

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, FEBRUARY 23, 2006, AT 9:00 A.M., NOTICE HAVING**  
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON FEBRUARY 2 AND 9,**  
6 **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 M. Gidley, County Planner**  
   **Priscilla M. Parker, Recording Secretary**

8  
9 *{Recording equipment failure; tapes kept shutting down}*

10  
11 Mr. Nunnally -                         Good morning, Ladies and Gentlemen. We’re sorry for the  
12 delay, and we apologize for that. We welcome you to the February meeting of the  
13 County of Henrico Board of Zoning Appeals. We ask you to please stand and join us for  
14 the **Pledge of Allegiance to the Flag of Our Country**. Mr. Secretary, would you read  
15 the rules, please.  
16

17 Mr. Blankinship -                    Good morning, Mr. Chairman, Members of the Board, ladies and  
18 gentlemen. The rules for this meeting are as follows. As Secretary, I will call each  
19 case. Then at that time the applicant should come to the podium. I will ask everyone  
20 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.  
21 The applicants will then present their testimony. After the applicant has spoken, the  
22 Board will ask them questions, and then anyone else who wishes to speak will be given  
23 the opportunity. After everyone has spoken, the applicant, and only the applicant, will  
24 be given the opportunity for rebuttal. After hearing the case, and asking questions, the  
25 Board will take the matter under advisement. They will render all of their decisions at  
26 the end of the meeting. If you wish to know their decision on a specific case, you can  
27 either stay until the end of the meeting, or you can call the Planning Office later this  
28 afternoon, or you can check the website. The vote on each case will be posted to our  
29 website within an hour of the end of the meeting. This meeting is being tape recorded,  
30 so we will ask everyone who speaks, to speak directly into the microphone on the  
31 podium, to state your name, and to spell your last name please. And finally, out in the  
32 foyer, there are two binders, containing the staff report for each case, including the  
33 conditions that have been recommended by the staff.  
34

35 Beginning at 9:00

36

37 Mr. Nunnally - Thank you sir. Do we have any requests for withdrawals or  
38 deferrals?

39

40 *{Mr. Blankinship - We have a request from Mr. Theobald to defer A-9-2006,*  
41 *BRC Richmond, LLC, Appeal of a Decision of the Director of Planning, until the*  
42 *next regular BZA meeting on March 23, 2006.}*

43

44 **A-9-2006** **BRC RICHMOND, LLC** appeals a decision of the Director of  
45 Planning pursuant to Section 24-116(a) regarding the property at  
46 9498 West Broad Street (Parcel 755-758-7804), zoned B-2,  
47 Business District (Brookland).

48

49 *{Mr. Theobald -}* .....pursue this appeal of interpretation, so we'd  
50 appreciate thirty days to continue that dialog.

51

52 Mr. Kirkland - I move that we defer it for thirty days.

53

54 Ms. Dwyer - Second.

55

56 Mr. Nunnally - Motion by Mr. Kirkland; second by Ms. Dwyer, that we defer  
57 it for thirty days. All those in favor say aye. It's been deferred.

58

59

60 Upon a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **deferred** application  
61 **A-9-2006** for an appeal of a decision of the Director of Planning pursuant to Section 24-  
62 116(a) regarding the property at 9498 West Broad Street (Parcel 755-758-7804). The  
63 case was deferred to allow negotiation of a solution, from the February 23, 2006, until  
64 the March 23, 2006, meeting.

65

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

67 Negative: 0

68 Absent: 0

69

70 *{The back-up recorder just failed.}*

71

72 Mr. Blankinship - They're waving us to go on again. Let's go as fast as we  
73 can. We'll call two at a time, just to hurry things up.

74

75 **UP-4-2006** **W. C. ENGLISH, INC.** requests a conditional use permit pursuant  
76 to Sections 24-52(d) and 24-103 to extract materials from the earth  
77 at 3501 Britton Road (Parcels 827-696-9825, 827-697-3933 and  
78 826-697-0978), zoned A-1, Agricultural District (Varina).

79

80 **UP-5-2006** **W. C. ENGLISH, INC.** requests a conditional use permit pursuant

81 to Sections 24-52(d) and 24-103 to extract materials from the earth  
82 at 6919 Monahan Road (Parcel 823-698-3046), zoned A-1,  
83 Agricultural District (Varina).  
84

85 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
86 please stand and raise your right hand?  
87

88 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
89 truth, the whole truth, and nothing but the truth, so help you God?  
90

91 Mr. Hinson - I do. Good morning. My name is Paul Hinson; I'm the  
92 owners' representative, as well as the developer/operator's representative. I'm with  
93 Koontz Bryant; we're the engineer who prepared the plans that were submitted and  
94 approved for the two borrow pits. The two projects that we're requesting renewals of  
95 the applications on, are for what is known as the Wooten Gregory Pit, as well as the  
96 Spanos Borrow Pit. The Wooten Gregory Pit has been used previously for the I-895  
97 construction, and the Spanos Pit was never activated. It does have an approved  
98 erosion control plan, submitted with the application. We have received comments from  
99 the Public Works Department as part of our renewal application, and we're more than  
100 willing to discuss those items with the staff and see if we can't make amendments to the  
101 plan as needed to try to satisfy those comments, but we do have active approved  
102 erosion control plans on both sites right now, and they have both been bonded. Our  
103 request for renewal is so that we may use these materials for projects such as the  
104 proposed airport connector, and possibly other projects such as Wilton Farms and  
105 others as may be needed, that English Construction would be participating in. There  
106 are no plans that I'm aware of, to sell any of the material from the pit, just for uses on  
107 projects where English Construction would be the general contractor or where the  
108 contractor was involved in projects. We're here to answer any questions you may have  
109 today. The representative from W. C. English, as well, is here, and they're the operator  
110 of the proposed pits.  
111

112 Mr. Nunnally - Do you have any plans at the present time to do any work, or  
113 is it just going to sit there, like it is now?  
114

115 Mr. Hinson - The Wooten Gregory Pit, we will be doing some ongoing  
116 activities to insure that we stabilize the areas where we've achieved the final grades that  
117 we're planning on in those areas, so that we will do some of those activities. That pit  
118 right now is inactive, in the sense that we're not actively extracting materials right now,  
119 but it does have an approved E&S Plan and it is ready to go back to operation if it needs  
120 to be. I'm not aware of any plans right now to extract any materials, but I do know the  
121 Wilton Farms project is one of the ones that they've discussed as a possible source  
122 where they'll need these materials, and I believe that one has been approved by the  
123 Board of Supervisors and is in the design development stage. We're hoping that project  
124 will become something that will need some materials in the very near future. That is  
125 part of the request for our renewal of these applications for both of these sites.  
126

127 Mr. Wright - Is that UP-5 that you're talking about now? I'm confused as  
128 to which one we're talking about.  
129  
130 Mr. Blankinship - UP-5 is the Spanos Pit that has not been mined.  
131  
132 Mr. Hinson - Yes sir, the Spanos Pit has not been mined at all at this point  
133 in time. There is an approved plan for that pit, but there has not been any activity on  
134 that site. The Wooten Gregory Pit was used for the I-895 construction project.  
135  
136 Ms. Dwyer - So Wooten Gregory is UP-4.  
137  
138 Mr. Hinson - Yes ma'am, that is correct.  
139  
140 Mr. Wright - Mr. Blankinship, I just wanted to call attention to the  
141 conditions; they are not the same in these two permits. Number 2, for instance. In UP-  
142 4 you've got the hours will be from 6:00 to 6:00, and Sunday shall be from 8:00 to 1:00,  
143 Saturdays 8:00 to 1:00, whereas in UP-5, it's 7:00 to 7:00, and 7:00 to 3:00.  
144  
145 Mr. Hinson - Yes sir, when we were at the Board of Zoning Appeals at the  
146 last meeting, we did bring that particular discrepancy to the attention of the staff, and  
147 they indicated that was just a misprint in the conditions. We are planning on operating  
148 both pits the same hours.  
149  
150 Mr. Wright - Which one is correct? I just want to make sure.  
151  
152 Mr. Hinson - It was the date of the operation that was also incorrect, if I  
153 remember correctly sir.  
154  
155 Mr. Blankinship - The dates I remember discussing, and I believe we rectified  
156 those. The two permits were approved separately and are being renewed together;  
157 that's why they hadn't been looked at side by side before.  
158  
159 Mr. Wright - Which one is correct? UP-5 says 7:00 to 7:00 during  
160 Monday through Friday when daylight savings time is in effect.  
161  
162 Mr. Blankinship - And UP-4 is from 6:00 until 6:00. I suppose that they  
163 requested that we move that one; that's the active pit. I suppose that they requested  
164 that we move that forward an hour to allow them to get started earlier. In their  
165 experience, they didn't need 6:00 to 7:00, so I would say that is probably the more  
166 recently amended set of conditions. UP-4 is probably the one that should stay the  
167 same, and UP-5 should probably be changed to match it. Unless the applicant has any  
168 objections.  
169  
170 Mr. Hinson - I don't believe that the applicant would have any objection. I  
171 do have a representative from English who's shaking his head. We're fine to amend  
172 those hours as the Board would feel fit for those projects. We'd like to leave them as

173 they are if we could.  
174  
175 Mr. Wright - Are you clear then, that the hours would be Monday through  
176 Friday, 6:00 to 6:00 in Daylight Saving Time, and 7:00 to 5:00, Eastern Standard Time,  
177 Saturday 8:00 till 1:00.  
178  
179 Mr. Hinson - Yes sir, that is correct.  
180  
181 Mr. Wright - That's what we want. That would be in UP-5 also.  
182  
183 Mr. Hinson - Those would be our preferred hours.  
184  
185 Mr. Wright - Another thing, Mr. Blankinship, # 27 in UP-4 is not in UP-5.  
186  
187 Mr. Blankinship - Number 27, failure to comply, should be there too.  
188  
189 Mr. Wright - That's an oversight?  
190  
191 Mr. Blankinship - Yes, that should be standard  
192  
193 Ms. Harris - How will you extract materials for this mining process?  
194  
195 Mr. Hinson - The extraction process would be more than likely with  
196 escalators and from the Spanos end of both the Wooten Pit now; we have amended  
197 both conditions to allow us to haul materials out down the roads, and we have obtained  
198 a request from the County to try to make sure that we use Darbytown Road primarily,  
199 instead of Charles City Road, and we are willing to try to use that road as our haul route  
200 as much as we can.  
201  
202 Ms. Harris - So there is no blasting, just the escalators rule?  
203  
204 Mr. Hinson - No ma'am, there is no blasting.  
205  
206 Mr. Wright - Also in condition # 5 in UP-4, it says, "...There shall be no  
207 excavation on the portion of the property north of I-895." Are you in accord with that?  
208  
209 Mr. Hinson - Which use permit was that sir?  
210  
211 Mr. Blankinship - Use Permit 4.  
212  
213 Mr. Hinson - I believe that is correct.  
214  
215 Mr. Blankinship - Before I-895 was actually constructed, they were allowed to  
216 borrow material from both sides, but now that it's constructed, we don't want any  
217 material removed from the north side, especially with the new subdivision recently  
218 approved there.

219  
220 Mr. Nunnally - There is no travel on Charles City Road?  
221  
222 Mr. Hinson - Yes sir, we would be willing to agree to that as well; the  
223 County did request that we use Darbytown, and we can use it as our primary haul road.  
224  
225 Ms. Dwyer - So why is the section north of I-895 included in the case if no  
226 excavation is permitted, or allowed?  
227  
228 Mr. Blankinship - When it was originally approved, it was authorized, but then  
229 once I-895 was cut across, it was as if that area had never actually been.  
230  
231 Ms. Dwyer - It seems to me that it's actually prohibiting any excavation  
232 north of I-895, that should be excluded from the case, just to avoid any errors from  
233 occurring in the future.  
234  
235 Mr. Hinson - We'd be happy to amend the plans and modify the limits to  
236 remove that area and resubmit that to the County.  
237  
238 Mr. Blankinship - We can put that in the recommended conditions as well.  
239  
240 Ms. Dwyer - It is in # 5.  
241  
242 Mr. Blankinship - I think we repeated that under the reclamation plan,  
243 requesting that they amend the plan to show that.  
244  
245 Ms. Dwyer - So will the process be excluding that?  
246  
247 Mr. Blankinship - When they submit their erosion and sediment control plan  
248 and their reclamation plan, those plans should be revised to remove that area.  
249  
250 Mr. Hinson - Yes ma'am, actually we would amend our existing approved  
251 plans to eliminate that area from our control measures and from the limits of our mining  
252 areas as well.  
253  
254 Ms. Dwyer - Maybe that could be one of the conditions, to highlight that.  
255  
256 Mr. Hinson - Yes ma'am, that would not be a problem at all.  
257  
258 Ms. Dwyer - I have a question about rehabilitation. Condition # 8 says  
259 "The rehabilitation of the property shall take place simultaneously with the extraction  
260 process." Has any rehabilitation occurred to date?  
261  
262 Mr. Hinson - We have achieved the final slopes required for our  
263 reclamation plan, in the areas where we've basically extracted all the materials. I  
264 believe they've attempted to establish the permanent vegetation in those areas. It has

265 been a little troublesome to get our vegetation to grow in those areas, but we will  
266 continue that effort, and we have achieved the slopes that are required, so in the areas  
267 where we're not planning on doing any more extracting, we have achieved the final  
268 slopes as shown on the extraction plan and the reclamation plan that was approved by  
269 the County.

270  
271 Ms. Dwyer - Refresh my memory about the reclamation plan. How will  
272 the land be reclaimed and restored?

273  
274 Mr. Hinson - The reclamation for the Wooten Borrow Pit was for that to  
275 remain a lake upon completion of the operations.

276  
277 Ms. Dwyer - Because it is a lake now.

278  
279 Mr. Hinson - Yes ma'am, the bottom of the excavation is several feet  
280 below the outfall excavations, so there's really no way for us to create a buffer there that  
281 does not have a permanent water surface elevation, unless we brought in additional  
282 materials, and there's a prohibition from us bringing any materials onto the site.

283  
284 Ms. Dwyer - When I looked at it, it looked like the Preston area was also  
285 under water.

286  
287 Mr. Hinson - Yes ma'am, both projects, our final plan is to have a  
288 permanent water pond there, and that was included in the documents that we submitted  
289 to the County and was stated in our reclamation plan that was included with those  
290 documents.

291  
292 Ms. Dwyer - Projecting ahead to the future, this could not be used for any  
293 sort of development. It would just be a permanent lake.

294  
295 Mr. Hinson - Yes ma'am, that is generally the situation, but access to the  
296 Wooten Preston property, I understand that it has very good visibility, but there really is  
297 no convenient way to get to that property, and when we looked at that, and when we  
298 were preparing our plat, there were really no commercial applications that we saw,  
299 because of the limited access to that property, so when we purchased it, when English  
300 purchased the property, it had been used for several years by the Wootens, which was  
301 a construction company that had owned it previously for the construction of I-295, so it  
302 had actually been used as a borrow pit prior to the purchase by English Construction for  
303 the I-895 project.

304  
305 Ms. Dwyer - So there will be no inert debris that will be brought in, that it's  
306 going to remain essentially "as is" and be topsoil.

307  
308 Mr. Hinson - If we bring any material onto the site, it would be topsoil as  
309 part of our reclamation, to make sure that we can establish permanent vegetation.  
310 There are no plans to bring any – when you say inert debris, you mean no concrete, no

311 asphalt rubble, no spoiled materials – we aren't planning to bring any of those materials  
312 to the site.

313  
314 Ms. Dwyer - What else will you do to reclaim the site, other than what you  
315 have already done, which is achieve the slopes, other than the part covered by water?

316  
317 Mr. Hinson - We will permanently vegetate the sites. In the side slope  
318 areas, we will make sure that we either, by use of erosion control blankets or topsoiling  
319 or soil amendments, or whatever procedures we need to use to accomplish a vegetation  
320 slope to prevent future erosion, and we will establish permanent vegetation on all the  
321 final slopes, once we've completed our extraction operations at the site.

322  
323 Ms. Dwyer - Can the Preston property be filled in and used for  
324 development at some future time? Is that some of the same problems that the Wooten  
325 property has in terms of elevation and water slopes?

326  
327 Mr. Hinson - The plan that we have proposed for the amount of materials  
328 to be extracted there, yes, it would prohibit us not having a permanent water surface  
329 elevation when completed, and again, these properties have limited commercial  
330 potential due to their locations and access off of secondary roads. The other challenge  
331 is that once we've removed all that material and then put material back, we can't bring  
332 in spoiled materials. We'll be able to build on it, and then we're starting to create  
333 situations where we need engineered foundations that make it cost prohibitive. We  
334 understand the County's desire for us to have a higher future use for the properties.  
335 Really, it's financially impractical because of the need to bring back the material that  
336 we're taking out of there, in essence to get it to grades that would be a lot less to use  
337 economical building techniques.

338  
339 Mr. Nunnally - Any other questions? I think we have someone in  
340 opposition. If you'll have a seat sir, you'll have a time to rebut after we hear from him.

341  
342 Mr. Hudgins - Good morning, ladies and gentlemen; my name is David  
343 Hudgins. I represent my father-in-law, Charles Bowery, who has a physical impairment.  
344 The hours of operation that were negotiated with English were 7:00 to 7:00, and that's  
345 why there's a difference. That was through prior negotiations, and we do not want that  
346 changed. Other than that, we're concerned that the restoration of UP-5, that English be  
347 held accountable and so far, we have no problem with it, but by the same token, they  
348 haven't done anything. We certainly will be monitoring that process, since my father-in-  
349 law lives actually immediately adjacent to the property.

350  
351 Ms. Dwyer - You're talking about UP-5 now? This is your father-in-law?

352  
353 Mr. Hudgins - Correct. He lives in that little piece that's been carved out of  
354 the middle, if we kind of go back one slide. To the left, you see that little rectangle that  
355 juts out into the borrow pit?

