neighbor of  
1967 Mr. Blackburn. Recently, Recreation and Parks voted to recognize the Blackburn  
1968 House with the same distinguished award. The Blackburn Plaque is currently  
1969 being cast, and hopefully this house will still be around to advertise its  
1970 distinctions. If you visit the Reference Section of Henrico Public Libraries, there  
1971 are a handful of books that mention the significance of this old house. Also in  
1972 libraries around the County there are historical magazines that have published  
1973 information about the Blackburn House from time to time.

1974

1975 There were many Civil War-era maps, and some earlier than that, that recognize  
1976 the house as a landmark. Speaking of the Civil War, this house witnessed the  
1977 only Civil War fighting in all of western Henrico County. On the night of his  
1978 infamous raid, Colonel Dahlgren's cavalry, flanked by the 5<sup>th</sup> Michigan Infantry,  
1979 could literally touch the front porch of this house as they sped down Three Chopt  
1980 Road. By all rights, this house should have been burned down in his raid, as it  
1981 was his orders to burn everything. But it's documented that Dahlgren was taking  
1982 sniper fire as fled past the property, and maybe that's why it's still standing.

1983

1984 The history of the people who lived in this house is immense. We have veterans  
1985 from the Civil War and world wars. There was a wagon wheel maker and  
1986 several farmers. There was a retail store in the house. At one point, there were  
1987 11 people living in this tiny little house, which only has one legal bedroom by  
1988 today's standards. Recreation and Parks has started to research this house's  
1989 rich history, but there's considerably more work to be done, and I hope there's an  
1990 opportunity to do that.

1991

1992 I was going to tell you a ghost story about this woman, but I'm actually not going  
1993 to do that. We've spent a lot of time on this project today. Her ghost hangs  
1994 around the house and hopefully if you vote on this variance and she likes your  
1995 vote—

1996

1997 Ms. Dwyer - She'll leave us alone?

1998

1999 Mr. Rubin - —she'll leave you alone. I'm making a disclaimer that  
2000 I have nothing to do with any visitations. If you have any questions, I'll be happy  
2001 to answer them.

2002

2003 Ms. Dwyer - Any more questions for Mr. Rubin?

2004

2005 Mr. Rubin - Okay, thanks.

2006

2007 Ms. Dwyer - Next speaker, please.

2008

2009 Mr. Nelson - Good morning, I'm Henry Nelson. I'm president of the  
2010 Association for Preservation of Henrico Antiquities. Our role in being here today

2011 is to assist Mr. Rubin in not only receiving his variance, but in trying to affirm the  
2012 fact that he is an owner willing to make a sacrifice in order to save a historical  
2013 property. You've probably heard of biblical references before, but I'll give you  
2014 one. Our inventory that the County maintains is our biblical reference that we  
2015 use. What we try to do in our role is to try to save and work with property owners  
2016 at each and every property that's listed here to try to save it for the future  
2017 generations. Unfortunately, many of these have already disappeared from the  
2018 last edition, and I'm sure they'll continue to disappear. But where we can save  
2019 them, we feel a compulsion to come forward and to try to do what we can to  
2020 expedite that process. So, we're asking that you give favorable attention to this  
2021 variance. I assure you that Mr. Rubin will work with us. We have him on public  
2022 record as wanting to reserve and preserve this house. We have methods that we  
2023 can do and use to be sure that that's achieved. We'll work diligently with him to  
2024 see that that's attained should he get the variance and be able to do so. I don't  
2025 want to belabor you with that point, but that is why I'm here. I think it's very  
2026 essential that we do this type of thing. We're all subject to the good will and good  
2027 wishes of the owners who have these properties currently, because in our  
2028 County, unfortunately, there is no historic preservation ordinance, and each and  
2029 every property that we have in Henrico County that's currently preserved is there  
2030 due to the good will and to the good wishes of the property owners who currently  
2031 reside there or own them thereof. So, we work with them trying to keep that  
2032 encouragement. I have had properties of my own where I have placed an  
2033 easement with the state, and that can be done on this in the future if he so  
2034 desires, and that will preserve it. It is conveyed with the deed. They're very  
2035 diligent in their pursuit of anyone who buys it to make acquaintance with them  
2036 upon their arrival, and work with them diligently to preserve what's there. So,  
2037 we'll work with him in that regard should he choose to do so.

