

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, DECEMBER 21, 2006, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **NOVEMBER 30 AND DECEMBER 7, 2006.**
7

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

Also Present: **David D. O’Kelly, Assistant Director of Planning**
 Benjamin Blankinship, Secretary
 Paul Gidley, County Planner
 Priscilla M. Parker, Recording Secretary

8
9
10 Mr. Nunnally - Ladies and gentlemen, we welcome you to our
11 December meeting. We wish you a merry Christmas and a happy New Year.
12 Will you please stand and join us in the **Pledge of Allegiance to the Flag of Our**
13 **Country**. Mr. Secretary, would you read the rules and procedures of the Board,
14 please?
15

16 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
17 ladies and gentleman. The rules for this meeting are as follows. As Secretary, I
18 will announce each case and while I’m speaking, the applicant should come
19 down to the podium. We will then ask everyone who intends to speak on that
20 case to stand and be sworn in. Then the applicant will give their testimony. Then
21 anyone else who wishes to speak will be given the opportunity. After everyone
22 has spoken, the applicant and only the applicant will have an opportunity for
23 rebuttal. After hearing all of the evidence and asking questions, the Board will
24 take the matter under advisement and they will render all of their decisions at the
25 end of the meeting. If you wish to know their decision on a specific case, you can
26 either stay until the end of the meeting or you can check the Planning
27 Department website this afternoon; we update it about half an hour after the
28 meeting ends, or you can call the Planning Department this afternoon. This
29 meeting is being tape recorded, so we’ll ask everyone who speaks to speak
30 directly into the microphone on the podium. State your name and please spell
31 your last name for us. Finally, out in the foyer, there are two binders that contain
32 the staff report for each case, including the conditions that have been
33 recommended by the staff. You will be asked whether you agree to those
34 conditions, so it’s important that you be familiar with them.
35

36 Mr. Nunnally - Mr. Blankinship, is there any withdrawals or deferrals?
37
38 Mr. Blankinship - No sir.
39
40 Mr. Nunnally - All right, sir, thank you. Call the first case please.
41
42 **A-44-2006** **BRENDA Y. CORBETT** requests a variance from
43 Section 24-94 to build a one-family dwelling at 2380 Yarnell Road (Parcel 814-
44 697-7483), zoned A-1, Agricultural District (Varina). The lot width requirement is
45 not met. The applicant has 140 feet lot width, where the Code requires 150 feet
46 lot width. The applicant requests a variance of 10 feet lot width.
47
48 Mr. Nunnally - Is anyone else here interested in this case today? If
49 so, please stand and raise your right hand and be sworn.
50
51 Mr. Blankinship - Raise your right hand, please. Do you swear the
52 testimony you're about to give is the truth and nothing but the truth so help you
53 God?
54
55 Mr. Smith - Yes sir.
56
57 Mr. Nunnally - Please state your name for the record sir, and tell us
58 what you're requesting.
59
60 Mr. Smith - I am Charles Smith from Engineering Design
61 Associates. I'm representing the contract purchaser, Mr. Tim Pitman.
62
63 Mr. Nunnally - What was the name?
64
65 Mr. Pitman - Tim Pitman.
66
67 Mr. Nunnally - All right, sir, go ahead. Tell us what you're
68 requesting, please.
69
70 Mr. Smith - This parcel's 10.75 acres on Yarnell Road. It abuts
71 State Route 895. The property at Yarnell Road is only 140 feet wide and it's an
72 A-1 zone, which requires 150 feet. We're requesting a variance of 10 feet so the
73 lot meets the zoning requirements of that and they can build a house.
74
75 Mr. Nunnally - I think the people that are in opposition to this case
76 [unintelligible]. Quite a few of them were here last month. Let me just ask you a
77 question. Why didn't you have a representative here?
78
79 Mr. Smith - Just confusion about who was supposed to be at the
80 meeting and who wasn't and the ball just got dropped and we're sorry about that.
81

82 Mr. Nunnally - All right. Any questions from the Board?
83
84 Mr. Wright - Where do you propose to access this property?
85
86 Mr. Smith - Originally, we were going to access the property from
87 Yarnell Road, but in the month we've had since the deferral, VDOT has granted
88 the contract purchaser a 50-foot right-of-way from Miller's Crossing Trail, which
89 parallels 895 and comes in from Yarnell Road. The drive will actually be much,
90 much shorter than we showed on the original plan.
91
92 Mr. Wright - So, you would come in off of—Is that Pocahontas
93 Parkway there?
94
95 Mr. Smith - It's 895.
96
97 Mr. Wright - 895.
98
99 Mr. Smith - Yes sir.
100
101 Mr. Wright - You could come in off of that at that—Have we got
102 that? There it is on the map.
103
104 Mr. Smith - There's a service road called Miller's Crossing Trail
105 that parallels 895. We would be coming off of that cul-de-sac now instead of
106 Yarnell Road.
107
108 Mr. Wright - Who owns the property that you will be crossing
109 there?
110
111 Mr. Smith - VDOT. Office of General Services, technically, owns
112 that parcel.
113
114 Mr. Wright - Well, that's VDOT's property then.
115
116 Mr. Smith - Yes.
117
118 Mr. Wright - All the way from the parkway up to your property is
119 owned by VDOT.
120
121 Mr. Smith - I believe so. Let me just check my plat.
122
123 Mr. Blankinship - Paul, would you flip to the aerial, please? The
124 property lines are shown there.
125
126 Mr. Smith - Yes. All that property north of this property is all
127 owned by VDOT or the Office of General Services.

128
129 Ms. Dwyer - You don't have to cross anyone else's property to get
130 to yours other than the VDOT-owned parcel.
131
132 Mr. Smith - No.
133
134 Ms. Dwyer - Okay.
135
136 Mr. Wright - How wide is the access that you would have there?
137
138 Mr. Smith - VDOT has granted them a 50-foot right of way.
139
140 Mr. Pitman - I do have intentions to purchase—
141
142 Mr. Blankinship - We need you to state your name and speak into the
143 microphone.
144
145 Mr. Pitman - Tim Pitman. I do have intentions to buy this piece of
146 property from the State after I purchase this 10.75 acres.
147
148 Ms. Dwyer - What do you plan to do with this acreage?
149
150 Mr. Pitman - I'm just going to put one home, dwelling, that's it. I
151 just wanted to get out of the city and get into some country.
152
153 Mr. Wright - Are you the purchaser?
154
155 Mr. Pitman - Yes sir.
156
157 Mr. Wright - Prospective purchaser? Where would the house be
158 located? That was a big concern of the people that were in opposition. They
159 said there are some drainage problems there.
160
161 Mr. Pitman - I'm going to be right in the middle of the 10 acres.
162
163 Mr. Wright - You see that line that's across on that photo there?
164
165 Mr. Pitman - Yes.
166
167 Mr. Wright - Would the home be to the left of that or to the right of
168 that line?
169
170 Mr. Pitman - To the left.
171
172 Mr. Wright - Left?
173

174 Mr. Pitman - Yes.
175
176 Mr. Wright - In other words, towards the bigger part of the
177 property.
178
179 Mr. Pitman - Correct.
180
181 Ms. Dwyer - What kind of home will you be putting on the
182 property?
183
184 Mr. Pitman - I'll be putting a modular.
185
186 Ms. Dwyer - Modular?
187
188 Mr. Pitman - A pre-manufactured modular. Stick-built home on a
189 brick and block foundation.
190
191 Ms. Dwyer - Stick-built usually doesn't mean modular, does it?
192
193 Mr. Pitman - They say it's all wood-built; it's just on a steel frame
194 being delivered.
195
196 Ms. Dwyer - Built in the factory and shipped.
197
198 Mr. Pitman - Right. It meets all HUD requirements and everything.
199
200 Ms. Dwyer - Have you spoken to Mr. Michael Riley who was here
201 last month and spoke in opposition to this case?
202
203 Mr. Pitman - Yes. I spoke to him a couple weeks ago.
204
205 Ms. Dwyer - Okay.
206
207 Mr. Pitman - His concern was that we would be too close to his
208 property.
209
210 Ms. Dwyer - Did you allay his concerns or?
211
212 Mr. Pitman - Yes. I told him, I said we'll be approximately 300 feet
213 from the end of his property line where I'll be putting the home.
214
215 Ms. Dwyer - There's something in the staff report about you selling
216 part of this property to someone else?
217
218 Mr. Pitman - Yes ma'am. I have intentions to sell three acres of it
219 to Mr. Riley.

220
221 Ms. Dwyer - That's where the little hand is now on the screen?
222
223 Mr. Pitman - Yes.
224
225 Ms. Harris - Mr. Pitman, if you found earthworks on the property,
226 what do you plan to do with those?
227
228 Mr. Pitman - I'm planning on not disturbing as much as I can. It's
229 just to where I'm going to put my home. I'm just going to leave as much
230 earthworks as I can.
231
232 Ms. Dwyer - Have you had an engineer look at the property to see
233 where a good home site would be in terms of drainage and where a drainfield
234 might be located?
235
236 Mr. Pitman - Yes I have. The people that I'm purchasing the home
237 from, they've got an engineer drawing up the septic system for me. It's going to
238 be a drip system, is what they call it. An engineered drip system.
239
240 Ms. Dwyer - The land perks or will—
241
242 Mr. Pitman - It perks for an engineered system.
243
244 Mr. Nunnally - You say you offered to sell three acres of the 10 that
245 you have? You offered to sell it?
246
247 Mr. Pitman - To Mr. Riley.
248
249 Mr. Nunnally - To Mr. Riley.
250
251 Mr. Pitman - Yes.
252
253 Mr. Nunnally - Did he accept your offer?
254
255 Mr. Pitman - At the time, yes he did.
256
257 Mr. Nunnally - You don't have a contract on it.
258
259 Mr. Pitman - No sir. I couldn't get a contract because I don't own
260 the piece of land yet.
261
262 Ms. Harris - Where does he live in proportion, or where's his
263 property in proportion to the property you're trying to sell him?
264
265 Mr. Pitman - To the left of the little hand on the screen.

266
267 Mr. Blankinship - It's the house immediately north of that.
268
269 Ms. Dwyer - How would you describe the drainage problems on
270 this property?
271
272 Mr. Smith - I can show you.
273
274 Ms. Dwyer - That would be fine. He's the engineer.
275
276 Mr. Smith - There's a drainage swell that runs down through the
277 middle of the property, just to the northeast of the old house that's on the
278 property. I don't believe there's any real drainage issues other than that. VDOT
279 has a [unintelligible] that comes across underneath Pocahontas Parkway that
280 drains into that swale. Most of the property, with the exception of that swale, is
281 pretty high and there should be no drainage problems where he's building his
282 house.
283
284 Ms. Dwyer - Where does the water flow from the property?
285
286 Mr. Smith - It actually flows across the property. You can see—
287 Does this mouse work on this?
288
289 Mr. Blankinship - Sometimes it does.
290
291 Mr. Smith - Here we go. Drainage basically comes down through
292 here. You can see this dark area.
293
294 Ms. Dwyer - Right.
295
296 Mr. Smith - That is the continuation of this drainage. We would
297 do nothing to impede that drainage, just continuing naturally where it goes now.
298
299 Ms. Dwyer - Is that an intermittent creek or?
300
301 Mr. Smith - I have no idea. I don't think it's any kind of creek. It
302 looks like it's probably some type of wetlands, but—
303
304 Mr. Wright - That's away from these folks that were objecting.
305 They were up north of that, well north of that.
306
307 Ms. Dwyer - I think there were some who—I can't remember now
308 where they lived. There was somebody who lived maybe on Barnes.
309
310 Mr. Wright - If you move that hand up there to the north, up a little
311 further. Some of them live right there.

312
313 Mr. Blankinship - That's Mr. Riley.
314
315 Mr. Wright - Then the others lived over here off of this Bronzeway
316 Lane. They're at the opposite end of that drainage situation. It appears to me
317 from this photo, this property is heavily wooded.
318
319 Mr. Pittman - Yes.
320
321 Mr. Wright - What would be your plan as far as cutting down trees
322 around the house? How much would you have to clear away?
323
324 Mr. Pittman - I'm just going to clear two acres. Just enough to put
325 my home and the drain field and have a little front and back yard. I'm going to
326 leave the rest of it all wooden and everything. Mr. Dowdy has a concern and I
327 did talk to him. His concern was that he heard that I was going to put a trailer
328 court there. I reassured him that I was only going to put one home and that was
329 it.
330
331 Mr. Wright - What size would that be, the home? You say it's
332 going to be a modular home?
333
334 Mr. Pittman - Yes. It's a 2,200-square-foot home.
335
336 Mr. Nunnally - Any other questions for Mr. Pittman or Mr. Smith?
337
338 Ms. Dwyer - There's nothing in the staff report that is a request by
339 the Department of Recreation and Parks to do any kind of documentation of the
340 earthworks?
341
342 Mr. Blankinship - Yes. It's Condition #4.
343
344 Ms. Dwyer - Okay. Have you read all the conditions, sir, and are
345 you in accord with those?
346
347 Mr. Pittman - No I haven't.
348
349 Ms. Dwyer - Okay. Well, you need to do that.
350
351 Mr. Pittman - The earthworks, I talked to Mr. Gregson at the
352 Historical Preservation and Museum Services. He's researched it and said that
353 those earthworks are not protected. I think I sent Mr. Blankinship a copy of it.
354
355 Mr. Blankinship - Yes, that's in the staff report and in the packet.
356

357 Mr. Pitman - I did understand that one person had a concern about
358 the earthworks, that they said it was protected. I did some research and found
359 out, and talked to the supervisor. He said that it was not protected.
360
361 Ms. Dwyer - Okay. It may not be protected, but what the condition
362 says is that you'll permit the Department of Recreation and Parks to map and
363 photograph the earthworks. So, you'll allow them to come on the property—
364
365 Mr. Pitman - Yes ma'am, I will.
366
367 Ms. Dwyer - —and record them, even though you're not obligated
368 to not disturb them.
369
370 Mr. Pitman - Right. The earthworks, basically, I talked to the
371 adjacent owners. They said it's just a mosquito haven. They said water stays in
372 it year-round and says the mosquitoes out there are real bad because of it. I
373 have no problems with them coming and photographing and mapping it out.
374
375 Ms. Dwyer - Okay.
376
377 Mr. Smith - I can show you basically where the line of earthworks
378 is on this.
379
380 Ms. Dwyer - Okay.
381
382 Mr. Smith - This section right here, this house actually disturbed
383 part of them when they built this house and they keep coming down. There's an
384 old gun emplacement right there on the property. You can see where the
385 earthworks bulge out. The earthworks keep coming down like this down in this
386 area. This is the line of earthworks right here. As I said, there's a gun
387 emplacement where the earthworks bulge out. Then the earthworks keep
388 coming across like this. You can still see them coming across that tree line right
389 there.
390
391 Ms. Dwyer - I'm guessing, looking at the placement of your house
392 and the driveway location, that these are going to be quite disturbed through the
393 building process.
394
395 Mr. Smith - With the driveway, we should be able to come
396 through here and skirt the earthworks. The house, from the topography, should
397 be located somewhere in this area right here. If there's any disturbance of the
398 earthworks at all, it should be minimal.
399
400 Mr. Pittman - The driveway will not be near the earthworks.
401

402 Mr. Nunnally - Any other questions? Do we have anybody here
403 today that was here last month in opposition? All right, sir. You all have a seat
404 and we'll call you back when they're through.

405
406 Mr. Riley - Good morning. My name's Mike Riley. It appears
407 that some of my concerns have been addressed. One of my wife's and my
408 biggest concerns was a drainage problem that we already have since the
409 highway was put in and the County hasn't really offered any relief for that. So,
410 loading up with another septic system and well and all that made myself and
411 some of the other adjoining property owners a little concerned. Half the time, my
412 back yard's a swimming pool, so that was one of our biggest concerns, another
413 load on the drainage and things like that. If he's going to have an engineered
414 system that's going to kind of offset that, then I guess I wouldn't necessarily have
415 any problems. The other problem I had was the proximity of his dwelling to ours.
416 We kind of bought in the area because we wanted some privacy and didn't
417 necessarily want a bunch of other houses sitting on top of us. I don't know. I've
418 been told by a few people that a modular was really just a trailer. I'm not a
419 realtor or any of that, but I was in the process of refinancing my home and they
420 said I should probably do it before they built anything because a modular or
421 trailer possibly would interfere with my appraisal and things like that. If it's going
422 to be a stick-built home and there's going to be some decent, I guess,
423 construction that's going to alleviate or prevent some of the extra drainage issues
424 that I have, and the proximity where he's stating that the house is going to be,
425 then I don't necessarily have any major complaints with it. I'm just hoping there's
426 not going to be a lot of traffic down the road. There was another driveway into
427 the top of the property, well, I guess at the southwestern part of the property, but
428 I guess he wants to use the northeastern area. I don't have any control over that.
429 That was basically my concerns.

430
431 Ms. Dwyer - You're purchasing a portion of this property?