356



357 Mr. Blankinship - Just off of Monahan Road?  
358  
359 Mr. Hudgins - Correct.  
360  
361 Ms. Dwyer - And what's your father-in-law's name?  
362  
363 Mr. Hudgins - Bowery.  
364  
365 Ms. Dwyer - And he wants it 7:00 to 7:00, did you say?  
366  
367 Mr. Hudgins - Correct.  
368  
369 Mr. Wright - That's what's in there now.  
370  
371 Mr. Hudgins - Correct – that's why it's in there.  
372  
373 Ms. Dwyer - What were you concerned about the reclamation?  
374  
375 Mr. Hudgins - Just that we have no experience with English, and we just  
376 want to make sure that they live up to the promise, since the Bowerys have lived there  
377 for fifty years, and they're not going anywhere. Whatever's left is what they're going to  
378 have to deal with. I'm sure they'll work the process.  
379  
380 Mr. Nunnally - If they don't live up to their promises, all you have to do is  
381 call the County, and they'll make sure they do.  
382  
383 Mr. Wright - Do you have any problem with UP-4? Right now UP-4 says  
384 6:00 to 6:00, where the one you're concerned with, UP-5, says 7:00 to 7:00. Are you  
385 concerned with the other one also, or just the one you're talking about?  
386  
387 Mr. Hudgins - UP-5. Britton Road is a pretty good distance away and  
388 doesn't impact – there are some physical reasons too, because physical therapy's got  
389 to go through. I can't speak to UP-4.  
390  
391 Mr. Wright - You have no concern whether it's 6:00 to 6:00 in UP-4?  
392  
393 Mr. Hudgins - No sir.  
394  
395 Mr. Wright - Just UP-5?  
396  
397 Mr. Hudgins - Correct.  
398  
399 Mr. Nunnally - Anything else sir?  
400  
401 Mr. Hudgins - That's it for me.  
402

403 Ms. Dwyer - Mr. Chairman, I have some questions for Mr. Hinson  
404 regarding UP-5.  
405  
406 Mr. Hinson - Yes ma'am.  
407  
408 Ms. Dwyer - Do you have issues with access, who owns and accesses  
409 the property that's existing on Monahan Road. He also indicated concern about how  
410 the property would be accessed for excavation – can you speak to that?  
411  
412 Mr. Hinson - I'm not exactly sure what the County's concerns were – was  
413 it the visibility or site lines, or was there just some concerns about the physical road into  
414 the site?  
415  
416 Ms. Dwyer - The physical road into the site, on Monahan Road, so you'll  
417 be coming by Mr. Bowery's home, with all of the trucks and excavation equipment?  
418  
419 Mr. Hinson - Yes ma'am, that's correct. But the excavation equipment,  
420 once it's on site, won't be moved off very often; it will basically remain there while the  
421 extraction operations are going on, but it will be delivered down that road.  
422  
423 M. Dwyer - There are several houses ***{on that road that would be***  
424 ***affected.}***  
425  
426 Mr. Blankinship - The staff's concern, Mr. Hinson, is that when this pit was  
427 originally approved, there was no traffic anywhere in this area between this property and  
428 I-895. It was a concept. It was the entrance to Monahan; it was not contemplated in the  
429 original permits that any traffic from this site would go onto Monahan or any other road  
430 in the County.  
431  
432 Mr. Hinson - That's correct, and the reason we renewed the permit last  
433 time – the condition was amended because I-895 was completed, and we weren't able  
434 to utilize the pit without having access to Monahan Road.  
435  
436 Ms. Dwyer - That's a very different case now that you're affecting the  
437 neighbors. Would you talk about the restoration plans for this site, because you are  
438 surrounded by houses here?  
439  
440 Mr. Hinson - We also have the required 200-foot buffer adjacent to all the  
441 adjacent properties, and there aren't any plans to do any work in those areas, according  
442 to the plan we presented. We do have a 200-foot buffer adjacent to the residential  
443 areas, and then our final plan for getting out is for us to basically create slopes that will  
444 be stable with the completed excavation, and we also have a screening room that we  
445 have constructed. If you know adjacent to the Monahan property, it's a fairly substantial  
446 berm; I believe there's a cross section if you're looking at the plans on sheet 3, that  
447 shows the geography of the berm, and if I remember correctly, a lot of that was in  
448 discussions with the neighbors on Monahan Road. We have met with all of them. As

449 you've heard from one of the gentlemen who live in that area, we even negotiated  
450 operating hours with them, to try to make sure that this was as minimal inconvenience  
451 as we could to the adjacent properties. There are some existing wetland areas on site,  
452 as well, that we are staying out of, and have some property around them, that includes  
453 the County policy. We do what we can to be a good neighbor.

454  
455 Ms. Dwyer - The 200 feet is from the house and not the property line, as  
456 I'm looking at this site plan. (Unintelligible) and not from the Bowery property line.

457  
458 Mr. Hinson - I do believe the Ordinance says a minimum of 200 feet from  
459 any adjacent residences, and then there's a 100-foot setback required also from all  
460 property lines. Now we have a 100-foot setback from all property lines, and we're a  
461 minimum of 200 feet from any residence.

462  
463 Ms. Dwyer - Will the screening berm just be property left as is, or will you  
464 be building that up to create a visual area?

465  
466 Mr. Hinson - It's approximately ten feet tall; it has an 80-foot long width,  
467 and the top width is 20 feet.

468  
469 Ms. Dwyer - So it will be an earthen berm that's created.

470  
471 Mr. Hinson - That's correct.

472  
473 Ms. Dwyer - And then what will the site look like after it's reclaimed?

474  
475 Mr. Hinson - We will vegetate all of the areas that we can that remain, but  
476 generally, the areas that we're not extracting materials from, are going to be left in their  
477 natural state, (unintelligible), and also to preserve as much existing vegetation as we  
478 can in most of these areas. When we complete our construction, we'll have permanent  
479 waterfront (unintelligible). There is an existing wetland area that has a buffer around it,  
480 and in the center of the property as well, and that will be left in its natural vegetative  
481 state as well.

482  
483 Ms. Dwyer - So that the area you've never delineated for extraction will  
484 end up being pond, similar to the other case that we just heard?

485  
486 Mr. Hinson - Yes ma'am, that is generally what will happen.

487  
488 Ms. Dwyer - Mr. Blankinship, where are we on the Board's request to the  
489 County to do a review of the extraction cases and reclamation efforts? How long do you  
490 think that will take?

491  
492 Mr. Blankinship - I don't know. I really won't know until we get into finding  
493 what information's available.

494

495 Mr. Nunnally - Any other questions from the Board or staff? Thank you for  
496 appearing. That concludes the case. UP-4-2006.

497  
498 Mr. Kirkland - Move we approve it.

499  
500 Mr. Wright - Second.

501  
502 Mr. Nunnally - Moved by Mr. Kirkland, second by Mr. Wright, that it be  
503 approved. All in favor, say aye. Opposed?

504  
505 Ms. Dwyer - Do we have any changes to the conditions?

506  
507 Mr. Blankinship - My notes were # 2, leave the hours alone; # 8 and # 11 need  
508 to be amended to remove the area north of the interstate.

509  
510 Mr. Wright - I thought that was already in it. That was already in it, in # 5,  
511 no excavation north of I-295. You'd already covered that, and I pointed that out to them.

512  
513 Mr. Blankinship - Okay.

514  
515 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
516 Wright, the Board **granted** application **UP-4-2006** for a conditional use permit to extract  
517 materials from the earth at 3501 Britton Road (Parcels 827-696-9825, 827-697-3933  
518 and 826-697-0978). The Board granted the use permit subject to the following  
519 conditions:

520  
521 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the  
522 County Code.

523  
524 2. Monday through Friday hours of operation shall be from 6:00 a.m. to 6:00 p.m.  
525 when Daylight Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other  
526 times. Saturday hours of operation shall be 8:00 a.m. to 1:00 p.m.

527  
528 3. No operations of any kind are to be conducted at the site on Sundays or on  
529 national holidays.

530  
531 4. Open and vertical excavations having a depth of 10 feet or more for a period of  
532 more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the  
533 public safety.

534  
535 5. All means of access to the property shall be from the existing entrance on Britton  
536 Road. Truck traffic to or from the site shall not travel on Charles City Road. There shall  
537 be no excavation on the portion of the property north of I-895.

538  
539 6. A superintendent who shall be personally familiar with all the terms and  
540 conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and

541 conditions of UP-1-2004, shall be present at the beginning and conclusion of operations  
542 each work day to see that all conditions of the County Code and the use permit are  
543 carefully observed.  
544

545 7. Topsoil shall not be removed from any part of the property outside of the area in  
546 which extraction is authorized. Sufficient topsoil shall be stockpiled on the property for  
547 respreading in a layer with five (5) inches of minimum depth. If the site does not yield  
548 sufficient topsoil, additional topsoil shall be brought to the site to provide the required  
549 five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and  
550 lime as recommended by the County of Henrico after the results of soil tests have been  
551 submitted to the County of Henrico. All topsoil shall be stockpiled within the authorized  
552 borrow area and provided with adequate erosion control protection.  
553

554 8. The rehabilitation of the property shall take place simultaneously with the  
555 extraction process. Rehabilitation shall not be considered completed until the extraction  
556 area is covered completely with permanent vegetation.  
557

558 9. Responsibility for maintaining the property, fences, and roads in a safe and  
559 secure condition indefinitely, or for converting the property to some other safe use, shall  
560 rest with the applicant.  
561

562 10. Entrance gates shall be erected and maintained at all entrances to the property.  
563 These gates shall be locked at all times, except when authorized representatives of the  
564 applicant are on the property.  
565

566 11. Erosion Control Plans shall be submitted to the Department of Public Works for  
567 review and approval at time of application for the Use Permit. Throughout the life of this  
568 extraction operation, the applicant shall continuously satisfy the Department of Public  
569 Works that erosion control procedures are properly handled and furnish plans and  
570 bonds that the department deems necessary. The applicant shall provide certification  
571 from a licensed professional engineer that dams, embankments and sediment control  
572 structures meet standard and approved design criteria as set forth by the State.  
573

574 12. The areas approved for extraction under this permit shall be delineated on the  
575 ground by the erection of five (5) foot high metal posts at least five (5) inches in  
576 diameter and painted in alternate one (1) foot stripes of red and white. These posts  
577 shall be so located as to clearly define the area in which the extraction is permitted.  
578 They shall be located, and the location certified by a certified surveyor, within ninety  
579 (90) days of the date of approval of this use permit by the Board of Zoning Appeals, or  
580 this use permit is void.  
581

582 13. "No Trespassing" signs shall be posted and maintained on the property to warn  
583 against use of the property by unauthorized persons. The minimum letter height shall  
584 be three inches and signs are to be posted every 250 feet along the perimeter of the  
585 property. The applicant shall furnish the Chief of Police a letter authorizing enforcement  
586 by the County Police Officers of the "No Trespassing" regulations, and agreeing to send

587 a representative to court for purposes of testimony whenever required or requested by  
588 the Division of Police.

589  
590 14. Excavation operations shall be discontinued on said site by April 30, 2008, and  
591 restoration accomplished not later than April 30, 2009, unless a new permit is applied  
592 for by not later than 60 days before the expiration of the permit, and is subsequently  
593 granted by the Board of Zoning Appeals.

594  
595 15. A financial guaranty satisfactory to the County Attorney shall be posted with the  
596 Secretary of the Board of Zoning Appeals for extracting materials from 83 acres, in an  
597 amount of \$2,000.00 per acre for each disturbed acre of land included, for a total of  
598 \$166,000.00 guaranteeing that the land will be restored to a reasonably level and  
599 drainable condition with a minimum slope on the restored property being five to one or  
600 flatter. The guaranty may provide for the termination of the obligations after 30 days  
601 notice in writing. Such notice shall be served upon the principal and upon the obligee  
602 as provided by law for the service of notices. At the termination of the aforesaid 30 day  
603 notice to the principal, all authority of the principal under this use permit to extract  
604 materials, and work incident thereto, shall cease provided the applicant has not  
605 furnished another guaranty suitable to the County within said 30 days. The principal  
606 shall then proceed within the next ensuing 30 days following the termination of its  
607 authority under this use permit, to accomplish the complete restoration of the land as  
608 provided for under the terms of this permit. A notice of termination by such surety shall  
609 in no event relieve the surety from its obligation to indemnify the County of Henrico for a  
610 breach of the conditions of this use permit.

611  
612 16. The applicant shall furnish a certification each year, verifying that the guaranty is  
613 in effect, premiums have been paid, and the bonding company reaffirms its  
614 responsibility under the use permit conditions. This certification shall be submitted to  
615 the Board on April 30, 2007.

616  
617 17. This permit does not become valid until the guaranty, required in condition No.  
618 15, has been posted with the County, and necessary approval received. This must be  
619 accomplished within 30 days of the Board's action or the action becomes invalid.

620  
621 18. A progress report shall be submitted to the Board on April 30, 2007. This  
622 progress report must contain information concerning how much property has been  
623 disturbed to date of the report, the amount of land left to be disturbed, and how much  
624 rehabilitation has been performed, and when and how the remaining amount of land will  
625 be rehabilitated, and any and all pertinent information about the operation that would be  
626 helpful to the Board.

627  
628 19 If, in the course of its preliminary investigation or operations, applicant discovers  
629 evidence of the existence of cultural or historical material or the presence on the site of  
630 significant habitat or an endangered species, it will notify appropriate professional or  
631 governmental authorities and provide them with an opportunity to investigate the site  
632 and applicant will report the results of such investigation to the Planning Department.

633  
634 20. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
635 state and local regulations administered under such act applicable to the property and  
636 shall furnish to the Planning Department copies of all reports required by such act or  
637 regulations.

638  
639 21. In the event that an appeal of the Board's approval action is filed, all conditions  
640 requiring action on the part of the applicant within 90 days are considered satisfied if the  
641 required actions take place within 90 days of final action on the appeal process by the  
642 courts.

643  
644 22. If the Virginia Department of Mines, Minerals and Energy determines that the use  
645 of this property constitutes a mine, the applicant shall obtain a mine license from the  
646 Division of Mineral Mining, Virginia Department of Mines, Minerals and Energy, within  
647 90 days of such determination, or the use permit is void.

648  
649 23. No offsite-generated materials shall be deposited on the site unless the materials  
650 and the plans for their placement have been approved by the Planning Office.

651  
652 24. If the Virginia Department of Mines, Minerals and Energy determines that the use  
653 of this property constitutes a mine, a sign shall be posted at the entrance to the mining  
654 site stating the name of the operator, the Henrico use permit number, the Division of  
655 Mineral Mining mine license number, and the phone number of the operator. The sign  
656 shall be 12 square feet in area and shall be properly maintained.

657  
658 25. If the Virginia Department of Mines, Minerals and Energy determines that the use  
659 of this property constitutes a mine, all drainage and erosion and sediment control  
660 measures shall conform to the standards and specifications of the Mineral Mining  
661 Manual Drainage Handbook.

662  
663 26. If water wells located on surrounding properties are adversely affected, and the  
664 extraction operations on this site are suspected as the cause, the effected property  
665 owners may present to the Board evidence that the extraction operation is a contributing  
666 factor. After a hearing by the Board, this use permit may be revoked or suspended, and  
667 the operator may be required to correct the problem. The applicant shall post a  
668 financial guarantee in the amount of \$25,000, satisfactory to the County Attorney,  
669 guaranteeing compliance with this condition.

670  
671 27. Failure to comply with any of the foregoing conditions shall automatically void this  
672 permit.

673  
674 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
675 Negative: 0  
676 Absent: 0

677  
678 The Board granted the request because it found the proposed use will be in substantial

679 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
680  
681 Mr. Nunnally - UP-5-2006.  
682  
683 Mr. Kirkland - I move we approve it; don't change the hours of operation on  
684 UP-5. Leave it as is.  
685  
686 Mr. Wright - 7:00 to 7:00, condition as stated in the report.  
687  
688 Ms. Dwyer - And add Condition # 27, Mr. Wright.  
689  
690 Mr. Wright - And the addition of Condition # 27.  
691  
692 Ms. Dwyer - What about Condition # 15 -- talk about financial guarantee  
693 for 40 acres, 2,000 acres, for a total of \$46,000 **(Unintelligible)**.  
694  
695 Mr. Blankinship - The disturbed area is 23.24 acres, so the dollar figure is  
696 correct; it's the acre that's wrong. Should be 23.24.  
697  
698 Ms. Dwyer - Did I hear a motion?  
699  
700 Mr. Nunnally - Motion by Mr. Kirkland, and second by Mr. Wright, that it be  
701 approved. All in favor say aye.  
702  
703 Ms. Harris - I have a question. With reference to reclamation,  
704 **(Unintelligible)** a progress report is going to be submitted in 2007, right. That's not my  
705 question; I'm fine with that. I was concerned about the reclamation, that we should look  
706 at it again.  
707  
708 Ms. Dwyer - There's also the question of access, when it was originally  
709 approved, there was no access to Monahan Road permitted, and now that is their only  
710 access. Does that give anyone pause?  
711  
712 Mr. Wright - It says an "existing entrance" on Monahan Road, so there  
713 must be road.  
714  
715 Ms. Dwyer - Right, but when this was originally approved, they were able  
716 to get access through the area where I-895 is now, so that means that access.  
717 **(Unintelligible)**.  
718  
719 Mr. Blankinship - Yes, that's staff's problem in this case.  
720  
721 Mr. Kirkland - Mr. Blankinship, on # 5, the pits are divided in half. How do  
722 they get from one side to the other? Is there a temporary bridge over that wetlands? I  
723 just wanted to know that for my own information?  
724



725 Mr. Blankinship - I don't know exactly. My guess is that they would just run a  
726 gravel road across there, and they would **(Unintelligible)**.

727  
728 Mr. Kirkland - They would still be using Monahan to get out, right? I don't  
729 want them coming out somewhere else.

730  
731 Mr. Blankinship - That would be regulated by the **(Unintelligible)**.

732  
733 Mr. Wright - That's what the condition says, the access is by Monahan.

734  
735 Ms. Dwyer - That was the concern. This is a narrow strip that goes by  
736 these houses. I really have a lack of knowledge about the reclamation issues about  
737 these properties, and we have asked the staff to do some research on it and get back to  
738 us with some recommendations, and we are approving a lot of these excavation sites,  
739 hundreds and hundreds of acres in the east end, and looking at the future, how will that  
740 affect future land use? I just have a concern about how we're doing, what we should be  
741 doing to appropriately reclaim these properties, so that it can be used in the future for  
742 industrial development or for any development or even residential development, and I  
743 see the answer as I look at this, is no. This would be a parcel that would be forever  
744 useless. What I don't know is, can it be made useful by our conditions for reclamation?  
745 I'm reluctant to approve any more acreage in cases like this, until we have a sense of  
746 what's required to reclaim it, whether it's reasonable to ask it to be reclaimed for future  
747 development, or whether it doesn't matter. I think all those issues need to be addressed  
748 by us, and that's what I hope the County would be looking at, and I would be interested  
749 to know how long it might take to investigate, maybe a work session with input from  
750 people in the County who have an expertise in this area, to educate us. I don't know if  
751 anyone else has that same concern.

752  
753 Mr. Kirkland - The other case I can see that can never be anything else but  
754 pond, because it's locked in, with an exit on the entrance to get to it.

755  
756 Ms. Dwyer - You'd be surprised. There is development in Innsbrook that  
757 is right up against the interstate that has more awkward access than this, so it's not  
758 impossible that it could be used. I think in its present state, because it's already been  
759 excavated, it probably can't be reclaimed for development purposes. This is  
760 developable for that, I mean if Innsbrook can do something just like this. It depends on  
761 how much demand there is for the land, and I'm just assuming that in the future there  
762 will be demand. Do any of my fellow Board members have a comment on that?

763  
764 Mr. Kirk' - You're saying in the future you want us to step over the  
765 reclamation permits and try to extend it to the future of some sort?

766  
767 **(Unintelligible)**

768  
769 Ms. Dwyer - I'm saying that before we approve these extraction requests,  
770 that we ought to have in mind what it is we want the land to look like and be useful for

771 when it's finished.

772

773 Mr. Kirkland - That would come under the comprehensive plan in the  
774 future, whether or not that would be **(Unintelligible)**.