2038

2039 Any questions you have?

2040

2041 Mr. Wright - So you're saying that we could put an easement on  
2042 here that would be binding?

2043

2044 Mr. Nelson - Well, there is a possibility, if he wishes to do that, yes.

2045

2046 Ms. Dwyer - The nature of that easement is?

2047

2048 Mr. Nelson - The state historic preservation people would have to  
2049 work in conjunction with him, and it would have to be his desire to do so. But if it  
2050 is his desire to do so, and I do not speak for him in that regard, he would be able  
2051 to do that and achieve it. The first step is getting the variance. We can't save  
2052 anything without that. So, I bring us back to that point.

2053

2054 Mr. Wright - Is that a long process?

2055

2056 Mr. Nelson - I would suggest it varies by locality and by the

2057 information there is and so on. But with everyone's willingness to work together,  
2058 it could go up to a year to do that.

2059  
2060 Mr. Wright - I would image that would prove no problem. There's  
2061 no urgency getting that done.

2062  
2063 Mr. Nelson - Our first step is getting his variance, and then we'll  
2064 work on it. I'll massage him to get that done. Thank you.

2065  
2066 Ms. Harris - Mr. Nelson, homes such as the Blackburn House are  
2067 unoccupied and remain unoccupied as long as they're considered historic by  
2068 your association?

2069  
2070 Mr. Nelson - Well, occupation is certainly a goal. We want all of  
2071 them put to productive use, but not all are at the current timeframe. Our goal is  
2072 to try to get someone in them that's going to make productive use of them  
2073 because they become further deteriorated if that doesn't happen.

2074  
2075 Ms. Dwyer - Mr. Nelson, I have one more question. I understand  
2076 your point about the variance, but in our view, the variance is dependent upon  
2077 the preservation.

2078  
2079 Mr. Nelson - Amen! Well, I'm here to assure you we're going to  
2080 work with him to get that accomplished.

2081  
2082 Ms. Dwyer - Right. I'm just looking at some possible language to  
2083 which Mr. Rubin apparently is in agreement. "The applicant shall apply for a  
2084 historic preservation easement with the State." Would that be the appropriate  
2085 language?

2086  
2087 Mr. Nelson - The State is the current municipal governing group  
2088 that has the law and the statutes to hold such easements.

2089  
2090 Ms. Dwyer - That name of that state—

2091  
2092 Mr. Nelson - The State Historic Resources, Department of Historic  
2093 Resources. It has to be approved and there's a certain process to get that.  
2094 We're not at that point yet.

2095  
2096 Ms. Dwyer - We certainly wouldn't require that he be approved,  
2097 but that the application be pursued.

2098  
2099 Mr. Nelson - Move in that direction. All right?

2100  
2101 Mr. Nuckols - Good morning. I'm Norwood Nuckols. I live in the  
2102 Three Chopt District, and have for most of my life. You can look at me and tell

2103 that that's been a good long while now. I'm speaking as one of Three Chopt's  
2104 representatives on the Historic Preservation Advisory Committee. We are trying  
2105 to save the historic resources and other artifacts of the County's 400 years now  
2106 of history. We have to proceed very carefully with the lack of a historic  
2107 preservation or ordinance. That said, I want to applaud Mr. Rubin for his  
2108 willingness to save this historic structure at considerable cost to himself. The  
2109 house is 150 years old. I've been looking at it myself for over 50 of those 150  
2110 years, and have always been struck by its appearance. We have had a lot of  
2111 these old homes in the County. We have a lot less of them now than we had let's  
2112 say 50 years ago, and many of them have been let's see squashed without even  
2113 so much as following the County's requirement for a demolition permit. I'm  
2114 speaking for myself and as a member of the Historic Preservation Advisory  
2115 Committee for the preservation of this house. Thank you.

2116  
2117 Ms. Dwyer - Thank you, sir.

2118  
2119 Mr. Nuckols - Do you have any questions?