432
433 Mr. Riley - We had talked about it, but it's kind of still up in the
434 air. I hadn't thought about it much any more. It's a little out of my price range at
435 the moment. I'll have to see how that goes.

436
437 Ms. Dwyer - One of the conditions to this case states, "At the time
438 of building permit application, the applicant shall demonstrate that the property
439 has been divided as shown on the exhibit submitted and the eastern half of the
440 property has been conveyed to an adjoining property owner."

441
442 Mr. Blankinship - Better change that to "offer for sale."

443
444 Mr. Nunnally - All right.

445
446 Ms. Harris - Mr. Riley, what's the square footage of your house
447 and maybe the houses of the neighborhood?

448
449 Mr. Riley - I know mine is a little over 3,000.
450
451 Ms. Harris - Okay. Are you no longer in opposition to this?
452
453 Mr. Riley- I'm neutral at this particular point.
454
455 Ms. Dwyer - You said something to the effect that you thought Mr.
456 Pitman was going to do something to alleviate drainage problems. I didn't hear
457 him say that.
458
459 Mr. Riley - He said he was going to put in some engineered
460 system, so I guess from my layman's terms, I guess that's better than what I
461 have, I'm presuming.
462
463 Ms. Dwyer - For the septic.
464
465 Mr. Riley - Yes.
466
467 Ms. Dwyer - Right, but he's not going to do anything to change the
468 existing drainage issues.
469
470 Mr. Riley - Right. I'm presuming that what he's going to build
471 won't be as harmful as a well and just drainfield. I'm taking that means it will
472 probably be better than what I have.
473
474 Mr. Nunnally - Any more questions for Mr. Riley? Anyone else want
475 to speak in opposition? Would you like to have a short rebuttal, sir? Would you
476 like a short rebuttal? Okay. Hear none, that completes the case. We'll let you
477 know later on today. Thank you for coming. A-44-2006, Brenda Y. Corbett.
478
479 **DECISION**
480
481 Ms. Dwyer - Before we get started, we were thinking about
482 amending Condition 6.
483
484 Mr. Blankinship - Yes. I put in there that it would be conveyed before
485 building permit. The neighbor sounded like he wasn't too excited about buying it,
486 so I think it should be changed to "offered for sale."
487
488 Mr. Wright - Is he proposing to sell off that piece?
489
490 Mr. Blankinship - He's proposing to sell it to the other gentleman who
491 spoke, but the other gentleman said he wasn't certain he was going to buy it.
492
493 Mr. Wright - What's that got to do with this case, our approving it?

494
495 Ms. Harris - The Condition #6.
496
497 Ms. Dwyer - I think it was just something that he had agreed to do
498 and so we were obligating him to do it.
499
500 Mr. Blankinship - Right, exactly.
501
502 Mr. Wright - Yeah, but if the other fellow doesn't want to buy it, we
503 can't make him buy it.
504
505 Mr. Blankinship - Right. So, we should either say, "offer for sale," or just
506 strike the condition altogether.
507
508 Mr. Wright - If you say, "has been conveyed to the adjoining
509 property owner," and the adjoining property owner doesn't want to buy it, what
510 are you going to do?
511
512 Mr. Blankinship - Right. I think we need to change that. It should either
513 say, "offered for sale" or I'll strike the condition, whichever you prefer.
514
515 Mr. Wright - If that's a big deal.
516
517 Mr. Nunnally - The guy said he couldn't afford it. He didn't want to
518 pay that kind of money for it.
519
520 Mr. Blankinship - Exactly. As Ms. Dwyer said, he had stated that he
521 was going to do that. It made his case sound better, so I wanted to bind him to it.
522 I didn't want him to be able to come in and make representations like that and
523 then not carry it through.
524
525 Mr. Wright - You can say, just like you stated, that he has to offer
526 to sell it. How about the price and all that business?
527
528 Mr. Blankinship - That's true. He could offer to sell it for a million
529 dollars, couldn't he?
530
531 Mr. Wright - Suppose the other guy says; I'll give you a dollar for
532 it?
533
534 Mr. Blankinship - If it's not important to the Board, we could just strike
535 the condition. It's like anything else; it's easier for staff to put it in there and for
536 you to take it out, than to dream it up while we're sitting here.
537
538 Ms. Dwyer - I would suggest that we just eliminate it so we'll not
539 get involved in all that.

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Mr. Wright - If he wanted to build something back there again, he'd have to come back to the Board and we could deny it.

Ms. Dwyer - The key is that we're only approving one dwelling on the whole parcel.

Mr. Blankinship - Last month, the neighbors were here in opposition and this month they really weren't. They had worked things out. They're no longer really in an adversarial situation. I don't think it would do any harm to drop the condition at this point.

Mr. Kirkland - I make a motion we approve it and we drop the Condition #6.

Ms. Harris - Second the motion.

Mr. Nunnally - Motion by Mr. Kirkland, seconded by Ms. Harris that it be approved, dropping that motion. All in favor say aye. Opposed? Been approved.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms. Harris, the Board **granted** application **A-44-2006** for a variance from Section 24-94 to build a one-family dwelling at 2380 Yarnell Road (Parcel 814-697-7483). The Board granted the variance subject to the following conditions:

1. Only one dwelling, as shown on the plan filed with the application, may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions may require a new variance.
2. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
3. At the time of building permit application, the applicant shall submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.
4. The property owner shall permit the Department of Recreation and Parks to map and photograph any earthworks that may exist on the property.

584 5. The driveway to the proposed dwelling shall enter the property from the cul-de-
585 sac at the end of Millers Crossing Trail, as shown on the exhibit submitted on
586 December 6, 2006.

587

588

589 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

590 Negative: 0

591 Absent: 0

592

593

594 The Board granted this request, as it found from the evidence presented that,
595 due to the unique circumstances of the subject property, strict application of the
596 County Code would interfere with all reasonable beneficial use of the property,
597 and authorizing this variance will neither cause a substantial detriment to
598 adjacent property nor materially impair the purpose of the zoning regulations.

599

600 Mr. Nunnally - Next case.

601

602 **UP-46-2006 MR. AND MRS. STEPHEN RICE** request a
603 conditional use permit pursuant to Section 24-95(i)(4) to build a swimming pool at
604 4280 Creighton Road (Charles A Smith) (Parcel 815-733-2288), zoned A-1,
605 Agricultural District (Fairfield).

606

607 Mr. Rice - Good morning, my name's Steven Rice. R-I-C-E.

608

609 Mr. Nunnally - Excuse me, sir. Is anyone else here interested in this
610 case? If so, please stand and raise your right hand and be sworn. All right.

611

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

615

616 Mr. Nunnally - Please state your name again, sir, and tell us what
617 you're requesting.

618

619 Mr. Rice - Steven Rice. R-I-C-E. We're trying to build an in-
620 ground pool on our property and we need a special permit because it's semi in
621 the front yard and the side of the house, as opposed to the back.

622

623 Ms. Harris - Mr. Rice, what are your neighbors' reactions to your
624 doing this?

625

626 Mr. Rice - Actually, we don't have any neighbors at the moment.
627 They're in the process of building this Hillcrest Farms. We did talk to one Oriental
628 couple that's moving in. I suggested they build a privacy fence in the back of
629 their property and they said they didn't care, so.

630
631 Ms. Harris - I think the report said that there were two houses that
632 this pool would be visible from.
633
634 Mr. Rice - Actually, one of them is not sold at the moment, I
635 believe.
636
637 Ms. Harris - I didn't hear that.
638
639 Mr. Rice - It's built but it's not sold.
640
641 Ms. Harris - You're saying that the homes that are visible have no
642 occupants at this time?
643
644 Mr. Rice - No ma'am.
645
646 Ms. Harris - Okay. Is this house near a flood plain?
647
648 Mr. Rice - Down in the bottom, the Chickahominy River is about
649 a mile away.
650
651 Ms. Harris - I was by there during the week, and I noticed that
652 there were some deep ravines around.
653
654 Mr. Rice - Behind the house there is one and in front of the
655 house.
656
657 Ms. Harris - Did that influence your decision to build your
658 swimming pool on the side/front?
659
660 Mr. Rice - Actually, because there are so many trees in the
661 back, they're full of leaves all the time and gumballs. Plus our septic system's
662 back there and our property is not real wide in the back of the house.
663
664 Ms. Dwyer - Could we go back to the other picture, Mr. Gidley?
665
666 Mr. Gidley - Which one?
667
668 Ms. Dwyer - The one before this one, the photo of the front of the
669 house where the porch is. Could you describe to us exactly where the pool is
670 going to go since I don't think we have a plat that shows the location?
671
672 Mr. Rice - All right. The pool will be in this area right here,
673 starting here and running down towards this tree right here at an angle. We have
674 40 feet from the corner of the house to where the mouse is, somewhere in there.
675

676 Ms. Dwyer - So, the entire pool will be forward of your front, the
677 front of your house? The entire pool will be in front of your house?
678

679 Mr. Rice - No. It will be at an angle right to that corner of the
680 house. It will be like cattycorner to the house.
681

682 Ms. Dwyer - Do you have any plans that you can show us about
683 what the pool will look like or—
684

685 Mr. Rice - No. We were planning on a 16 by 32, at the largest.
686

687 Ms. Dwyer - It will be a cement pool or?
688

689 Mr. Rice - In-ground cement.
690

691 Ms. Dwyer - This is the legal front yard.
692

693 Mr. Blankinship - It could go either way. The house is angled to one of
694 the corners and since the lot doesn't front on a public street, you could call either
695 the southwest or southeast.
696

697 Mr. Wright - It's perfectly square, isn't it?
698

699 Mr. Rice - It sits on a diamond-shaped lot more or less. The
700 house sits kind of to the left-hand side of the lot.
701

702 Mr. Wright - Looking at the plat, it's 209 feet on every side, isn't it?
703

704 Ms. Dwyer - The lot is square, but the house is at an angle inside
705 the square.
706

707 Mr. Wright - Where is the front?
708

709 Mr. Blankinship - You could argue the southwest or the southeast side,
710 since the access sort of comes in almost on the corner. If I had to choose, I'd go
711 with the southwest where the access actually enters. It looks like when it was
712 developed, it was the southeast because you've got a 40.3-foot setback there.
713 That would not meet the front yard setback, but it would meet the side yard
714 setback. It appears that when the house was built, it was interpreted that that
715 southwest side was the side yard and the southeast was the front yard.
716

717 Ms. Dwyer - What kind of fencing will you have around the pool?
718

719 Mr. Rice - According to your ordinances here, I was thinking of a
720 six-foot privacy fence on two sides and then like a picket fence on the side

721 towards the house. It says here you can only have a three-foot, six-inch fence in
722 your front yard.

723

724 Ms. Dwyer - Isn't there an ordinance—

725

726 Mr. Rice - It's gotta be a four-foot for around the pool, at least
727 four foot.

728

729 Mr. Blankinship - There's an unfortunate conflict between the Building
730 Code and the Zoning Ordinance here. It's one of the issues you're going to face
731 any time you put a pool in the front yard. The zoning ordinance only allows a
732 three-foot, six-inch fence in the front yard, but the Building Code requires a taller
733 fence than that around the pool. The way we can resolve that is if the fence
734 around the pool complies with the setbacks for a structure, then it can be taller
735 than three feet, six inches. The three feet, six inches thing assumes that the
736 fence is on the property line or near the property line. That's why you have that.

737

738 Mr. Nunnally - Here it could be taller.

739

740 Mr. Blankinship - As long as it complies with the building setback, which
741 would be 20 feet from that side lot line.

742

743 Ms. Harris - Does that need to be a condition?

744

745 Mr. Blankinship - It's going to be enforced whether it's in here or not.

746

747 Mr. Wright - So, he would have to put the pool at least 20 feet from
748 that side line.

749

750 Mr. Blankinship - Right, in order to have the fence there that complies
751 with the Building Code and the Zoning Ordinance.

752

753 Mr. Rice - So, what you're saying, it has to be 20 feet from my
754 property line towards the house?

755

756 Mr. Blankinship - Right.

757

758 Mr. Rice - It's gotta be 10 feet from the house.

759

760 Mr. Blankinship - Right.

761

762 Mr. Rice - So, that's 30 feet and only a 10-foot wide pool.

763

764 Mr. Blankinship - The house comes to a corner there, so you can move
765 it forward or back to comply.

766

767 Mr. Nunnally - Any other questions for Mr. Rice?
768
769 Ms. Dwyer - As we're looking at the aerial, the drainfield is in a
770 cleared area behind the house?
771
772 Mr. Rice - You mean for the septic system?
773
774 Ms. Dwyer - Yes.
775
776 Mr. Rice - Yes. I guess it would be the opposite corner of where
777 we're putting the pool.
778
779 Ms. Dwyer - You have enough space for the pool in the back, you
780 just have to clear—
781
782 Mr. Rice - Actually, there's a couple of trees there. Yes. Well,
783 the way that property line is, and plus we built a porch on the back, and it comes
784 across there at an angle anyway, so. Ten foot from there and ten foot from the
785 house, we'd be in kind of like the same predicament without clearing a lot of
786 trees, which I really didn't want to destroy the trees. Prospect Homes has done
787 enough of that. I didn't know there were so many conditions when applied for
788 this thing. It looks like now we probably couldn't even do it unless it was in the
789 backyard because you've got to have too much cement around the pool. My
790 pool is down to a lap pool, five feet wide, so I don't think it's gonna work out
791 anyway.
792
793 Mr. Nunnally - All right. Any other questions? Is anyone here in
794 opposition to this request? Hear none, that completes the case. Thank you for
795 coming. UP-46-2006, Mr. and Mrs. Stephen Rice.
796
797 **DECISION**
798
799 Ms. Harris - I move that this be denied. When we considered
800 what the swimming pool requirements were and the County's requirements, we
801 find the best place for the pool is in the backyard.
802
803 Ms. Dwyer - Second.
804
805 Mr. Nunnally - Motion by Ms. Harris it be denied. Second by Ms.
806 Dwyer. All in favor say aye. Been denied.
807
808 After an advertised public hearing and on a motion by Ms. Harris, seconded by
809 Ms. Dwyer, the Board **denied** application **UP-46-2006** request for a conditional
810 use permit pursuant to Section 24-95(i)(4) to build a swimming pool at 4280
811 Creighton Road (Charles A Smith) (Parcel 815-733-2288).
812

813
814 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
815 Negative: 0
816 Absent: 0

817
818

819 Mr. Nunnally - Next case.

820

821 **A-49-2006** **L. WENDELL ALLEN** requests a variance from
822 Section 24-95(b)(8) to build a one-family dwelling at 978 Scott Road (Garden
823 City) (Parcel 785-758-4511), zoned A-1, Agricultural District (Fairfield). The lot
824 width requirement and total lot area requirement are not met. The applicant has
825 28,900 sq. ft. total lot area and 100 ft. lot width, where the Code requires 30,000
826 sq. ft. total lot area and 150 ft. lot width. The applicant requests a variance of
827 1,100 sq. ft. total lot area and 50 ft. lot width.

828

829 Mr. Nunnally - Is anyone else here interested in this case? If so,
830 please stand and raise your right hand to be sworn.

831

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

835

836 Mr. Allen - I do.

837

838 Mr. Nunnally - Please state your name for the record sir, and tell us
839 what you're requesting.

840

841 Mr. Allen - Good morning. My name is Leroy Wendell Allen, Jr.,
842 and I am requesting a variance whereas the property has a hundred feet road
843 frontage and I think the County requires 150 feet, as well as the property total
844 square footage is 28,900 and there's a 30,000 square foot ordinance in place
845 currently. As the Board can see, Garden City is a residential area whereas the
846 plat was developed around 1920 and it was developed for a residential
847 community. What I'm proposing to do is, basically, build a single-family dwelling
848 there for myself. I looked at the suggested conditions. I've spoken with my
849 contractor. My contractor assured me that there's no problem to meet the
850 suggested conditions that the Board has proposed.

851

852 Ms. Harris - Have you spoken with your neighbors, your
853 prospective neighbors?

854

855 Mr. Allen - No, I have not. I know my realtor, when I was first
856 looking at the property, did speak with the neighbor. She's here with me. I've
857 not told them that. I haven't gone to knock on the door to speak with them about
858 it. I did not foresee any objection, being that this is a residential community. It's

859 a neighborhood. It isn't set up as a rural area; it's set up as a neighborhood. The
860 lots are clearly cut. If you would look at the aerial view, what the County has is
861 clearly set up as residential. All those lots are each 100 foot except for the
862 neighbor in 1000 Scott Road. A portion of that has been cut off for a proposed
863 road in the original plat where there was a 30-foot easement between each of the
864 properties for the County, as well as the cutoff right there into his property. So, I
865 think his property is about around 90 or 80 foot road frontage. Other than that,
866 the strict design of the entire Garden City neighborhood is a residential
867 community of homes. It's just this particular area was not fully developed. I
868 purchased a lot. I plan on building a home for myself. I just did not foresee
869 anyone having any objections to me building a home in this community.