775

776 Ms. Dwyer - The comprehensive plan would say should it be commercial,  
777 or industrial, or residential. I'm saying, could it be something we should look at. We  
778 don't have to say it could be used for industrial versus residential, but we might want to  
779 say it needs to be developable; it needs to be reclaimed so that it can be used for  
780 something, even if it's a park. **(Unintelligible)**

781

782 Mr. Kirkland - **(Unintelligible)** That would not be grounds to deny it.

783

784 Ms. Dwyer - I'm not suggesting that we make that decision, that the  
785 Board make it; I'm suggesting that the before we allow this land to be used in such a  
786 way as it renders it undevelopable for anything in the future, we should know what the  
787 answer to that question is. Before we allow excavation, we should know what the  
788 reclamation result would be, because we're the ones who say "green light" to the  
789 excavation.

790

791 Ms. Harris - How would we use that as a condition? In some past  
792 tenses, the land would be restored to a **(Unintelligible)**?

793

794 Mr. Blankinship - Every use permit for extraction has a reclamation plan with  
795 it. It just so happens that with this one, the whole thing is to be under water. There  
796 have been two recently, where there have been proposed "tall mounds," and we've said  
797 "no, a tall mound is not an appropriate way to reclaim this."

798

799 Ms. Dwyer - What that doesn't answer, is even if it's restored to grade  
800 and not useable, can it be developed. We still have not answered that question, and  
801 that's the root of my inquiry.

802

803 Ms. Harris - Whose responsibility is it that we have a reclamation plan?

804

805 Mr. Wright - The landowner ought to have something to say about any  
806 land use.

807

808 Mr. Blankinship - The applicant submits the plan; it's part of the required  
809 **(Unintelligible)**.

810

811 Ms. Dwyer - We're not playing God; we're giving permission that all this  
812 land be excavated, and I think it's incumbent upon us to look out for the interests of the  
813 future use of that land that we're allowing to be excavated and say, "yes it's appropriate  
814 to excavate it, but when you finish, it needs to be whatever it needs to be, whether it's a  
815 pond or just reclaim the vegetation or make it useful for future development."

816

817 Mr. Kirkland - Could we deny a case if we didn't like the use it was going to  
818 end up as?  
819  
820 Ms. Dwyer - I think the reclamation is part and parcel of the case.  
821  
822 Mr. Blankinship - I'm not so sure about the use, but I think you could say it's  
823 not appropriate to dig out all this material and just leave a pond there. I certainly felt  
824 comfortable with you saying "we don't think it's appropriate for you to build a great big  
825 hill."  
826  
827 Mr. Wright - Then you get in a situation .....

828  
829 Mr. Blankinship - Restore it to some useable condition.  
830  
831 Mr. Wright - That's how we've been addressing these, but you get to a  
832 point where, if you say we're not satisfied to have a pond there, we're just going to deny  
833 forthwith. You just won't have any excavations.  
834  
835 Ms. Dwyer - I don't think all excavations end up with ponds, and some  
836 excavations, like one that we had recently, where they filled it with inert construction  
837 materials. Suppose we say "that's fine," so you make money extracting materials; you  
838 make money depositing the inert construction debris. What we expect, once you  
839 deposit that inert construction debris, is that the land be covered and be reclaimed so  
840 that it can be used for some future purpose. In other words, we **(Unintelligible)** for the  
841 fill.  
842  
843 Mr. Wright - But who's controlling it – the owner's the one who decides  
844 what he wants to do with his land.  
845  
846 Ms. Dwyer - But we're the ones who grant the permit that allowed the  
847 excavation and the fill. That's our job.  
848  
849 Mr. Kirkland - I guess the staff would have to make sure that it's included in  
850 their reclamation permit.  
851  
852 Ms. Dwyer - But right now, the staff doesn't know how to do that, and we  
853 don't know how to do that.  
854  
855 Mr. Kirkland - That's exactly right.  
856  
857 Ms. Dwyer - I think we need to know how to do that. I think staff needs to  
858 get back to us on what are some possible and reasonable standards of reclamation that  
859 we could impose. It may be that, in a case like this, we say a pond is fine. It may be a  
860 case like the one in Varina where they wanted to put construction debris in, we'll say  
861 that's fine, but you have to have it engineered so that a building could go on top of that  
862 at some point and not delay the use of development for all time.

863  
864 Mr. Kirkland - It would be a mutual agreement between us and the staff.  
865 Sometimes they need to give us some guidance before we open our mouths.  
866  
867 Mr. Nunnally - Okay Ben, you've made note of all that?  
868  
869 Mr. Blankinship - Oh yes, we made note of it last month. **(Unintelligible)**  
870  
871 Mr. Kirkland - I guess we need to get to that.  
872  
873 Mr. Blankinship - We'll need more than a note.  
874  
875 Ms. Dwyer - Can we have something next month, some sort of an  
876 update? Maybe we need a work session too. I think a work session might be a good  
877 idea, since people who own land would be affected by this.  
878  
879 Mr. Blankinship - We can get something next month, yes.  
880  
881 Ms. Dwyer - I'd like to see this case deferred until we have some sort of  
882 standards for reclamation.  
883  
884 Mr. Kirkland - You think you can do that in thirty days, Ben?  
885  
886 Mr. Blankinship - No, not completed. We could have some sort of an update  
887 in March, but I would not feel comfortable promising you a completed study on a subject  
888 I know very little about.  
889  
890 Mr. O'Kelly - Much of this takes place in agricultural areas in the eastern  
891 part of the County, and there's nothing you could do to make the land suitable for septic  
892 tanks, not even with an alternative system. It's not possible.  
893  
894 Mr. Wright - We've deferred it once. We can't defer it more than 90 days.  
895  
896 Ms. Harris - And here we do with # 8 for UP-4; this is what we normally  
897 say with these cases, talking about the rehabilitation of the property. Here it would be  
898 covered completely with permanent vegetation – you don't think that's enough that we  
899 need to consider the future against other properties – is that what you're saying?  
900  
901 Ms. Dwyer - That could mean you spread five inches of dirt and seed it,  
902 and then you've got grass, which may be fine in some cases, but in some cases that  
903 doesn't go to the issue of whether the land is useable for anything afterwards, which is  
904 really the crux of my concern. There may be some land we say this is an important  
905 location; we want to make sure it could be used for something in the future, so reclaim it  
906 to a particular standard, not just to grass.  
907  
908 **(Unintelligible)**

909  
910 **Mr. Kirkland -** **Mr. Blankinship, since you can't come up with a**  
911 **reasonable standard in the next thirty days, it wouldn't do any good to defer it.**  
912 **We've only got a 90-day window here, and we've already deferred it once.**  
913  
914 **Ms. Dwyer -** **Can we defer it today, or does it matter?**  
915  
916 (Unintelligible)  
917  
918 Ms. Harris - Could we have a condition that would conform to the  
919 reclamation policy?  
920  
921 Mr. Kirkland - They've submitted a plan, so the reclamation thing  
922 **(Unintelligible)** in use. I don't know if we can, without some more data from the  
923 County, whether we can force them in use on anybody, I guess that's what it is, without  
924 getting into .....  
925  
926 Ms. Dwyer - That's what we're doing now, by requiring reclamation.  
927  
928 Mr. Kirkland - They have to do that, under the Commonwealth of Virginia. I  
929 assume that's a State permit.  
930  
931 Mr. Blankinship - I'm sure it is.  
932  
933 Ms. Dwyer - Maybe **(Unintelligible)** we don't know that.  
934  
935 Ms. Harris - Can we say that while we review this progress report in  
936 2007, we will address it then, next year?  
937  
938 Mr. Blankinship - You would not only get the progress report; this application  
939 would come back up before you in two years, unless they'd completed work by then,  
940 and since they haven't started yet, the project they want to use this for hasn't been  
941 funded yet, may not be funded in the next two years.  
942  
943 Mr. Kirkland - This is the one they want to use for the Wilton Farm project?  
944 This one's been funded. They're just waiting for the plans to come out of the County so  
945 they could start. I guess this is the Wilton.  
946  
947 Mr. Blankinship - I would be surprised if they used material from here for the  
948 Wilton project, but I've been surprised before.  
949  
950 Ms. Harris - When we come up with that criteria then, will we judge all  
951 cases in the future by that criteria, but right now we don't have it, so I don't see how we  
952 can hold them up, as long as they rehabilitate the land as they said. I think we should  
953 let them go and do our homework with creating this reclamation policy and hold  
954 everyone else accountable for that.

955  
956 Mr. Kirkland - I'm ready to call for action.

957  
958 Mr. Nunnally - UP-5-2006 – motion's been made by Mr. Kirkland, seconded  
959 by Mr. Wright to be approved. All in favor say aye. Opposed.

960  
961 Ms. Dwyer - No.

962  
963 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
964 Wright, the Board **granted** application **UP-5-2006** for a conditional use permit to extract  
965 materials from the earth at 6919 Monahan Road (Parcel 823-698-3046). The Board  
966 granted the use permit subject to the following conditions:

967  
968 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the  
969 County Code.

970  
971 2. Monday through Friday hours of operation shall be from 7:00 a.m. to 7:00 p.m.  
972 when Daylight Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other  
973 times. Saturday hours of operation shall be from 7:00 a.m. to 3:00 p.m.

974  
975 3. No operations of any kind are to be conducted at the site on Sundays or on  
976 national holidays.

977  
978 4. Open and vertical excavations having a depth of 10 feet or more for a period of  
979 more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the  
980 public safety.

981  
982 5. All means of access to the property shall be from the existing entrance on  
983 Monahan Road. Truck traffic to or from the site shall not travel on Charles City Road.

984  
985 6. A superintendent who shall be personally familiar with all the terms and  
986 conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and  
987 conditions of UP-5-2006, and shall be present at the beginning and conclusion of  
988 operations each work day to see that all conditions of the County Code and the use  
989 permit are carefully observed.

990  
991 7. Topsoil shall not be removed from any part of the property outside of the area in  
992 which extraction is authorized. Sufficient topsoil shall be stockpiled on the property for  
993 respreading in a layer with five (5) inches of minimum depth. If the site does not yield  
994 sufficient topsoil, additional topsoil shall be brought to the site to provide the required  
995 five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and  
996 lime as recommended by the County of Henrico after the results of soil tests have been  
997 submitted to the County of Henrico. All topsoil shall be stockpiled within the authorized  
998 borrow area and provided with adequate erosion control protection. This condition shall  
999 not prevent the applicant from constructing a screening berm as requested by the owner  
1000 of the adjoining property.

- 1001  
1002 8. The rehabilitation of the property shall take place simultaneously with the  
1003 extraction process. Rehabilitation shall not be considered completed until the extraction  
1004 area is covered completely with permanent vegetation.  
1005
- 1006 9. Responsibility for maintaining the property, fences, and roads in a safe and  
1007 secure condition indefinitely, or for converting the property to some other safe use, shall  
1008 rest with the applicant.  
1009
- 1010 10. Entrance gates shall be erected and maintained at all entrances to the property.  
1011 These gates shall be locked at all times, except when authorized representatives of the  
1012 applicant are on the property.  
1013
- 1014 11. Erosion Control Plans shall be submitted to the Department of Public Works for  
1015 review and approval at time of application for the use permit. Throughout the life of this  
1016 extraction operation, the applicant shall continuously satisfy the Department of Public  
1017 Works that erosion control procedures are properly handled and furnish plans and  
1018 bonds that the department deems necessary. The applicant shall provide certification  
1019 from a licensed professional engineer that dams, embankments and sediment control  
1020 structures meet standard and approved design criteria as set forth by the State.  
1021
- 1022 12. The areas approved for extraction under this permit shall be delineated on the  
1023 ground by the erection of five (5) foot high metal posts at least five (5) inches in  
1024 diameter and painted in alternate one (1) foot stripes of red and white. These posts  
1025 shall be so located as to clearly define the area in which the extraction is permitted.  
1026 They shall be located, and the location certified by a certified surveyor, within ninety  
1027 (90) days of the date of approval of this use permit by the Board of Zoning Appeals, or  
1028 this use permit is void.  
1029
- 1030 13. "No Trespassing" signs shall be posted and maintained on the property to warn  
1031 against use of the property by unauthorized persons. The minimum letter height shall  
1032 be three inches and signs are to be posted every 250 feet along the perimeter of the  
1033 property. The applicant shall furnish the Chief of Police a letter authorizing enforcement  
1034 by the County Police Officers of the "No Trespassing" regulations, and agreeing to send  
1035 a representative to court for purposes of testimony whenever required or requested by  
1036 the Division of Police.  
1037
- 1038 14. [AMENDED] Excavation operations shall be discontinued on said site by April  
1039 30, 2008, restoration accomplished not later than July 31, 2009 unless a new use permit  
1040 is applied for by not later than 60 days before the expiration of the permit, and is  
1041 subsequently granted by the Board of Zoning Appeals.  
1042
- 1043 15. [AMENDED] A financial guaranty satisfactory to the County Attorney shall be  
1044 posted with the Secretary of the Board of Zoning Appeals for extracting materials from  
1045 23.24 acres, in an amount of \$2,000.00 per acre for each disturbed acre of land  
1046 included, for a total of \$46,480.00 guaranteeing that the land will be restored to a

1047 reasonably level and drainable condition with a minimum slope on the restored property  
1048 being five to one or flatter. The guaranty may provide for the termination of the  
1049 obligations after 30 days notice in writing. Such notice shall be served upon the  
1050 principal and upon the obligee as provided by law for the service of notices. At the  
1051 termination of the aforesaid 30 day notice to the principal, all authority of the principal  
1052 under this use permit to extract materials, and work incident thereto, shall cease  
1053 provided the applicant has not furnished another guaranty suitable to the County within  
1054 said 30 days. The principal shall then proceed within the next ensuing 30 days  
1055 following the termination of its authority under this use permit, to accomplish the  
1056 complete restoration of the land as provided for under the terms of this permit. A notice  
1057 of termination by such surety shall in no event relieve the surety from its obligation to  
1058 indemnify the County of Henrico for a breach of the conditions of this use permit.  
1059

1060 16. [AMENDED] The applicant shall furnish a certification each year, verifying that  
1061 the guaranty is in effect, premiums have been paid, and the bonding company reaffirms  
1062 its responsibility under the use permit conditions. This certification shall be submitted to  
1063 the Board on April 30, 2007.  
1064

1065 17. This permit does not become valid until the guaranty, required in condition No.  
1066 15, has been posted with the County, and necessary approval received. This must be  
1067 accomplished within 30 days of the Board's action or the action becomes invalid.  
1068

1069 18. [AMENDED] A progress report shall be submitted to the Board on April 30, 2007.  
1070 This progress report must contain information concerning how much property has been  
1071 disturbed to date of the report, the amount of land left to be disturbed, and how much  
1072 rehabilitation has been performed, and when and how the remaining amount of land will  
1073 be rehabilitated, and any and all pertinent information about the operation that would be  
1074 helpful to the Board.  
1075

1076 19. If, in the course of its preliminary investigation or operations, applicant discovers  
1077 evidence of the existence of cultural or historical material or the presence on the site of  
1078 significant habitat or an endangered species, it will notify appropriate professional or  
1079 governmental authorities and provide them with an opportunity to investigate the site  
1080 and applicant will report the results of such investigation to the Planning Department.  
1081

1082 20. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1083 state and local regulations administered under such act applicable to the property and  
1084 shall furnish to the Planning Department copies of all reports required by such act or  
1085 regulations.  
1086

1087 21. In the event that an appeal of the Board's approval action is filed, all conditions  
1088 requiring action on the part of the applicant within 90 days are considered satisfied if the  
1089 required actions take place within 90 days of final action on the appeal process by the  
1090 courts.  
1091



1092 22. If the Virginia Department of Mines, Minerals and Energy determines that the use  
1093 of this property constitutes a mine, the applicant shall obtain a mine license from the  
1094 Division of Mineral Mining, Virginia Department of Mines, Minerals and Energy, within  
1095 90 days of such determination, or the use permit is void.

1096  
1097 23. No offsite-generated materials shall be deposited on the site unless the materials  
1098 and the plans for their placement have been approved by the Planning Office.

1099  
1100 24. If the Virginia Department of Mines, Minerals and Energy determines that the use  
1101 of this property constitutes a mine, a sign shall be posted at the entrance to the mining  
1102 site stating the name of the operator, the Henrico use permit number, the Division of  
1103 Mineral Mining mine license number, and the phone number of the operator. The sign  
1104 shall be 12 square feet in area and shall be properly maintained.

1105  
1106 25. If the Virginia Department of Mines, Minerals and Energy determines that the use  
1107 of this property constitutes a mine, all drainage and erosion and sediment control  
1108 measures shall conform to the standards and specifications of the Mineral Mining  
1109 Manual Drainage Handbook.

1110  
1111 26. If water wells located on surrounding properties are adversely affected, and the  
1112 extraction operations on this site are suspected as the cause, the effected property  
1113 owners may present to the Board evidence that the extraction operation is a contributing  
1114 factor. After a hearing by the Board, this use permit may be revoked or suspended,  
1115 and the operator may be required to correct the problem. The applicant shall post a  
1116 financial guarantee in the amount of \$25,000, satisfactory to the County Attorney,  
1117 guaranteeing compliance with this condition.

1118  
1119 27. [ADDED] Failure to comply with any of the foregoing conditions shall  
1120 automatically void this permit.

1121  
1122 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
1123 Negative: Dwyer, 1  
1124 Absent: 0

1125  
1126 The Board granted the request because it found the proposed use will be in substantial  
1127 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1128  
1129 **UP-7-2006** **SOUL CIRCUS, INC.** requests a temporary conditional use permit  
1130 pursuant to Section 24-116(c)(1) to operate a circus at 1741  
1131 Dumbarton Road (Parcel 785-743-1062), zoned B-2, Business  
1132 District (Fairfield).

1133  
1134 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1135 please stand and raise your right hand and be sworn?

1136  
1137 Mr. Blankinship - Do you swear that the testimony you are about to give is the

1138 truth, the whole truth, and nothing but the truth, so help you God?

1139

1140 Mr. Johnson - I do. My name is Benjamin Johnson. I'm Director of  
1141 Operations for the Soul Circus, Inc., which operates as Soul Circus. We are here to  
1142 deal with the application process through the Board, to seek approval to operate at  
1143 Azalea Mall. We are scheduled to hold shows March 22 through the 26. This morning I  
1144 had the opportunity to review your staff report, including suggested conditions, and the  
1145 Board of Zoning Appeals case report, which was up front on the table. Based on the  
1146 conditions within the report, we don't see any issues with us abiding with those  
1147 stipulations. You have an end time in that report of 10:00 pm, which is right at the same  
1148 time we normally end on the weekdays, and on Saturdays and Sundays a little earlier.  
1149 The other conditions in the report with respect to parking and turning the tent so that the  
1150 rear entry faces at the commercial area – there is no issue there. I do have other  
1151 stipulations in the report, which are par for the course for us. The one reference to  
1152 people parking outside of that Azalea Mall area, I'm not quite clear on where that came  
1153 from, because since we've been at Azalea Mall, we've never reached the capacity of  
1154 parking on the property itself. We've worked with your officials here in the County, the  
1155 Police, Fire, since 2003, to overcome some challenges previously. I certainly think we  
1156 continue a good relationship as the years go by, especially for this year, and as you  
1157 often know, we have the Fire and Police Departments working the event while we're  
1158 there, as well as the Richmond Police, because you share jurisdiction there. We have  
1159 also addressed the one complaint I'm aware of, regarding noise on March 17 last year  
1160 at 11:11 am. What I would like to ask the Board about, is that one of your stipulations  
1161 say two consecutive days of complaints would revoke the permission. I would like to  
1162 ask that before we get to March 22, that we establish a decibel level, which we do in  
1163 other jurisdictions across the country. That would be acceptable. I don't want to end up  
1164 in a situation that is for whatever reason, someone does not want the event, and calls  
1165 on two consecutive days, whether they have a legitimate complaint or not. We've  
1166 worked with neighborhoods across the country, adjusting our volume, and sometimes  
1167 it's the lower end levels of base that affects the neighbors, so we can adjust our sound.  
1168 Just one other thing about the position of the tent – last year it was requested by the  
1169 County, that we turn the tent so that our flap entrance faces Dumbarton Road, which is  
1170 the direction of the commercial area. Previously we had it so that the artists' entrance,  
1171 which is referenced in your report, that was published on the 13<sup>th</sup>, faced that direction,  
1172 so we will be more than happy to turn it back that way for 2006. That is all that I have at  
1173 this time, unless you have questions for me.

