

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, FEBRUARY 28, 2008, AT 9:00 A.M., NOTICE**
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **FEBRUARY 7, 2008 AND FEBRUARY 14, 2008.**

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

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

8
9
10 Mr. Kirkland - Good morning, ladies and gentlemen. Welcome to the
11 February Board of Zoning Appeals. Before we get started, could we please
12 stand for the **Pledge of Allegiance to the Flag of Our Country**. Mr. Secretary,
13 could you read the rules for the meeting please.

14
15 Mr. Blankinship - Good morning, Mr. Chairman, ladies and gentlemen.
16 The rules for this meeting are as follows. Acting as Secretary, I will call each
17 case and while I'm reading the announcement, the applicant should come down
18 to the podium. We will then ask everyone who intends to speak on that case to
19 stand and be sworn in. The applicant will be allowed to speak and then anyone
20 else who wants to speak will be given the opportunity. After everyone has
21 spoken, the applicant, and only the applicant, will have an opportunity for
22 rebuttal. After everyone has spoken and the Board has asked questions, they
23 will take the matter under advisement. They will render all of their decisions at
24 the end of the meeting. If you wish to know their decision on a specific case, you
25 can either stay until the end of the meeting, or you can check the Planning
26 Department website this afternoon, or you can call the Planning Department this
27 afternoon. This meeting's being tape recorded, so we will ask everyone who
28 speaks to speak directly into the microphone on the podium, state your name,
29 and please spell your last name so we get it correctly in the record. Finally, out
30 in the foyer there is a binder that contains the staff report for each case, including
31 the conditions that have been recommended by staff. Particularly if you're the
32 applicant on a use permit case, you need to be familiar with those conditions.

33
34 Mr. Chairman, we do have a request for a withdrawal and I believe we have a
35 request for deferral this morning.

36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81

Mr. Kirkland - All right. What's the withdrawal?

Mr. Blankinship - This is the case with the concept road running across it. They were just not able to get the buyer, the seller, and Public Works all to sit at the same table at the same time and work this out. So, they have asked to withdraw without prejudice so that they could reapply within one year if they do come up with a workable solution.

A-043-07 **JOSEPH DEMETRIUS TYLER** requests a variance from Sections 24-94 and 24-9 to build a one-family dwelling at 8369 Strath Road (Parcels 816-684-9123 and 817-684-3216), zoned A-1, Agricultural District (Varina). The lot width requirement and public street frontage requirement are not met. The applicant has 20 feet lot width and 20 feet public street frontage where the Code requires 150 feet lot width and 50 feet public street frontage. The applicant requests a variance of 130 feet lot width and 30 feet public street frontage.

Mr. Kirkland - Do I have motion to that?

Mr. Wright - So move.

Mr. Nunnally - Second.

Mr. Kirkland - Motion by Mr. Wright, second by Mr. Nunnally. All those in favor say aye. All those opposed say no. The ayes have it; the motion carries.

The Board **allowed withdrawal** of **A-043-07**, Joseph Demetrius Tyler, as requested by the applicant.

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

Mr. Kirkland - What's the deferral?

A-001-08 **EMERALD LAND DEVELOPMENT** requests a variance from Section 24-95(b)(7) to build a one-family dwelling at 3921 Grayson Street (Providence Park Annex) (Parcel 793-737-0345), zoned R-5, General Residence District (Fairfield). The lot width requirement and total lot area requirement are not met. The applicant has 35 feet lot width and 3,445 square feet total lot area, where the Code requires 50 feet lot width and 6,000 square feet total lot area. The applicant requests a variance of 15 feet lot width and 2,555 square feet total lot area.

82
83 Mr. Blankinship - I don't see Mr. Baker coming to the podium. This was
84 the one with the very small lot and a vacant lot just to the north. They have been
85 very actively pursuing acquiring that lot. So, we may have a happy ending on this
86 one.
87
88 Mr. Kirkland - Do you want to pass it right now?
89
90 Mr. Blankinship - That's probably best.
91
92 Mr. Kirkland - All right. We'll pass this case and call it back at the
93 end of the agenda. All right. If you would, call the next one.
94
95 **UP-002-08 RESOURCE DEVELOPMENT ASSOCIATES**
96 requests a conditional use permit pursuant to Sections 24-103 and 24-52(d) to
97 extract materials from the earth at 1801 Kingsland Road (Parcel 818-676-5915),
98 zoned A-1, Agricultural District (Varina).
99
100 Mr. Kirkland - Anyone else with to speak on this case? If you would,
101 sir, raise your right hand and be sworn in.
102
103 Mr. Blankinship - Do you swear the testimony you're about to give is
104 the truth and nothing but the truth so help you God?
105
106 Mr. Hooker - I do.
107
108 Mr. Kirkland - Please state your name for the record.
109
110 Mr. Hooker - Randy Hooker.
111
112 Mr. Kirkland - Could you get a little closer to the mike, or get it
113 closer to you, whichever.
114
115 Mr. Hooker - Randy Hooker.
116
117 Mr. Kirkland - What do you request from the Board?
118
119 Mr. Hooker - Just a renewal on an existing conditional use permit.
120
121 Mr. Nunnally - Have you all been active down there recently?
122
123 Mr. Hooker - No sir.
124
125 Mr. Nunnally - Are you planning on it?
126

127 Mr. Hooker - I did receive a request from a client to give them an
128 estimated amount of materials that could still be removed from the site. That was
129 within this past month. I think they have somebody interested in some materials
130 to pull out of that site.