2120  
2121 Ms. Dwyer - Questions for Mr. Nuckols? Anyone else to speak to  
2122 the case?

2123  
2124 Mr. Wright - Do we need to get Mr. Rubin to address this and  
2125 confirm that he would agree?

2126  
2127 Ms. Dwyer - Oh, okay.

2128  
2129 Mr. Wright - Just to cement it.

2130  
2131 Ms. Dwyer - Mr. Rubin, there's been a question presented about  
2132 your willingness to accede to an application to the State Department of Historic  
2133 Resources for an easement for the property.

2134  
2135 Mr. Rubin - I'm trying to think how that works. I really don't know  
2136 the answer. The answer is I'm more than welcome to apply to the State and the  
2137 Federal for the designation. I don't know how that easement works. I'm trying to  
2138 save this house in the here and now. I don't know what the easement does to  
2139 the house; I'm not a lawyer. In the spirit of things, I'm going to spend a whole lot  
2140 of money trying to get this house right, but I don't know what an easement does  
2141 to the house.

2142  
2143 Mr. Wright - Do you want to defer the case to get with your  
2144 attorney and come back so that you'll be sure of what you can do and what can  
2145 be done?

2146  
2147 Mr. Rubin - I actually feel more sure about what I can do than  
2148 what you guys can do. I don't want to be rude. I mean, I feel pretty sure that the

2149 easement—I feel like I'm 90% sure of what this easement is and I'm not sure  
2150 whether that's a completely good business standpoint, but I'd be happy to go  
2151 through the motions of trying to get something that's workable. In my lifetime, I  
2152 want to save the house.

2153

2154 Mr. Wright - So, you agree to work with Mr. Nelson.

2155

2156 Mr. Rubin - I absolutely agree to work with Mr. Nelson. I'm a  
2157 member of his organization and I don't wish to have him turn on me.

2158

2159 Ms. Dwyer - What if for some reason the state historical  
2160 designation doesn't work out? Would you be willing to put any sort of easement  
2161 on the deed to this property?

2162

2163 Mr. Rubin - I don't mind making a—I think it's a great idea,  
2164 actually, to make a declaration on the deed. I think everybody should know that  
2165 it's historic. It's going to have a historic plaque on it, I hope. It's going to have  
2166 several other historic plaques on it, I hope. You have me in public record  
2167 standing here saying I'm not going to do anything that's going to hurt this house.

2168

2169 Ms. Dwyer - I'm not concerned about you, I'm concern about—

2170

2171 Mr. Rubin - And I'm concerned about the future, too. I guess I'm  
2172 afraid that it would do something catastrophic to my pocketbook and my son's  
2173 inheritance 30 or 40 years from now.

2174

2175 Ms. Dwyer - We're willing to defer to come up with some language  
2176 in the meantime that would satisfy this.

2177

2178 Mr. Rubin - Okay.

2179

2180 Ms. Dwyer - If that's what you would like to do.

2181

2182 Mr. Rubin - I guess the next meeting would be a discussion about  
2183 the presumably one or two sentences that would go into the conditions of  
2184 approval.

2185

2186 Ms. Dwyer - We would not rehear the case.

2187

2188 Mr. Rubin - Okay. What do you think about that, Mark?

2189

2190 Mr. Baker - [Off mike.] We establish that the idea of going with  
2191 some sort of a deed restriction includes the comment about Parks and Recs or  
2192 exterior alterations and that sort of thing. We determined that wasn't satisfactory  
2193 in terms of—