1174

1175 Mr. Wright - Mr. Chairman, has Mr. Johnson seen this letter?

1176

1177 ***(Unintelligible)***

1178

1179 Mr. Blankinship - No, he has not seen it. While he's looking that over, I can  
1180 explain a little bit about the issue with parking. Last year staffers found out about the  
1181 two complaints that went out about parking, and when staffers found the complaints,  
1182 they noticed that, and there's some note in one of our files, it seemed that people  
1183 coming to the circus didn't know where to park and didn't know where to turn in; that

1184 caused some traffic problems, some parking problems on other sites, and just some  
1185 general confusion. We were hoping to get some clear signage. If they're charging for  
1186 parking on their site, and somebody has a free place across the street, then you're  
1187 going to get people parking there and running across the road, so we did want to see  
1188 that "free parking" delineated clearly on their site, just to simplify the traffic in and out,  
1189 and keep people from running across the road.

1190  
1191 Mr. Johnson - Mr. Chairman, Members of the Board, as far as parking,  
1192 we've never charged for parking. Our parking is always free. We will produce more  
1193 signage; we'll get it further out onto the roadways, as long as we meet regulations  
1194 provided with the signage, to make sure the people coming, whether they be in car, van  
1195 or bus, can get into the designated parking areas.

1196  
1197 Ms. Harris - Would you give me a little history of the Soul Circus. I've  
1198 been there; I know it's spectacular. I parked in the free parking; I loved that, but I think  
1199 the Board really needs to know about the 12-year history.

1200  
1201 Mr. Johnson - We began in 1994 in Atlanta. We did a month in Atlanta in  
1202 1994 and another month in 1995. It was a hit, but we lost a lot of money. In 1996 we  
1203 did four cities in the U. S., and 1997 was our first real national tour. As the years have  
1204 gone on, we got popular enough to develop a second unit. As far as the economic  
1205 climate, it didn't allow us to maintain two units, so last year we went back to one unit.  
1206 We have performed on an annual basis, when we just had one unit, to over a million  
1207 people across the country. We have people who come from churches, schools,  
1208 individuals, daycares. When we first started, it was primarily an African-American  
1209 attended event. As we have grown in popularity and extended our marketing, we have  
1210 attracted people from the main population. We reach Latinos, Asian, whether it be  
1211 Chinese, Korean, Japanese, so this event, which when you come to see it – I hope the  
1212 entire Board will come – you will see it is truly a multi-cultural event. This year, as in the  
1213 past years, we have people from China; Gabon, which is in central Africa; Columbia,  
1214 South American (these are performers I'm talking about); France; New York; Ohio;  
1215 Mexico; Florida; Ethiopia; and Brazil, so our circus in itself is naturally multi-cultural and  
1216 very educational for the public. There are a lot of people who did not know, or who  
1217 have never seen people that close, 40 feet away, do the types of tricks and perform with  
1218 animals and other people, in their lives. So we offer something to the public that isn't  
1219 seen every day. There are other circuses, yes, but we bring a different flair to it. It's  
1220 steeped in the urban, R & B, gospel soul, and that's where you get Univer" **soul**" from.  
1221 You get a nice mixture of cultures, you fuse that with our music that is born and bred  
1222 here in the U. S., and then you put on a dynamic show that involves the people, from  
1223 the time they step into the tent until the time they leave. That's a brief synopsis of the  
1224 circus.

1225  
1226 Ms. Harris - I went on the internet to do some research on the circus, and  
1227 it said that it is the only circus in the world wholly owned by African-Americans – is that  
1228 true?

1229

1230 Mr. Johnson - That is correct. At the turn of the century, there was one  
1231 other circus that was very short lived, and that was the first one. There have been  
1232 attempts by other organizations to say that they were, but they were actually owned by  
1233 others. We're proud of that fact, because the people of African-American descent in the  
1234 country don't do well historically in business, but regardless of whether we're owned by  
1235 Americans, whites, Hispanics, whatever, the show that we put on is very rich in  
1236 entertainment. It's rich in culture, and it's an educational experience, regardless of what  
1237 your background is and where you come from. We have people who come from China  
1238 to come to our show and rave about it, and go back to their homeland and tell their  
1239 people, call embassies in Chicago, and consulates in Chicago and New York and DC  
1240 and get their other compatriots to come out. We get this sort of response across the  
1241 country, so it's a family event, and that's what we do at Soul Circus. We'd like the  
1242 opportunity once again to present our family event here in your County, with your  
1243 permission, and I hope that in the future, working with Mr. Blankinship and others, we  
1244 can avoid some of the issues that have come up in this last application, so we can be  
1245 proactive in the process and work together.

1246  
1247 Mr. Nunnally - How many do you anticipate having at this?

1248  
1249 Mr. Johnson - We hope that we would sell out every show, which has a  
1250 capacity of 2,400. We have our opening on Wednesday night and close on Sunday;  
1251 we're slated for eleven shows, so we're looking at about 27,000, give or take, over the  
1252 course of the week.

1253  
1254 Mr. Nunnally - You have two security guards?

1255  
1256 Mr. Johnson - Once we get to the site, we fence our site completely in with  
1257 a six-foot fence. We have two places where you can enter and exit, and that's  
1258 maintained by people 24 hours a day. In addition to that, we have the **(unintelligible)**  
1259 tent; we have a staff of ushers and other personnel to go out and greet the people and  
1260 take their tickets from them and bring them into their seats. Once we get our box office  
1261 there, we have police personnel who work the box office. In addition to that, we have  
1262 one Richmond officer and one Henrico County officer, who work the traffic details. In  
1263 addition to that, we have the fire watch that's there, provided by the Fire Department.

1264  
1265 Ms. Dwyer - So you have two security officers 24 hours a day. In addition  
1266 to that, you have police officers. When do the police officers come, just during the  
1267 event?

1268  
1269 Mr. Johnson - The police officers that do the traffic detail, yes ma'am,  
1270 during the events. The box office – we open on a Wednesday; our box office should be  
1271 up and running on site by Tuesday morning, maybe as early as Monday afternoon.  
1272 From the time we open the box office, we'll have that officer there during box office  
1273 hours.

1274  
1275 Mr. Kirkland - What are the box office hours?

1276  
1277 Mr. Johnson - They are 9:00 am to 9:00 pm daily. The first day, because  
1278 we're traveling, we may not open right at 9:00 am, so that might be in the afternoon.  
1279 After that point, it's 9:00 am to 9:00 pm.  
1280  
1281 Mr. Kirkland - A police officer, from either locality, will be there at all times  
1282 when that box office is open, .....

1283  
1284 Mr. Johnson - That is correct.  
1285

1286 Ms. Dwyer - And the security guards – are they your employees, or are  
1287 they hired locally, or are they off-duty police officers?  
1288

1289 Mr. Johnson - They are our employees who travel with the show, who know  
1290 who to let on site and who not to. They stay in touch by radio communication with their  
1291 supervisors, who are on site as well.  
1292

1293 Mr. Wright - Mr. Johnson, have you tried to locate another site, other than  
1294 this site, in Henrico, for this performance?  
1295

1296 Mr. Johnson - As of today, we have looked at other sites; we've not  
1297 pursued them aggressively yet. In the past we actually looked at some other locations,  
1298 other than Azalea Mall.  
1299

1300 Mr. Wright - Did you ever look at the Fairgrounds?  
1301

1302 Mr. Johnson - We did look at the Fairgrounds, but the conflict was always  
1303 with the schedule. That's one of the things that one of our local coordinators and also a  
1304 member of our field marketing team, Ms. White, and I discussed most recently when all  
1305 this came about, was the possibility of going to the Fairgrounds , which may be in the  
1306 future more suitable for this sort of event.  
1307

1308 Mr. Wright - That would be perfect for it.  
1309

1310 Mr. Johnson - We will explore that again. The issue has always been a  
1311 matter of timing, because of what they have scheduled vs. our time that we're slated  
1312 here.  
1313

1314 Mr. Wright - I don't believe they have anything scheduled for that period  
1315 of time.  
1316

1317 Mr. Johnson - Apparently, there's a gun show the 25<sup>th</sup> and 26<sup>th</sup>, and before  
1318 that, there's another event.  
1319

1320 Ms. Dwyer - So it's not an option this year, is what you're saying.  
1321

1322 Mr. Johnson - Not this year. We'd be more than happy to look at it for  
1323 future use. We want to return. It's down the street. I think our audience would still  
1324 attend, and it would be easier to park, so it's a win-win, and that's what we want. We  
1325 want a good relationship with the County officials, the Police, the Fire Department, and  
1326 the people who live here. So whether it's the people who live on the nearby streets, or  
1327 the people who live thirty miles away, we still want everyone to have a positive take on  
1328 the subject, so we will explore that aggressively.

1329  
1330 Mr. Wright - It'll also enable you to expand if you want to attract more  
1331 people, because the Fairgrounds is perfectly suited for that.

1332  
1333 **(Unintelligible)**

1334  
1335 Mr. Johnson - Yes sir, I understand.

1336  
1337 Mr. Wright - How many animals will you have there?

1338  
1339 Mr. Johnson - We have three elephants, and we have six lions. Those are  
1340 all the exotic animals that we have.

1341  
1342 Ms. Dwyer - Do people live on site? Your performers and employees, do  
1343 they live in trailers on site?

1344  
1345 Mr. Johnson - Yes ma'am. We need to maintain a staff on site in the event  
1346 of bad weather or some issue to protect the big top itself, as well as of course with the  
1347 animals. Once they're there, they don't leave, so you don't have to worry about them  
1348 wandering through the neighborhood. We have additional staff as well, that stays on  
1349 site, and we find it's better in the circus world, for everyone to live on site for the sake of  
1350 the safety of everyone concerned.

1351  
1352 Ms. Dwyer - What about sanitation facilities for those travelers?

1353  
1354 Mr. Johnson - The sanitation for those on site, they have their own  
1355 bathrooms in the trailers, which are serviced by the same company that provides our  
1356 toilets. One of your local companies provides portable toilets, and portable toilet  
1357 service, so when they come to pump out the toilets, they also pump out the trailers. We  
1358 provide some additional porta-johns for our back-lot staff, the people who come who are  
1359 staying in hotels, because we do have both. We don't have the capacity right now to  
1360 put everyone on site.

1361  
1362 Ms. Dwyer - Our staff report says that you're going to be here March 19  
1363 through the 28<sup>th</sup>, but the correct date is the 22<sup>nd</sup> through the 26<sup>th</sup>.

1364  
1365 Mr. Johnson - The actual shows are March 22 through 26; the earlier date  
1366 is for set-up, and what that primarily is, is for our lots attendant to come out and mark  
1367 the lot and receive the phone service. Other than that, you won't see us on site until

1368 Monday morning, which is the 20<sup>th</sup>.  
1369  
1370 Ms. Dwyer - So you do want it to cover March 19 thru 28?  
1371  
1372 Mr. Johnson - That is correct, ma'am, and then the 28<sup>th</sup> gives us two days  
1373 do our lot restoration, take everything down, and move to the next city.  
1374  
1375 Ms. Harris - When do the inspectors normally come in to check the  
1376 conditions?  
1377  
1378 Mr. Johnson - The inspectors will normally come in the morning of the  
1379 show, sometimes the day before, just to check things out. Normally the Fire  
1380 Department is that way. And then they will come for a final inspection the morning of,  
1381 because, since we are moving, it takes us a little time to put everything into show ready  
1382 condition. So we'll get them both on Tuesday and Wednesday.  
1383  
1384 Ms. Harris - What about the Fire Inspectors, because when I did attend  
1385 the last time, one of the late evening performances was late starting, and I heard that  
1386 Henrico inspectors were by and large, some of them were (*unintelligible*) show up, and  
1387 I was quite concerned about that.  
1388  
1389 Mr. Johnson - I do recall, last year or the year before, there was concern  
1390 that the Fire Marshal had about some of the exit ways, so I don't know if there was a  
1391 (*unintelligible*) or trailer that needed to be moved. We worked very well, so it may  
1392 have been something where we were just pressed for time and couldn't get to the point  
1393 where we needed to be, so I wouldn't want you to leave here with the impression that  
1394 the Fire Marshal was just holding us up. He was doing his job; I don't know the exact  
1395 reason.  
1396  
1397 Mr. Wright - Are you in accord with the hours of operation as stated in our  
1398 conditions?  
1399  
1400 Mr. Johnson - Yes sir, the ones that are printed from February 13 that  
1401 requires us to end by 10:00 pm, yes sir.  
1402  
1403 Mr. Wright - 9:30 am to 10:00 pm.  
1404  
1405 Mr. Blankinship - Do you need to open at 9:00 o'clock, rather than 9:30? I'm  
1406 not sure what the source of 9:30 was, but you had said 9:00.  
1407  
1408 Mr. Johnson - We open at 9:30 am, and that would be for our Thursday,  
1409 March 23 and Friday, March 24 shows that are 10:30 am – we open one hour before.  
1410 On Saturday, with the 12:00 noon show, we open at 11:00.  
1411  
1412 Mr. Nunnally - Did you say box office?  
1413

1414 Mr. Johnson - The box office opens 9:00 to 9:00.  
1415  
1416 Mr. Blankinship - We should probably amend the condition then. The way it  
1417 reads now, we would expect the box office not to open till 9:30 either. I don't think  
1418 there's any problem changing it to 9:00. We can hear from the public.  
1419  
1420 Mr. Johnson - If there's an issue with that, we could open the box office  
1421 from 9:00 to 9:00, and then the circus event gates could open at 9:30.  
1422  
1423 Ms. Dwyer - There was some discussion about how the tent should be  
1424 oriented. As I look at the plan, there are two entryways for the spectators to come in the  
1425 tent, and there is one performer entry – is that right? That would suggest that the  
1426 performer entry be faced toward Dumbarton Road and the commercial area, because  
1427 they assume that would generate less noise to the surrounding residents. What is your  
1428 opinion?  
1429  
1430 Mr. Johnson - That is my opinion. We were asked last year to turn it just  
1431 the opposite, and we didn't want to argue with the officials. What we find is some of the  
1432 noise, as you open the large opening for the artist's entrance, will come out that way.  
1433  
1434 Mr. Blankinship - The artists' entrance is the largest entrance on the tent?  
1435  
1436 Mr. Johnson - That is correct.  
1437  
1438 Mr. Blankinship - That's actually what the note that I read said, that the largest  
1439 entrance was the one that needed .....  
1440  
1441 Mr. Johnson - That is the artists' entrance, so what we would do is turn it  
1442 again, back to the original position where we had in 2003-2004, where the artists'  
1443 entrance would face Dumbarton, and then that means the public would park on the  
1444 other side of the bank, in that section.  
1445  
1446 Ms. Dwyer - I wasn't clear where the tent is actually going to be, because  
1447 when I looked right, the footprint of the former Azalea Mall is fenced off with chain link  
1448 fence that seems to be imbedded in the asphalt. You don't put the tent where the  
1449 former Azalea Mall used to be, do you?  
1450  
1451 Mr. Johnson - No, the footprint of Azalea Mall is not where the tent is. It is  
1452 in the parking lot area of Azalea Mall. Do you have that on your **(unintelligible)**? I  
1453 could point that out.  
1454  
1455 Ms. Dwyer - Our report shows the tent being close to Dumbarton, close to  
1456 I-95, which would be the best location, but it can't be there, because that's on the  
1457 Azalea Mall footprint.  
1458  
1459 Mr. Johnson - If you look on the Brook Road side, as you come left where



1460 the footprint of the actual mall used to be, our tent is between where you see the “B” in  
1461 Brook Road, and the footprint of the mall, which is lighter in color, so it’s actually in the  
1462 parking lot area, so as you go up and down, north to south, going towards Dumbarton,  
1463 that’s where our tent, our compound is.

1464  
1465 Ms. Dwyer - It’s not where it’s represented to be on this. The map shows  
1466 it on the mall footprint, but it’s not going to be there.

1467  
1468 Mr. Johnson - Where that green rectangle is? Absolutely not.

1469  
1470 Ms. Dwyer - That’s where we were told the tent would be.

1471  
1472 Mr. Blankinship - That’s taken off the plans that were submitted by the  
1473 applicant, but apparently those plans .....

1474  
1475 Ms. Dwyer - **(Unintelligible)** That’s actually a good location, because it’s  
1476 so far away from all the residences, but where you’re going, you’re going to be right up  
1477 against Brook Road. You can see how close you are and all the houses. You’re  
1478 actually closer to the **(Unintelligible)**. You’re basically not able to put the tent where we  
1479 were told you put the tent. **(Unintelligible)** You told Henrico to say we have incorrect  
1480 information before us today.

1481  
1482 Mr. Johnson - That is correct.

1483  
1484 Mr. Kirkland - Mr. Blankinship, Mr. Johnson had a question about some  
1485 decibel levels at the property line, so that he wouldn’t get a lot of complaints with really  
1486 no basis that would shut him down really quick. Do you have a feel for what we should  
1487 put at the property line for a decibel level?

1488  
1489 Mr. Blankinship - I don’t. I would be interested to hear what other  
1490 communities have requested. I know that when we have gone on decibel levels in the  
1491 past, we have set them very low, even a very strict level, but that has generally been for  
1492 permanent installations, not for a five-day event. We don’t normally go with a decibel  
1493 level, as you know.

1494  
1495 Mr. Johnson - We do this in Brooklyn quite a bit, because we’re a lot closer  
1496 to the community – we play in a place called Prospect Park, and they’re a lot closer in  
1497 proximity to the houses there. We work with them quite a bit. I could provide those  
1498 readings, and we could use that as somewhat of a guideline. At the end of the day, we  
1499 want to stick technically to the number; we want to try to work with the community and  
1500 adjust it so we can have a show, and at the same time, work with the people who live  
1501 there.

1502  
1503 Mr. Kirkland - If they do that, Mr. Blankinship, can you get some of that  
1504 information from him?