870

871 Mr. Wright - Did the house on 1000 get a variance? That lot looks
872 like a little smaller than this lot.

873

874 Mr. Blankinship - Yeah, with the corner cut off. I would think it must
875 have, Mr. Wright, but I'm sorry, I don't know that.

876

877 Mr. Wright - What is that on 970? Is that a house?

878

879 Mr. Allen - That is a house.

880

881 Ms. Dwyer - Do we know anything about the status of the right-of-
882 way? Is that essentially abandoned by the County or is it something that may
883 eventually be built?

884

885 Mr. Allen - When I spoke with the County representative over—I
886 think I spoke with someone over in Economic Development. They said that they
887 knew of no intended purpose for the road at this point in time.

888

889 Mr. Blankinship - I don't believe it's been abandoned. The adjoining
890 property owners would have to apply for abandonment.

891

892 Mr. Kirkland - So, if it was vacated. Is that what you're trying to
893 state. It still wouldn't help him with this problem, would it?

894

895 Mr. Blankinship - It would help. It wouldn't get him all the way there.

896

897 Mr. Wright - He'd still need a variance.

898

899 Ms. Dwyer - This lot was created in the 1920's, is that right?

900

901 Mr. Allen - Yes. The plat was designed in 1920, yes, before the
902 1960 ordinance came about.

903

904 Ms. Harris - This is really a paper street, right?

905
906 Mr. Blankinship - Yes ma'am.
907
908 Mr. Allen - Yes ma'am. I've spoken with my builder, and as I
909 stated, the 20 foot setback on each side of the property line is not a problem. I
910 plan on putting it pretty much in the middle. I think the width of the property will
911 be somewhere between 36 and 32 feet wide, which puts me well within the
912 setback that is suggested.
913
914 Ms. Dwyer - What would be your planned setback from Scott
915 Road? I noticed the house at 970 is fairly close to the road and the house at
916 1000 is set back more. We don't have continuity along the street. Had you given
917 any thought to that?
918
919 Mr. Allen - Not a whole lot, but some. It would probably be
920 similar to around what 1000 is set back.
921
922 Ms. Harris - The home at 970 is an older home?
923
924 Mr. Allen - Yes ma'am, it is.
925
926 Ms. Dwyer - I would hate to see you set it back any further from
927 the road than the house at 1000.
928
929 Mr. Allen - I don't plan on setting it back too far. I want a nice
930 size backyard and that would allow me to have a decent size backyard.
931
932 Mr. Nunnally - Any other questions for Mr. Allen? Anyone here in
933 opposition to this request?
934
935 Mr. Allen - Thank you.
936
937 Mr. Nunnally - Have a seat, Mr. Allen. We'll call you back.
938
939 Ms. Beering - My name is Michele Beering and this is my husband,
940 Mark. We aren't opposed to the individual building there. We were just worried
941 that—I didn't want to open my door and have to kiss my neighbor. We wanted to
942 make sure his property weren't this big humungous house. It takes away from
943 our value when we go to sell. That was our main concern. If he's going to do
944 what he says, then, he's clarified that it wouldn't be like that. I wanted to know
945 what size home he was going to build there because all around us is really big
946 houses being built now. That was one of the concerns and we had a concern.
947
948 Mr. Beering - My name is Mark Beering. My concern was, I guess,
949 in the front. It's like a swamp-type area there that stays wet all the time. What
950 actually can be done about that? Also, I guess, by the County owning the

951 property, his property is going to have at least what, 15 feet from the property line
952 where the County owns?
953
954 Ms. Beering - From each side. When we build, we'd have 15 on
955 each side of the house?
956
957 Ms. Dwyer - He's going to have 20.
958
959 Ms. Beering - He's going to have 20 on each side?
960
961 Ms. Dwyer - From his property line. Actually, there's a street area
962 between your house and his property line.
963
964 Ms. Beering - Do you know how wide the street area between his
965 property line and ours would be?
966
967 Mr. Blankinship - Just a moment and I'll see if this map will tell me.
968
969 Mr. Wright - When was your house built?
970
971 Ms. Beering - 2001, I think.
972
973 Mr. Wright - Did you have to get a variance?
974
975 Ms. Beering - Yes. Gooden Construction Company.
976
977 Mr. Wright - So, you're asking for the same thing he's asking for
978 today.
979
980 Ms. Beering - Yes. No. Yeah, we asked for the same thing, but we
981 wanted to make sure the rules hadn't changed all of a sudden. He can build and
982 not have that 15 on each side all of a sudden, he can just do whatever. That's
983 all. We just wanted to make sure the rules hadn't changed.
984
985 Mr. Wright - He's got the same requirements that you had to build.
986
987 Ms. Beering - Yes, we hope so.
988
989 Mr. Wright - In so far as the side lot line and so forth.
990
991 Ms. Beering - Okay.
992
993 Ms. Dwyer - The condition imposes a greater restriction on the
994 applicant. It requires a 20-foot setback from the side lines. Could you spell your
995 last name, please?
996

997 Ms. Beering - B-E-E-R-I-N-G.
998
999 Mr. Blankinship - I show the road right-of-way is 40 feet wide. I can't be
1000 sure that's accurate.
1001
1002 Ms. Beering - We don't oppose it, we just want to make sure—
1003
1004 Mr. Beering - That they're going to have enough if the road is—
1005
1006 Ms. Dwyer - Making sure your interests are protected.
1007
1008 Ms. Beering - Yes.
1009
1010 Ms. Harris - Do you have a swamp problem?
1011
1012 Mr. Beering - In the front, it's—
1013
1014 Ms. Harris - You do?
1015
1016 Ms. Beering - Yes ma'am. That side of the road is always flooded.
1017 Whenever it rains, it floods on that side.
1018
1019 Ms. Beering - Even if it's a light rain, you can see it's wet.
1020
1021 Ms. Harris - That's on your side?
1022
1023 Ms. Beering - His side.
1024
1025 Mr. Nunnally - All right. Any other questions?
1026
1027 Mr. Beering - It's right along in here and over towards the right a
1028 little bit.
1029
1030 Ms. Dwyer - How about further back?
1031
1032 Mr. Beering - Further back, right in there it stays wet a little bit. I
1033 don't know if they checked to see if it perked or what. That's the only concerns I
1034 have.
1035
1036 Mr. Nunnally - Thank you very much. Mr. Allen, will you come back
1037 up, please? I think you know what size you're going to build. Can you give us
1038 the square footage?
1039
1040 Mr. Allen - Right now I plan on building—I spoke with my
1041 contractor. He has the home. The home is going to be 1800 square feet. I
1042 haven't decided on a one- or two-car garage.

1043
1044 Mr. Nunnally - That a two-story or a one-story?
1045
1046 Mr. Allen - Two stories. That's why I say 36 to 42 feet wide
1047 because I hadn't decided on the one-car garage or the two-car garage. It isn't
1048 going to be any larger than 1800 square feet. I do believe from the plat, the large
1049 plat shows that the County's easement is a 30 foot easement in between the
1050 properties. I think at that time, the road only had to be 30 feet wide.
1051
1052 Mr. Blankinship - You think it's 30 rather than 40. You may be right.
1053 This map is not accurate to the foot.
1054
1055 Mr. Wright - Mr. Blankinship, what's the minimum size required for
1056 this zoning?
1057
1058 Mr. Blankinship - It's 900.
1059
1060 Mr. Wright - So, you'd be building twice the size that the ordinance
1061 permits.
1062
1063 Mr. Allen - Yes sir.
1064
1065 Mr. Blankinship - According to your records, the houses on either side
1066 are about 1,300 and 1,500. Fairly consistent with the neighborhood.
1067
1068 Ms. Dwyer - Have you looked into the drainage issues on the
1069 property?
1070
1071 Mr. Allen - No, I have not looked into it. I've spoken with an
1072 engineer that's going to be doing a perk test for me and I'll have him look and tell
1073 me what would be the best proposed plan. It sounds like from what the
1074 gentleman was stating, that particular location, that's part of the County's
1075 easement and so I don't know how much I would be able to do. I'm assuming
1076 that it's coming from the roadway, the runoff from the roadway is causing the
1077 problems because behind all of that is a wooded area. I'm assuming it's coming
1078 from the roadway and it's in the County property. I doubt I'd be able to address
1079 that. That would be up to the County.
1080
1081 Ms. Dwyer - You might also want to consider that as an issue
1082 when you decide how you're gonna build your house.
1083
1084 Mr. Allen - I will.
1085
1086 Ms. Dwyer - Varina has a lot of flat land that holds water.
1087
1088 Ms. Harris - Have you already purchased the land?

1089
1090 Mr. Allen - Yes, I already own the land.
1091
1092 Mr. Nunnally - All right, sir. Thank you so much from coming down.
1093
1094 Mr. Allen - Thank you very much.
1095
1096 Mr. Nunnally - A-49-2006, L. Wendell Allen.
1097
1098 **DECISION**
1099
1100 Ms. Harris - I move that we approve the variance because without
1101 the variance, there's no reasonable beneficial use of this property, which was
1102 deeded back in the 20's. The other lots in the neighborhood are of similar size.
1103
1104 Mr. Nunnally - Motion by Ms. Harris. Do I have a second?
1105
1106 Mr. Kirkland - I'll second that.
1107
1108 Mr. Nunnally - Second by Mr. Kirkland. All in favor—Oh, excuse me.
1109 Discussion?
1110
1111 Ms. Dwyer - My only concern, and as I looked at the site plan, one
1112 of the houses is very close to the property on one side of this lot, one is quite a
1113 distance from Scott Street. I'm going to—What do you all think about putting a
1114 condition that requires the house on this property to be no closer to Scott Street
1115 than the house at 1000 Scott Street, to have some continuity along the street so
1116 at least new construction is in alignment.
1117
1118 Mr. Kirkland - I have no problem with that as long as it doesn't
1119 interfere with his septic system. He might have to move his house further
1120 forward a little bit to get enough land in the back for it to perk.
1121
1122 Ms. Dwyer - If it's too far forward, then the next one over is going
1123 to be looking into the—
1124
1125 Mr. Kirkland - Yeah. I would like them to in line, too, as long as it
1126 doesn't affect his septic. If it's wet, it's going to be a rather large thing unless he
1127 uses an alternative septic system.
1128
1129 Mr. Wright - I thought he said he was going to try to line it up with
1130 that.
1131
1132 Ms. Harris - He did. He also has an engineer looking into the
1133 [unintelligible].
1134

1135 Mr. Kirkland - Seems to me Scott Road seems to be very wide
1136 through there so most of his front yard looks like the area through there, the
1137 easement, looks like it's the County's. That seems like a very wide stretch
1138 through there, more than 50 feet. Yes ma'am, I'm in agreement in keeping in
1139 line as long as it doesn't affect his septic. I don't know how we can word that.
1140

1141 Ms. Dwyer - Can you think of a way to word it that would take care
1142 of that?
1143

1144 Mr. Blankinship - I guess what I'm not sure about is the house at 970.
1145

1146 Ms. Harris - That's an older home. The neighborhood is like that.
1147

1148 Mr. Kirkland - I think that was the home place.
1149

1150 Ms. Harris - Yes.
1151

1152 Mr. Blankinship - If we're pushing this house back, then we're pushing it
1153 into 970's backyard. If we push it forward, then 1000 is in his backyard.
1154

1155 Ms. Harris - I think he has experts working on it when it comes to
1156 the construction and wet problems they have. I think they're going to have to go
1157 by what the experts say is going to be the best.
1158

1159 Mr. Kirkland - One thing, there is a buffered zone, Mr. Blankinship,
1160 from the old house to the property line of 970. All those trees are there so if he
1161 did push it back even with the one, it would be kind of buffered a little bit by trees,
1162 I think. Don't you think? At least by this aerial that's what it's showing. The
1163 distance seems to be greater from the 970 house to the new house than it is from
1164 the 1000 to the new house.
1165

1166 Ms. Dwyer - I don't feel that strongly about it, it's just a concern I
1167 have about developing some consistency in the streetscape along here, as we
1168 have an older subdivision with smaller lots. If you don't think it's workable, Mr.
1169 Blankinship, I don't mind withdrawing that. We're dealing with some substandard
1170 lots.
1171

1172 Mr. Kirkland - 1004 and 1008 will probably be in here shortly, if this
1173 keeps going. 1004 and 1008. There are no existing dwellings on those, are
1174 there?
1175

1176 Mr. Blankinship - No.
1177

1178 Mr. Kirkland - You need to start lining them up somewhere.
1179

1180 Mr. Blankinship - Yes.

1181
1182 Ms. Dwyer - We can line them up from now forward.
1183
1184 Mr. Wright - You could say if you really wanted to, that the house
1185 would be located so that it would at least be in line with 1000.
1186
1187 Ms. Harris - This was not her concern. The concern of those
1188 homeowners was the buffer area and they seemed satisfied.
1189
1190 Ms. Dwyer - This is not something that they mentioned. I think if
1191 they're looking in somebody's backyard—if that was somebody else's house,
1192 they wouldn't be happy.
1193
1194 Mr. Wright - They're required to put it back 50 feet, aren't they?
1195
1196 Ms. Harris - Yes.
1197
1198 Ms. Dwyer - How far back is 1000?
1199
1200 Mr. Blankinship - About a 100. Roughly 100 feet.
1201
1202 Mr. Wright - You put it back 50 feet, you could draw a line from
1203 1000 to 970 and it would probably be right straight.
1204
1205 Mr. Blankinship - You'd probably cross it at some point.
1206
1207 Ms. Harris - Might be more than that because of the wet problem
1208 he has. I think it's [unintelligible] for us to sit here and determine just how many
1209 feet, other than going by the guidelines that the County set.
1210
1211 Mr. Nunnally - Okay, what are we going to do? Are we going by Ms.
1212 Harris' motion or are we going to say its got to be lined up with the other house?
1213
1214 Ms. Harris - I think the County's taken care of that when it said 50
1215 feet, don't you think? If his engineer finds that he can't do that because of the
1216 problem that site has, that site imposes, then they're going to have to move it
1217 back probably even further. He bought the lot, so I hope he knows what he's—
1218
1219 Mr. Wright - You could say that it will not be more than 100 feet
1220 back. That makes it even with 1000. That gives him between 50 feet to work it.
1221
1222 Mr. Kirkland - That's good. No more than 100, no less than 50.
1223
1224 Mr. Wright - It's got to be 50 feet.
1225
1226 Mr. Kirkland - Right.

1227
1228 Mr. Wright - You could say shall be no more than 100 feet from
1229 Scott Street.
1230
1231 Ms. Dwyer - That boxes it in a little bit.
1232
1233 Mr. Kirkland - Yes.
1234
1235 Mr. Nunnally - You got that, sir? Ben?
1236
1237 Mr. Blankinship - Yes sir.
1238
1239 Mr. Nunnally - Okay. All in favor say aye. Opposed? Been
1240 approved.

1241
1242 After an advertised public hearing and on a motion by Mr. Harris, seconded by
1243 Mr. Kirkland, the Board **granted** application **A-49-2006** for a variance from
1244 Section 24-95(b)(8) to build a one-family dwelling at 978 Scott Road (Garden
1245 City) (Parcel 785-758-4511). The Board granted the variance subject to the
1246 following conditions:

- 1247
1248 1. This variance applies only to the lot width and lot area requirements for one
1249 dwelling only. All other applicable regulations of the County Code shall remain in
1250 force.
1251
1252 2. Approval of this request does not imply that a building permit will be issued.
1253 Building permit approval is contingent on Health Department requirements,
1254 including, but not limited to, soil evaluation for a septic drainfield and reserve
1255 area, and approval of a well location.
1256
1257 3. At the time of building permit application, the applicant shall submit the
1258 necessary information to the Department of Public Works to ensure compliance
1259 with the requirements of the Chesapeake Bay Preservation Act and the code
1260 requirements for water quality standards.
1261
1262 4. The proposed dwelling shall be set back a minimum of 20 feet from each side
1263 property line.
1264
1265 5. The proposed dwelling shall be built on a crawl space with an exterior brick
1266 foundation.
1267
1268 6. [ADDED] The proposed dwelling shall be set back no more than 100 feet from
1269 the right-of-way of Scott Road.
1270
1271
1272

1273 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
 1274 Negative: 0
 1275 Absent: 0

1276
 1277

1278 Mr. Nunnally - Next case, Mr. Blankinship,

1279

1280 **UP-47-2006 VULCAN CONSTRUCTION MATERIALS, LP**

1281 requests a conditional use permit pursuant to Sections 24-103 and 24-52(d) to
 1282 extract materials from the earth at 4705 Curles Neck Road (Parcels 833-678-
 1283 0193, 833-680-7719 and 836-667-5251), zoned A-1, Agricultural District (Varina).

1284

1285 Mr. Nunnally - Anyone else here interested in this case? If so, will
 1286 you please stand and raise your right hand?

1287

1288 Mr. Blankinship - Raise your right hand, please. Do you swear the
 1289 testimony you're about to give is the truth and nothing but the truth so help you
 1290 God?