131

132 Mr. Kirkland - Any other questions?

133

134 Ms. Harris - Condition #17 where we're treating the road with
135 calcium chloride or other wetting agents to eliminate any dust nuisance. Do you
136 find this to be very effective? Have you done this before? The reason I'm
137 questioning this is because we have other such use permits using wetting
138 solutions and I'm noticing like on Darbytown Road a great deal of residue to the
139 point that it looks almost like an industrial site on Darbytown Road. I'm just
140 wondering when you say, "other wetting agents," how effective are other wetting
141 agents.

142

143 Mr. Hooker - Honestly, I am no expert in that. I would imagine that
144 Public Works would be a better resource for that question than me. I'm sure that
145 the calcium chloride is more or less a stabilizer for the water. The biggest thing
146 is the construction entrance; it has to be maintained. If it's not maintained, then
147 you're going to have dirt, mud, and everything coming out of the site onto the
148 public roads.

149

150 Ms. Dwyer - Mr. Chairman, I have a few questions. Under the
151 statement that you submitted to the Planning staff, "Mining Methods,"
152 subparagraph C, says, "Generally, all mining will occur above the water table." I
153 consider the word, "generally," to mean that maybe some of it will be below the
154 water table. Can you be more specific about your intention?

155

156 Mr. Hooker - I apologize; no, I cannot. I don't know what the exact
157 water table is for this site. We can verify what the water table is so we don't
158 disturb the existing water table. I know there is a condition in here that we don't
159 want to disturb the water table for the surrounding properties. That could be
160 verified.

161

162 Ms. Dwyer - There are a number of properties and then also you
163 see that there's a subdivision planned adjacent to this. So I think that's of critical
164 importance. I was concerned about the qualifier "generally." If you said all mining
165 will occur above the water table, that would be clear, but I'm not clear what this
166 means.

167

168 Mr. Hooker - Okay.

169

170 Ms. Dwyer - I have a question about that that I guess can't be
171 answered today. Under, "Reclamation Plan," subparagraph A, it says, "The
172 proposed use of the property after mining's been completed is a subdivision of

173 four or more lots adjoining a wetland area.” As I look at the reclamation plan, I
174 don’t see a wetland area. Can you help me understand what you meant?
175

176 Mr. Hooker - The wetland area is down towards the lower part of
177 the site. I haven’t seen a proposed layout for a subdivision. I know we do have a
178 transmission easement coming through the site as well. As far as the wetlands
179 location, it’s at the southern end of the site, towards the southern tip of the site.
180

181 Ms. Dwyer - Roundabout Creek, at that end?
182

183 Mr. Hooker - Yes ma’am.
184

185 Ms. Dwyer - Do we have the reclamation plan?
186

187 Mr. Blankinship - I’m sorry, that’s part of our computer problem this
188 morning. We don’t have any of the scans in the presentation.
189

190 Ms. Dwyer - Okay. Mr. Hooker, do you have in front of you the
191 plan I’m looking at?
192

193 Mr. Hooker - Yes ma’am.
194

195 Ms. Dwyer - It’s designated “Reclamation Plan.”
196

197 Mr. Hooker - Yes ma’am.
198

199 Ms. Dwyer - The area, then, designated as future residential would
200 be for this triangular area that has a rise to it from about 68 feet to 90 feet?
201

202 Mr. Hooker - Yes ma’am. Like I said, I haven’t seen a proposed
203 layout for this subdivision. I would imagine they would try to have something
204 close to Kingsland.
205

206 Ms. Dwyer - On the other side of the transition line. So, this slight
207 rise referred to in the staff report is this 22-foot rise in this area near the
208 Roundabout Creek.
209

210 Mr. Blankinship - Where in the staff report?
211

212 Ms. Dwyer - Staff report under Evaluation says, “The reclamation
213 plan submitted, shows a slight rise about surrounding grade.”
214

215 Mr. Blankinship - Again, that’s just a general comment. Their highest
216 grade is slightly higher than anything else in the area, but it’s not like 20 feet
217 higher. It’s four or five feet higher than the surrounding property.
218

219 Ms. Dwyer - Than the surrounding property. Okay. This shows a
220 22-foot rise.
221
222 Mr. Blankinship - From the lowest point of this property.
223
224 Ms. Dwyer - Right. Okay. I'm trying to get a picture of what this is
225 going to look like when you're finished and it looks like that's more than a slight
226 rise, in my estimation, this 22-foot rise. The basis for all these questions is how
227 reclaimable will this property be for residential development if you have this kind
228 of a rise.
229
230 Mr. Blankinship - The way I was viewing it was starting from Kingsland
231 Road and going back. On the reclamation plan, you see all the slopes between
232 Kingsland Road and the power line easement are the 4%, which is a very flat
233 terrain. Then after you cross the power line easement, there's a little bit of a step
234 up. Again, that triangular area that's fairly flat. Then it drops off down to the
235 creek.
236
237 Ms. Dwyer - Right. I guess the reason I was calling that into
238 question is the reclamation plan says the subdivision will be near the wetland
239 area, which is where that steep rise is, and that was my concern. Have you done
240 enough planning in advance to know that this can be reclaimed for a residential
241 area?
242
243 Mr. Blankinship - It would be nice to see the subdivision that they're
244 talking about here.
245
246 Mr. Hooker - I can see what we have as far as a proposed layout
247 for a subdivision.
248
249 Ms. Dwyer - Okay.
250
251 Mr. Blankinship - And why that says, "adjoining wetland area."
252
253 Mr. Hooker - We're going to have our setbacks from either the SPA
254 or RPA anyway, so we're not going to be encroaching any wetlands.
255
256 Ms. Dwyer - The property, as you pointed out, does have the
257 power line bisecting it. It has this future wetland in one area and a fairly steep
258 drop-off to the back. I just want to make sure that this is useable land when
259 you're finished mining it and reclaiming it. That's my only concern here.
260
261 Mr. Hooker - I would think that the owner would like to have it in a
262 condition to sell at a later date and have it useable. I would think that they would
263 want to have it at a condition that they could do something with it at a later date.
264

265 Ms. Dwyer - That's what we want to be sure of as well, that we
266 don't have pockets of wasteland—

267
268 Mr. Hooker - Yes, I understand.