1505

1506 Mr. Blankinship - Yes sir, we'll do that.  
1507  
1508 Mr. Wright - What generates the most noise?  
1509  
1510 Mr. Johnson - We have a world class sound system. We are inviting the  
1511 Board to come, so you can understand what you are regulating on, but we have a  
1512 sound system that rivals most concerts, with respect to size. We don't have the same  
1513 amount of equipment you would see at a major concert, but the quality is there. What  
1514 we find is, the base, the low end level, is often the culprit, so we can adjust it if we know,  
1515 but if we don't know, we can't really adjust. That's normally the culprit. It's not the high  
1516 end, where you get the vocals; it's from the base.  
1517  
1518 Mr. Wright - Is all that in the tent?  
1519  
1520 Mr. Johnson - Yes sir, we do not (*unintelligible*) it outside of the tent at all.  
1521 On a rare occasion, we will have a radio station come out and do a remote right there at  
1522 the box office, but by the time you get eighty feet away, you can't hear it in the parking  
1523 lot. That doesn't affect the residents; it's the sound system of our show.  
1524  
1525 Mr. Wright - The tent would tend to hold it somewhat.  
1526  
1527 Mr. Johnson - Yes, it does, and the good thing about the Richmond  
1528 audiences, because they do attend in good numbers, the bodies actually absorb a lot of  
1529 the sound. If we have a good showing, then we have less of a problem with the sound.  
1530  
1531 Mr. Blankinship - So if the residents want to control the sound, what they need  
1532 to do is attend.  
1533  
1534 Mr. Johnson - That would help. When we first started it, at Azalea Mall,  
1535 some of our other colleagues canvassed the area to inform the community about our  
1536 show. We do this across the country, especially when we are going to new places, and  
1537 let them know this is what it's like, what they can expect, and we offer tickets. We'll do  
1538 that again this year; we'll try to get them back out. Not a lot of people took the tickets,  
1539 but we hope that they will come, and we always encourage officials to come out to see  
1540 what we do.  
1541  
1542 Mr. Nunnally - Any other questions of Mr. Johnson? I'm sure we're going to  
1543 have some opposition, so this has been going on a right good while, so any more  
1544 questions of Mr. Johnson? Do you have anyone else to speak on your behalf, Mr.  
1545 Johnson?  
1546  
1547 Mr. Johnson - We have a representative from a radio station.  
1548  
1549 Mr. Nunnally - As long as he doesn't repeat what's already been said, we'd  
1550 appreciate it.  
1551

1552 Ms. Thomas - Good morning. I'm Shane Roberts-Thomas, Radio I, if  
1553 you're not familiar with our stations, we are KISS, WKJS, WKJM. KISS is the urban  
1554 **(unintelligible)** Lite 98 demographics, classic, R&B, soul. We have **(unintelligible)**  
1555 and we have PRAZ, WKCZ, which is the first African gospel station. All stations are top  
1556 **(unintelligible)** in this market, and we tend to be a very big portion of any national and  
1557 local **(unintelligible)** that are going on. I have handled the Universal Soul Circus for  
1558 two consecutive years, marketing, and promotionally. We're called the 30% solution,  
1559 because we currently handle 30% of the urban market. Most of the KISS listeners have  
1560 \$75,000 income; they're 60% homeowners. They are white collar workers, and most of  
1561 them attend the circus. I'm a mother of three; I attended the circus. I do both the  
1562 Universal Soul and Barnum and Bailey. Turnout for Barnum and Bailey is very well.  
1563 We come out; they love us, and they want that urban portion. We're not trying to get  
1564 away from what we are. We are an African-American group of people, but we do want  
1565 to have, as a station, our listeners not to be disappointed. We have children, that we go  
1566 out every year. If we don't know **(unintelligible)** with Universal Soul, and we give away  
1567 tickets. We just ask them to come out with their parents for an hour, involve  
1568 themselves, in being better to the community. We go to local Henrico County libraries;  
1569 we give away books. We also attend all of the health fairs. We do free health  
1570 screenings with the children at Bon Secours (unintelligible), and Universal Soul, again,  
1571 gives away tickets. This is all revenue that they're giving back to the community. In an  
1572 effort not to put a negative on this, I just came out today because marketing for them for  
1573 Radio I – we are a big entity – has been tremendous. They double the amount of some  
1574 other people that I deal with, to try to get the message out to people, and they do a lot of  
1575 free events. We are a community effort, and we do marketing for them. I think our  
1576 listeners would be truly disappointed if it leaves. Location wise, I do have to agree with  
1577 Mr. Wright, because we'd love to have the State Fairgrounds. The issue is timing this  
1578 year, along with what can go along with the powers that be to get us there. The station  
1579 is 100% behind bringing Universal Soul. I attended last year, and it was phenomenal.  
1580 My mother works for the Attorney General, and she thought it was amazing, so it's  
1581 something your children have to experience. My children were in awe, and they  
1582 **(unintelligible)**, and I do the marketing, and it's like comparing apples to apples. Some  
1583 events just do one way, but we welcome everyone; the event is fantastic, and the  
1584 station's there to back it up. That's all I have to say today, and I thank you for your time.

1585  
1586 Ms. Dwyer - Does the station do any promos outside the tent that would  
1587 be noise producing?

1588  
1589 Ms. Roberts-Thomas - We do bring the vehicles out; our vehicles are very  
1590 elaborate, and we do have a little PA system that they operate from. Now our decibel  
1591 level's probably minute, compared to a sound system, but we are outside the tent, and  
1592 we're only on air at that point, and we're saying, "Come on to the Universal Soul Circus;  
1593 we're out here today," but it really doesn't affect the surroundings, more so the listeners  
1594 can get it over the airwaves. We hardly make any noise, just like here on the  
1595 microphone, talking to the other people in the station.

1596  
1597 Ms. Dwyer - Where would that be located?

1598  
1599 Ms. Roberts-Thomas - In our trucks. We have a hummer and a KISScalade.  
1600  
1601 Ms. Dwyer - Where would they be located on the site?  
1602  
1603 Ms. Roberts-Thomas - Normally they are at the entrance to the site.  
1604  
1605 Ms. Dwyer - At Brook Road?  
1606  
1607 Ms. Roberts-Thomas - We're right at the entrance to the tent, not the Brook Road  
1608 entrance. We tend to park our vehicles right at the entrance.  
1609  
1610 Mr. Nunnally - Any other questions? Thank you ma'am.  
1611  
1612 Ms. Williams - Good morning. My name is Winifred B. Williams, and I'm in  
1613 an outreach house over here for Henrico County Mental Health. I've been working with  
1614 the circus since they came in 2003, with the youth in the families, through our  
1615 Prevention Unit, as well as our Adolescent SA Unit. I'm just here to speak on behalf of  
1616 the circus and behalf of the youth and the families that are served. They have allowed  
1617 us the opportunity to attend the circus free of charge and have donated up to 200 tickets  
1618 to our families and our kids. We appreciate the circus, and we're here to show our  
1619 support.  
1620  
1621 Mr. Fox - Good morning. My name is Feneral A. Fox, President of  
1622 Josea Productions. As far as the music level is concerned on Brook Road, if you were  
1623 driving down or walking down Brook Road, you couldn't even tell that music was going  
1624 on inside. It wasn't that loud at all. I'm in music, and I've been doing shows for 48  
1625 years; I've been with the County, and I know when it's loud and when it's not loud, and I  
1626 was out there. I understand the neighbors, because I know about the parking. I know  
1627 that some people came home, and people may have parked in their parking space, and  
1628 we all know how we all get when we can't park, so I guess that's one of the reasons. As  
1629 far as the music was concerned, I'm sorry; it wasn't loud.  
1630  
1631 Mr. Robertson - Hello everybody. My name is Bryan Robertson, General  
1632 Sales Manager for Radio I. I'm also a former resident of the Ginter Park and  
1633 Washington Park community. I've attended the circus for the past three years, and I  
1634 just want to brag the fact of the track record of the circus since it's been there. It's one  
1635 of the most positive events that just happens to be for African Americans in the city of  
1636 Richmond every year. There is no violence; it's a peaceful, fun-loving family, just a  
1637 positive experience for the community. I look forward to it coming again, and I hope that  
1638 you allow it to at least remain at Azalea Mall this year.  
1639  
1640 Mr. Sanders - Good morning. My name is Todd Sanders; I'm with the  
1641 walk-in **(unintelligible)**. I have an invitation for you. I'd like for any of you to come to  
1642 my home while the circus is playing and hear the noise. It is unbearable.  
1643

1644 Mr. Nunnally - Are you against this?  
1645  
1646 Mr. Sanders - I am against it.  
1647  
1648 Mr. Nunnally - We're not ready for you yet.  
1649  
1650 Mr. Sanders - How long do you think that will take sir?  
1651  
1652 Mr. Nunnally - I hope not very long; just have a seat for a minute please sir.  
1653  
1654 Mr. Sanders - I'm sorry; I apologize.  
1655  
1656 Mr. Nunnally - Does anyone else want to speak for? Please make it short;  
1657 we'll be here all night.  
1658  
1659 Ms. Mwema - My name is Joyce Mwema, and I attend Ephesus Junior  
1660 Academy; I am the class President.  
1661  
1662 Mr. Blankinship - Would you spell your last name please.  
1663  
1664 Ms. Mwema - Mwema. We would like for you to seriously consider  
1665 keeping the Universal Soul Circus open and running. My school has been going to the  
1666 Universal Soul Circus every year for a long time. The Universal Soul Circus is a circus  
1667 for African Americans and other ethnic backgrounds. We enjoy seeing our people  
1668 perform. Closing down the circus will take away our excitement and joy. However, the  
1669 circus doesn't only reach us, but many other African-American families. This circus  
1670 provides fun and wholesome entertainment, in a scene where other activities or  
1671 entertainment may provide unwholesome activities for young black citizens and other  
1672 ethnic backgrounds. This circus serves as an alternative to other entertainment.  
1673 Closing the circus will open opportunities to those very activities that it keeps us from.  
1674 We ask that you think about this through our eyes, and analyze all aspects pertaining to  
1675 this discussion. Please don't **(unintelligible)** what's happening and take this  
1676 excitement and childlike wonder away from us. Thank you for your time.  
1677  
1678 Ms. Harris - What's your school?  
1679  
1680 Ms. Mwema - Ephesus Junior Academy.  
1681  
1682 Mr. Nunnally - We'll hear three more people.  
1683  
1684 Ms. Jones - My name is Jewell Jones. I'm one of many Head Start  
1685 directors in the Commonwealth. While I was the Head Start Director at **(unintelligible)**  
1686 Agency for Community Action, the UniverSoul Circus was one of our community  
1687 partners. In that capacity, they sponsored and provided free and reduced tickets for  
1688 staff and for families and also sponsored 100 of our children. We are not actually  
1689 located here in the City or in Henrico County. We have five counties. We serve New

1690 Kent, Charles City, King William, King and Queen and Caroline. Thank you.  
1691  
1692 Mr. Khalfani - Good morning. My name is King Salim Khalfani. I serve as  
1693 the Executive Director of the Virginia State Conference of the National Association for  
1694 the Advancement of Colored People. I'm here to represent that entity in the Henrico  
1695 County branch of the NAACP and our support of the UniverSoul Circus. It's been a  
1696 great, positive attribute in this community, ever since its inception here, and we ask for  
1697 your vote to keep it going. Thank you.  
1698  
1699 Mr. Nunnally - All right – now we'll hear from the opposition.  
1700  
1701 Mr. Sanders - Thank you. I apologize for earlier **(unintelligible)**. My name  
1702 is Todd Sanders; I'm with North Ginter Park, directly behind the Azalea Mall parking lot.  
1703 It's on West Seminary Avenue, just behind the "B" on Brook Road. My back wall  
1704 actually faces the center of Azalea. It's one block above the "B" of Brook Road, on  
1705 Seminary Avenue.  
1706  
1707 Ms. Dwyer - One block east of Brook Road?  
1708  
1709 Mr. Sanders - Yes, one block east of Brook Road.  
1710  
1711 Ms. Dwyer - What's the cross street there?  
1712  
1713 Mr. Sanders - Watkins. I believe there must be a better venue, other than  
1714 a vacant mall parking lot next to a residential neighborhood. The noise is unbearable.  
1715 You could actually feel my house vibrate. You can hear the windows rattle. I have  
1716 called on several occasions to complain about the noise, just to file a complaint. The  
1717 first call, the lady I was speaking with in your office, asked me if I would be calling if it  
1718 were the Ringling Brothers Circus. I think you should be embarrassed and ashamed  
1719 that someone would even make that comment, because it has nothing to do with that. It  
1720 has to do with the comfort of my lifestyle and the house I live in. The noise is just  
1721 unbearable, and I was told several times by the Police that it has been addressed with  
1722 the circus, and they have done something about it. I never once felt like the noise level  
1723 was any lower, from the very beginning. There just must be a better venue. I'm not  
1724 against the circus; I'm just against where it's located. The Fairgrounds are perfect. I  
1725 would love for any of you to come and hear it. In fact, my back wall that faces that  
1726 circus – I know there's a crack in the dry wall; you can feel the wall vibrate. It's  
1727 unbelievable. Of course I mention that to you so that there's no way I can prove that it  
1728 wasn't there before. And I agree. **(Unintelligible)** better prepared this time. I just  
1729 encourage you to not allow the circus to play at that location, just because of the noise.  
1730  
1731 Ms. Harris - Mr. Sanders, if they monitor the noise decibels, would you  
1732 be pleased with that?  
1733  
1734 **Mr. Sanders -** It depends on how loud it is. I work out of my home; I have a  
1735 home office, no set schedule. Ten o'clock, for one thing, is too late. You can't think

1736 over that noise. I'm there, one person usually. I come home at 6:00 o'clock and work in  
1737 my office for a couple hours a night. I regret living in that neighborhood from the noise  
1738 from the circus. If I wanted to live next to something like that, I would have bought a  
1739 house by the Fairgrounds. I wouldn't even consider buying a house in that area if I  
1740 knew that circus would start playing there. **(Unintelligible)** The decibel level would  
1741 seriously have to be reduced to the point that I don't think the circus would have the  
1742 impact that they desire and be as successful as it is.

1743  
1744 Ms. Harris - Your only objection is the noise?

1745  
1746 Mr. Sanders - There is increased traffic, loitering in the alleys, more trash,  
1747 that sort of thing. That's the least of my concerns, compared to the noise.

1748  
1749 Mr. Nunnally - Thank you sir. Anyone else?

1750  
1751 Mr. Jones - My name is Larry Jones; I'm the President of the Bellevue  
1752 Civic Association – that's the community at the bottom of the map there, at the very tip  
1753 of it. I'd just like to plead for the noise abatement for the reasons already given, and to  
1754 add something new. If you were to reduce to baseline, maybe just 30-35%, it would  
1755 have to preserve the **(Unintelligible)** of the fine people who go to the circus, and would  
1756 be less stressful on the animals. They don't hear amplified rock and soul music in their  
1757 native habitat, so this thing about the kids who go to the circus, and the animals  
1758 **(Unintelligible)**. Thank you very much.

1759  
1760 Mr. Nunnally - Is there anyone else?

1761  
1762 Mr. Miller - Good morning. My name is Tom Miller. I live on Westbrook  
1763 Avenue. Actually, I don't have a problem with the circus; I've heard really good things  
1764 about it, actually. But I have to echo the concerns that have been expressed. The  
1765 noise levels are extreme. One of the past Presidents of the Westbrook Civic  
1766 Association lives right down the street from me. I was hoping he could also be here this  
1767 morning, Bob Almond. He has things rattling in his house; it's literally that loud. To be  
1768 honest, I'd love to attend; if they're offering some free tickets, because I have heard  
1769 some good things about it. But I have to echo the noise concerns; it's extreme, and all  
1770 you have to do is ride by there.

1771  
1772 Mr. Wright - What type noise are you experiencing?

1773  
1774 Mr. Miller - It's loud. The music is loud.

1775  
1776 Mr. Kirkland - Sir, are you getting base tones or high tones?

1777  
1778 Mr. Miller - I'm hearing it all, but I think they're right; the base is probably  
1779 the worst.

1780  
1781 Ms. Dwyer - Any noise from the crowds or the animals?

1782  
1783 Mr. Miller - A little bit, but it's not crowd noise. I've heard the crowd,  
1784 some applause, and that type of thing. The noise levels and the neighborhood need to  
1785 be taken care of.  
1786  
1787 Mr. Nunnally - Anyone else? Mr. Johnson, do you want a little time to  
1788 rebut?  
1789  
1790 Mr. Johnson - I certainly appreciate the time we have been provided. I  
1791 would like to let the neighborhood know that we want to work with you. We want to  
1792 obviously put on our show, but at the same time, we know you have to live there. What  
1793 we would like to do early on in the process, is get together with the people who came  
1794 out today and say, "Look, this is where we are normally. Let's play with the levels and  
1795 see what we can get it to, so everybody can live." That is the best that I can offer, you  
1796 know. I hope it is not as, the gentleman who said earlier, we'd have to turn it down to a  
1797 point where we couldn't even have a show. That was Mr. Sanders, I believe, because  
1798 then, what's the point. But we hope that we can get it to where it is acceptable and  
1799 everyone can live together. Like I say, we will explore the Fairgrounds very  
1800 aggressively and other areas in Henrico County. We looked at a lot of other places, but  
1801 the space needed is just not readily available.  
1802  
1803 Mr. Wright - Mr. Johnson, it just seems like this is what goes on in this  
1804 society everywhere you go. Somebody drives up beside you in an automobile, and the  
1805 automobile is shaking. All of the windows are closed and it goes boom, boom, and my  
1806 vehicle is shaking. I try to make a phone call and I can't hear a thing. Everywhere you  
1807 go in any establishment now, it is all loud. I don't see how this younger generation is  
1808 going to survive and put their ears through all of this. It looks like to me something  
1809 could be done to reduce that level.  
1810  
1811 Mr. Blankinship - Do you have any experience in your locations with baffling  
1812 the sound, setting up some kind of a barrier that prevents it from going into a specific  
1813 direction?  
1814  
1815 Mr. Johnson - We use the natural barriers like trees. Of course, this time of  
1816 year you don't have the leaves on them. We have in some instances trailers that we  
1817 reposition around the tent, to try to help absorb some of the sound, so we will use every  
1818 trick that we have in our book to help with this, and like I said, once again going into  
1819 different parts of the community taking readings and talking to people. We just, you  
1820 know, the low level whether it is a high barrier or a low barrier, travels on the ground, so  
1821 we will play with that to try to avoid people's homes shaking.  
1822  
1823 Mr. Blankinship - The good news is, It is something you can adjust. It is not  
1824 like it is aircraft noise, where you can't fly without making noise. It's just a matter of  
1825 turning the right knobs in the right direction.  
1826



1827 Ms. Dwyer - I'm concerned still about the location of the tent and its proximity to the  
1828 neighbors on the other side of Brook Road. Is there any way you could move the tent, if  
1829 you had space, or have you even looked at the possibility of moving the tent closer to  
1830 Dumbarton Road than you had it last year? You had it sort of in the middle of the site  
1831 before. If you push it all the way up against Dumbarton Road, and I know there's an  
1832 entry drive there, so that you can't go completely to Dumbarton, but .....

1833

1834 Mr. Johnson - If you look where the green rectangle is on the cement,  
1835 which is the former footprint of the mall, just to the right of that is where the approximate  
1836 area we could position the tent. Before it was much further down.