1291

1292 Mr. Nunnally - Please state your name for the record, sir, and tell us
 1293 what you're requesting.

1294

1295 Mr. Lewis - My name is Monty Lewis. I'm with Lewis and
 1296 Associates, civil engineers on this project for several years now. With me is Tom
 1297 Brazzle with Vulcan. What we're asking for is to continue the mining that right
 1298 now is—I you look on your map, the areas in green are what you approved in '05,
 1299 this area. We put the bridge in across here to service this area. What we're
 1300 asking for is the mining area in this purple color on this side and then the
 1301 extension on the north side of this mining area. We're presently mining this area
 1302 and the green area right now. The bridge is in place. I haven't heard of any
 1303 problems that they've had with the bridge or with dust problems. I rode by there
 1304 last weekend and everything looked fine. We've met with Public Works a couple
 1305 of times about erosion control on the north side and reconfigured ourselves that
 1306 we're mining to do a better job on the ENS. We have applied for the ENS plans
 1307 with the County. It's going to be in two phases on this side because we have
 1308 some wetlands to deal with. Our first phase will not impact any wetlands. Our
 1309 second phase, we have to get the wetlands permit, which we're applying for now.
 1310 We have monitoring wells in place. Tom can help me out here. I believe they
 1311 are—We have a perennial stream, an RPA along right here at this side. We
 1312 have a buffer that we're reforesting. That was due to none of our work, but the
 1313 landowner had it timbered and they went too far. We're going to reforest that.
 1314 We're going to be creating wetlands that were with this '05 case down in this
 1315 area as part of the permit with the DEQ in the core. We have monitoring wells
 1316 between us and the perennial stream. This area drains down to this perennial
 1317 stream. Our area drains this way, so our mining activities here do not impact any
 1318 wells that they may have on this side, because they get—Their water

1319 underground flows kind of like is does on the surface down towards the perennial
1320 stream. As a condition of the '05 case, we've put in monitoring wells and we're
1321 watching those. We haven't really had to pump any of these areas. Once it's all
1322 finished and reclaimed, they'll be more like recharge areas because this one will
1323 drain into the wetland, which will go into the perennial stream. In these areas, it'll
1324 be open pits like we have on this side of Curls Neck where it holds the water and
1325 it perks into the sand. If you have any questions, I'll be glad to answer them.

1326
1327 Ms. Dwyer - What about wells south of New Market? Is there any
1328 monitoring of those?

1329
1330 Mr. Brazzle - If I could, my name is Tom Brazzle. I'm a manager of
1331 Geological Services with Vulcan Materials.

1332
1333 Mr. Nunnally - Can you get into that microphone so we can hear a
1334 little better?

1335
1336 Mr. Brazzle - Yes sir. We hired a professional hydrologist from
1337 Northern Virginia, a Dr. David Bust, to design the layout of the observation wells.
1338 We have three in this area. We have one along the power line near Route 5 and
1339 we have one here. We're encircling these areas that we're mining. We monitor
1340 those at least once a month and to the best of my knowledge, there's been no
1341 significant change in the water levels. In fact, this area here was—This is
1342 depleted and we now have a lake in that area.

1343
1344 Mr. Wright - Mr. Blankinship, may I ask a question? I understand
1345 all the materials, the excavated materials will be removed through, on the James
1346 River by barge. Is that correct?

1347
1348 Mr. Blankinship - Yes sir.

1349
1350 Mr. Wright - What is #15, "Trucks shall be loaded in a way to
1351 prevent overloading or spilling on any [unintelligible] or on any public road." How
1352 does that—They're not taking any materials off on a public road, are they?

1353
1354 Mr. Blankinship - No sir. That's a standard condition that probably
1355 should have been removed.

1356
1357 Mr. Wright - I was just curious, because that indicates to me that
1358 they could take it off on a public road. Don't we need to eliminate that, that
1359 particular condition?

1360
1361 Mr. Blankinship - Probably should, yes sir.

1362
1363 Mr. Wright - Okay.

1364

1365 Ms. Harris - I do come through this way and I do admire how you
1366 keep the area clean. I was looking week before last. You put some type of
1367 materials on the road, do you, to water down or something?
1368

1369 Mr. Lewis - Correct. We have to keep dust down, so periodically a
1370 water truck runs through all of the roads and wets it down.
1371

1372 Ms. Harris - Okay. So, if there's dust, that's from the mining? It's
1373 not from the spilling of materials, getting back to Condition 15.
1374

1375 Mr. Lewis - Right. The dust is mainly from the traffic of the
1376 tractors and the trucks. It's not really the mining operation that creates the dust.
1377 It's mined down here, loaded on trucks, and then the trucks come down the road.
1378 As the trucks travel on the road, you have to watch the dust from that.
1379

1380 Ms. Dwyer - Again, they're not on a public road.
1381

1382 Mr. Lewis - No ma'am.
1383

1384 Ms. Dwyer - They're just crossing on the bridge and otherwise
1385 they're on private property.
1386

1387 Mr. Wright - Is there much traffic in and out of the property?
1388

1389 Mr. Lewis - I'll let Tom talk to how many times the trucks cross
1390 that bridge. They extract materials here, come across the bridge and down
1391 through here, way on down to the James River loading area.
1392

1393 Mr. Wright - They don't go on a public road.
1394

1395 Mr. Lewis - No sir. The only trucks that would cross right here is
1396 the workers coming in, in the morning. Their pickup trucks will come in here. We
1397 have a parking area for them. We probably have one or two workers that come
1398 in.
1399

1400 Mr. Brazzle - I would guess no more than three or four. Normally,
1401 you have one person who operates the equipment that loads the trucks and there
1402 may be a bulldozer operator. Normally, you have one person in that area.
1403

1404 Mr. Wright - Number 13, that talks about a flagman to control
1405 traffic onto the public road. The way this operation is, that may be the people
1406 who are driving there to work, but I would not anticipate there would be a lot of
1407 traffic in and out of the site, if all of the material is taken and off-loaded onto
1408 barges on the river.
1409

1410 Mr. Blankinship - I don't believe we've ever asked them to provide a
1411 flagman.
1412
1413 Mr. Wright - You don't need a flagman, do you?
1414
1415 Mr. Lewis - We don't need a flagman, we never had one. We
1416 didn't have any problem with the condition staying there if you want it because it
1417 does say if warranted by the Police Department.
1418
1419 Mr. Wright - I would think that you wouldn't want a condition that
1420 you have to have a flagman if you don't need one.
1421
1422 Ms. Dwyer - Well, on the other hand, if something happened to the
1423 bridge, let's say, and they had to use, for any reason, had to use the roadway, it
1424 might be good just to leave those standard conditions in there. If they don't
1425 apply, you don't use them.
1426
1427 Mr. Lewis - Right. The requirement is only there, I believe, if it
1428 was required by the police.
1429
1430 Mr. Blankinship - Right.
1431
1432 Mr. Lewis - We leave it to their discretion. We're okay.
1433
1434 Mr. Wright - Do you have a flagman?
1435
1436 Mr. Lewis - No sir.
1437
1438 Mr. Wright - Then you're violating the condition.
1439
1440 Mr. Lewis - Only if the police say we're required to have a
1441 flagman.
1442
1443 Mr. Wright - It says, "Shall provide a flagman."
1444
1445 Mr. Blankinship - The second sentence. "The flagman will be required
1446 whenever the Division of Police deems necessary." I don't think there's any
1447 harm in deleting the condition.
1448
1449 Mr. Wright - Okay.
1450
1451 Mr. Lewis - We're fine with leaving it.
1452
1453 Ms. Harris - They have trucks that go in and come out periodically;
1454 I've seen.
1455

1456 Mr. Lewis - Pickup trucks. The workers coming to work and
1457 going—
1458
1459 Ms. Harris - No, they're not pickup trucks. They're steel trucks I've
1460 seen come out of that site where the sign is near New Market Road.
1461
1462 Mr. Brazzle - Excuse me, ma'am, do you mean the entrance to the
1463 farm?
1464
1465 Ms. Harris - No, it says, "Vulcan."
1466
1467 Mr. Brazzle - Yes ma'am. There are two columns at the entrance to
1468 the farm. Is that where you're referring to?
1469
1470 Ms. Harris - I am not—
1471
1472 Mr. Brazzle - What brick columns?
1473
1474 Ms. Harris - I'm not sure. I just know the sign [unintelligible]
1475 Vulcan and periodically that come out.
1476
1477 Mr. Brazzle - It could be maintenance, it could be the farm trucks.
1478 The farmer—The land that their farm is—It's leased to a farmer I believe named
1479 David Hoola. They bring out semis with grain and other products.
1480
1481 Mr. Kirkland - Do they use the same road as your operation? Is that
1482 what you're saying?
1483
1484 Mr. Brazzle - No sir. They do not use the hall road that crosses
1485 Route 5, but they do use the road on the farm itself.
1486
1487 Mr. Kirkland - Okay.
1488
1489 Ms. Dwyer - I guess it's your letter and the staff report indicates
1490 that the dept of excavation will be an average of 60 feet and 55 feet for the two
1491 mined parcels?
1492
1493 Mr. Lewis - That's correct, yes.
1494
1495 Ms. Dwyer - And that they will be reclaimed to a slope no steeper
1496 than 5 to 1, which is pretty steep.
1497
1498 Mr. Lewis - Well ma'am, that's the slope that's actually less than
1499 the County requirement, in terms of maximum angle. That's the maximum angle
1500 you could effectively work with a tractor for sowing and maintenance. The

1501 County standard's 3 to 1 where you go over 3 and up 1. We're going 5 and up 1,
1502 which is easily mobile.

1503

1504 Ms. Dwyer - Okay. You mentioned there was a lake created on
1505 the northern parcel, UP-2-2005. The lake will remain as part of that reclamation.
1506 Will there be a body of water created from this mining operation or will it be
1507 graded so that it's seeded and planted?

1508

1509 Mr. Lewis - The phases are laid out in three distinct phases north
1510 of Route 5. The first one will have no wetlands impact and it will create an
1511 internal drainage area and there'll be a pond in the center of that area.

1512

1513 Ms. Dwyer - In the one north of Route 5, did you say?

1514

1515 Mr. Lewis - Yes ma'am.

1516

1517 Ms. Dwyer - Okay.

1518

1519 Mr. Lewis - The second phase will be tied in with the UP-2-2005
1520 and the drainage will actually extend the pond that we've currently created. It's
1521 going to increase the area for drainage and help us with our wetlands creation
1522 there. The third phase will be on the southern part and that will also be an
1523 internal drainage area with a pond in the center.

1524

1525 Ms. Dwyer - It'll be a 5 to 1 slope to the pond.

1526

1527 Mr. Lewis - No greater than 5 to 1.

1528

1529 Ms. Dwyer - Okay.

1530

1531 Mr. Nunnally - Mr. Blankinship, this operation has been going on for
1532 a very good while.

1533

1534 Mr. Blankinship - Yes sir. Well, the part north of New Market Road is
1535 new.

1536

1537 Mr. Nunnally - I don't think we've ever had a complaint about them,
1538 have we?

1539

1540 Mr. Blankinship - Certainly not in the time I've been here.

1541

1542 Mr. Nunnally - That's what I'm saying.

1543

1544 Ms. Dwyer - What kind of future use will there be for this property
1545 when the mining is completed?

1546

1547 Mr. Lewis - We are currently returning it to agricultural or
1548 [unintelligible]. Whatever the current owners decide will be the ultimate fate of
1549 the property. I would imagine some type of mixed development, but I've not
1550 been involved with those discussions.

1551

1552 Ms. Dwyer - Would it support houses do you think, houses or
1553 commercial development?
1554

1555 Mr. Lewis - I really don't know. This was part of the property when
1556 they sold Curles Neck Farms to I think it's three individuals, one being Mr. Pruitt.
1557 This is part of that property as is all this to the south, which was mined, which
1558 has the ponds. I really don't know what their plans are.
1559

1560 Mr. Blankinship - The Land Use Plan shows it's Prime Agricultural and
1561 Conservation.
1562

1563 Mr. Nunnally - Any other questions? Is anyone here in opposition to
1564 this request? Will you please come forward? Please state your name and tell us
1565 what you're—
1566

1567 Mr. Marshall - Marvin Marshall.
1568

1569 Ms. Marshall - Cynthia Marshall.
1570

1571 Mr. Nunnally - All right.
1572

1573 Ms. Marshall - We are on Long Bridge Road as you go up a little on
1574 your map. I'm not sure exactly where our property lines are on there. We have
1575 some concerns. Number one, how long will this operation be going on. We know
1576 the operation on the other side of Route 5 has been going on for many years.
1577 We were a bit disconcerted to learn that the bridge had been put across and no
1578 one from Curles Neck had ever said a word, although we have not really had any
1579 real communications with the graveling operation. From time to time, we've
1580 certainly had communications with Curles Necks owners in general. We have
1581 certainly helped to oversee, not to oversee but to help them protect some of the
1582 property. Some of our other concerns are, of course, with the wells. I see that
1583 they have attempted to explain how they are addressing that, but we do want to
1584 know what happens if those precautions do not work and the water supply is
1585 compromised. The Marshall property was a farm. It has been split up among
1586 Marshall heirs and we are now in the home place. We have spent the last few
1587 years renovating the home place and may have done something differently had
1588 we known that this was going to be behind us and, quite frankly, probably
1589 compromised our ability if we do decide to sell a couple of building lots to
1590 someone else in the family or to someone in general. Nobody's going to want to
1591 live backed up to a graveling operation. We've already had our peace and quiet
1592 somewhat compromised and that's been going on for years. It's one thing when

1593 they're on the other side of Route 5 and it's another thing when they're in your
1594 backyard, so to speak. We only have so much buffer between us.

1595
1596 One other concern, and we have many obviously, there are breast works on that
1597 property. I do wonder, has the County or has the Parks Department mapped out
1598 all the breast works and made sure they were protected? That's Civil War
1599 battlefield property. Up until several years ago, we could kick up bullets with our
1600 feet on our property. Major battles were fought right in that area.

1601
1602 Structural stability is another thing. That's why I said we've spent the last few
1603 years renovating his home place and now we have equipment much closer to our
1604 property than we've had in the past. We really don't know what the implications
1605 are for that.

1606
1607 Property value. What does that do? It's what we have; it's all we have. It's
1608 already been greatly compromised. I've been on the property for 30 years.
1609 Marvin's been there for 60. We already have the Colonial Pipeline running under
1610 our property and we have high-voltage wires running across the most beautiful
1611 part of the property to service people in Chesterfield because we were deemed
1612 to be the best place to put it because we're out there by ourselves, basically. Not
1613 too many people around, not too many people to upset. We just feel like
1614 sometimes we get one thing after another. I would feel like when you have all
1615 these things that are compromising your property, we should at least get some
1616 kind of tax break or something or other.

1617
1618 I was wondering why we were not informed before the bridge was built so that we
1619 could register our opinion and concerns before a bridge was ever built across.
1620 Once someone puts that kind of money into building something that obviously is
1621 for a specific use—Why now? Why wait to inform us now?

1622
1623 Mr. Nunnally - That bridge was approved, I think, two years ago,
1624 ma'am. I think it was advertised that they were going to build a bridge there and
1625 this Board approved it.

1626
1627 Ms. Marshall - We got no letter.

1628
1629 Mr. Nunnally - Excuse me. As far as tax breaks are concerned, this
1630 Board has nothing to do with that.

1631
1632 Ms. Marshall - I understand. In general, I'm saying that our property
1633 has been used by the County for everyone else's benefit and we've been
1634 expected to give and give and give. A little consideration would have been nice
1635 and it would have been nice, as an adjoining property owner, to have received
1636 some sort of notice. We did not know about the bridge. We did not receive a
1637 letter. We were not asked. We were not informed by either Vulcan or by the
1638 County.

1639
1640 Mr. Kirkland - Mr. Blankinship, are they adjacent landowners?
1641
1642 Ms. Marshall - Yes we are.
1643
1644 Mr. Blankinship - Yes sir and they were notified of this hearing.
1645
1646 Ms. Marshall - No sir, we—Oh, this hearing. When the bridge went
1647 across, we were not.
1648
1649 Mr. Kirkland - The 2005 case?
1650
1651 Mr. Blankinship - I couldn't say for certain. They certainly should have
1652 been.
1653
1654 Ms. Marshall - We certainly weren't. Neither were Peggy or Mary
1655 Marshall, who are my sister-in-laws, who also live on what was the Marshall
1656 farm. Nor was Lee Gauling, whose stepfather is here to speak on her behalf.
1657
1658 Mr. Wright - Mr. Blankinship, I'd like for you to go back in the
1659 record and check that.
1660
1661 Mr. Blankinship - All right, we will.
1662
1663 Mr. Wright - You would have certified letters as notification,
1664 wouldn't you?
1665
1666 Mr. Blankinship - Yes sir, we would.
1667
1668 Ms. Dwyer - What specifically about the operation, the mining
1669 operation now is bothersome to you?
1670
1671 Ms. Marshall - Probably the most bothersome to me is going to be
1672 the noise levels as they increase. Well, the noise levels now. We've been able to
1673 hear the graveling operations forever. The noise levels are certainly a concern.
1674 Any structural compromising is a concern.
1675
1676 Ms. Dwyer - Have you had any structural problems with your home
1677 because of the operation?
1678
1679 Ms. Marshall - We have a very good foundation and we have a brick
1680 structure. Thus far, we've had very little problem. That does not mean that will
1681 remain that way.
1682
1683 Mr. Marshall - How close is the graveling operation going to be to
1684 our back door? We have had no contact with anyone describing any of it to us

1685 and I've been living there since 1946. We had right much at the beginning with
1686 the Curles Neck property, discussion with them, but it's been sold a couple of
1687 times. Since the graveling operation has started, we haven't had any contact. As
1688 my wife said, it came across the road this past spring and we have not received
1689 any notification of that.