269
270 Ms. Dwyer - —that we're creating for the future. That actually
271 brings me to the statement in the staff report under "Evaluation," where it
272 mentions the Department of Mines inspected the site and found that it had been
273 active and not yet reclaimed. One of our conditions is that reclamation—or
274 "Rehabilitation" is the word—under Condition 29, "takes place simultaneously
275 with the mining." My question is, why hasn't that occurred with the mining to
276 date, why hasn't there been rehabilitation that occurred simultaneously with the
277 mining.

278
279 Mr. Hooker - This site has been sitting for 10 years with no activity,
280 so I couldn't speak to prior to 10 years ago as far as activity.

281
282 Ms. Dwyer - Not prior, but within the last 10 years. If it's been
283 mined and then has been inactive for 10 years, you've had 10 years to
284 rehabilitate the property because our condition says, "Rehabilitation is
285 simultaneous with mining." I could be wrong, but it seems to me that it took an
286 inspection by the State to come in and say this property is not being property
287 maintained and then, apparently, you all came in and stabilized the soil and did
288 that sort of thing. That raises a red flag also to me that the reclamation or the
289 rehabilitation is not being done concurrently with mining and the property has
290 been allowed to lie fallow and erode.

291
292 Mr. Wright - Should not staff be checking this?

293
294 Mr. Blankinship - Yes sir, we do check them every month. Erosion
295 control measures were in place. The sediment basin and that sort of thing was
296 catching all the erosion, but this site has been in that condition for about 10
297 years. We did recently get it at least dressed up. Paul, are you able to put the
298 photographs up on the screen now, instead of the maps? That's the road coming
299 in, so it's still kind of muddy. There you see what's going on with the site now.
300 They are getting some ground cover established now. As we mentioned in the
301 report, it seems to me that we should just go ahead and reclaim the site. They're
302 not using it. It hasn't been used for 10 years. I don't see how it's in anyone's best
303 interest to just keep it in this condition indefinitely.

304
305 Mr. Wright - So, they have not, in effect, been complying with the
306 conditions that we proposed.

307
308 Mr. Blankinship - They've complied with each thing we've asked them
309 to do.

310

311 Mr. Wright - But they wait until you ask them to do it.
312
313 Mr. Blankinship - Right.
314
315 Mr. Wright - As Ms. Dwyer indicated, should they not have been
316 reclaiming as they mined?
317
318 Mr. Blankinship - That's what I would like to see.
319
320 Mr. Wright - They have not been doing that?
321
322 Mr. Blankinship - Right. There hasn't been any activity on this site.
323
324 Mr. Wright - But there was activity.
325
326 Mr. Blankinship - Right, there was once.
327
328 Mr. Wright - They didn't reclaim after that activity like they should
329 have?
330
331 Mr. Blankinship - Right.
332
333 Mr. Wright - Basically, they're in violation with their conditions,
334 then, aren't they?
335
336 Mr. Blankinship - They have it to the shape that it should be in if it were
337 active, but because it's not active, it really ought to be reclaimed completely, in
338 my opinion.
339
340 Mr. Wright - I don't know whether that answers my question. Do
341 you understand what I'm saying, Ms. Dwyer?
342
343 Mr. Kirkland - It sounds like he didn't meet the requirement of the
344 use permit. Is that correct?
345
346 Mr. Wright - They mine some and then they're supposed to
347 reclaim that.
348
349 Mr. Blankinship - Right.
350
351 Mr. Wright - The question, I guess — is that they never got it
352 mined enough so that they could reclaim it. Is that what you're saying?
353
354 Mr. Blankinship - That's the way to put it, yes.
355

356 Mr. Wright - They were in the process of mining and hadn't
357 completed it.
358
359 Mr. Blankinship - Right.
360
361 Mr. Wright - If they haven't completed it, then they don't reclaim it
362 until they complete it. They haven't done anything for 10 years, so it's been
363 sitting there.
364
365 Mr. Blankinship - Right. I guess I'm sensitive to the word, "violation,"
366 because if we give them a Notice of Violation, they will comply.
367
368 Mr. Wright - Yes.
369
370 Mr. Blankinship - Or even without a notice. Anything we've asked them
371 to, they've done.
372
373 Mr. Wright - That was my initial question. If they have not complied
374 with these conditions, the staff should have notified them, given them a Notice of
375 Violation.
376
377 Mr. Blankinship - Right. Well, they have laid the slopes back to where
378 they're safe and they have the erosion control measures in place so that the silt
379 is not leaving the site, it's being trapped in the silt basin. I would not really say
380 the site is in violation, but it is not—
381
382 Mr. Wright - I was just trying to get to the root of the thing. Mr.
383 Hooker, what prompted this application now after 10 years?
384
385 Mr. Hooker - It's a renewal for an existing permit. The existing
386 permit will expire in April, so we're looking to renew the existing permit. Like I
387 said, I was just contacted within the past month on how much could be mined out
388 of the site. They had somebody interested in materials.
389
390 Mr. Wright - If you went at this like you normally would and mined
391 it, how long would it take to mine it out so you'd be done?
392
393 Mr. Hooker - I'm sure it's all dependent on demand.
394
395 Mr. Wright - I'm saying let's assume there was a demand and you
396 were mining it on a daily basis. How long would it take to complete the mining of
397 this site?
398
399 Mr. Hooker - I would say they'd definitely be done within a year.
400
401 Mr. Wright - How many?