2194



2195 Ms. Dwyer - Yes.  
2196  
2197 Mr. Rubin - Okay.  
2198  
2199 Ms. Dwyer - It's not satisfactory to me because, again, while we  
2200 have all the assurances in the world today of what Mr. Rubin's intentions are and  
2201 we have no reason to doubt that, we have to look 25 years down the road and  
2202 for some reason the property is sold.  
2203  
2204 Mr. Wright - This is a very significant thing and I think we should  
2205 give it everything we can give it.  
2206  
2207 Mr. Rubin - I'm willing to—  
2208  
2209 Mr. Wright - Have the secretary get with the County Attorney and  
2210 come back with a recommendation that we think would be binding.  
2211  
2212 Mr. Rubin - I'm willing to defer to try to come up with some  
2213 language that we can agree to.  
2214  
2215 Mr. Wright - We're only talking 30 days.  
2216  
2217 Mr. Rubin - Yes, I can do the 30-day holding on this. I appreciate  
2218 it.  
2219  
2220 **DECISION**  
2221  
2222 Mr. Wright - Then I move we defer the case to the next meeting of  
2223 the Board.  
2224  
2225 Mr. Witte - I'll second that.  
2226  
2227 Mr. Wright - With no testimony, just to deal with something to  
2228 ensure that we preserve this house.  
2229  
2230 Ms. Dwyer - We've had a hearing on case A-004-09. The motion  
2231 is to defer the case for the single issue of determining language that would  
2232 preserve the house by some sort of deed, declaration or deed addition.  
2233  
2234 Mr. Rubin - Absolutely. Thank you.  
2235  
2236 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Witte. All in  
2237 favor say aye. All opposed say no. The ayes have it; the motion passes. The  
2238 case is deferred on those terms for 30 days.  
2239  
2240 After an advertised public hearing and on a motion by Mr. Wright, seconded by

2241 Mr. Witte, the Board **deferred** application **A-004-09, Hilton Rubin's** request for  
2242 a variance from Section 24-94 to build a one-family dwelling at 9312 Three  
2243 Chopt Road (Parcel 752-749-7078 (part)), zoned R-3, One-family Residence  
2244 District (Three Chopt).

2245

2246

2247 Affirmative: Dwyer, Harris, Witte, Wright 4

2248 Negative: 0

2249 Absent: Nunnally 1

2250

2251

2252 Ms. Dwyer - We've dispatched with the last case, we'll move to the  
2253 next to the last case for a decision. John W. Gibbs, Jr.

2254

2255 Mr. Gidley - Don't forget the deferred case.

2256

2257 Ms. Harris - The first case.

2258

2259 Ms. Dwyer - Oh, right.

2260

2261 **CASE UP-005-09 CONTINUED FROM PAGE 2**

2262

2263 **UP-005-09 REITHOFFER SHOWS** requests a temporary  
2264 conditional use permit pursuant to Section 24-116(c)(1) to hold a carnival at 4869  
2265 Nine Mile Road (Parcel 812-723-1692), zoned B-2, Business District (Fairfield).

2266

2267 Mr. Blankinship - He has not come in, so.

2268

2269 Ms. Dwyer - No one is here to represent—

2270

2271 Mr. Blankinship - Reithoffer Shows.

2272

2273 Ms. Dwyer - —Reithoffer Shows, UP-005-09? All right.

2274

2275 Mr. Wright - We could defer it.

2276

2277 Ms. Dwyer - You want to defer it to the next meeting.

2278

2279 Mr. Wright - That's not up to me, but I said we could.

2280

2281 Ms. Harris - Okay. I move that we defer UP—

2282

2283 Male - Ms. Harris?

2284

2285 Mr. O'Kelly - The event is going to be held on May 7<sup>th</sup>, so a  
2286 deferral—

2287  
 2288 Mr. Wright - How can we hear it, then, without any evidence?  
 2289  
 2290 Ms. Dwyer - So, they decided not to have it? Well, let's proceed in  
 2291 order. So, let's proceed in order, A-003-09, John W. Gibbs, Jr.  
 2292  
 2293 Mr. Wright - You skipped over A-002-09.  
 2294  
 2295 Ms. Dwyer - I'm going backwards.  
 2296  
 2297 Mr. Wright - You want to go backwards? Okay.  
 2298  
 2299 Ms. Dwyer - The next item on the agenda is the minutes. Are  
 2300 there amendments to the minutes by Board members? Do I have a motion on  
 2301 the minutes?  
 2302  
 2303 Mr. Wright - Page 7—Oh, you want a motion first? I have one  
 2304 amendment, page 7, line 304. I think over time *it* would completely fill. That's  
 2305 pretty obvious a typo. I move we approve them.  
 2306  
 2307 Ms. Dwyer - Motion to approve the minutes by Mr. Wright.  
 2308  
 2309 Ms. Harris - Second.  
 2310  
 2311 Ms. Dwyer - Seconded by Ms. Harris. All in favor say aye. All  
 2312 opposed say no. The ayes have it; the motion passes. Motion carries four to  
 2313 zero to approve the minutes as amended.  
 2314  
 2315 On a motion by Mr. Wright, seconded by Ms. Harris, the Board **approved as**  
 2316 **amended** the **Minutes of the April 23, 2009** Henrico County Board of Zoning  
 2317 Appeals meeting.  
 2318  
 2319  
 2320 Affirmative: Dwyer, Harris, Witte, Wright 4  
 2321 Negative: 0  
 2322 Absent: Nunnally 1  
 2323  
 2324  
 2325 Ms. Dwyer - Any other business items to be brought before the  
 2326 Board?  
 2327  
 2328 Mr. Wright - I have something. I'm looking at page 3 of the A-003  
 2329 case.  
 2330  
 2331 Ms. Dwyer - Page 3  
 2332