1690

1691 Ms. Dwyer - Where exactly is your home on this map, or is it on
1692 this map?

1693

1694 Mr. Marshall - You can't quite see it.

1695

1696 Mr. Kirkland - What is your address?

1697

1698 Ms. Marshall - 4961 Long Bridge Road.

1699

1700 Mr. Marshall - It starts at 4883, 4939, 4945, and 4961. It's all part of
1701 the original home place within the family.

1702

1703 Ms. Marshall - And the undeveloped property behind 4883 and the
1704 other two before you get to 4961.

1705

1706 Ms. Dwyer - All of them are on Long Bridge?

1707

1708 Mr. Marshall - Yes. It starts right at the corner of the Curles Neck
1709 property and goes east on Long Bridge Road.

1710

1711 Ms. Harris - How close is the bridge they constructed to your
1712 property?

1713

1714 Mr. Marshall - The way the crow flies, about a mile, but down Long
1715 Bridge Road and come back around on Route 5, it's probably three.

1716

1717 Ms. Marshall - That is why we were completely unaware of the
1718 bridge until one day we decided on a Sunday afternoon to go eat and we went
1719 that way on Route 5 and discovered there was a bridge there.

1720

1721 Ms. Dwyer - Is the bridge a problem for you?

1722

1723 Ms. Marshall - The bridge itself is not a problem. The bridge was just
1724 an indication that there was a lot being done about which we were uninformed.

1725

1726 Mr. Marshall - If you look at the green property there, 2005, going
1727 north, our place is right north of that.

1728

1729 Ms. Dwyer - What they're asking for today is the purple area,
1730 which would be on the other side of the current mining area from—

1731
1732 Mr. Wright - That would be away from where you are.
1733
1734 Mr. Blankinship - It looks like it won't be within half a mile of you.
1735
1736 Mr. Marshall - Well, we didn't know that until we got here; that's part
1737 of the problem. If you find a copy of the letter we should have received, I would
1738 like to see it.
1739
1740 Mr. Blankinship - The one from two years ago?
1741
1742 Mr. Marshall - Yes.
1743
1744 Mr. Blankinship - Okay. We'll do that.
1745
1746 Mr. Marshall - That would be four different properties.
1747
1748 Ms. Dwyer - Have you had any problems with your wells since the
1749 mining began?
1750
1751 Mr. Marshall - No, we have not. The first place and the fourth place
1752 we had deep wells. The two sisters in between, they have shallow wells. They
1753 had some problems, but I don't know if it's anything to do with the graveling.
1754
1755 Mr. Blankinship - There is a condition on the use permit requiring that if
1756 there is any damage to wells they have to make you whole.
1757
1758 Ms. Dwyer - I will also say they way it's worded—Which one is
1759 that?
1760
1761 Mr. Blankinship - Eighteen.
1762
1763 Ms. Dwyer - The way it's worded, the property owners have to
1764 present evidence that the extraction is a contributing factor to the well problem.
1765 The burden is on the landowner, the way the condition is written, to show that the
1766 well is dry because of the excavation.
1767
1768 Mr. Marshall - I understand that.
1769
1770 Ms. Marshall - That's pretty standard and we understand that and
1771 that's part of the concern. Part of the concern is—We're homeowners. We like
1772 in an agricultural area. Obviously, not the most prosperous part of Henrico
1773 County. Both of my sister-in-laws have had trouble with their shallow wells. How
1774 are they supposed to spend the money to get someone to prove that their well
1775 problems have been due to extraction from the land behind us? It is a big burden
1776 for a small homeowner. Part of the reason we have a deep well is because we

1777 felt like with development coming along, it's much better to do that. They could
1778 not afford it.
1779
1780 Mr. Kirkland - Mr. Marshall, how long have you lived at your present
1781 location?
1782
1783 Mr. Marshall - Since '46.
1784
1785 Ms. Marshall - That's the home place. His mother lived there before
1786 she passed away, but we were still on property that was part of the home place.
1787 We simply moved back to the house itself.
1788
1789 Mr. Nunnally - Any other questions for Mr. and Ms. Marshall? Hear
1790 none, we thank you for coming. Mr. Lewis, you want to rebut? Oh, I'm sorry.
1791 Excuse me, sir.
1792
1793 Mr. Stephens - My name is Bill Stephens and I'm Wendy Gaulding's
1794 stepfather. She can't be here this morning, so I got this dropped on me pretty
1795 recently. I'm very familiar with the mining operations of sand and gravel. I retired
1796 with 30 years under my belt. I'm mostly concerned about the well problems. I
1797 understand they have monitoring wells, but I also understand that they're not
1798 sharing that information with any of the homeowners or with the County. If their
1799 wells go bad, my stepdaughter could not afford to have another well drilled. She
1800 has a deep well, but if something happens to it, there's no way she could ever—
1801 I'd have to drill another well or fix it. I think they need to share that information
1802 that they get from these monitoring wells. With the homeowners that it affects, I
1803 don't think they're going to like doing that. I think even the Board needs to have
1804 that information available to them so you can determine maybe what's going on
1805 without these people having to hire a hydrologist and competing with Vulcan
1806 Materials to get that information and help them with that. I don't know, again,
1807 how far they intend to go. I don't know where the boundaries occur on that
1808 property. Her property's not shown on the map. I don't know if they intend to
1809 ever go farther towards the east. I guess it would be on Long Bridge. Or if that is
1810 the extent of their reserves up through there, I just don't know.
1811
1812 Mr. Blankinship - They are required to renew the permit every two
1813 years.
1814
1815 Mr. Stephens - I'm well aware of that.
1816
1817 Mr. Blankinship - Any time they wanted to move that boundary, there
1818 would be a new hearing.
1819
1820 Mr. Kirkland - Also there's a condition in the case, #23, that every
1821 year they make a report to this Board. It normally goes to Mr. Blankinship. I'm
1822 sure that if there's any well information, it would be in this report.

1823
1824 Mr. Blankinship - I don't see it mentioned.
1825
1826 Mr. Kirkland - We could add that to the conditions.
1827
1828 Mr. Blankinship - We could certainly require them to show that each
1829 year.
1830
1831 Mr. Stephens - I think the homeowners do need to have that
1832 information available to them if it's done by an outside firm other than Vulcan's
1833 foreman or somebody going out and measuring those wells. I guess that's about
1834 all I have.
1835
1836 Ms. Harris - Mr. Stephens, how large a community, residential
1837 community is in this area?
1838
1839
1840 Mr. Stephens - How large is the community?
1841
1842 Ms. Harris - Yes, how many residents, about how many
1843 homeowners.
1844
1845 Mr. Stephens - I only know the Marshall's and my stepdaughter. She
1846 just moved there and we've known the Marshall's for several years.
1847
1848 Ms. Harris - Do you know how many homes are in the
1849 neighborhood?
1850
1851 Mr. Stephens - I have no idea. It's not a great deal of homes, I don't
1852 think. You should have a map of it. They should have included some of that
1853 property on their drawing there.
1854
1855 Mr. Nunnally - Any other questions? Thank you, sir. Do you have a
1856 short rebuttal, Mr. Lewis?
1857
1858 Mr. Lewis - Yes. I'm sorry that they weren't notified in '05 when
1859 we first applied for this site. Just to let everybody know, we take tests on those
1860 wells every month. We'd be glad to send those to Mr. Blankinship. If he wants
1861 them once a year, if he wants them twice a year, we'll be glad to share the
1862 information. That's why we're taking it, so everybody's assured that we're not
1863 affecting the groundwater. As far as timing, we finish mining in this area and
1864 they're going to be starting reclamation probably within the next couple of
1865 months. The activity as far as hearing equipment and probably the worst thing is
1866 probably the beeping noise when they're backing up, which we have to have
1867 because of OSHA. Is that what you usually hear, the beeping? That's usually
1868 the worst. We still have to reclaim this area and that will be starting, like I say,

1869 probably in the next couple of months. It'll probably take a year to reclaim that.
1870 Once the majority of it's reclaimed, we will have some work because these two
1871 drainage systems are tied in with this wetlands work that we're doing down here.
1872 For the most part, most of the work is finished in that area so we'll be further
1873 away from the neighbors to our north, so there'll be less impact from visual and
1874 sound especially. The wells we'll continue to monitor. We'll provide you with that
1875 information. Structurally, like somebody suggested, we do no blasting so it's not
1876 like a rock quarry and the problems that they had with structural and shaking of
1877 homes. The bridge is a temporary bridge, since they weren't here in '05. It's
1878 going to be removed when this mining on the north side has ceased. In fact, that
1879 was the bridge that was at Shirley Plantation?

1880
1881 Mr. Brazzle - Right, that's right.

1882
1883 Mr. Lewis - It was moved from there to this site. Any other
1884 questions that you might have, we can address those. Do we have a map, a GIS
1885 that can show where they're located so we can have an idea?

1886
1887 Ms. Dwyer - What's the buffer on your property between the
1888 operation and the property line, the actual mining operation?

1889
1890 Mr. Brazzle - If I may, the section of Haul Road that you see in red
1891 north of Route 5 is about a mile long. There are several hundred feet—I couldn't
1892 give you an exact measure, but there are several hundred feet of forested non-
1893 disturbed buffer on the north side of the property. When we mined south of Route
1894 5, we maintained a 100-foot tree buffer along Route 5, which I believe is required
1895 by Code as well.

1896
1897 Ms. Dwyer - In UP-2-2005, there's a 100-foot buffer on your own
1898 property between the mining operation and the nearest property line.

1899
1900 Mr. Lewis - That's with the RPA. We have RPA along that creek.
1901 I'm not sure, is the creek the property line.

1902
1903 Mr Brazzle - No, the creek is not the property line. The property
1904 line is shown in the red and extends further north of the creek.

1905
1906 Ms. Dwyer - On this map, the property line for Curles Neck is in
1907 red?

1908
1909 Mr. Brazzle - That is correct.

1910
1911 Ms. Dwyer - Okay, so, the Marshall's and anyone else would live
1912 on the other side of Long Bridge?

1913

1914 Mr. Lewis - I'm not sure where their property is. You're up in
1915 here? Okay. The large power line that goes across? The power line runs
1916 through here, so you're talking about probably close to there.
1917

1918 Mr. Blankinship - Unless I'm mistaken, the triangle to the top right
1919 corner there is actually where the Marshall's property is. It is shown on the map
1920 there, but just barely. That's the Marshall's property there.
1921

1922 Mr. Lewis - Can you get the GIS and pull the distance from there
1923 to—
1924

1925 Mr. Blankinship - It's about 3300 feet.
1926

1927 Ms. Dwyer - Does Curles Neck own from the mining operation to
1928 that red line?
1929

1930 Mr. Lewis - Curles Neck is all in here.
1931

1932 Ms. Dwyer - Okay.
1933

1934 Mr. Lewis - All of that area. I was thinking they were up here near
1935 Long Bridge, but they're right here.
1936

1937 Mr. Blankinship - I'm not sure where Mr. Stephens' or Ms. Gauling's
1938 property is. Oh, okay, in the same little—
1939

1940 Mr. Lewis - As far as the Civil War activities, we have not seen
1941 any breastworks here. In the research that I've done, they came across right
1942 here and then moved up towards Long Bridge. There were some gun
1943 emplacements in here, but we know of no activity over in what used to be called
1944 "the slash," back in those days and still referred to on some of the USGS.
1945

1946 Mr. Brazzle - When we first started working on UP-2-2005, we had
1947 an archeological survey conducted by [unintelligible] and the results of that were
1948 shared with the Parks Service. The only breastworks that we found were in this
1949 area about here, which we are not impacting.
1950

1951 Ms. Dwyer - What was the distance again, Mr. Blankinship, I think
1952 you ventured a guess, between the mining operation as delineated on our map
1953 and the property line where these residents live?
1954

1955 Mr. Blankinship - It looks like 3,361 feet on the GIS.
1956

1957 Ms. Dwyer - That's a pretty good size.
1958

1959 Mr. Blankinship - I'm not sure of my end point, but that's the distance
1960 between the two points that I've put on this map.
1961
1962 Ms. Harris - Do you currently own the Curles Neck Farm or do you
1963 just have mining rights?
1964
1965 Mr. Lewis - We just have mining rights.
1966
1967 Ms. Harris - Okay. Aren't there historical markers all over Curles
1968 Neck?
1969
1970 Mr. Lewis - There's a marker out here near the entrance that
1971 you're probably talking about, where the two white columns are, which is right in
1972 here. There's a marker right there and I think it's about Bacon's Rebellion.
1973
1974 Ms. Dwyer - That's not Civil War.
1975
1976 Mr. Lewis - No, that was way before. That was Indians uprising
1977 and Bacon—
1978
1979 Ms. Dwyer - Prior to that, yes.
1980
1981 Mr. Lewis - Dissatisfied with the governor so he got his own band
1982 up and took care of business and got in big trouble with the government. There
1983 was an article in the paper about it a couple weeks ago.
1984
1985 Mr. Nunnally - Any other questions? Hear none, that completes the
1986 case. That you for coming. All right, Mr. Blankinship. UP-47-2006.
1987
1988 **DECISION**
1989
1990 Mr. Kirkland - I move we approve it.
1991
1992 Mr. Wright - Second.
1993
1994 Ms. Dwyer - I have a suggestion for a condition on that, that the
1995 well monitoring data be submitted to the County. The applicant said they'd be
1996 glad to do that.
1997
1998 Mr. Wright - Yeah, he said he had no problem doing it.
1999
2000 Ms. Dwyer - Right.
2001
2002 Mr. Blankinship - Annually or?
2003
2004 Mr. Kirkland - How about quarterly?

2005
2006 Ms. Dwyer - Quarterly, I think.
2007
2008 Mr. Kirkland - I'll accept Ms. Dwyer's about the well monitoring.
2009
2010 Mr. Nunnally - Motion by Mr. Kirkland, seconded by Mr. Wright.
2011
2012 Ms. Dwyer - The applicant did state that they'd be willing to do
2013 that.
2014
2015 Mr. Kirkland - Yes. I think he seems very workable.
2016
2017 Ms. Dwyer - Could we add just a little discussion on this since
2018 there was a fair amount of opposition. I'd just like to say that the operation
2019 appears to be over 3,000 feet from the nearest property line, which is a
2020 considerable distance. While there may be some noise, it doesn't seem to be
2021 any indication that it's a clear nuisance to the level that we would need to
2022 reconsider this particular application. That seemed to be the most serious
2023 concern. Apparently, there are no structural issues, there's just concern that
2024 there might be some negative impact. There's no indication that there has been
2025 or, in fact, will be.
2026
2027 Mr. Nunnally - All in favor say aye. Opposed? So approved.
2028
2029 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by
2030 Mr. Wright, the Board **granted** application **UP-47-2006** for a conditional use
2031 permit pursuant to Sections 24-103 and 24-52(d) to extract materials from the
2032 earth at 4705 Curles Neck Road (Parcels 833-678-0193, 833-680-7719 and 836-
2033 667-5251). The Board granted the use permit subject to the following conditions:
2034
2035 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24
2036 of the County Code.
2037
2038 2. Before beginning any work, the applicant shall provide a financial guaranty in
2039 an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of
2040 \$378,300, guaranteeing that the land will be restored to a reasonably level and
2041 drainable condition. This permit does not become valid until the financial
2042 guaranty has been approved by the County Attorney. The financial guaranty may
2043 provide for termination after 90 days notice in writing to the County. In the event
2044 of termination, this permit shall be void, and work incident thereto shall cease.
2045 Within the next 90 days the applicant shall restore the land as provided for under
2046 the conditions of this use permit. Termination of such financial guaranty shall not
2047 relieve the applicant from its obligation to indemnify the County of Henrico for any
2048 breach of the conditions of this use permit. If this condition is not satisfied within
2049 90 days of approval, the use permit shall be void.
2050

- 2051 3. Before beginning any work, the applicant shall submit erosion control plans to
2052 the Department of Public Works for review and approval. Throughout the life of
2053 the operation, the applicant shall continuously satisfy the Department of Public
2054 Works that erosion control procedures are properly maintained, and shall furnish
2055 plans and bonds that the department deems necessary. The applicant shall
2056 provide certification from a licensed professional engineer that dams,
2057 embankments and sediment control structures meet the approved design criteria
2058 as set forth by the State. If this condition is not satisfied within 90 days of
2059 approval, the use permit shall be void.
2060
- 2061 4. The applicant shall maintain a mine license from the Virginia Department of
2062 Mines, Minerals and Energy.
2063
- 2064 5. The areas approved for mining under this permit shall be delineated on the
2065 ground by five-foot-high metal posts at least five inches in diameter and painted
2066 in alternate one foot stripes of red and white. These posts shall be so located as
2067 to clearly define the area in which the mining is permitted.
2068
- 2069 6. In the event that the Board's approval of this use permit is appealed, all
2070 conditions requiring action within 90 days will be deemed satisfied if the required
2071 actions are taken within 90 days of final action on the appeal.
2072
- 2073 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2074 state and local regulations administered under such act applicable to the
2075 property, and shall furnish to the Planning Department copies of all reports
2076 required by such act or regulations.
2077
- 2078 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight
2079 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
2080
- 2081 9. No operations of any kind are to be conducted at the site on Sundays or
2082 national holidays.
2083
- 2084 10. Access to the property shall be from the established entrance onto New
2085 Market Road. Traffic into and out of the property north of New Market Road shall
2086 cross New Market Road on the private bridge maintained by the operator.
2087 Excavated material shall be removed from the property through the operator's
2088 established loading area on the James River.
2089
- 2090 11. The applicant shall maintain a sign at the entrance to the mining site stating
2091 the name of the operator, the use permit number, the mine license number, and
2092 the telephone number of the operator. The sign shall be 12 square feet in area
2093 and the letters shall be three inches high.
2094
- 2095 12. The applicant shall maintain "No Trespassing" signs every 250 feet along the
2096 perimeter of the property. The letters shall be three inches high.