402
403 Mr. Hooker - A year.
404
405 Ms. Dwyer - But that's going to be dependent on the demand that
406 you have.
407
408 Mr. Hooker - Yes.
409
410 Ms. Dwyer - It may not be—
411
412 Mr. Wright - Assuming a demand, I was just wondering how long
413 you'd be there. You've been there over 10 years. Somewhere it says 1991, right?
414 Isn't that when they recorded it?
415
416 Mr. Blankinship - Yes.
417
418 Mr. Wright - Is that when they got the initial application?
419
420 Mr. Blankinship - Yes sir.
421
422 Mr. Wright - That's more than 10 years.
423
424 Mr. Blankinship - It's 10 years since there's been any activity.
425
426 Mr. Wright - Yes.
427
428 Mr. Blankinship - I think they mined it for the first six or seven years, or
429 maybe not even that long.
430
431 Mr. Wright - You've been there 17, going on 18 years.
432
433 Ms. Dwyer - Mr. Blankinship, we say rehabilitation shall take place
434 simultaneously with the mining process and the understanding I think we've
435 come to here is that some mining was done, but the mining was not completed,
436 therefore the reclamation wasn't done.
437
438 Mr. Blankinship - Right. It's a process.
439
440 Ms. Dwyer - It seems to me that what we're talking about here is
441 that rehabilitation is the final rehabilitation. Is that what you're saying?
442
443 Mr. Blankinship - If you picture the Curles Neck mines, big mines that
444 are constantly being worked. They dig a trench and then they drop the material
445 from the next trench into that trench and reclaim. It's almost like a landfill. They
446 move steadily across the face. I think that's what's actually envisioned by that
447 condition.

448
449 Ms. Dwyer - But this is a small site.
450
451 Mr. Blankinship - Right. This is a small site that is not actively worked,
452 so it's difficult to apply.
453
454 Ms. Dwyer - So what we expect is for them to certainly stabilize
455 the site if the demand for their materials is few and far between, but not a total
456 reclamation.
457
458 Mr. Blankinship - That's what we have required up to this point.
459
460 Ms. Dwyer - Okay. Mr. Hooker, would you like some time to get
461 some clarification on the water table issue, and the final reclamation, and
462 possible use?
463
464 Mr. Hooker - And the proposed layout for the subdivision as well.
465
466 Ms. Dwyer - Yes. Would you like to do that and come back next
467 month?
468
469 Mr. Hooker - That would be fine. Thank you.
470
471 Ms. Dwyer - Okay. So let's defer.
472
473 Ms. Harris - I have a couple of questions. Is Condition 29 new
474 with this application, about the rehabilitation being simultaneous?
475
476 Mr. Blankinship - No ma'am, that's a standard condition.
477
478 Ms. Harris - Okay. So, all of these conditions are what we had
479 before, for the most part, except for Sundays?
480
481 Mr. Blankinship - Yes, with some minor adjustments.
482
483 Ms. Harris - No work on Sunday. I'm concerned that the
484 neighborhood, which is—You have a new subdivision, right? And they're still
485 building up around the site? I'm concerned that we're going to get some
486 complaints if the site is dirty or undesirable to travel through or to look at. I don't
487 know how we can address that. I would just hate for it to look like some of the
488 other sites in the Varina District now.
489
490 Mr. Hooker - We have a 200-foot buffer along Kingsland Road and
491 then a 100-foot buffer along adjacent properties. I would think that would be
492 beneficial for the screening of this site to adjacent areas.
493

494 Ms. Harris - Okay. I see that when the Division of Police deems
495 necessary, flagmen will be required. I think they deem it necessary when they
496 get complaints from the community. Is that true?

497
498 Mr. Blankinship - Probably.

499
500 Ms. Harris - Okay. I just don't want this to be an accident getting
501 ready to happen.

502
503 Mr. Hooker - It's not a new site either. It does intersect with Strath
504 Road, so it's not creating a new intersection into Kingsland.

505
506 Ms. Harris - I'm familiar with it, but I'm just concerned about the
507 activity there.

508
509 Mr. Kirkland - Any other questions by Board members? You don't
510 have any problem with the deferral for 30 days?

511
512 Mr. Hooker - No sir.

513
514 Mr. Kirkland - Do I have a motion to that effect?

515
516 Ms. Harris - I so move.

517
518 Mr. Nunnally - Second.

519
520 Mr. Kirkland - Motion by Ms. Harris, seconded by Mr. Nunnally. All
521 in favor say aye. All opposed say no. The ayes have it; the motion passes. It is
522 deferred to our March meeting.

523
524 Mr. Hooker - Thank you.

525
526 After an advertised public hearing, **UP-002-08, Resource Development**
527 **Associates**, has been **deferred** until the March 27, 2008 meeting.