2333 Mr. Wright - That's the one we denied. I'm looking at page 3,  
2334 under "Evaluation," the statement by the staff. I'm looking at the second  
2335 sentence here. "The adoption date of this ordinance set the benchmark when  
2336 considering the condition of the property when taken as whole per the Cochran  
2337 decision." I disagree with that. I don't think it should be put in there. If we're  
2338 going to get into that, I think we should have a legal opinion from the County  
2339 Attorney. I could go on. I can argue that there's no mention in the Cochran  
2340 decision about the date of the ordinance. That's in Cherrystone, and the only  
2341 mention is because the statute itself as to shallowness says specifically it has to  
2342 be at the effective date of the ordinance. I'm not going to stretch that, and  
2343 maybe the Supreme Court would, or somebody else would, but I'm not going to  
2344 stretch that to adopt it to the other, like the 50-foot road frontage, or one of these  
2345 other things. There's nothing in the ordinance that says that lot has to have that  
2346 requirement at the date of the ordinance. I think when you interpret these things,  
2347 you have to be strict and you have to stick right to the law. That's just my  
2348 opinion. I think this gives a wrong signal. Well, I don't think it gives the wrong  
2349 signal; I don't think it's accurate.

2350  
2351 Mr. Blankinship - I appreciate that, Mr. Wright, and I'll take that under  
2352 advisement for future reports.

2353  
2354 Mr. Wright - If you want to take time, I'm prepared to argue this  
2355 issue right now, if you want to do it. I don't know. Or we can set aside another  
2356 time. I've reviewed the Cochran case; I've reviewed Cherrystone. That's the  
2357 basis for this decision. It'll take a half hour, but I could go through these cases  
2358 with you point-by-point and point this out or whatever. I don't think Ms. Dwyer  
2359 agrees with me either, so she may have a counter position.

2360  
2361 Mr. Blankinship - We used to write the report broadly enough to  
2362 accommodate both of your positions, and you're right, it's not the staff's job to  
2363 give the Board legal advice.

2364  
2365 Mr. Wright - That's my point. We can continue to argue this every  
2366 time we have a case.

2367  
2368 Mr. Blankinship - I don't think we want to do that.

2369  
2370 Mr. Wright - I'd like to take you on on this one. I think I could win it.

2371  
2372 Ms. Dwyer - All right. Well, maybe you and I should have a  
2373 discussion.

2374  
2375 Mr. Blankinship - We'll just write two staff reports.

2376  
2377 Mr. Wright - I think we're reading something into the Cochran  
2378 decision. That's why I take this position. I think we consider these cases if there's

2379 any reasonable use of the property at the time, we do it. Unless it has to do with  
2380 shallowness. Then we have to go back and say was that condition there at the  
2381 date of the ordinance. But in all of this, that's the only reference to the date of the  
2382 ordinance.

2383  
2384 Ms. Dwyer - I agree with you on that. The problem is that we never  
2385 get from our applicants specific citations to the Code as to which exception  
2386 they're going with. So, we don't really know whether they're claiming shallowness  
2387 [inaudible – blank]. I would like to change that, and I'm not quite sure how to do  
2388 that. So, maybe those two issues would be a good discussion. I'm not averse to  
2389 having a meeting after our meeting in the conference room, which we've done  
2390 before, to go over these because these are difficult legal issues. I think for a lot  
2391 of them, there is no clear guidance either from the legislature or the Supreme  
2392 Court.