1837

1838 Mr. Blankinship - Is it possible north from there?

1839

1840 Mr. Johnson - Go even further north?

1841

1842 Mr. Blankinship - Due north from that green rectangle to that part  
1843 **(Unintelligible)?**

1844

1845 Mr. Johnson - No. It won't fit. The diameter of the structure is too big. I  
1846 will go back by there today after the meeting, to see if it is possible, but off the top of my  
1847 head and looking at it again this morning, I don't think we can fit there, but we can go  
1848 further north towards Dumbarton from where we were last year, which is where the "B"  
1849 in Brook Road is, if you come to the left. That is about where the tent was. We can  
1850 push it back further north.

1851

1852 Mr. Wright - Would you have any objections if this were approved, for a  
1853 condition to say that you would erect the tent as far north on this property as close to  
1854 Dumbarton Road as you could?

1855

1856 Mr. Johnson - No. We would do that. Absolutely. We will go as far as we  
1857 can. We don't want the neighbors complaining. We don't want them calling. We want  
1858 them to come to the show.

1859

1860 Mr. Wright - Orient the tent so the opening would be toward Dumbarton  
1861 Road.

1862

1863 Mr. Johnson - Yes, sir, yes, sir.

1864

1865 Mr. Wright - That would probably help some.

1866

1867 Ms. Dwyer - The problem is, you are going to run into that access road  
1868 from Dumbarton, and that will limit your ability to push it to Dumbarton, but you are also  
1869 going to have to have space for people to drive in that access, and I'm sure the Fire  
1870 Department is not going to let you block that.

1871

1872 Mr. Johnson - Well, we will have to work with the Fire Department. I think  
1873 there where the "t" is on Dumbarton, is where that access is, it comes down, so what we  
1874 would do is, you'd come down from the "t" and go to your right. We would use that as a  
1875 fire lane, so I'll have to go out and take some measurements, but I think we can get that  
1876 achieved, getting it further up to Dumbarton Road.

1877  
1878 Ms. Dwyer - You are up against a deadline, and you have to have  
1879 approval today in order to do this, obviously, so I am wondering what you can offer in  
1880 terms of quantifying the noise levels, so that we can leave here today with some surety  
1881 of what the noise levels will be.

1882  
1883 Mr. Johnson - It would be very difficult to quantify exactly because it  
1884 changes with the environment, the cloud level. Luckily it is asphalt, so that doesn't  
1885 change, but the number of leaves on the trees, the bushes, everything comes into play.  
1886 Where we might be at 74 in one area, we could easily drop down to 84 somewhere  
1887 else. So it would be very difficult to say right now. I did see in the conditions that you  
1888 listed, getting everything done by March 10. What I would like to do is work on  
1889 something with Mr. Blankinship and others, so we can meet that deadline, so we can  
1890 qualify and come up with a real answer for you. I hate to say something now and be  
1891 unrealistic.

1892  
1893 Ms. Dwyer - Can you give us a maximum today?

1894  
1895 Mr. Blankinship - The decibel levels are usually measured, but they don't  
1896 usually focus on the low end anyway; it's kind of a spectrum across the sound, so you  
1897 could have 55 decibels and still drive Mr. Sanders crazy, and you could have 74  
1898 decibels and not bother him at all.

1899  
1900 Mr. Johnson - The low levels are really difficult.

1901  
1902 Ms. Harris - But I did hear you say you would be with the neighbors to  
1903 monitor just what is appropriate.

1904  
1905 Mr. Johnson - Yes. We will reach out to them and see if we can actually  
1906 get by. That is what we do in Brooklyn. We will do what we have to do to get our show  
1907 going and keep the people in the neighborhood in good standing.

1908  
1909 Ms. Harris - And that could be done by March 10?

1910  
1911 Mr. Johnson - The problem is, we don't have the equipment there. It is  
1912 something that would need to be done on the morning of the 22<sup>nd</sup>, because it is possible  
1913 to be up and running on the 21<sup>st</sup>, but it is unlikely. It would be too late in the night to  
1914 start the music on the 21<sup>st</sup>, so it would be the morning of the 22<sup>nd</sup> we could get out there  
1915 and start playing with the levels.

1916  
1917 Ms. Dwyer - Do you have 11 shows in 5 days?

1918  
1919 Mr. Johnson - Yes, ma'am.  
1920  
1921 Ms. Dwyer - What are the times of the shows?  
1922  
1923 Mr. Johnson - Wednesday night at 7:30 pm; then Thursday morning at  
1924 10:30 am, and an evening show at 7:30 pm; Friday, 10:30 am and 7:30 pm; then  
1925 Saturday, 12 noon, 4:30 and 8:00; and then Sunday 1:00, 4:00 and 7:00 p.m.  
1926  
1927 Ms. Dwyer - So the 8:00 o'clock shows you end at 10?  
1928  
1929 Mr. Johnson - Correct. I would make sure we cut off the 8:00 show at  
1930 10:00. Normally it's a 2 hour and 15 minute program, but because of the ordinance, I  
1931 will make sure we cut off right at 10:00 o'clock.  
1932  
1933 Ms. Dwyer - Obviously, you want to maintain those evening shows. What  
1934 about having them earlier, so that the noise is not extending so late in the evening?  
1935  
1936 Mr. Johnson - The problem is, the evening shows are really designed for  
1937 people to go home, get their families and come out, so by the time you get them, people  
1938 are running in right at 7:30, 7:45, unfortunately. That is really not a **(Unintelligible)** for  
1939 us. I can make sure they end at 10:00 o'clock, no problem, but to try to push it earlier  
1940 would create definitely a hardship on the people who are coming to attend. A lot of  
1941 people are coming during that 7:30 period; that's when they pull into the parking lot,  
1942 because they've got to get their kids, they've gone home, then come to the circus.  
1943  
1944 Ms. Dwyer - If it were a question of whether or not you could have the  
1945 circus there or not, you'd be willing to have it earlier?  
1946  
1947 Mr. Johnson - In 2006, this year, I would not want to say yes, because of  
1948 the way things are already geared. We've got people who have purchased tickets  
1949 already, planning for 7:30 and 8:00 o'clock. What time are you looking for us to end?  
1950  
1951 Ms. Dwyer - Considering the noise concern, 9:30 on a weekday, and  
1952 10:00 on Saturday, and around 9:15 on Sunday. To give the neighbors at least an hour  
1953 so that would be helpful to them to not have to **(Unintelligible)**. You've already  
1954 published your tickets with a time on them?  
1955  
1956 Mr. Johnson - Yes ma'am.  
1957  
1958 Ms. Harris - It's also on the internet.  
1959  
1960 Mr. Johnson - And with Ticketmaster.  
1961  
1962 Ms. Harris - You have people coming to the show from New Kent, from  
1963 other counties to the show, and they're pushing it when they .....

1964  
1965 ***{Tape skipped ahead to the next case. Recording equipment malfunction, lost the***  
1966 ***end of the testimony.}***  
1967  
1968 Mr. Nunnally - UP-7-2006.  
1969  
1970 Ms. Harris - I move that we approve this case, but with some conditions.  
1971 Number 1, Condition # 6, with 9:00 am until 10:00 pm, instead of 9:30 am until 10:00 pm.  
1972  
1973 Mr. Kirkland - Shall we put something in there like “the gates will open at  
1974 9:00 am and close at 10:00 pm.”  
1975  
1976 Ms. Harris - You mean the ticket office?  
1977  
1978 Mr. Kirkland - Put something in there that says the official time the property  
1979 opens, I guess.  
1980  
1981 Ms. Harris - And I would add, that the owners or the managers would  
1982 meet with the neighbors to arrange to regulate the volume of music or introduce some  
1983 type of noise level monitoring system. Would that be a seismograph?  
1984  
1985 Mr. Blankinship - I can’t think of the technical term for it.  
1986  
1987 Mr. Kirkland - Decibel meter or regulator.  
1988  
1989 Ms. Harris - A decibel meter to determine the noise level.  
1990  
1991 Ms. Dwyer - I think we need to be really specific about this noise, in the  
1992 condition that we’re considering.  
1993  
1994 Mr. Kirkland - Ms. Harris, are you going to propose the other condition  
1995 about moving the tent?  
1996  
1997 Ms. Harris - Yes, the third thing that I would add is that they erect the tent  
1998 as far north as they can, opening the tent to Dumbarton Road.  
1999  
2000 Ms. Dwyer - Would that be a new condition?  
2001  
2002 Ms. Harris - Yes.  
2003  
2004 Mr. Kirkland - It’s never been there before, has it Mr. Blankinship, the tent?  
2005  
2006 Mr. Blankinship - I don’t know that they’ve put it in the same location each  
2007 year.  
2008

2009 Mr. Kirkland - I think it's going to be far away from any neighborhood;  
2010 you're still going to get some vibration, but .....

2011

2012 Mr. Blankinship - Open space doesn't really buffer sound very well.

2013

2014 Ms. Dwyer - Solid asphalt is the other thing, with no buffers around.  
2015 When someone two blocks away is having their walls vibrate, I don't know that moving it  
2016 .....  
2017

2018 Mr. Kirkland - He's down on Brook Road though.

2019

2020 Mr. Blankinship - And we're not even moving away from him.

2021

2022 Ms. Dwyer - We're moving it a little bit away. I think there's still some  
2023 residents on Seminary that are .....

2024

2025 Mr. Kirkland - **(Unintelligible)** decibel levels in concerts.

2026

2027 Ms. Harris - Well, they're going to have to turn it down; there's no doubt  
2028 about that, but if they meet with the neighbors to regulate the levels, **(Unintelligible)**.

2029

2030 Mr. Kirkland - I think the County should be involved in that .....

2031

2032 Ms. Harris - You mean the neighbors and the County?

2033

2034 Mr. Kirkland - Yes.

2035

2036 Ms. Dwyer - The problem is, what if they don't agree? They should have  
2037 applied for this in order to give them some leeway to work these details out, before they  
2038 were up against the problem of printing tickets, and that's the first problem. We're in a  
2039 position of either approving it or not approving it, because **(Unintelligible)** was allowed  
2040 to work the neighbors and come up with a condition that we could accept. I think you  
2041 need to be specific about the decibel level.  
2042

2043 Mr. Kirkland - **(Unintelligible)** at the property line for a permanent  
2044 transformer, things like MCI had, the generators and everything – we were running  
2045 about eighty decibels on them. But that's a different kind of noise, but that's a  
2046 continuous hum; it doesn't go up or down.  
2047

2048 Mr. Blankinship - It's 24 hours.

2049

2050 Mr. Kirkland - And they test them at certain times of the day. When you  
2051 have music, it goes the full range, and eighty might be fine, but that base might slide  
2052 through under that eighty, and you could have a real problem.  
2053

2054 Ms. Dwyer - How do we regulate the base?

2055  
2056 Mr. Kirkland - I have no idea, because I'm not a concert person.  
2057  
2058 Ms. Harris - Just cut it down till it's **(Unintelligible)**.  
2059  
2060 Ms. Dwyer - That depends on who you're asking.  
2061  
2062 Mr. Blankinship - You're going to have to go to a reasonable person test.  
2063  
2064 Mr. Kirkland - Give them all a set of earphones, and do it through a sound  
2065 system.  
2066  
2067 Mr. Blankinship - Mr. O'Kelly, do you know what we do at Innsbrook?  
2068  
2069 Mr. O'Kelly - I was going to ask you the same thing. They do get a music  
2070 festival permit from us every year. We have had complaints, and those complaints are  
2071 addressed through an agreement with the Police Department, and I think there is, there  
2072 may be a decibel level that is added as a condition of the music festival permit, but we'd  
2073 have to check on that.  
2074  
2075 Mr. Blankinship - They submit a report after the fact; they do continuous  
2076 monitoring of the sound and report after the fact how loud it was.  
2077  
2078 Mr. Kirkland - I'm concerned the police aren't here to address some of  
2079 these situations, since we've received a couple of letters from them.  
2080  
2081 Ms. Dwyer - We also need assistance from the County in assessing  
2082 decibel levels and what's reasonable under these circumstances. I don't know if eighty  
2083 is reasonable, eighty-five.  
2084  
2085 Mr. Kirkland - **(Unintelligible)** Innsbrook, but I don't even know what that  
2086 is. There are two big buildings in front of them, which act as, they bounce the sound  
2087 back.  
2088  
2089 Ms. Dwyer - That's a different environment than this is.  
2090  
2091 Ms. Harris - Who's going to determine which would work with  
2092 **(Unintelligible)**?  
2093  
2094 Mr. Blankinship - If it's a matter of meeting with the neighbors and determining  
2095 what's reasonable, that would probably fall to me, but if it's going to be something  
2096 technical, I don't even know who on the staff would have that.  
2097  
2098 Mr. Kirkland - Okay, Mr. Tokarz.  
2099

2100 Mr. Tokarz - I am not involved in this case, but I do want to advise the  
2101 Board that Section 4-15 of the County Code, which deals with music festivals, in  
2102 paragraph, A-11, it states that the “applicant shall submit a statement that no music  
2103 shall be played, either by mechanical device or live performance, in such a manner that  
2104 the sound emanating there from shall exceed 65 decibels at the property lines of the  
2105 property on which the festival is located.” That is the only thing I’m aware of in the  
2106 County Code, dealing with music and sound levels, and those are measured usually by  
2107 sound level meters, which are something that costs about \$30.00 at Radio Shack.  
2108

2109 Ms. Dwyer - That’s an existing ordinance .....

2110

2111 Mr. Tokarz - On music festival permits, yes.

2112

2113 Mr. Wright - This is not a music festival though.

2114

2115 Ms. Dwyer - Thank you for that. At least it’s a standard that is .....

2116

2117 Mr. Kirkland - Would they have to get a festival permit from the police?

2118

2119 Mr. Blankinship - Not if he has the use permit.

2120

2121 Ms. Harris - So are we going to use the 65 as a rule, in accordance with  
2122 the County Code?

2123

2124 Ms. Dwyer - I would say yes, in the absence of any other evidence,  
2125 **(Unintelligible)**.

2126

2127 Ms. Harris - Condition # 5 – I think that we might state this condition, and  
2128 of course it’s open to the public, I think that this puts this group at a disadvantage.

2129

2130 Mr. Kirkland - That’s up to the County and the Director of Planning to see  
2131 that the complaints warrants which will stop the concert.

2132

2133 Ms. Harris - To see if it’s legitimate?

2134

2135 Mr. Kirkland - If they’re all music oriented, and we’ve got a decibel level in  
2136 there, then there is no black and white.

2137

2138 Mr. Wright - It looks like to me that # 5 would take care of the problem.

2139

2140 Mr. Kirkland - So if we put 65 or 70 decibels, that covers the noise levels.

2141

2142 Ms. Dwyer - I’ve heard the Soul Circus. I don’t think that this is a very  
2143 good measure as it exists, because you could get anybody who complains for any  
2144 reason, and that would trigger the revocation of the use permit.  
2145

2146 Mr. Kirkland - Like trash on the road.  
2147  
2148 Ms. Dwyer - It could be valid or invalid. I think the first sentence is fine.  
2149 The second sentence that talks about the complaints, then you could put the decibel  
2150 level in there too, **(Unintelligible)**.  
2151  
2152 Ms. Harris - **(Unintelligible)**  
2153  
2154 Mr. Kirkland - 65?  
2155  
2156 Ms. Dwyer - Is that going to take care of the base problem? Is there  
2157 some testimony that even at a given decibel level, the base would have more of an  
2158 impact than other sound.  
2159  
2160 Ms. Harris - But we don't have any information **(Unintelligible)**. I would  
2161 think that would be a part of the music.  
2162  
2163 Mr. Blankinship - We'll do the best we can.  
2164  
2165 Mr. Wright - Also, you want to have Ms. Harris' tent, the entrances  
2166 oriented away from the Brook Road?  
2167  
2168 Ms. Harris - Yes, I do say to erect the tent as far north as is possible, and  
2169 opening the tent to Dumbarton Road.  
2170  
2171 Ms. Dwyer - That would be the performers' entrance? **(Unintelligible)**  
2172 toward Brook Road, and the lobby area .....

2173  
2174 Mr. Wright - Dumbarton Road.  
2175  
2176 Ms. Dwyer - I'm sorry, not Brook, Dumbarton or I-95, because they're  
2177 going to be angled toward the interstate too.  
2178  
2179 Mr. Nunnally - Ben, you've got all that?  
2180  
2181 Mr. Blankinship - Yes sir. I want to check it.  
2182  
2183 Mr. Nunnally - Okay, moved by Ms. Harris, .....

2184  
2185 Ms. Dwyer - Can we repeat it?  
2186  
2187 Ms. Harris - Okay, we haven't had a second.  
2188  
2189 Mr. Blankinship - I'm sorry, I've got 1through 4 standing as drafted; Condition  
2190 # 5, the first sentence is going to stand; the second sentence will be parallel to the Code  
2191 provision in 4-15 that Mr. Tokarz referred to at 65 decibels. Let me just mention that Mr.



2192     Gidley just came over and suggested that it say “residential property line,” but we’re not  
2193     concerned with 65 decibels at a commercial property line, but the nearest residential  
2194     property line. Number 6, the hours of operation would be amended from 9:00 o’clock,  
2195     and we would clarify that’s when the box office opens. The gates would open at 9:30,  
2196     Number 10 would be clarified that it’s the artists and performers’ entrance that would be  
2197     oriented toward Dumbarton Road and the Interstate, that portion of the property, and let  
2198     them nail down the specifics. Add a Condition # 14 that the tent be located as far north  
2199     on the property as practical.

2200  
2201     Ms. Dwyer -                     Would you consider also a statement as to their testimony  
2202     about the security guards, that was unclear, but I think they testified that there would be  
2203     two security guards 24 hours a day, 2 police officers to direct traffic during the hours of  
2204     operation.

2205  
2206     Mr. Blankinship -             You want to insert that in the condition that addresses police  
2207     now? Which condition is that?

2208  
2209     **(Unintelligible)** -- too many voices.

2210  
2211     Mr. Blankinship -             Was it 1, 2 or 3 – there is one that addresses police  
2212     requirements generally. Number 1.

2213  
2214     Ms. Dwyer -                     **(Unintelligible)** We want any .....

2215  
2216     Mr. Blankinship -             Minimum of 2 guards, 24 hours, 2 additional police to direct  
2217     traffic, and I believe that you mentioned one additional guard at the box office.

2218  
2219     Ms. Dwyer -                     Is that sufficient police. And while there were some  
2220     complaints about parking, is that sufficient?

2221  
2222     Mr. Kirkland -                 They’ll respond automatically once a complaint is called in;  
2223     the Henrico and City units will respond immediately if there is a call.

2224  
2225     Mr. Blankinship -             And they will have additional staff.

2226  
2227     Ms. Dwyer -                     But this will commit them to have them, to hire them to be  
2228     available to direct traffic?

2229  
2230     Mr. Blankinship -             Yes. Mr. Johnson, is there anything in there that’s  
2231     objectionable or that you can’t work with? **(Unintelligible) with what’s been**  
2232     **discussed?**

2233  
2234     Mr. Johnson -                 No, I don’t see any problems at this point.

2235  
2236     Mr. Blankinship -             Thank you.