528
529 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
530 Negative: 0
531 Absent: 0

532
533
534 **A-002-08** **BROOKSTONE BUILDERS, INC** requests a variance
535 from Section 24-95(c)(4) to build a one-family dwelling at 1751 Francis Road
536 (Greenwood Heights) (Parcel 780-766-9344), zoned R-4, One-family Residence
537 District (Fairfield). The front yard setback is not met. The applicant has 27 feet
538 front yard setback where the Code requires 35 feet front yard setback. The
539 applicant requests a variance of 8 feet front yard setback.

540
541 Mr. Kirkland - Anyone else here wish to speak on this case? If you
542 would, sir, stand. Everyone raise their right hand and be sworn in.
543
544 Mr. Blankinship - Raise your right hand, please. Do you swear the
545 testimony you're about to give is the truth and nothing but the truth so help you
546 God.
547
548 Mr. Martin - I do.
549
550 Mr. Kirkland - All right, sir, are you for or against the case? Okay.
551 We'll hear the applicant and then you can make your statement next. All right, sir,
552 proceed.
553
554 Mr. Martin - We are contracted to purchase the lot that's described
555 on Francis Road by the current owner. It is contingent upon being able to build a
556 single-family dwelling on it. Francis Road was widened I believe back in 2000-
557 2001. The County had acquired approximately 25 feet off the front of said lot.
558 The lot would still be deemed buildable I guess by today's regulations; however,
559 the house size would only allow about an 18-foot depth, which would really not
560 be conducive to today's market and house styles. Therefore, we're trying to
561 acquire a variance for the front setbacks to be reduced.
562
563 Ms. Harris - Is that 14-foot alley being used now?
564
565 Mr. Martin - No it is not.
566
567 Ms. Harris - Did you see in the County's plan or recommendation
568 that maybe you could get a request for that 14-foot alley in the rear to be set
569 aside?
570
571 Mr. Martin - We did actually look into vacating at least half of that
572 alleyway. We even had the County do a title search. Apparently, when this
573 property or this old subdivision was recorded back in the 1930's, these alleyways
574 and roadways that show on paper, apparently the County does not have
575 ownership of. We kind of hit a dead end when we looked into that.
576
577 Ms. Dwyer - Who owns it now?
578
579 Mr. Martin - I do not know. It was a company called Guaranteed
580 Realty that actually developed this property or was to develop it back in the '30's.
581 They sold the lots off, apparently to individuals, and they recorded the plat at the
582 courthouse. The strange thing is, nobody shows any right of ownership to the
583 alleyways and roadways that are adjacent to these properties. I don't really have
584 the answers.
585

586 Ms. Dwyer - It appears that nobody really owns it?
587
588 Mr. Martin - I don't know who's paying taxes on it. I don't know if it
589 goes to the state. I don't really know how that works.
590
591 Ms. Dwyer - Legal action could be taken if there's no—
592
593 Mr. Martin - Right. We did some research and apparently,
594 somebody had vacated an alleyway in this same parent tract, if you will, years
595 ago. I think that actually came through the governor.
596
597 Ms. Dwyer - Because it's VDOT or?
598
599 Mr. Martin - Again, I really don't know. We did look into it. That's
600 the first thing we thought of doing was vacating the alleyway.
601
602 Mr. O'Kelly - Ms. Dwyer, this is a fairly new interpretation by the
603 County's Real Property office, that some of these older subdivisions didn't have
604 the proper dedicatory language granting the County these rights-of-way on these
605 old plots. So, they've taken the position that we don't have any interest in them.
606 Therefore, there's nothing to vacate.
607
608 Ms. Dwyer - We have no ownership interest. So, apparently, no
609 one really owns it because everyone assumed that it was County property?
610
611 Mr. O'Kelly - I guess the heirs to the original subdivider perhaps.
612 It's not being taxed. It's an issue of concern to the County manager, but we don't
613 know how to resolve it right now.
614
615 Mr. Wright - How wide is it?
616
617 Mr. O'Kelly - The alley?
618
619 Mr. Wright - Is that 15 feet?
620
621 Mr. O'Kelly - Fourteen feet I think.
622
623 Ms. Harris - It runs all the way down those other lots, too, a
624 complete block.
625
626 Ms. Dwyer - I'm sorry, I didn't catch your name.
627
628 Mr. Martin - David Martin.
629
630 Ms. Dwyer - Regardless of the status of the alley, which I guess
631 could give you some additional property, I see that you've signed the statement

632 about the Cochran case when you filed your application. The Cochran case
633 basically says that the BZA, in order to have jurisdiction, has to have before it a
634 case in which the applicant essentially has no reasonable beneficial use of the
635 property whatsoever. Only in that case do we have jurisdiction. Even though the
636 buildable area is not what you might desire, it does have a buildable area. In my
637 interpretation of that, we don't have jurisdiction for the case. I also see that you
638 wanted to have a covered porch, which is, again, outside the buildable area.
639

640 Mr. Martin - Correct. We told them that we would omit the covered
641 porch if need be, if it would allowable to build the structure. The way that the lot is
642 now, you really could build about an 18-foot depth of a home, which is not very
643 typical.
644