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

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

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

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

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

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

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

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

21. No offsite-generated materials shall be deposited on the mining site without prior written approval of the Director of Planning. To obtain such approval, the operator shall submit a request stating the origin, nature and quantity of material to be deposited, and certifying that no contaminated or hazardous material will be included. The material to be deposited on the site shall be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like

2143 materials, and shall not include any hazardous materials as defined by the
2144 Virginia Hazardous Waste Management Regulations.

2145
2146 22. A superintendent, who shall be personally familiar with all the terms and
2147 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
2148 terms and conditions of this use permit, shall be present at the beginning and
2149 conclusion of operations each work day to see that all the conditions of the Code
2150 and this use permit are observed.

2151
2152 23. A progress report shall be submitted to the Board on or about January 31,
2153 2008 stating how much property has been mined to date of the report, the
2154 amount of land left to be mined, how much rehabilitation has been performed,
2155 when and how the remaining amount of land will be rehabilitated, and any other
2156 pertinent information about the operation that would be helpful to the Board.

2157
2158 24. Excavation shall be discontinued by January 31, 2009, and restoration
2159 accomplished by not later than January 31, 2010, unless a new permit is granted
2160 by the Board of Zoning Appeals.

2161
2162 25. The rehabilitation of the property shall take place simultaneously with the
2163 mining process. Rehabilitation shall not be considered completed until the mined
2164 area is covered completely with permanent vegetation.

2165
2166 26. Failure to comply with any of the foregoing conditions shall automatically
2167 void this permit.

2168
2169
2170 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2171 Negative: 0
2172 Absent: 0

2173
2174
2175 Mr. Nunnally - Next case, Mr. Blankinship.

2176
2177 **UP-48-2006 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**
2178 requests a conditional use permit pursuant to Sections 24-103 and 24-52(d) to
2179 extract materials from the earth at 2980 Meadow Road (Parcel 843-720-7272),
2180 zoned A-1, Agricultural District (Varina).

2181
2182 Mr. Nunnally - Is anyone else here interested in this case? If so,
2183 please stand and raise your right hand.

2184
2185 Mr. Blankinship - Raise your right hand. Do you swear the testimony
2186 you're about to give is the truth and nothing but the truth so help you God?

2187
2188 Mr. Bryant - I do.

2189
2190 Mr. Nunnally - Please state your name for the record, sir, and tell us
2191 what you're requesting.
2192
2193 Mr. Bryant - My name is Lou Bryant. I'm the business manager for
2194 Gillies Creek and I'm here to request a renewal of our use permit to continue
2195 operations at Meadow Road.
2196
2197 Mr. Kirkland - Have we had any complaints, Mr. Blankinship, on this
2198 case prior to this on this site?
2199
2200 Mr. Blankinship - Not that I'm aware of. I am not certain whether we
2201 have received the annual report from last year, it's not attached.
2202
2203 Mr. Bryant - The 2005 annual report? I believe it's been sent in.
2204 It's sent in every month on a regular basis. The annual report should have been
2205 sent in conjunction with December's monthly report, but I can confirm that for
2206 you.
2207
2208 Mr. Blankinship - Mr. Gidley will check the file while we speak.
2209
2210 Mr. Nunnally - Mr. Bryant, I've heard several people say that around
2211 your operation there you're having a lot of mud out there on the road.
2212
2213 Mr. Bryant - We had some problem with—
2214
2215 Mr. Nunnally - They said you had a lot of mud on there and when the
2216 people come home from work or go to work, they get mud all over their cars and
2217 have to get them washed before they come home or have to get them washed
2218 before they go to work the next morning. I drove down there yesterday and it's
2219 just as clean as this office here, this room here. I saw four or five trucks coming
2220 off Williamsburg Road. You can't take a left out of your operation, you have to go
2221 up to Dry Bridge, right?
2222
2223 Mr. Bryant - Yes sir, that's correct.
2224
2225 Mr. Nunnally - It looks good. I'm wondering where all these
2226 complaints are coming from unless you all had an inkling we were coming down
2227 there to look at it and went out there and got everything nice and spic and span.
2228
2229 Mr. Bryant - Well, sometimes I wonder where the complaints are
2230 coming from as well. I think we're very diligent in our efforts to keep the road
2231 clean. Whenever we're operating in there extensively, we always have a broom
2232 tractor on site and a water truck at our disposal to keep the road clean. We've
2233 had some complaints in the past and I think we've responded as quickly and as

2234 effectively as we can to address those problems. In my opinion, I think we keep
2235 the road very clean for any type of construction operation.

2236
2237 Mr. Wright - Number 17 puts the burden on them to keep it clean.

2238
2239 Mr. Bryant - If I may, I think some of the complaints—There have
2240 been several operators of this facility prior to us taking it over and I think that they
2241 created a very antagonistic relationship with the neighbors down there in the way
2242 they handled the operation. We sometimes are dealing with their previous sins, if
2243 you will, in not keeping the road clean and not doing the things they were
2244 supposed to be doing for the County and for the neighborhood.

2245
2246 Mr. Wright - Describe to us what action you take to keep the road
2247 clean. Are they monitored daily or tell us how you do that.

2248
2249 Mr. Bryant - Yes sir. They're monitored daily. We have a lot of our
2250 own trucks that use the facility so we're always checking on how the road looks,
2251 especially on days we've had rain or it's been muddy from previous days of rain.
2252 There's always a broom tractor on site there when we're operating in the pit and
2253 we have water trucks that we use in conjunction with those when they're
2254 necessary.

2255
2256 Mr. Wright - Do you try to get the tires clean before they leave the
2257 property?

2258
2259 Mr. Bryant - Yes sir. There's a truck wash on the property.

2260
2261 Mr. Wright - If they're cleaned before they leave, how could there
2262 be mud on Meadow Road?

2263
2264 Mr. Bryant - Unless they're cleaned by hand, it's impossible
2265 always to get all of the dirt out. A lot of times what we get is dust on the road.
2266 The road is paved from Meadow Road a distance of about I believe 600 feet into
2267 the property. From there, it is construction stone #3 entrance material. So, you'll
2268 pull dirt or dust from the rock onto the pavement and we have to go back and
2269 clean it back up to the rock in kind of an ongoing process.

2270
2271 Mr. Nunnally - When do you have the operation?

2272
2273 Mr. Bryant - I believe it's 7 to 5:30 Monday through Friday and 7 to
2274 noon on Saturday. That's correct.

2275
2276 Mr. Nunnally - Is there any way that you could wash that road down
2277 after the operations? Do you have any kind of spraying outfit down there for that,
2278 a water sprayer?

2279

2280 Mr. Bryant - We do it with a water truck, high-pressure water off of
2281 a truck.
2282
2283 Mr. Nunnally - Can you do that several times a week to make sure?
2284
2285 Mr. Bryant - We do that often when we're really in there heavy,
2286 especially if there's a lot of traffic through there. Generally on heavy traffic days,
2287 the truck will be by at least once a day.
2288
2289 Mr. Kirkland - Do you work there every day? Do they go in and out
2290 every day?
2291
2292 Mr. Bryant - For the most part, yes sir.
2293
2294 Mr. Kirkland - Some days it's just heavier than others.
2295
2296 Mr. Bryant - That's correct.
2297
2298 Ms. Dwyer - This is a continuation of an earlier permit. This covers
2299 A-1, A-2, and B, is that correct, what you've designated the mining areas to be?
2300
2301 Mr. Bryant - Yes ma'am.
2302
2303 Ms. Dwyer - Are those the only mining areas there?
2304
2305 Mr. Bryant - Yes.
2306
2307 Ms. Dwyer - A-1—
2308
2309 Mr. Bryant - A-2 and B.
2310
2311 Ms. Dwyer - The only reclamation plan I see is for B. Is that
2312 because the other two have been reclaimed already or?
2313
2314 Mr. Bryant - Where we are—I don't know how clear this is. This is
2315 A-1 here, that's A-2, there's B. A-1 and A-2 have been fully refilled with dirt at
2316 this point and are awaiting seeding, topsoil spreading and reseeding. Right now,
2317 we're in B right here in this area right here.
2318
2319 Ms. Dwyer - Okay, let me stop you there. Mining areas A-1 and A-
2320 2 have been reclaimed how? Have they been filled with construction materials?
2321
2322 Mr. Bryant - They've been filled with material that we consistently
2323 bring in there. The topsoil has not been re-spread at this point.
2324
2325 Ms. Dwyer - How high is the mound?

2326
2327 Mr. Bryant - I do not have an elevation. I couldn't tell you an
2328 elevation.
2329
2330 Ms. Dwyer - A guess?
2331
2332 Mr. Bryant - Above sea level or in relation to the adjoining
2333 property?
2334
2335 Ms. Dwyer - In relation to the adjoining property.
2336
2337 Mr. Bryant - It is slightly higher than the adjoining property. One of
2338 the conditions is that we cannot throw water on our neighbors, which, the way we
2339 have graded the fill prevents that from happening. All the water does not and will
2340 continue to be channeled to the sediment basin here in the, on this picture the
2341 southeast corner of the property.
2342
2343 Ms. Dwyer - How high is the reclaimed—
2344
2345 Mr. Bryant - I don't know that I could hazard a guess, I really don't.
2346
2347 Ms. Dwyer - More than 50?
2348
2349 Mr. Bryant - No, not more than 50.
2350
2351 Ms. Dwyer - Less than 25?
2352
2353 Mr. Bryant - Yeah, less than 25 above our adjoining neighbors. I
2354 think that's safe to say.
2355
2356 Ms. Dwyer - Okay. I understand it's an estimate at this point, but I
2357 just want a ballpark.
2358
2359 Mr. Bryant - Okay.
2360
2361 Ms. Dwyer - The staff reported noted that there was no information
2362 provided by you as to the reclaimed height of mining area B.
2363
2364 Mr. Bryant - That's correct because on the approved plans, there
2365 are no finished elevations, finished grades specified. The only real conditions, as
2366 I said, were that we couldn't divert water onto our neighbor's property.
2367
2368 Ms. Dwyer - I would like to know what the reclaimed height would
2369 be.
2370
2371 Mr. Bryant - Okay.

2372
2373 Ms. Dwyer - What the elevation would be. I think that's important
2374 to know. We don't want Mt. Trashmore.
2375
2376 Mr. Bryant - Right, I understand.
2377
2378 Ms. Dwyer - In isolated places all over the County.
2379
2380 Mr. Bryant - Certainly.
2381
2382 Ms. Dwyer - Even though it would be, it needs to be reclaimed and
2383 useable as something in the future. If we had steep slopes, if we have high
2384 elevation, it's not useable for anything so that's a concern.
2385
2386 Mr. Bryant - I understand.
2387
2388 Mr. Kirkland - Mr. Bryant, I don't know if you saw our staff report or
2389 not, but the pictures—We have a picture of I guess that is the road entering into
2390 the property. Is the picture above that part of the reclaimed area? Is that the
2391 mound?
2392
2393 Mr. Bryant - This picture here, sir?
2394
2395 Mr. Kirkland - There's one above it on our sheets, so I guess it
2396 would be the next one above it on there.
2397
2398 Ms. Dwyer - It shows a mound.
2399
2400 Mr. Kirkland - Is that part of the reclaimed area there?
2401
2402 Mr. Bryant - It doesn't give much of a reference point. I'm trying to
2403 think where that is.
2404
2405 Mr. Kirkland - Our picture looks different than that, believe it or not.
2406
2407 Ms. Dwyer - It shows a little more of an area.
2408
2409 Mr. Bryant - Okay. All right. This is the very end of A-1. To the left
2410 is the lake that was there when we first moved in. All the fill you see to the right
2411 of that photograph was already in place when we started operating, had been
2412 done by the previous operators.
2413
2414 Mr. Kirkland - All right.
2415

2416 Mr. Bryant - I would estimate the rise from the top of that slope to
2417 the top of the slope where we're currently working probably is no more than six to
2418 eight feet, over the distance of probably 400 to 500 feet.
2419
2420 Ms. Dwyer - The important comparison is the height of this rise in
2421 relation to adjacent property.
2422
2423 Mr. Bryant - I couldn't tell you what that is; I really don't know.
2424
2425 Ms. Dwyer - What should we do, Mr. Blankinship, if we don't have
2426 the data that we need to make a decision, that is the reclaimed elevation of
2427 mining area B?
2428
2429 Mr. Blankinship - I guess a deferral would be the normal course.
2430
2431 Ms. Dwyer - When does this expire?
2432
2433 Mr. Bryant - I think today is two years on the nose from the last
2434 issuance.
2435
2436 Ms. Dwyer - If we don't approve it today then you can't mine.
2437
2438 Mr. Bryant - Then I have a problem. Yes ma'am, that's correct.
2439
2440 Ms. Dwyer - The staff report does say, "Applicant should provide
2441 information as to final elevation of the project upon completing of the
2442 reclamation."
2443
2444 Mr. Bryant - I did not get a copy of that. I reviewed it this morning
2445 before I came in. This is the first time, I think, the staff has asked for what the
2446 finished elevation will be.
2447
2448 Ms. Dwyer - If we set a limit on the height for the reclaimed area
2449 and the applicant's not satisfied with that, could the applicant come in and
2450 petition to amend that?
2451
2452 Mr. Blankinship - Yes ma'am.
2453
2454 Ms. Dwyer - Actually, we can't impose a condition unless the
2455 applicant agrees, is that right?
2456
2457 Mr. Blankinship - That's correct.
2458
2459 Mr. Wright - If they're excavating, why should they have a problem
2460 with elevation?
2461

2462 Mr. Blankinship - We have had some applications recently, as I'm sure
2463 you'll recall, where the reclamation plan showed a great deal of filling.
2464
2465 Mr. Wright - They're bringing in stuff off of the site.
2466
2467 Ms. Dwyer - They're going to fill this. We have no idea how high
2468 it's going to be.
2469
2470 Mr. Nunnally - We certainly ought to control that.
2471
2472 Mr. Blankinship - I think at this point, there's more money in filling than
2473 there is in digging. That's the way market conditions are today.
2474
2475 Ms. Harris - What about Condition 23? Doesn't that deal with
2476 excavation?
2477
2478 Ms. Dwyer - Yes. Once they finish excavating and they fill it and
2479 they create a mound, how high will the mound be is my concern.
2480
2481 Ms. Harris - You're concerned with reclamation rather than—
2482
2483 Ms. Dwyer - Yes.
2484
2485 Ms. Harris - Okay.
2486
2487 Ms. Dwyer - Which would be 29. Do you have an elevation, Mr.
2488 Blankinship that we've used in the past? I know this has come up before.
2489
2490 Mr. Blankinship - As you were saying, we normally tie it to the adjoining
2491 property.
2492
2493 Ms. Dwyer - I think if we pass it today, we need to have some
2494 agreement about the elevation.
2495
2496 Mr. Bryant - Let me make sure that one thing is clear. Even if the
2497 center line of the property is elevated over the adjoining property, we understand
2498 we have to tie in at the elevation of the adjoining property and we will tie in at that
2499 existing elevation. We can divert the water and control the sheet flow of the
2500 water into all the necessary sediment traps. We're not going to wind up with a
2501 wall or a cliff, so to speak, next to our neighbors.
2502
2503 Ms. Dwyer - Because you're diverting the water into the sediment
2504 basin.
2505
2506 Mr. Bryant - Correct.
2507