2237

2238 Mr. Kirkland - Ms. Harris, you made a motion. Has there been a second?

2239

2240 Mr. Wright - I'll second.

2241

2242 Mr. Nunnally - Second by Mr. Wright. All in favor with the approved  
2243 conditions, say aye. It's been approved.

2244

2245 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
2246 Wright, the Board **granted** application **UP-7-2006** for a temporary conditional use permit  
2247 to operate a circus at 1741 Dumbarton Road (Parcel 785-743-1062). The Board  
2248 granted the use permit subject to the following conditions:

2249

2250 1. [AMENDED] No later than March 10, 2006, the operations plans shall be filed  
2251 with the Henrico County Division of Police and Division of Fire Services. The Division of  
2252 Police and the Planning Department shall be provided with the contact information for a  
2253 person who shall be on-site at all times and who shall have the authority to respond  
2254 immediately to complaints. There shall be at least two guards on the property at all  
2255 times. In addition, there shall be at least two police officers directing traffic when the  
2256 gates are open and a guard at the box office whenever it is open.

2257

2258 2. All necessary building and electrical permits shall be obtained from the Henrico  
2259 County Office of Building Inspections.

2260

2261 3. All food service shall be inspected and approved by the Henrico County Health  
2262 Department.

2263

2264 4. The applicant shall satisfy all requirements of the Henrico County Animal  
2265 Protection Officer regarding the care and safety of animals performing in the circus.

2266

2267 5. [AMENDED] The applicant must maintain the property so that noise is  
2268 controlled. The sound emanating from the circus shall not exceed 65 decibels at the  
2269 property lines of the nearest residential property.

2270

2271 6. [AMENDED] The hours of operation shall be limited from 9:00 AM to 10:00 PM.  
2272 The gates shall not open before 9:30 AM. If a sound amplification system is operated  
2273 outside those hours, this permission may be revoked without further notice by the  
2274 Director of Planning.

2275

2276 7. All structures and vehicles related to the circus shall be removed from the  
2277 property by March 31, 2006, at which time this permit will expire.

2278

2279 8. All exterior lighting shall be shielded to direct light away from adjacent property  
2280 and streets.

2281

2282 9. All trash shall be in closed containers with regular pickups, the area shall be kept  
2283 clean, and the containers shall be properly screened.

2284  
2285 10. [AMENDED] The artists' and performers' entrance to the tent shall face toward  
2286 Dumbarton Road and Interstate 95.

2287  
2288 11. The applicant shall not charge for parking and shall provide signage directing the  
2289 public to clearly designated and free public parking areas.

2290  
2291 12. No alcoholic beverages shall be provided on site.

2292  
2293 13. This approval is only for the applicant, Soul Circus, Inc. to conduct a circus on  
2294 the former Azalea Mall site (G.P.I.N. 785-743-1062).

2295  
2296 14. [ADDED] The tent shall be located on the site as far north as practical.

2297  
2298 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2299 Negative: 0

2300 Absent: 0

2301  
2302 The Board granted the request because it found the proposed use will be in substantial  
2303 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2304  
2305 Mr. Nunnally - We'll take a five-minute break.

2306  
2307 Mr. Nunnally - Call the next case.

2308  
2309 **A-10-2006** **ERNEST BROWN** requests a variance from Section 24-95(k) to  
2310 allow an existing garage to remain at 1016 Westham Parkway  
2311 (Westhampton Hills) (Parcel 761-740-6486), zoned R-3, One-family  
2312 Residence District (Tuckahoe). The minimum side yard setback is  
2313 not met. The applicant has 6 feet minimum side yard setback,  
2314 where the Code requires 55 feet minimum side yard setback. The  
2315 applicant requests a variance of 49 feet minimum side yard  
2316 setback.

2317  
2318 Mr. Nunnally - Is anyone else here involved in this case, want to speak on  
2319 this case, for or against? If so, would you please stand and raise your right hand?

2320  
2321 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2322 truth, the whole truth, and nothing but the truth, so help you God?

2323  
2324 Mr. Brown - I do. My name is Ernest Brown. I own a home at 1016  
2325 Westham Parkway. About 25 years ago, I hired a contractor to build a garage there on  
2326 Westham, and I had relied on him to be sure that it was properly constructed and  
2327 approved, and I have just learned in the last few months that there was a problem with  
2328 the location of it. It came about as a result of talking with a real estate agent, who had  
2329 asked for a copy of my survey, which I think was dated in 1978, which is about when I

2330 bought the property. When she looked at the survey, she said it appeared that there  
2331 was a problem with the garage, because the survey showed a 15-foot building setback  
2332 line along Patterson, and I think the garage was built 6 or 7 feet into that 15-foot setback  
2333 line. My agent indicated that if I intended to sell the property, there would be an issue  
2334 with title insurance, so that's why I'm here. It's a little bit of an unusual situation in the  
2335 back yard, because the topography is so steep that the garage is more or less dug into  
2336 the hillside, and as a result of its being dug into the hillside with the steep topography, it  
2337 almost would have to be because of the grade below Patterson, but as a result of it, it's  
2338 so low that that's part of the reason that it apparently hasn't been objectionable to  
2339 anyone, to my knowledge, and it's so noted in the northwest corner, which would be the  
2340 far right corner near that chimney on the house beyond. At that corner, the eave of the  
2341 garage is only about two feet or so above the ground, so that you can actually step off  
2342 the ground to the roof of the garage. It's my belief that because of that, it's not been  
2343 objectionable to anyone to my knowledge for 25 years or so. I would ask that you  
2344 please grant the variance so I won't be deprived of the use of my property. I thank you  
2345 for your time.

2346  
2347 Mr. Nunnally - You said a real estate person looked at your deed survey.  
2348 Are you planning on selling?

2349  
2350 Mr. Brown - Yes sir.

2351  
2352 Mr. Kirkland - Mr. Blankinship, first page of the staff report says that "Prior  
2353 to the Board acting on this request, the Board of Supervisors must approve the vacation  
2354 of the 15-foot building line."

2355  
2356 Mr. Blankinship - Yes sir, I was just going to speak to that. That is a policy; it's  
2357 not a matter of law, but it is our policy that the Board of Supervisors would prefer to see  
2358 the request before it comes to the BZA. In this case, there was a problem with getting  
2359 the application onto the Board of Supervisors' Agenda. It was supposed to be on the  
2360 February 14<sup>th</sup> Agenda, and it was not, so we would like to recommend an additional  
2361 condition, that this variance is only effective if the Board of Supervisors vacates that  
2362 building line. That still needs to be done, but to allow the variance to immediately take  
2363 effect, upon the Board's approval, so if they can get to the Board of Supervisors before  
2364 your next meeting, they wouldn't have to wait.

2365  
2366 Ms. Dwyer - That condition is not on our staff report.

2367  
2368 Mr. Blankinship - You might add Condition # 2, that "This variance will take  
2369 effect only if the building line is vacated by the Board of Supervisors," or something to  
2370 that effect.

2371  
2372 Ms. Dwyer - Mr. Brown, who built the garage?

2373  
2374 Mr. Brown - The gentleman's name was Smith or Smythe, or something;  
2375 I don't recall precisely; it was quite a long time ago. I've looked through some of my

2376 records, and I don't have any records, really any older than about ten years ago, so I  
2377 wasn't able to come up with much documentation.

2378  
2379 Ms. Dwyer - Was there a building permit?

2380  
2381 Mr. Brown - I relied upon my belief that he obtained one. As I said, I just  
2382 relied upon him to do it properly. I had no reason to think that he hadn't.

2383  
2384 Ms. Dwyer - Except that you're ultimately responsible for what's on your  
2385 property.

2386  
2387 Mr. Brown - That certainly is true.

2388  
2389 Ms. Harris - Mr. Blankinship, could Mr. Brown have requested a  
2390 conditional use permit?

2391  
2392 Mr. Blankinship - The recent amendment to the Code authorizes you to grant  
2393 a conditional use permit to allow an accessory structure other than in the rear yard,  
2394 where the Code required it. That's not the issue here. This accessory structure is in the  
2395 rear yard, and there's nothing in that amendment that would allow a conditional use  
2396 permit to cure a setback issue.

2397  
2398 Mr. Nunnally - Isn't the County partially at fault in this error?

2399  
2400 Mr. Blankinship - We really don't know. Our records are not much better when  
2401 a building permit's 25 years old, than Mr. Brown's; if it were for the principal dwelling, it  
2402 would probably be on a real estate card, but we don't have a note that there was a  
2403 building permit for a garage, but that's not really proof that there was not a building  
2404 permit.

2405  
2406 Mr. Kirkland - Your garage is on the real estate card, isn't it?

2407  
2408 Mr. Blankinship - Yes, the garage has been assessed.

2409  
2410 Mr. Kirkland - Therefore it was probably a permit issued to be on the card.

2411  
2412 Mr. Blankinship - Or it could have just been picked up at a reassessment.

2413  
2414 Mr. Nunnally - Any other questions? Anyone here in opposition? Hearing  
2415 none, that concludes the case. A-10-2006, Ernest Brown.

2416  
2417 Mr. Kirkland - I make a motion we approve it with a Condition # 2.

2418  
2419 Ms. Dwyer - And the Condition # 2 would be that .....

2420  
2421 Mr. Blankinship - Vacation of the building line by the Board of Supervisors.

2422  
 2423 Ms. Dwyer - I'll second it, but I'd also like some discussion on this.  
 2424  
 2425 Mr. Nunnally - Motion by Mr. Kirkland, second by Ms. Dwyer. Discussion?  
 2426  
 2427 Ms. Dwyer - Strict application of the ordinance would say that this should  
 2428 be denied, although it's a case which has existed for 25 years, apparently without  
 2429 complaint or imposition upon he neighbors, so it's a question of whether we apply mercy  
 2430 or the strict application of the law.  
 2431  
 2432 Mr. Wright - There is still some indication, we don't know whether the  
 2433 County's involved in this or not, because if there were a building permit approved back  
 2434 in 1981, the owner generally could take care of it. We have to have some sort of  
 2435 flexibility here.  
 2436  
 2437 Ms. Dwyer - I would also like to consider a condition that would say,  
 2438 "There could be no additions to the garage, and if the garage is ever torn down, it  
 2439 cannot be rebuilt in its present location?" Is that enforceable?  
 2440  
 2441 Mr. Nunnally - Seconded by Ms. Dwyer with the condition. All in favor, say  
 2442 aye. Opposed? It's approved.  
 2443  
 2444 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
 2445 Dwyer, the Board **granted** application **A-10-2006** for a variance to allow an existing  
 2446 garage to remain at 1016 Westham Parkway (Westhampton Hills) (Parcel 761-740-  
 2447 6486). The Board granted the variance subject to the following conditions:  
 2448  
 2449 1. This variance applies only to the location of the detached garage shown on the  
 2450 plan filed with the application. Any additional improvements shall comply with the  
 2451 applicable regulations of the County Code. Any substantial changes or additions may  
 2452 require a new variance.  
 2453  
 2454 2. [ADDED] This variance shall not take effect until and unless the building line  
 2455 recorded on the subdivision plat is vacated by the Board of Supervisors.  
 2456  
 2457 3. [ADDED] The detached garage shall not be enlarged, extended, reconstructed,  
 2458 substituted or structurally altered except in conformance with the requirements of the  
 2459 County Code.  
 2460  
 2461 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 2462 Negative: 0  
 2463 Absent: 0  
 2464  
 2465 The Board granted this request, as it found from the evidence presented that, due to the  
 2466 unique circumstances of the subject property, strict application of the County Code  
 2467 would produce undue hardship not generally shared by other properties in the area, and

2468 authorizing this variance will neither cause a substantial detriment to adjacent property  
2469 nor materially impair the purpose of the zoning regulations.

2470  
2471 **A-11-2006**                    **ROBERT T. ROYSTER** requests a variance from Section 24-9 to  
2472 build a one-family dwelling at 7032 Charles City Road (Parcel 860-  
2473 693-9106 (part)), zoned A-1, Agricultural District (Varina). The  
2474 public street frontage requirement is not met. The applicant has 0  
2475 feet public street frontage, where the Code requires 50 feet public  
2476 street frontage. The applicant requests a variance of 50 feet public  
2477 street frontage.  
2478

2479 Mr. Nunnally -                    Does anyone else here desire to speak on this case? If so,  
2480 would you please stand and raise your right hand?

2481  
2482 Mr. Blankinship -                Do you swear that the testimony you are about to give is the  
2483 truth, the whole truth, and nothing but the truth, so help you God?  
2484

2485 Mr. Donati -                      Yes, I do. Good morning, Mr. Chairman, Board members;  
2486 I'm Jim Donati. I'm here representing Mr. Royster and the property that's in question.  
2487 The sole purpose of me being here, is that this parcel that is in question is the one I  
2488 would like to build my new home on. The property has got 1400 feet off of the roadway,  
2489 and a 50-foot easement that has access to my property, but I don't have the required 50  
2490 feet road frontage for the property that I have, so I'm here asking for a variance of 50  
2491 feet.  
2492

2493 Ms. Dwyer -                      So this is obviously not a family division. This is a lot that  
2494 you purchased from Mr. Royster?  
2495

2496 Mr. Donati -                      Right.

2497  
2498 Ms. Dwyer -                      And what's the status of the 50-foot right-of-way? Is that  
2499 deeded or dedicated, or .....

2500  
2501 Mr. Donati -                      That's deeded.

2502  
2503 Ms. Dwyer -                      To the County or to .....

2504  
2505 Mr. Donati -                      It's a fifty-foot easement that runs along the property, from  
2506 Charles City Road, back beyond the property that I have.  
2507

2508 Ms. Dwyer -                      Would your house be oriented to that fifty-foot right-of-way  
2509 as if it were a road?

2510  
2511 Mr. Donati -                      Yes, it would be fronting the road; it's a fifty-foot setback  
2512 from the existing fifty-foot easement.  
2513

2514 Ms. Dwyer - Did the Roysters have that fifty-foot easement?  
2515  
2516 Mr. Donati - Yes they did, because it runs all along the entire parcel of  
2517 the property originally, so they owned it.  
2518  
2519 Mr. Nunnally - You say they deeded it over to you.  
2520  
2521 Mr. Donati - Yes, it's going to be deeded to my plat when I take it.  
2522  
2523 Ms. Dwyer - You don't have access to the easement, I assume.  
2524 **(Unintelligible)** as far as the ownership of the fifty-foot right-of-way, that's probably still  
2525 in the hands of the .....  
2526  
2527 Mr. Donati - It becomes part of mine and as far as the maintenance of the  
2528 roadway, for me to access my property.  
2529  
2530 Mr. Kirkland - Do you have a maintenance agreement in your deed?  
2531  
2532 Mr. Donati - Not at this point. It hasn't been deeded yet. But it will be.  
2533  
2534 Ms. Dwyer - Would the Roysters be willing to agree to dedicate without  
2535 cost, that fifty-foot right-of-way to the County, should the County ever decide to include  
2536 it in the road system?  
2537  
2538 Mr. Donati - Don't know. Couldn't answer that. That's something that's  
2539 going to be addressed shortly in the County with the Major Thoroughfare Plan that's  
2540 become **(Unintelligible)** update, so it will probably be addressed at some time.  
2541  
2542 Ms. Harris - **(Unintelligible)** this property, the two photo. Could you  
2543 identify where your property would be in comparison to this – this is a private road, right.  
2544  
2545 Mr. Donati - This is a private road, not the fifty-foot easement.  
2546  
2547 Ms. Harris - It's not? Where would your property be **(Unintelligible)** in  
2548 comparison to this road?  
2549  
2550 Mr. Donati - This road is west of my property.  
2551  
2552 Mr. Blankinship - Are we looking straight at your property?  
2553  
2554 Mr. Donati - Where that white structure is, is that the farm bed there. It's  
2555 directly behind that white object.  
2556  
2557 Ms. Harris - So you can actually access your property by this road?  
2558  
2559 Mr. Donati - No ma'am. The roadway is actually running along the



2560 woods line, all the way back out to Charles City Road.  
2561  
2562 Mr. Blankinship - So you're going to be putting in a new driveway, not using  
2563 the existing?  
2564  
2565 Mr. Donati - Right. This one can be used temporarily, for construction,  
2566 but when that happens, we are close to complete, the roadway will go all the way out to  
2567 Charles City Road.  
2568  
2569 Mr. Nunnally - You back up to Charles City County, right.  
2570  
2571 Mr. Donati - Yes sir, my back property line would be the Charles City  
2572 County boundary line.  
2573  
2574 Ms. Dwyer - So none of this fifty-foot right-of-way that goes from the front  
2575 of your property out to the Charles City Road, that hasn't been constructed yet?  
2576  
2577 Mr. Donati - There's actually a roadbed there, but it's grown up; it needs  
2578 to be cleared and graveled. You can actually drive a car through there; that's an  
2579 entrance on Charles City Road with a cable across it, right there.  
2580  
2581 Ms. Dwyer - And that will be done with the building of this house?  
2582  
2583 Mr. Donati - Right.  
2584  
2585 Mr. Nunnally - Any other questions? You've read the conditions, Mr.  
2586 Donati?  
2587  
2588 Mr. Donati - Yes sir, and I agree with those, no problem at all.  
2589  
2590 Mr. Nunnally - Any other questions, from Board or staff? Hearing none,  
2591 that completes the case. Thank you. A-11-2006,  
2592  
2593 Mr. Wright - Move we approve it.  
2594  
2595 Ms. Harris - Second.  
2596  
2597 Mr. Nunnally - Moved by Mr. Wright; seconded by Ms. Harris, that we  
2598 approve this case.  
2599  
2600 Ms. Dwyer - Could we have some discussion on this. I'm **(Unintelligible)**  
2601 concerned that these lots with 0 road frontage is looking ahead towards the future, and  
2602 this does have a fifty-foot right-of-way that's designated on the plans, and I assume that  
2603 there will be other houses, probably, since there are other lots along this roadway. I  
2604 would like to be sure that this fifty-foot road way would be dedicated without cost to the  
2605 County, should the County ever decide to use this to pave the road and make it part of

2606 the County system.  
2607  
2608 Mr. Wright - I don't see how this applicant can affect that.  
2609  
2610 Ms. Dwyer - Mr. Royster is the property owner; Mr. Donati is his  
2611 representative. The applicant is actually Mr. Royster, who's the owner of that  
2612 easement.  
2613  
2614 Mr. Nunnally - We understand that Mr. Royster is not planning on  
2615 developing it; he and Jim are friends, and he let him have that to build his house on.  
2616  
2617 Ms. Dwyer - And I think it's an appropriate place for a lot; I don't have a  
2618 problem with that. I just want to make sure that the County will be protected in the  
2619 future, and it doesn't require anybody to do anything at the moment, other than promise  
2620 as a condition of this application by Mr. Royster, as the applicant and owner, that if  
2621 requested by the County at any time in the future, he will dedicate without charge, that  
2622 fifty-foot right-of-way.  
2623  
2624 Mr. Wright - I guess we could put a condition on it to that effect, since Mr.  
2625 Royster's the applicant. He owns the road, does he not?  
2626  
2627 Mr. Nunnally - Yes sir. But what happens if he decides he doesn't want to  
2628 do that? **(Unintelligible)**  
2629  
2630 Mr. Wright - He's not dedicating anything now; he's just agreeing down  
2631 the road that if it comes to that **(Unintelligible)**,  
2632  
2633 Mr. Blankinship - Do you want to put a sunset on it, that if the County doesn't  
2634 make that kind of request within a certain number of years, then it expires?  
2635  
2636 Ms. Dwyer - No. We might be projecting fifty, twenty-five, years in the  
2637 future. As long as we are allowing these big, non-conforming lots to come into  
2638 existence, it seems to me that we need to protect the County's interests in the future.  
2639  
2640 Ms. Harris - Wouldn't that public road also service other lots, so you  
2641 would expect **(Unintelligible)** to pay or just that portion.  
2642  
2643 Ms. Dwyer - Nobody's paying for anything now, but just have the  
2644 Roysters, who are the owners of the property and owners of that particular  
2645 **(Unintelligible)**, if requested at any time in the future by the County to dedicate that  
2646 **(Unintelligible)**, they would do that without cost.  
2647  
2648 Ms. Harris - So the road is being constructed by the County .....