645 Mr. Kirkland - But you could build the 18-foot home, correct?
646

647 Mr. Martin - Yes, you could.
648

649 Mr. Kirkland - Thank you.
650

651 Mr. Martin - I don't know if anyone would buy it, but you could
652 build it.
653

654 Mr. Kirkland - I don't know. I've seen some strange ones lately.
655

656 Ms. Dwyer - It could be very wide.
657

658 Mr. Martin - Right.
659

660 Ms. Dwyer - But narrow in depth. Long and narrow.
661

662 Mr. Kirkland - Any other questions from our Board members?
663 Anyone else? Okay. If you would, sir, have a seat. You can rebut his comments.
664 If you would, sir, come forward. State your name for the record. We're ready to
665 hear from you.
666

667 Mr. Robinson - My name is Wayne Robinson. My concern is—
668

669 Mr. Kirkland - Where do you live, sir?
670

671 Mr. Robinson - On 10015 Harding Avenue.
672

673 Mr. Kirkland - Okay.
674

675 Mr. Robinson - My concern is are you going to change this ruling on
676 all the lots down through there or just this particular one? If so, that house will be
677 sticking out further than the rest of any houses they build down through there.

678
679 Mr. Kirkland - We judge each case on its on merits. We don't make
680 a blanket rule when we rule on a case.
681
682 Mr. Robinson - You all were just talking about that alleyway. I own
683 property on that alleyway.
684
685 Mr. Kirkland - You own the alleyway?
686
687 Mr. Robinson - I own land that butts up to the alley.
688
689 Mr. Kirkland - Okay.
690
691 Mr. Robinson - Are you all going to close it up?
692
693 Mr. Kirkland - No, no, no. No sir. The question was who owned it.
694 As far as we can determine, no one knows at this point.
695
696 Mr. Robinson - Okay.
697
698 Mr. Kirkland - So nothing's going to be done to the alley. It just
699 stays there.
700
701 Mr. Robinson - My reasoning is I hate to see one house sticking out
702 there further as far as looking down the road frontage. The other houses will be
703 sitting back.
704
705 Ms. Dwyer - Are there houses now that you're concerned it won't
706 be aligned with or are you concerned about future houses?
707
708 Mr. Robinson - The property beside it. That means you'll have to
709 change all along those other properties.
710
711 Mr. Kirkland - You're talking about future homes.
712
713 Ms. Dwyer - Are you talking about future homes?
714
715 Mr. Robinson - Mmm-hmm.
716
717 Ms. Dwyer - What you're saying, maybe, is you want all the homes
718 to be aligned and you don't want one closer to the road than another. You're
719 concerned that this application might put this house closer to the road.
720
721 Mr. Robinson - It will put it closer to the road, if it's passed.
722

723 Mr. Wright - Looks like all of them would have the same problem,
724 wouldn't they?
725

726 Mr. Robinson - I would say so, yes. If you were to close that alley up,
727 who would get that land?
728

729 Mr. Kirkland - We have nothing to do with it. As Mr. O'Kelly stated
730 earlier, the County has a hands-off approach. You'd have to do the investigating
731 or whatever you'd like to find out who owned it. Then you could go your own way
732 of doing things.
733

734 Mr. Wright - Normally the County owns it.
735

736 Mr. Robinson - That's what I thought.
737

738 Mr. Wright - If the County owned it, and evidently, there's no
739 evidence to that affect. If it were vacated, the property owners on each side
740 would get half of the alley, so it would add seven feet to each abutting lot.
741

742 Mr. Robinson - To mine.
743

744 Mr. Wright - —to this property, to all the properties along the alley.
745

746 Mr. Robinson - What about that Roosevelt Boulevard that's supposed
747 to cut through there between those two front lots out there?
748

749 Mr. Wright - I don't have any idea. Is that alley useable now or it
750 grown up?
751

752 Mr. Robinson - I keep it cut, but I use it sometimes to drive down it or
753 run my tractor down it.
754

755 Mr. Wright - Can you access your residence?
756

757 Mr. Robinson - I can come off Harding Avenue onto the alley, yes.
758

759 Mr. Blankinship - You're talking about a different alley from the one
760 behind this property.
761

762 Mr. Robinson - No, they all go right along beside it.
763

764 Mr. Blankinship - You're at what address?
765

766 Mr. Robinson - I'm at 10015, but I own the property on the other side
767 from house.
768

769 Ms. Harris - Is that 10030?
770
771 Mr. Robinson - No, I'm 10015.
772
773 Mr. Blankinship - Right. 10030 is how we have mapped the other
774 property on the other side.
775
776 Mr. Robinson - I have the tax things here, if you want to see what lot
777 they are.
778
779 Mr. Wright - Do we have a map up on this?
780
781 Mr. Blankinship - Yes. See where we have 10030 on here? That's what
782 we're talking about. There's no house there. We've assigned that number.
783
784 Mr. Robinson - I own 8-1/2 lots. 10030 is on that corner. Where is
785 Harding Avenue?
786
787 Mr. Blankinship - That's Harding Avenue running north/south.
788
789 Ms. Harris - It's running into Francis Road.
790
791 Mr. Blankinship - [Off mike.] This would be your house.
792
793 Mr. Robinson - [Off mike.] I'm 10030.
794
795 Mr. Blankinship - [Off mike.] You had drawn this out [unintelligible], and
796 we're talking about that.
797
798 Mr. Robinson - If you look right down there where they have staked it
799 off, it's the same alley.
800
801 Ms. Dwyer - It is possible all the landowners could get together
802 and pool your resources and try to get some resolution about ownership of the
803 alley, but what we understand here is the County doesn't own, the County has no
804 interest in it, or ability to vacate it. That would be a private matter.
805
806 Mr. Robinson - Somebody's paying the taxes on it, though, right?
807
808 Mr. Blankinship - No. It's mapped as if it were County right-of-way, so
809 no one pays taxes on it. Apparently, it's not County right-of-way. Nobody's
810 paying taxes on it.
811
812 Mr. Wright - Somebody has to own it.
813
814 Mr. Robinson - Yes.