2508 Ms. Dwyer - That's not my only concern. That's important that you
2509 not be changing the grade of the land so water's being dumped on the neighbors,
2510 but also we need the condition of the land to be in a state that it is useable for
2511 agriculture or some other purpose.
2512
2513 Mr. Bryant - I understand.
2514
2515 Ms. Dwyer - We don't want a big mound.
2516
2517 Mr. Kirkland - Mr. Blankinship, what's the recommended slope?
2518 Like in the last case, they talked 5 to 1.
2519
2520 Mr. Blankinship - Five to one, I believe Mr. Brazzle said is the maximum
2521 that they felt comfortable mowing on. I think the standard condition is 3 to 1.
2522
2523 Mr. Kirkland - Right.
2524
2525 Mr. Blankinship - Two to one is the temporary.
2526
2527 Mr. Kirkland - Five to one's a pretty slight slope.
2528
2529 Ms. Dwyer - It is.
2530
2531 Mr. Blankinship - Yeah, that's rolling farmland.
2532
2533 Mr. Kirkland - Right.
2534
2535 Mr. Blankinship - Two to one is the maximum that we'll allow for a
2536 temporary right after they've cut.
2537
2538 Mr. Wright - Shouldn't we try to maintain the elevation that's there
2539 before they excavate? Shouldn't that be our objective?
2540
2541 Mr. Blankinship - That's been done in other cases, yes sir.
2542
2543 Mr. Wright - So you don't change the character of the land.
2544
2545 Ms. Dwyer - I can go with that.
2546
2547 Mr. Blankinship - I really think it should fall to applicant to present a
2548 plan for the Board to review.
2549
2550 Ms. Dwyer - Instead of us trying to pick something.
2551
2552 Mr. Blankinship - That's my position.
2553

2554 Ms. Dwyer - Do you have any suggestions as to what slope and
2555 elevation?
2556
2557 Mr. Bryant - I would have to go back and have it surveyed by our
2558 surveying crew and find out where we are now in terms of elevation in relation to
2559 the neighbors. I know that this site was originally started as a sand and gravel
2560 mine in the 40's or 50's. I don't know of anyone that has any real idea of what it
2561 looked like prior to the operation beginning. We'd probably have to find that out,
2562 too.
2563
2564 Ms. Dwyer - It seems to me we should have more in terms of a
2565 reclamation plan than we've got here.
2566
2567 Mr. Bryant - Yes ma'am.
2568
2569 Ms. Harris - Don't they have 90 days before they would have to
2570 actually cease operation? I was looking at some of the conditions, if the
2571 condition is not satisfied within 90 days of approval.
2572
2573 Mr. Blankinship - That's a good point.
2574
2575 Ms. Dwyer - We could approve this for a short period of time.
2576
2577 Mr. Blankinship - Subject to review of the final plans within 90 days.
2578
2579 Ms. Harris - That's within the guidelines here on several
2580 conditions.
2581
2582 Ms. Dwyer - I'm trying to figure out a way where we can get the
2583 information we need but you don't have to cease operations.
2584
2585 Mr. Bryant - I understand.
2586
2587 Ms. Dwyer - We can approve it for six months, three months and
2588 then you could come back after that time with a reclamation plan and present it to
2589 us and then we could consider it for a two year time.
2590
2591 Mr. Wright - How long will it take to do what we need to have, to
2592 produce what we need to have?
2593
2594 Mr. Bryant - I think six months would be reasonable.
2595
2596 Mr. Wright - In other words, it wouldn't do any good just to defer
2597 this for a month.
2598
2599 Mr. Bryant - No sir.

2600
2601 Mr. Kirkland - It wouldn't give you enough time.
2602
2603 Mr. Bryant - I don't think 30 days would be enough time for us to
2604 get the information that you need together.
2605
2606 Ms. Dwyer - His present permit expires today, so if we defer, what
2607 impact would that have? Would he have to cease operation because he no
2608 longer has—
2609
2610 Mr. Wright - We shouldn't defer it for more than 30 days, I don't
2611 think. Go ahead and approve it for a shorter period of time.
2612
2613 Ms. Dwyer - I'll only approve it for six months.
2614
2615 Mr. Wright - What do you think of that?
2616
2617 Mr. Bryant - I think we can work with that.
2618
2619 Ms. Dwyer - What we have now as far as reclamation, so we don't
2620 want it to be—Let's say it cannot be filled above, what, the existing. What is the
2621 existing elevation?
2622
2623 Mr. Bryant - The grade of the neighbor's property?
2624
2625 Ms. Dwyer - Yes. For the next six months.
2626
2627 Mr. Wright - I wasn't aware. I thought they were having a problem
2628 getting it up to grade; I didn't realize that we're using this to bring the materials in
2629 to raise the elevation. We should be careful about that.
2630
2631 Ms. Dwyer - What if we do this. We approve it today for six
2632 months with the condition that it cannot be filled above the existing grade. Does it
2633 have an existing—The existing grade of the adjacent property?
2634
2635 Mr. Blankinship - Okay.
2636
2637 Ms. Dwyer - Okay? Then in six months, you can come back and
2638 give us a reclamation plan. If you want to raise it above that, give us some detail
2639 so we know what we're working with.
2640
2641 Mr. Bryant - Okay. Really, the most important thing that I think
2642 you need from the reclamation plan is what the finished elevation's going to be
2643 across the entire site.
2644
2645 Mr. Blankinship - That's correct.

2646
2647 Mr. Bryant - Okay. I understand.
2648
2649 Mr. Wright - At the same time, you meet the existing grades of
2650 adjacent landowners, please continue to drain the water towards the sediment
2651 basin.
2652
2653 Mr. Bryant - Right. I understand that as well.
2654
2655 Ms. Dwyer - That's already a condition.
2656
2657 Mr. Blankinship - Yes, that's a requirement.
2658
2659 Mr. Wright - I just want to make sure.
2660
2661 Ms. Dwyer - I know A-1 and A-2 have already been mounded,
2662 right?
2663
2664 Mr. Bryant - They've already been—Yes. There's no more dirt
2665 going into that area at all.
2666
2667 Ms. Dwyer - So, we're really just talking about B.
2668
2669 Mr. Bryant - That's correct. Let me ask you this question. Is the
2670 County going to try to require that we cut dirt out if we need to?
2671
2672 Ms. Dwyer - Of A?
2673
2674 Mr. Bryant - Of A or A-1?
2675
2676 Ms. Dwyer - I don't think I would propose that because it's already
2677 been done and you have not been held to any other standard at this point.
2678
2679 Mr. Bryant - Okay.
2680
2681 Ms. Dwyer - I think we could only legitimately hold you to a
2682 standard—
2683
2684 Mr. Bryant - Moving forward from today.
2685
2686 Mr. Wright - I don't think that would be fair to go back.
2687
2688 Ms. Dwyer - We are just talking about the reclamation of B.
2689
2690 Mr. Bryant - Understood. Okay. Well, thank you.
2691

2692 Ms. Dwyer - All right. So, you're agreeable to that.
2693
2694 Mr. Bryant - In six months, we can put a plan together for you for
2695 the remaining 50% left to be filled at B and bring that to you.
2696
2697 Ms. Dwyer - Let us know the status of A.
2698
2699 Mr. Bryant - Oh, yes, I understand. In terms of where the
2700 reclamation is. Right.
2701
2702 Mr. Wright - Is the grass growing yet.
2703
2704 Mr. Bryant - Correct. I understand.
2705
2706 Ms. Dwyer - How high it is, what the contours of the reclaimed land
2707 are in relation to the surrounding property.
2708
2709 Ms. Harris - When you said the existing grades, you are talking
2710 about the upcoming grade for this parcel. In other words, I'm hearing two things.
2711 Ms. Dwyer said she's dealing with the exiting grades, should not be—
2712
2713 Ms. Dwyer - For six months.
2714
2715 Ms. Harris - You're talking about future grades, are you not?
2716
2717 Mr. Bryant - As I understand, what we're saying is moving forward,
2718 any fill left to be done will be to the elevation of the adjacent property owner. Any
2719 filling already done, will be left as-is. In six months, we'll come back with the final
2720 reclamation plan on A, A-1, and B, with new maps and elevations for you.
2721
2722 Ms. Harris - Nicely stated.
2723
2724 Mr. Wright - Get that, Mr. Blankinship?
2725
2726 Mr. Blankinship - Yes sir.
2727
2728 Mr. Nunnally - You make that as a motion, Ms. Dwyer?
2729
2730 Ms. Dwyer - I will when we—
2731
2732 Mr. Nunnally - This is the last case. Let's make it a motion.
2733
2734 Ms. Dwyer - All right.
2735
2736 Mr. Nunnally - If you will.
2737

2738 **DECISION**

2739

2740 Ms. Dwyer - I move we approve this case for a six month period of
2741 time with the conditions as stated by the applicant.

2742

2743 Mr. Nunnally - It's all in the records.

2744

2745 Mr. Blankinship - Yes it is.

2746

2747 Ms. Dwyer - In the record.

2748

2749 Mr. Wright - Second.

2750

2751 Mr. Nunnally - One thing I want to add, too, is, like I said, I was very
2752 pleased by what I found down at your place yesterday, but I'm also concerned
2753 about the neighbors around there. I want to put you on notice. I'm not
2754 threatening you, now, but I'm going to put you on notice that we're going to be
2755 checking you. Mr. Blankinship will probably be coming down every other day.
2756 I'm just kidding.

2757

2758 Mr. Blankinship - The neighbors must be calling someone else,
2759 because they're not calling the Planning Department. They must be calling
2760 environmental.

2761

2762 Mr. Nunnally - Well, maybe so.

2763

2764 Mr. Blankinship - Or they're calling Gillies Creek which, of course, is
2765 what they should be doing.

2766

2767 Mr. Nunnally - All right. We have a motion by Ms. Dwyer. You got
2768 little note in there, too, Mr. Blankinship?

2769

2770 Mr. Blankinship - Did you want that to be part of the motion?

2771

2772 Mr. Nunnally - Yes sir. I want it to be checked on.

2773

2774 Mr. Blankinship - All right. Yes sir.

2775

2776 Mr. Nunnally - You second both of them?

2777

2778 Mr. Wright - I second it.

2779

2780 Mr. Nunnally - Second by Mr. Wright. All in favor, say aye.
2781 Opposed? Been approved.

2782

2783 Mr. Bryant - Thank you very much. Merry Christmas.

2784
2785
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2827

Ms. Dwyer - Thank you.

After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr. Wright, the Board **granted** application **UP-48-2006** for a conditional use permit to extract materials from the earth at 2980 Meadow Road (Parcel 843-720-7272) The Board granted the temporary use permit subject to the following conditions:

1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of \$40,170, guaranteeing that the land will be restored to a reasonably level and drainable condition. This permit does not become valid until the financial guaranty has been approved by the County Attorney. The financial guaranty may provide for termination after 90 days notice in writing to the County. In the event of termination, this permit shall be void, and work incident thereto shall cease. Within the next 90 days the applicant shall restore the land as provided for under the conditions of this use permit. Termination of such financial guaranty shall not relieve the applicant from its obligation to indemnify the County of Henrico for any breach of the conditions of this use permit. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
3. Before beginning any work, the applicant shall submit erosion control plans to the Department of Public Works for review and approval. Throughout the life of the operation, the applicant shall continuously satisfy the Department of Public Works that erosion control procedures are properly maintained, and shall furnish plans and bonds that the department deems necessary. The applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structures meet the approved design criteria as set forth by the State. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
4. The applicant shall maintain a mine license from the Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
5. The areas approved for mining under this permit shall be delineated on the ground by five-foot-high metal posts at least five inches in diameter and painted in alternate one foot stripes of red and white. These posts shall be so located as to clearly define the area in which the mining is permitted.

- 2828 6. In the event that the Board's approval of this use permit is appealed, all
2829 conditions requiring action within 90 days will be deemed satisfied if the required
2830 actions are taken within 90 days of final action on the appeal.
2831
- 2832 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2833 state and local regulations administered under such act applicable to the
2834 property, and shall furnish to the Planning Office copies of all reports required by
2835 such act or regulations.
2836
- 2837 8. Hours of operation shall be from 7:00 a.m. to 5:30 p.m. Monday through
2838 Friday and 7:00 a.m. to 12:00 noon on Saturday.
2839
- 2840 9. No operations of any kind are to be conducted at the site on Sundays, New
2841 Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or
2842 Christmas Day.
2843
- 2844 10. All means of access to the property shall be from the established entrance
2845 onto Meadow Road. All truck traffic to the site shall approach from Williamsburg
2846 Road north on Drybridge Road, then east on Meadow Road. All truck traffic
2847 leaving the site shall travel west on Meadow Road, then south on Drybridge
2848 Road to Williamsburg Road.
2849
- 2850 11. The applicant shall maintain gates at all entrances to the property. These
2851 gates shall be locked at all times, except when authorized representatives of the
2852 applicant are on the property.
2853
- 2854 12. The applicant shall maintain a sign at the entrance to the mining site stating
2855 the name of the operator, the use permit number, the mine license number, and
2856 the telephone number of the operator. The sign shall be 12 square feet in area
2857 and the letters shall be three inches high.
2858
- 2859 13. The applicant shall maintain "No Trespassing" signs every 250 feet along the
2860 perimeter of the property. The letters shall be three inches high. The applicant
2861 shall furnish the Chief of Police a letter authorizing the Division of Police to
2862 enforce the "No Trespassing" regulations, and agreeing to send a representative
2863 to testify in court as required or requested by the Division of Police.
2864
- 2865 14. Standard "Truck Entering Highway" signs shall be maintained on Meadow
2866 Road on each side of the entrances to the property. These signs will be placed
2867 by the County, at the applicant's expense.
2868
- 2869 15. The applicant shall maintain a standard stop sign at the entrance to Meadow
2870 Road. The operator shall cooperate with the Division of Police to enforce this
2871 stop sign.
2872

- 2873 16. The applicant shall provide a flagman to control traffic from the site onto the
2874 public road, with the flagman yielding the right of way to the public road traffic at
2875 all times. This flagman will be required whenever the Division of Police deems
2876 necessary.
2877
- 2878 17. All roads used in connection with this use permit shall be effectively treated
2879 with calcium chloride or other wetting agents to eliminate any dust nuisance. The
2880 operator shall take the necessary steps to prevent mud from being tracked onto
2881 Meadow Road. The road shall be maintained by washing in addition to sweeping.
2882
- 2883 18. The operation shall be so scheduled that trucks will travel at regular intervals
2884 and not in groups of three or more.
2885
- 2886 19. Trucks shall be loaded in a way to prevent overloading or spilling of
2887 materials of any kind on any public road.
2888
- 2889 20. The applicant shall maintain the property, fences, and roads in a safe and
2890 secure condition indefinitely, or convert the property to some other safe use.
2891
- 2892 21. If, in the course of its preliminary investigation or operations, the applicant
2893 discovers evidence of cultural or historical resources, or an endangered species,
2894 or a significant habitat, it shall notify appropriate authorities and provide them
2895 with an opportunity to investigate the site. The applicant shall report the results of
2896 any such investigation to the Planning Office.
2897
- 2898 22. If water wells located on surrounding properties are adversely affected, and
2899 the extraction operations on this site are suspected as the cause, the effected
2900 property owners may present to the Board evidence that the extraction operation
2901 is a contributing factor. After a hearing by the Board, this use permit may be
2902 revoked or suspended, and the operator may be required to correct the problem.
2903
- 2904 23. Open and vertical excavations having a depth of 10 feet or more, for a period
2905 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to
2906 protect the public safety.
2907
- 2908 24. Topsoil shall not be removed from any part of the property outside of the
2909 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the
2910 property for respreading in a layer with five inches of minimum depth. All topsoil
2911 shall be stockpiled within the authorized mining area and provided with adequate
2912 erosion control protection. If the site does not yield sufficient topsoil, additional
2913 topsoil shall be brought to the site to provide the required five-inch layer of cover.
2914 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as
2915 recommended by the County after soil tests have been provided to the County.
2916
- 2917 25. [AMENDED] All offsite-generated materials deposited on the mining site
2918 shall be documented in a monthly report to the Director of Planning. The operator

2919 shall submit a report stating the origin, nature and quantity of material deposited,
2920 and certifying that no contaminated or hazardous material was included. The
2921 material deposited on the site shall be limited to imperishable materials such as
2922 stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like materials, and
2923 shall not include any hazardous materials as defined by the Virginia Hazardous
2924 Waste Management Regulations. The site shall not be filled above the elevation
2925 of the existing grade of the adjoining property.
2926

2927 26. A superintendent, who shall be personally familiar with all the terms and
2928 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
2929 terms and conditions of this use permit, shall be present at the beginning and
2930 conclusion of operations each work day to see that all the conditions of the Code
2931 and this use permit are observed.
2932

2933 27. [AMENDED] A progress report shall be submitted to the Board on June 30,
2934 2007. This progress report must contain information concerning how much
2935 property has been mined to date of the report, the amount of land left to be
2936 mined, how much rehabilitation has been performed, when and how the
2937 remaining amount of land will be rehabilitated, and any other pertinent
2938 information about the operation that would be helpful to the Board.
2939

2940 28. [AMENDED] Excavation shall be discontinued by June 30, 2007, and
2941 restoration accomplished by not later than June 30, 2008, unless a new permit is
2942 granted by the Board of Zoning Appeals.
2943

2944 29. [AMENDED] The rehabilitation of the property shall take place
2945 simultaneously with the mining process. Rehabilitation shall not be considered
2946 completed until the mined area is covered completely with permanent vegetation.
2947 The applicant shall submit a complete restoration plan showing finish grading of
2948 the site.
2949

2950 30. All drainage and erosion and sediment control measures shall conform to the
2951 standards and specifications of the Mineral Mining Manual Drainage Handbook.
2952 Any drainage structures in place prior to October 14, 1992 and which do not
2953 conform to the Mineral Mining Manual Drainage Handbook may remain in place
2954 until such time as any reconstruction is required at which time said structures
2955 shall be brought into conformance with the Mineral Mining Manual Drainage
2956 Handbook.
2957

2958 31. [ADDED] The operator shall submit quarterly reports to the Planning
2959 Department regarding the status of the monitoring wells.
2960

2961 32. Failure to comply with any of the foregoing conditions shall automatically
2962 void this permit.
2963
2964

2965	Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
2966	Negative:		0
2967	Absent:		0

2968

2969 The Board granted this use permit because it found the proposed use will be in
 2970 substantial accordance with the general purpose and objectives of Chapter 24 of
 2971 the County Code.