2393  
2394 Mr. Wright - I'm concerned also about the statement in the  
2395 Cochran case that the County or the State could adopt a statute that would give  
2396 this Board authority to deal with variances that were not based on the  
2397 constitutionality of the matter.

2398  
2399 Ms. Dwyer - Right.

2400  
2401 Mr. Wright - We already did it with the pools.

2402  
2403 Ms. Dwyer - Right.

2404  
2405 Mr. Wright - We could deal with these road frontage cases in a  
2406 different manner. I agree with Ms. Dwyer that each one of these road frontage  
2407 cases is a recurring issue. The only reason that I don't apply that in my  
2408 judgment is because it's been going on—I've been on this Board 38 years, and  
2409 the Board was doing it when I came on. They didn't even talk to them; they were  
2410 automatic. We've called to the Supervisor's attention several times, recently  
2411 about two or three years ago that people need relief. We should have some  
2412 discretion in considering those road frontage cases, to grant those if they meet  
2413 certain criteria. If you apply that rule right down the line, we don't have that.

2414  
2415 Ms. Dwyer - I don't disagree with you that I wish the Board would  
2416 give us some guidance on that, because it's such a pervasive problem. We  
2417 have numerous properties that are either landlocked or do not have adequate  
2418 road frontage. To just say that you have to have road frontage and leave it at  
2419 that ignores the problem. If we followed what the Board has said we have to do,  
2420 and people started getting denied, I think maybe then the Board would have to  
2421 address it.

2422  
2423 Mr. Wright - That may be.

2424

2425 Ms. Dwyer - People would be concerned about the fact that they  
2426 can't use their property because of the ordinance.  
2427  
2428 Mr. Blankinship - That's how the pools got changed.  
2429  
2430 Ms. Dwyer - Exactly. People were denied and didn't accept it.  
2431  
2432 Mr. Wright - I kept telling that lady to go to her Supervisor, and she  
2433 did.  
2434  
2435 Ms. Harris - Yes, she did. Question. Mr. O'Kelly, you attend the  
2436 Board meetings, the Supervisor's meetings, right? Do you normally attend those  
2437 meetings of the Board?  
2438  
2439 Mr. O'Kelly - [Unintelligible.]  
2440  
2441 Ms. Harris - You do. I was told that there's something coming up  
2442 that pertains to us, so maybe this is it. I will find out.  
2443  
2444 Ms. Dwyer - That's intriguing. We don't know what? Maybe they're  
2445 going to fire us.  
2446  
2447 Mr. Blankinship - Ever since the letter that Mr. Wright referred to, which  
2448 is two years ago almost, we have been working on this issue. The wheels of  
2449 Government grind slowly. I think we finally have a paper that will be acceptable  
2450 to everybody.  
2451  
2452 Mr. Wright - Well, maybe we have an answer coming.  
2453  
2454 Mr. Blankinship - I got tired about six months ago of telling you every  
2455 month that we were still working on that. But, we are continuing to work on it.  
2456  
2457 Mr. Wright - It's just a shame, especially out in the Varina area  
2458 where they have all this property. If it looks like this property could be subdivided  
2459 and so forth—those are the things we should consider if we had the authority to  
2460 do so. There are instances where they are not subject to be subdivided. We're  
2461 just denying people use of their property. That's what worries me.  
2462  
2463 Ms. Dwyer - All right. Anything else?  
2464  
2465 Mr. Witte - I make a motion we adjourn.  
2466  
2467 Ms. Harris - I second the motion.  
2468  
2469 Ms. Dwyer - All in favor?  
2470

2471 There being no further business, the Board adjourned until the May 28, 2009  
2472 meeting at 9 a.m.

2473

2474

2475

Elizabeth G. Dwyer  
Chairman

2476

2477

2478

2479

2480

2481

Benjamin Blankinship, AICP  
Secretary

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2483

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