815
816 Mr. Blankinship - Chief Powhatan.
817
818 Ms. Harris - God owns it.
819
820 Mr. Wright - What?
821
822 Ms. Harris - God owns it.
823
824 Mr. Wright - God owns it? Yes, you may be right.
825
826 Ms. Harris - Do you receive services from the County as far as
827 waste?
828
829 Mr. Robinson - I have the water, but they haven't brought the sewage
830 up Harding Avenue yet.
831
832 Ms. Harris - So, no trucks actually go through that alleyway. Is it a
833 wooded area?
834
835 Mr. Robinson - It's cleared. Part of it. Behind that lot where they're
836 trying to change the variance on it, it's halfway grown up.
837
838 Mr. Blankinship - Do we have the aerial photographs?
839
840 Mr. Wright - That would be an unusual house, wouldn't it.
841
842 Mr. Kirkland - That large shed that rears to 1705, is that yours?
843
844 Mr. Robinson - Yes.
845
846 Mr. Kirkland - So, you're built in the alley.
847
848 Mr. Blankinship - That's why he's so sensitive about that alley.
849
850 Mr. Robinson - According to the markers they put out, I'm just barely
851 touching it. I'm backed up to it. It's just a portable building.
852
853 Mr. Kirkland - Okay.
854
855 Mr. Robinson - It can be slid forward, if I need to.
856
857 Mr. Wright - He's operating under that rule that possession is nine
858 points of the law.
859
860 Mr. Robinson - One of them is one of those metal—

861
862 Mr. Kirkland - Handy Hut.
863
864 Mr. Robinson - Yes.
865
866 Mr. Kirkland - All right. Any other questions by Board members?
867 Thank you, sir.
868
869 Mr. Robinson - Thank you.
870
871 Mr. Kirkland - Would you like to comment, sir, on any of his
872 statements?
873
874 Male - [Off mike] No.
875
876 Mr. Blankinship - Mr. Martin.
877
878 Mr. Kirkland - Mr. Martin back in the back. Okay, thank you. Any
879 other questions? Any other person want to speak on this case? If not, that
880 concludes the case.
881
882 Can I hear a motion?
883
884 Ms. Dwyer - I move we deny the case because the applicant has
885 some reasonable and beneficial use of the property taken as a whole. In my
886 interpretation of the Cochran case, we don't have jurisdiction to approve it. Also,
887 I think we need to hear the neighbor's concern that as we grant these variances,
888 we could see some variability in the distance between the houses and the street
889 frontage. That can cause some aesthetic problems for development in the
890 neighborhood.
891
892 Ms. Harris - I'm going to second that motion, but I do want to
893 make a statement that I do feel that the owner of the property does have a
894 recourse to get to the bottom of who owns the 14-foot alley and actually
895 purchase it. Even purchasing that I don't think would compromise the neighbor
896 who had concerns because it was at a junction where the alley sort of came
897 together. There's an intersection there. I do hope that the owners of that entire
898 tract of lots will pursue purchasing that 14-foot alley.
899
900 Mr. Kirkland - Any other comments? Motion made by Ms. Dwyer,
901 seconded by Ms. Harris. All those in favor say aye. All those opposed say no.
902 The ayes have it; the motion passes. The case was denied.
903
904 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
905 Ms. Harris, the Board **denied** application **A-002-08, Brookstone Builders, Inc.'s**
906 request for a variance from Section 24-95(c)(4) to build a one-family dwelling at

907 1751 Francis Road (Greenwood Heights) (Parcel 780-766-9344), zoned R-4,
908 One-family Residence District (Fairfield). The front yard setback is not met.

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

913
914

915 **UP-003-08 MARK AND CAROLINE CZARNECKI** request a
916 conditional use permit pursuant to Section 24-12(e) to operate a private
917 noncommercial kennel at 6124 Bootsie Boulevard (Estates at Willis Church)
918 (Parcel 852-685-5022), zoned A-1, Agricultural District (Varina).

919

920 Mr. Blankinship - Mr. Chairman, let me call your attention to the two
921 letters that were left at your places. We received them late yesterday afternoon,
922 so I apologize that you've had no time to review them.

923

924 Mr. Kirkland - Has the applicant seen these letters, Ben?

925

926 Mr. Blankinship - I just handed them to him. As far as I know, he hasn't
927 seen them.

928

929 Mr. Kirkland - We would like a few minutes to peruse these.

930

931 Mr. Wright - We should give him a few minutes to sit down and
932 look at them, if he wants to.

933

934 Mr. Blankinship - While we're waiting, is Mr. Mark Baker here or anyone
935 else representing Emerald Land Development on Grayson Street?

936

937 Mr. Wright - That's the one we passed over.

938

939 Mr. Blankinship - Right.

940

941 Mr. Kirkland - Have you read them, sir? Are you ready to go? All
942 right. If you would raise your right hand and be sworn in.