2972

2973 Mr. Nunnally - All right. November 16 minutes.

2974

2975 Ms. Dwyer - I just have one comment on page 37 in the amended
 2976 condition. I understand what's being said and it might be okay. It says, "This
 2977 variance applies only to the lot width," blah, blah, blah, "for one dwelling only." I
 2978 would just like to be more affirmative. When we say only one dwelling can be
 2979 built on the property, I like the way it was worded in the most recent case we
 2980 looked at where it says, "only one dwelling as shown on the plan file," or if it's not
 2981 shown, we have to [unintelligible] that part. Maybe constructed pursuant
 2982 [unintelligible]. That way, it's crystal clear to everyone from now in perpetuity that
 2983 this is only for one dwelling.

2984

2985 Ms. Harris - What page?

2986

2987 Ms. Dwyer - 37, the amended condition.

2988

2989 Mr. Wright - What condition are you talking about?

2990

2991 Ms. Dwyer - Number 1, the amended one.

2992

2993 Mr. Blankinship - You're not actually amending the minutes—

2994

2995 Ms. Dwyer - No.

2996

2997 Mr. Blankinship - —your just asking us to draft the condition differently.

2998

2999 Ms. Dwyer - Just to make it—Use the wording that you used on
 3000 this case 44-2006, which just starts off by saying, "only one dwelling is
 3001 approved," and then we can talk about the other part of it.

3002

3003 Mr. Blankinship - Okay.

3004

3005 Ms. Dwyer - I'm not changing anything, I just want the wording to
 3006 be—

3007

3008 Mr. Wright - How do you want it to be read?

3009

3010 Ms. Dwyer - Like the condition in the case we just heard. It says,
3011 "Only one dwelling as shown on the plan filled with the application may be
3012 constructed pursuant to this approval."
3013
3014 Mr. Wright - Yes.
3015
3016 Ms. Dwyer - It's kind of in there, but I like the wording of the case
3017 that we just heard today better.
3018
3019 Mr. Nunnally - What line are you on?
3020
3021 Ms. Dwyer - 1655.
3022
3023 Ms. Harris - 1656, too.
3024
3025 Ms. Dwyer - Yes. That whole paragraph.
3026
3027 Mr. Blankinship - Again, you're not proposing that we change the
3028 minutes.
3029
3030 Ms. Dwyer - No.
3031
3032 Mr. Wright - For future cases, that would be a new type of
3033 condition, new wording.
3034
3035 Mr. Wright - Are you finished?
3036
3037 Ms. Dwyer - Yes.
3038
3039 Mr. Wright - On page, let's see, 25. This case has been appealed
3040 or will be appealed, I understand. Is that right?
3041
3042 Ms. Harris - Yes.
3043
3044 Mr. Wright - We don't have any basis for the decision expressed
3045 there, any grounds for the decision.
3046
3047 Mr. Kirkland - I stated—
3048
3049 Mr. Wright - You stated something.
3050
3051 Mr. Kirkland - Yes sir.
3052
3053 Mr. Wright - Normally, Ben takes it—I talked about this. We all
3054 had discussion on this. I think we ought to make sure that we have something in
3055 here for the court to listen to or to consider.

3056
3057 Mr. Kirkland - I remember saying "good faith" and all this in my
3058 motion.
3059
3060 Mr. Blankinship - If that is stated in the discussion and in the motion—
3061
3062 Mr. Wright - Normally, in all of these cases, you say—Let me give
3063 you an example later on. Let me get one.
3064
3065 Ms. Dwyer - That's on 22, Mr. Kirkland, your motion and the
3066 reasons for it.
3067
3068 Mr. Blankinship - It used to be our practice—
3069
3070 Mr. Wright - Page 29. Look at line 1234. On that case, you said
3071 the "Board granted the request because it found the proposed use would be a
3072 substantial accordance with the general purpose objectives of Chapter 24 of the
3073 County Code." That was the reason of the ground of the approval. You usually
3074 give some sort of—Here all you say is "the Board granted the variance subject to
3075 the following conditions," and you put the conditions in there and you put the
3076 vote, but we don't have any grounds given for the decision.
3077
3078 Mr. Blankinship - It used to be our practice that we did not transcribe
3079 the discussion at the end of the meeting, all we transcribed was the public
3080 hearing portion and then we inserted the decisions that were made at the end of
3081 the meeting. None of the discussion was transcribed and actually put in the
3082 minutes. I think that was why those statements had been done in the past. I'm
3083 uncomfortable with putting words in your mouth, basically. If you've made a
3084 statement of why you're making the motion you are, then I don't feel comfortable
3085 with the staff coming back later and saying this is why they really made the
3086 motion.
3087
3088 Mr. Wright - Let's take the last case we just approved. There was
3089 a motion made and second and it was passed. No basis was given. No basis or
3090 grounds were given for the motion. I'm saying at the time we do something, we
3091 ought to state a basis or a reason for the motion.
3092
3093 Mr. Blankinship - It really needs to be spelled out in the making of the
3094 motion.
3095
3096 Ms. Harris - I think we generally do. I think on that last case, we
3097 got caught in some of the—
3098
3099 Mr. Blankinship - The discussion of the condition.
3100
3101 Ms. Harris - Yes, the discussion.

3102
3103 Mr. Wright - No specific basis or grounds for that last motion we
3104 just made, the last case.
3105
3106 Ms. Harris - Right. I thought about it at the time.
3107
3108 Mr. Wright - I thought the way you were doing it, you would take
3109 the sense of the Board. I've been through these things and I've written up some
3110 stuff. It's pretty standard.
3111
3112 Mr. Blankinship - We did it two or three months running and nobody
3113 referred to them, so we stopped doing it.
3114
3115 Mr. Wright - I thought that was good. In other words, we could say
3116 this is the reason. Number one would be the basis without reading the whole
3117 thing. It's hard to articulate it at the time you make the motion unless you've got
3118 something in your mind or something before you on these things.
3119
3120 Mr. Blankinship - That's something that we've been struggling with a
3121 little bit recently.
3122
3123 Mr. Wright - I just was concerned. This is going before the court.
3124 What's the court going to have on this? It says, "After advertised, motion by Mr.
3125 Kirkland." I seconded it, the Board granted it, the variance to build eight houses.
3126 "The Board granted the variance subject to the follow conditions." It just says
3127 you gave you the vote.
3128
3129 Ms. Dwyer - In this case, Mr. Kirkland did say the reason.
3130
3131 Ms. Harris - When he made the motion.
3132
3133 Mr. Wright - He said that.
3134
3135 Ms. Harris - He gave his reasons.
3136
3137 Mr. Wright - I'm not sure that's a full-blown basis, grounds for the
3138 decision. If you really want to look at that case, in order to approve it, we would
3139 have to, we would say what we've said before. You could talk about what I said
3140 in here, that you would have to refer to—Taken as a whole. In other words, as it
3141 stands, it does not, or does interfere with all the benefits and uses of the property
3142 taken as a whole. You've got to get Cochran in there and you've got to get the
3143 [unintelligible] or the other three points, which were alluded to by the attorney for
3144 the proponent. He addressed all of those issues.
3145
3146 Ms. Harris - I thought with the ensuing dialogue between you and
3147 Ms. Dwyer [unintelligible], that—

3148
3149 Mr. Wright - We covered them.
3150
3151 Ms. Harris - Yeah, you covered them. You did discuss. You
3152 seconded the motion, so I thought that it was taken care of.
3153
3154 Ms. Dwyer - It's in the record.
3155
3156 Mr. Wright - We discussed it and if that goes up, I guess that's the
3157 best you can do. I just wanted to point that out. I don't know how we should
3158 address that in the future.
3159
3160 Mr. Blankinship - I think in the past it was done because the
3161 discussions were not transcribed at all. The transcription ended when the public
3162 hearing ended and then there was just the statement of what happened after.
3163 Now that we transcribe the discussion, I'd rather not have us put words in your
3164 mouth. I think that's very helpful, yes.
3165
3166 Mr. Wright - In the future, when I make a motion, I'm going to state
3167 the basis for my motion.
3168
3169 Mr. Blankinship - Yes. I think that's the best.
3170
3171 Mr. Wright - I've been through all this stuff and I've got each type
3172 of situation. I'm just going to read it off rather than try to make it up at the time.
3173
3174 Ms. Dwyer - I sat down last night, because I think the zoning
3175 ordinance is so confusing. It repeats itself and has public policy in with sort of
3176 the systematic requirements. I just sat down and outlined it. I think that's almost
3177 what we have to do is look back to the ordinance. Every time we make a
3178 decision, we should refer to the ordinance and the language in that ordinance as
3179 a basis for the decision.
3180
3181 Ms. Harris - I agree.
3182
3183 Mr. Wright - For instance, on these use permits—and I've been
3184 through these minutes—basically the sole reason given the basis for approval of
3185 these use permits, like [unintelligible], etcetera, I went through. You put, "The
3186 proposed use will be in substantial accordance with the general purpose and
3187 objectives of Chapter 24 of the County Code." Arrgh. What's that?
3188
3189 Mr. Wright - In other words, we ought to use some language that it
3190 has traffic conditions or how it affects the adjoining properties and all the stuff
3191 that's in the use permit set forth in the Code of why we approve it. We don't get
3192 any appeal from those so it doesn't cause us any problems. I had a couple more
3193 things, if you all will bear with me for a second. Let's see, page 46. That's the

3194 same thing. There's no basis, no grounds for the decision on that one. I don't
3195 know if we even talked about that or not.

3196

3197 Mr. Gidley - If there is something given, like on the Scott Road
3198 case today, Ms. Harris gave reasons for her approval. Therefore, we would let
3199 that stand on its own, but as you pointed out, on the Yarnell Road case, none
3200 were given. In that case, we would come back and put something in so at least
3201 there's something in the record. In this case, Ms. Harris gave her reasons on line
3202 20, 25. Therefore, there was no need to come back.

3203

3204 Mr. Wright - I don't know whether that's a legal basis for it or not,
3205 but anyhow. Page 34, it's the same thing. We'll let that go. Page 71 and 72.
3206 I've got some confusion in these minutes and I don't know how it happened. That
3207 case, they didn't appear on the one that we heard today? If you go to page 71—
3208 Well, no, that's a no-basis one, too. There's no grounds stated there. Take a
3209 look at page 53. I was just confused. If you go back to page 52, that's A-54, the
3210 one we heard today. You go over to page 53. We say, "Is there anyone here
3211 interest in," then we passed it. Then it picks up again on 2393. Then we went
3212 through all of that. Then go back to page 72 and look at line 3278. I'm confused.
3213 It looks like—

3214

3215 Mr. Blankinship - That discussion should be moved to page 54.

3216

3217 Mr. Wright - It's kinda confusing to me because we talked about it
3218 on page 53 and then on page 72 in line 3278, Ms. Dwyer said, "There are three
3219 people who have been sitting in the back."

3220

3221 Ms. Dwyer - Which is when we returned to the case.

3222

3223 Mr. Wright - Huh?

3224

3225 Ms. Dwyer - That's when we returned to the case, I think.

3226

3227 Mr. Blankinship - If you continue on down to 3308.

3228

3229 Mr. Wright - I don't know. I'm confused.

3230

3231 Mr. Kirkland - We came back after the break and I think you must
3232 have—

3233

3234 Mr. Blankinship - We either need to move all of it or none of it.

3235

3236 Mr. Wright - Yes, just to be consistent.

3237

3238 Mr. Blankinship - Yes.

3239

3240 Mr. Wright - It ought to be together.
3241
3242 Mr. Blankinship - We'll correct that.
3243
3244 Mr. Wright - Okay. Let's see, I had one more. All right, page 81 is
3245 another one we didn't have any grounds stated, specific grounds stated.
3246
3247 Ms. Dwyer - We all agree to do better on that.
3248
3249 Mr. Wright - It's all right if nothing happens, but when somebody
3250 appeals one of these things, I think it makes us look bad. I don't know what the
3251 court hangs its hat on if we don't have any grounds for the Board's decision.
3252
3253 Ms. Dwyer - The last case that was appealed, Ms. Harris and I
3254 went and heard the case in Circuit Court. Almost the whole discussion was—
3255
3256 Mr. Wright - What was the basis of the—
3257
3258 Ms. Dwyer - What facts did the Board rely on and what was the
3259 basis of the decision, so that—
3260
3261 Mr. Wright - Now, we had a good discussion on this A-44 thing.
3262 You had some and I had a lot, so I think the court could, from that, get
3263 something. I think when we really come down to the decision, we ought to say
3264 the grounds.
3265
3266 Mr. Blankinship - It should be stated in the motion, I agree.
3267
3268 Mr. Wright - Yes. With those corrections, I move we approve the
3269 minutes.
3270
3271 Mr. Nunnally - Motion by Mr. Wright that the minutes be approved.
3272
3273 Mr. Kirkland - Second.
3274
3275 Mr. Nunnally - Second by Mr. Kirkland. All in favor say aye.
3276
3277 On a motion by Mr. Wright, seconded by Mr. Kirkland, the Board **approved** the
3278 Minutes of the **November 16, 2006**, Henrico County Board of Zoning Appeals.
3279
3280 Mr. Wright - I'm glad that the Board appealed this case because I
3281 think we need some clarification. The only thing is, it's such a unique case, I
3282 doubt if we'll ever have another case like it.
3283
3284 Mr. Blankinship - I hope not.
3285

3286 Ms. Harris - I hope not either.
3287
3288 Mr. Blankinship - That is a strange set of facts.
3289
3290 Mr. Kirkland - Has it already started? Has the process already
3291 started?
3292
3293 Mr. Blankinship - Yes.
3294
3295 Mr. Kirkland - When do you think they will hear the case? Next
3296 year?
3297
3298 Mr. Blankinship - I would hope it would be in '07.
3299
3300 Mr. Kirkland - About mid-year or so?
3301
3302 Mr. Blankinship - Yes. I would wait and see.
3303
3304 Mr. Wright - It's such a unique case, I don't know whether we'll get
3305 a whole lot of precedent out of it.
3306
3307 Mr. Blankinship - Yes, that is a strange set of facts.
3308
3309 Ms. Dwyer [off mike] - So, we should never approve a case that comes
3310 before us like the one in [unintelligible]. [Unintelligible] the landowner.
3311
3312 Mr. Kirkland - Either that or tell the people that rules in the case in
3313 [unintelligible], they can't [unintelligible] decision.
3314
3315 Mr. Blankinship - When we wrote them the letter and said wait a
3316 minute, you are in spirit violating this condition now.
3317
3318 Ms. Dwyer - Oh, we couldn't stop them from [unintelligible].
3319
3320 Mr. Nunnally - You all excuse me just for a minute. Ben? Ben?
3321 Elizabeth? We received a note from Mrs. Parker this morning. It really breaks
3322 our heart, Ms. Parker, to see you leave. We wish you best of luck in your
3323 retirement and we thank you for all the things you've done for use since we've
3324 been here.
3325
3326 The Board adjourned until **January 25, 2007**, at 9:00 a.m.
3327
3328
3329 James W. Nunnally
3330
3331 Chairman

3332
3333
3334
3335
3336
3337
3338
3339
3340

Benjamin Blankinship, AICP
Secretary