2649  
2650 Ms. Dwyer - No, no, not now, this is **potential road** .....

2651

2652 Ms. Harris - So if the potential road is being constructed by the County,  
2653 we expect these owners to pay for their portion.  
2654

2655 Ms. Dwyer - No. Typically, what would happen is, property like this, the  
2656 developer builds the road and incurs the complete cost of that. We're not requiring that  
2657 of this landowner, potential owner, we're just requiring that the person dedicate the land  
2658 area.  
2659

2660 Mr. O'Kelly - Ms. Dwyer, are we certain that Mr. Royster owns the fifty-  
2661 foot easement? I mean it's an easement. **(Unintelligible)**  
2662

2663 Ms. Dwyer - I thought Mr. Donati said that, but ....., and I'm  
2664 assuming that because he owns everything, that he owns that too, but your question  
2665 may be advisory, and maybe we should find that out before we make a decision. I think  
2666 it's a safe assumption that maybe we shouldn't assume that. Could we defer, pending  
2667 that determination?  
2668

2669 Mr. Blankinship - That's the way it's platted.  
2670

2671 Mr. Kirkland - Ms. Dwyer, the piece of road here, it might extend all the  
2672 way back to that last parcel; he might be part owner of that too. I'm trying to figure out --  
2673 it seems like there's a lot of land back in here that isn't all owned by Mr. Royster.  
2674 There's one piece way in the back that's owned by Mr. Ratlief – is that correct?  
2675

2676 Ms. Dwyer - Right, but see how the road takes a jog there.  
2677

2678 Mr. Kirkland - Yes, but he could feed right into .....

2679

2680 Ms. Dwyer - He could have access to the road, but I'm saying as far as  
2681 granting the County the easement for the right-of-way. It looks like it takes a jog so that  
2682 it gives access to that last Royster property. But it appears from the plat that it's all  
2683 owned by Mr. Royster.  
2684

2685 Mr. Kirkland - If Mr. Ratlief, in the next couple of years, wants to do the  
2686 same thing, put a house, he could extend the fifty-foot easement right up to his property,  
2687 is that what you're saying? He could promise it also.  
2688

2689 Ms. Dwyer - We would need to ask that. If he petitioned for a lot and  
2690 didn't have any road frontage, we could certainly ask that he dedicate a fifty-foot right-  
2691 of-way as well.  
2692

2693 Mr. Wright - **(Unintelligible)** owned by Mr. Royster. If there's any further  
2694 development, this would be the first applicant conveyance, I take it. He could do one  
2695 more; then he'd have to have subdivision approval, is that correct?  
2696

2697 Mr., Blankinship - He does own, I think, six separate parcels .....

2698  
2699 Mr. Wright - If there's any further development beyond one more, he  
2700 would have to have it subdivided, and he would have to pay for the road, so what  
2701 difference would it make, whether the County owned it or he owned it? He would have  
2702 to pay for the road, wouldn't he? He'd have to dedicate the road. It wouldn't be any  
2703 cost to the County if this is developed.  
2704  
2705 Ms. Dwyer - Right, if he comes under the requirement that he build a road  
2706 because he's subdividing it, then yes, he would incur the cost of the land, but also the  
2707 cost of the **(Unintelligible)**. But, if lots come into play, gradually over time, then it's  
2708 conceivable that he would not have to, that he could get another variance .....

2709  
2710 Mr. Wright - One more is all he could get.  
2711  
2712 Ms. Dwyer - Well, I don't know. These are separate lots; they aren't  
2713 delineated. I'm not sure that building on any of these other lots would necessarily  
2714 trigger a subdivision clause.  
2715  
2716 Mr. Kirkland - Mr. Blankinship?  
2717  
2718 Mr. Blankinship - There's the one immediately south of the existing house. Do  
2719 we have a map, Paul? There's a lot – the area is actually better, because it showed the  
2720 property line. There's a lot immediately south of the house, that has a little corner cut  
2721 out of it there. There is another lot that is currently vacant that has existed in its present  
2722 shape since prior to 1987, so conceivably there could be two houses built on that  
2723 property, and that lot does not have any public street frontage at this time.  
2724  
2725 Mr. Wright - How about any further development houses?  
2726  
2727 Mr. Blankinship - That's the only one ..... **(Unintelligible)**  
2728  
2729 Mr. Wright - Looks like to me that any further development would require  
2730 a subdivision, and that would be provided for.  
2731  
2732 Ms. Dwyer - It seems to me that he already has certain lots that are set  
2733 out, and you wouldn't necessarily need to subdivide those to have further development.  
2734 Looking ahead thirty years, if you have six lots here, six houses, and at some point the  
2735 County decided it needs to be a paved roadway that's part of the County roadway  
2736 system, my condition would be only in that case, and it would only require the person to  
2737 dedicate the land to the County, so the County wouldn't be caught holding the bag,  
2738 having to purchase the land.  
2739  
2740 Mr. Wright - We wouldn't have any control over that; in the future, they'd  
2741 have to come in for a variance to get access to the property, wouldn't they?  
2742  
2743 Ms. Dwyer - Well, it's just like this one.

2744  
2745 Mr. Wright - We could control it down the road if it gets to that point. We  
2746 could require that dedication any time.  
2747  
2748 Ms. Dwyer - Right. I'm saying we should require it now, with the first  
2749 house that we've been requested to **(Unintelligible)**.  
2750  
2751 Mr. Nunnally - Do we want to take a vote on that?  
2752  
2753 Mr. Wright - There's a motion on the floor, unless there's a motion to  
2754 amend or .....  
2755  
2756 Ms. Dwyer - I make a motion that we amend the case to add a condition  
2757 to say that if at any time the County desires to take this fifty-foot right-of-way that's  
2758 indicated on the plans, into the County system, that the owner, Mr. Royster, or any  
2759 subsequent owner, would agree to dedicate that fifty-foot right-of-way to the County  
2760 without cost to the County.  
2761  
2762 Mr. Nunnally - All in favor of Ms. Dwyer's motion .....  
2763  
2764 Mr. Blankinship - It hasn't been seconded, Mr. Chairman.  
2765  
2766 Mr. Nunnally - Do I have a second?  
2767  
2768 Ms. Harris - I second.  
2769  
2770 Mr. Nunnally - All in favor of her motion, say aye -- 2. Opposed, nay – 3.  
2771  
2772 Upon a motion by Ms. Dwyer, seconded by Ms. Harris, the Board voted on amending  
2773 the case to add a condition to say that, "If at any time the County desires to take this  
2774 fifty-foot right-of-way that's indicated on the plans, into the County system, that the  
2775 owner, Mr. Royster, or any subsequent owner, would agree to dedicate that fifty-foot  
2776 right-of-way to the County without cost to the County."..  
2777  
2778 Affirmative: Dwyer, Harris, 2  
2779 Negative: Kirkland, Nunnally, Wright 3  
2780 Absent: 0  
2781  
2782 Mr. Blankinship - Proceed to the motion to approve.  
2783  
2784 Mr. Nunnally - Mr. Wright made a motion to approve, seconded by Ms.  
2785 Harris. All in favor say aye. Opposed? It's been approved.  
2786  
2787 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
2788 Harris, the Board **granted** application **A-11-2006** for a variance to build a one-family

2789 dwelling at 7032 Charles City Road (Parcel 860-693-9106 (part)). The Board granted  
2790 the variance subject to the following conditions:

2791

2792 1. This variance applies only to the public street frontage requirement. All other  
2793 applicable regulations of the County Code shall remain in force.

2794

2795 2. Approval of this request does not imply that a building permit will be issued.  
2796 Building permit approval is contingent on Health Department requirements, including,  
2797 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
2798 of a well location.

2799

2800 3. At the time of building permit application, the applicant shall submit the  
2801 necessary information to the Department of Public Works to ensure compliance with the  
2802 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
2803 water quality standards.

2804

2805 4. The applicant shall present proof with the building permit application that a legal  
2806 access to the property has been obtained.

2807

2808 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
2809 for maintaining access to the property until such a time as the access is improved to  
2810 County standards and accepted into the County road system for maintenance.

2811

2812 6. Any improvements on the proposed lot shall be set back at least 50 feet from the  
2813 western property line.

2814

2815 Affirmative: Harris, Kirkland, Nunnally, Wright 4

2816 Negative: Dwyer, 1

2817 Absent: 0

2818

2819 The Board granted this request, as it found from the evidence presented that, due to the  
2820 unique circumstances of the subject property, strict application of the County Code  
2821 would produce undue hardship not generally shared by other properties in the area, and  
2822 authorizing this variance will neither cause a substantial detriment to adjacent property  
2823 nor materially impair the purpose of the zoning regulations.

2824

2825 **UP-8-2006** **TJITSE J. DEWOLFF** requests a conditional use permit pursuant to  
2826 Section 24-95(i)(4) to build accessory structures in the side yard at  
2827 12610 Lizfield Way (Westfield) (Parcel 734-773-3097), zoned A-1,  
2828 Agricultural District (Three Chopt).

2829

2830 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2831 please stand and raise your right hand?

2832

2833 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2834 truth, the whole truth, and nothing but the truth, so help you God?

2835  
2836 Mr. DeWolff - Yes sir. My name is Theo DeWolff. I'm a resident of  
2837 Henrico County, and I would appreciate it if you could grant this conditional use permit.  
2838 We bought this property in 1999. It's nearly five acres, 4.9 acres, and we built a house.  
2839 We have lived there for five years, and we would like to add a pool and a pool house  
2840 and gazebo. When we built the house five years ago, we kind of located the house on  
2841 the highest point of the property, on a knoll, and therefore, what we call our back yard,  
2842 is, according to the County, our front yard. That's why we need this special conditional  
2843 use permit. I talked with all the neighbors about the plans, and the neighbors support it.  
2844 Our lot is relatively large, five acres. The structure is buffered, protected by a green  
2845 corridor on all sides, by trees and other shrubs. You can see the support of our  
2846 neighbors by the approval that we got from the architectural committee in our  
2847 subdivision. There is one property owner who is not part of our subdivision; that  
2848 property is owned by Mr. Greg Windsor, who is developing the Stonehurst Subdivision.  
2849 I have talked with him, and he also indicated verbally that he supports our plans. If you  
2850 have questions, I would like to address them; otherwise, we would appreciate it if you  
2851 would grant us this conditional use permit.

2852  
2853 Mr. Blankinship - Talk just a minute about the topography of your property.  
2854

2855 Mr. DeWolff - As I stated earlier, the house was built on the highest point,  
2856 on the knoll; to the west, the property is grading off, and there is a little creek that is  
2857 running on the property line, usually west of us. We don't have public water and sewer  
2858 there. I see what you would call the back yard of our house; that's where we have the  
2859 septic field, but we could not place the pool and the pool house over there. Our back  
2860 yard slopes down to the west, and we would build the pool about thirty to forty feet away  
2861 from the house, where it would not be in the wetlands or in areas where it would not be  
2862 allowed by the Zoning Board.

2863  
2864 Ms. Dwyer - It is an unusually shaped lot. I'm not sure how many sides it  
2865 has – eight, approximately. Your house as it is built is oriented towards what appears to  
2866 be the concrete pad on our aerial photograph, is that right.

2867  
2868 Mr. Blankinship - The front of the house is where it says "Parking Court." It  
2869 may be better if you have the site plan, if you can pull it up.

2870  
2871 Mr. DeWolff - We are coming with a pretty long driveway from Lizfield  
2872 Way, and then when you come up our driveway, you see our back yard, and then we  
2873 drive around our house to what we call our front yard, where the front door is where we  
2874 have the garage. As I said, we are quite fortunate to have a 4.9-acre lot, and so we  
2875 wanted to use the lot, so we built a house on the highest point, the knoll. The reason  
2876 that we situated the house as it is, is that the back of the house is facing the sun, the  
2877 south and the west. Our back yard is facing basically an area which is all trees, and the  
2878 area that our house is facing is a little creek that will never be affected. It creates the  
2879 most privacy for us, and also the most privacy for our neighbors, especially since we  
2880 plan to add. You can see from the site plan, and also from the aerial photograph, there

2881 is a tree buffer completely around it, so it will not affect any of the neighbors. We have  
2882 talked with the neighbors (**Unintelligible**), the structure will be the same material as the  
2883 house. It will be private, and we tried to make it a nice addition to our house from an  
2884 architectural and official perspective.

2885  
2886 Mr. Wright - Mr. DeWolff, have you read the proposed conditions?  
2887

2888 Mr. DeWolff - Yes, I have  
2889

2890 Mr. Wright - You're in accord with those?  
2891

2892 Mr. DeWolff - Yes, we will, if you grant us the permit, we will follow the  
2893 suggested conditions.  
2894

2895 Ms. Dwyer - This is the first case we've had under the new Ordinance, is  
2896 that correct?  
2897

2898 Mr. Blankinship - Yes ma'am. Mr. and Mrs. DeWolff and their architect  
2899 actually met with us about three months ago, and when we told them that there was no  
2900 way that they could get a variance for this, they thought we were crazy. When we told  
2901 them that fortunately, other people had already started the process of the amendment,  
2902 and that if they could hold off for a few months, there would be a process available to  
2903 them, they were very pleased with that, and they actually filed their application before  
2904 the Code was amended.  
2905

2906 Mr. O'Kelly - I'd like to add, Mr. Chairman, that both Mr. and Mrs. DeWolff  
2907 followed the ordinance amendment process very closely; they participated within the  
2908 work sessions and the public hearings, and the staff just wants to thank them for their  
2909 support.  
2910

2911 Mr. DeWolff - We would like to express our appreciation for how this has  
2912 been a passed ordinance, but there are all kinds of special cases, and I think of this  
2913 size, where we mentioned the lot is very oddly shaped with eight different sides, I don't  
2914 think we are affecting any of the neighbors, and I think this new amendment to the  
2915 ordinance is addressing these special cases. We really appreciate how that has been  
2916 handled and also in a very timely way.  
2917

2918 Mr. Nunnally - Any other questions? Hearing none, that concludes the  
2919 case. Thank you for coming. We'll start from the rear here and take your case first.  
2920

2921 Mr. Wright - I move we approve it.  
2922

2923 Mr. Kirkland - Second.  
2924

2925 Mr. Nunnally - Motion by Mr. Wright, second by Mr. Kirkland, that it be  
2926 approved. All in favor, say aye. Opposed? It's been approved, sir.



2927  
2928 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
2929 Kirkland, the Board **granted** application **UP-8-2006** for a conditional use permit to build  
2930 accessory structures in the side yard at 12610 Lizfield Way (Westfield) (Parcel 734-773-  
2931 3097) The Board granted the use permit subject to the following conditions:

2932  
2933 1. This use permit is only for the purpose of allowing the location of the accessory  
2934 structures shown on the plan filed with the application to be located in the side yard. All  
2935 other requirements of the County Code must be met including height and setback  
2936 requirements.

2937  
2938 2. Any substantial changes or additions to the plan filed with the application may  
2939 require a new use permit.

2940  
2941 3. The new construction shall match the existing dwelling as nearly as practical in  
2942 materials and color.

2943  
2944 4. Approval of this request does not imply that a building permit will be issued.  
2945 Building permit approval is contingent on Health Department requirements, including,  
2946 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
2947 of a well location.

2948  
2949 5. At the time of building permit application, the applicant shall submit the  
2950 necessary information to the Department of Public Works to ensure compliance with the  
2951 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
2952 water quality standards.

2953  
2954 6. The applicant shall meet all requirements of the Building Inspections Department,  
2955 including safety fencing around the pool.

2956  
2957 7. The pool house may not be used as a residence.

2958  
2959 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2960 Negative: 0

2961 Absent: 0

2962  
2963 The Board granted the request because it found the proposed use will be in substantial  
2964 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2965  
2966 Mr. Nunnally - The minutes, December minutes.

2967  
2968 Mr. Wright - I had one comment, on page 37, I don't know if it made any  
2969 difference, but it's duplicated. It doesn't have any adverse effect on the minutes, but it  
2970 just says the same thing over.

2971  
2972 Mr. Nunnally - What line?

2973  
2974 Mr. Wright - Look on page 38, beginning with line 1704. You go back to  
2975 page 37, line 1662 – everything from there to the end is just a duplicate of what’s on  
2976 that page.  
2977  
2978 Mr. Blankinship - It’s two different permits though.  
2979  
2980 Mr. Wright - Okay, that takes care of it. I move we approve them.  
2981  
2982 Ms. Harris - Second.  
2983  
2984 On a motion by Mr. Wright, seconded by Ms. Harris, the Board **approved** the Minutes of  
2985 the **December 15, 2005**, Henrico County Board of Zoning Appeals meeting.  
2986  
2987 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2988 Negative: 0  
2989 Absent: 0  
2990  
2991 Mr. Nunnally - Now I think we’re going to hear from another motion.  
2992  
2993 Ms. Dwyer - I move we go into a Closed Meeting for a consultation with  
2994 the County Attorney regarding specific legal matters requiring the provision of legal  
2995 advise, pertaining to “Simons Hauling Company Inc. v. the Board of Zoning Appeals,”  
2996 pursuant to Section 2.2-3711 (A)(7) of the Code of Virginia, 1950, as amended.  
2997  
2998 Ms. Harris - Second the motion.  
2999  
3000 ***(The Board entered into a Closed Meeting at 12:00 noon, which concluded at***  
3001 ***12:45 pm.)***  
3002  
3003 Ms. Dwyer - I move that the Board of Zoning Appeals certifies that, only  
3004 public business matters lawfully exempted from open meeting requirements by Virginia  
3005 law, were discussed in the closed meeting to which this certification resolution applies,  
3006 and only such public business matters as were identified in the motion convening the  
3007 closed meeting were heard, discussed, or considered in the closed meeting just  
3008 concluded.  
3009  
3010 Ms. Harris - Second.  
3011  
3012 Mr. Nunnally - All in favor say aye.  
3013  
3014 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3015 Negative: 0  
3016 Absent: 0  
3017

3018 There being no further business, and on a motion by Mr. Wright, seconded by  
3019 Mr. Kirkland, the Board adjourned until **March 23, 2006**, at 9:00 am.

3020

3021

3022

3023

3024

James W. Nunnally

3025

Chairman

3026

3027

3028

Benjamin Blankinship, AICP

3029

Secretary

3030

3031