943

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

946

947 Mr. Czarnecki - I do.

948

949 Mr. Kirkland - Would you state your name for the record?

950

951 Mr. Czarnecki - Mark Czarnecki.

952

953 Mr. Kirkland - Okay. What do you request from the Board?
954
955 Mr. Czarnecki - I request that you allow us to bring our animals down
956 from Pennsylvania where we currently live, to our new residence on Bootsie
957 Boulevard. We currently have four elderly dogs, four cats, and a bird.
958
959 Mr. Wright - What kind of dogs did you say?
960
961 Mr. Czarnecki - They're mixed. There is one large dog, who is nine
962 years old. I have some pictures, if you'd like to see them. She's a Doberman mix.
963 We then have a Huskie mix, who is kind of small—she's about 28 pounds, a
964 Corgi and a Collie mix
965
966 Ms. Dwyer - What was the last one?
967
968 Mr. Czarnecki - Um, Collie mix.
969
970 Mr. Kirkland - Where do you keep the dogs?
971
972 Mr. Czarnecki - They're indoor dogs. We don't leave them outside.
973 Spoiled, I guess, is the word you want to call it. They all stay with us. Sleep on
974 the couches, sleep in our beds. They're always inside except when they go out
975 to do their duty, and then they come right back in.
976
977 Mr. Kirkland - What is the square footage of your home?
978
979 Mr. Czarnecki - About 2100 square feet.
980
981 Mr. Wright - You have two cats and a bird, right?
982
983 Mr. Czarnecki - Four cats and a bird.
984
985 Mr. Wright - Four cats and a bird?
986
987 Mr. Czarnecki - Yes.
988
989 Mr. Wright - How many dogs? They have nine animals there.
990
991 Mr. Czarnecki - Yes sir. It kind of happened that way with relatives
992 not being able to take care of them or a death in the family.
993
994 Mr. Wright - Who looks after them?
995
996 Mr. Czarnecki - I do. I do not currently work, so I stay at home with
997 them all day.
998

999 Mr. Wright - And they don't stay outside at all, except to do their
1000 duty.
1001
1002 Mr. Czarnecki - Just to do their duty.
1003
1004 Mr. Kirkland - Do you clean that up?
1005
1006 Mr. Czarnecki - Yes. Currently, it either goes into, basically, the
1007 garbage. We put it in a plastic bag and it goes out in the garbage. It doesn't stay
1008 on the premises.
1009
1010 Ms. Harris - Have you had any complaints from the neighbors
1011 about your animals?
1012
1013 Mr. Czarnecki - Not in our current neighborhood, and they are much
1014 closer than our proposed house.
1015
1016 Mr. Wright - How long have you been there?
1017
1018 Mr. Czarnecki - Our current house? Seven years.
1019
1020 Mr. Wright - You've lived there seven years with these animals?
1021
1022 Mr. Kirkland - Now, this is the one in Pennsylvania or—
1023
1024 Mr. Czarnecki - The one in Pennsylvania.
1025
1026 Mr. Kirkland - You haven't moved into this dwelling here in
1027 Richmond, yet, have you?
1028
1029 Mr. Czarnecki - No sir.
1030
1031 Mr. Kirkland - Okay.
1032
1033 Mr. Wright - Oh, that's right. You haven't moved yet.
1034
1035 Mr. Czarnecki - No.
1036
1037 Mr. Wright - Okay.
1038
1039 Mr. Czarnecki - The clearances of our current neighborhood are about
1040 30 feet to 40 feet between each house, and we've had no complaints from any
1041 our current neighbors.
1042
1043 Mr. Wright - How much acreage do you have in your proposed
1044 new home?

1045
1046 Mr. Czarnecki - 1.3 or a little bit more.
1047
1048 Mr. Wright - Have you actually purchased this home, sir? Do you
1049 have a contract on it or are you just—
1050
1051 Mr. Czarnecki - Yes. It's in the documents. We have permission from
1052 the current owner who we're buying it from to submit this application.
1053
1054 Mr. Wright - When you take these animals out, do you put them on
1055 a leash?
1056
1057 Mr. Czarnecki - We're going to have a fence put in the backyard. We
1058 prefer a picket fence, or if we have to, the invisible fence, depending on what
1059 we're allowed by the homeowners association. I would prefer a physical barrier
1060 which would basically just cover the back of the house and stick out a little bit on
1061 one side for a gate for a lawnmower to get through to cut the grass. We are
1062 hopefully going to have a fence put in.
1063
1064 Mr. Wright - So, you'll have a fenced-in backyard.
1065
1066 Mr. Czarnecki - Yes, that's the plan. We have it budgeted it out for a
1067 fenced-in backyard.
1068
1069 Mr. Wright - You say you have an acre there, 1.2?
1070
1071 Mr. Czarnecki - 1.34.
1072
1073 Mr. Wright - When you turn them out, how long would they be out
1074 in the backyard?
1075
1076 Mr. Czarnecki - Currently, they don't spend more than 5, 10 minutes
1077 just doing their business. Most of them come in right away with very little
1078 encouragement. The Corgi goes out, does her business, and is right back in.
1079 Same with the Husky and the Doberman mix. The only one who likes to wander
1080 around is the Collie mix, but she comes in as soon as she's told.
1081
1082 Mr. Wright - You say you're there all day?
1083
1084 Mr. Czarnecki - I'm with them all day, yes. We always go out with
1085 them.
1086
1087 Mr. Wright - How old are your cats?
1088
1089 Mr. Czarnecki - The cats range in age from 5 to I think one's going to
1090 be about 10 this year. They are also indoor cats. We keep them with us.

1091
1092 Mr. Wright - If this is approved by this Board, we would limit the
1093 number to what's there.
1094
1095 Mr. Czarnecki - Yes.
1096
1097 Mr. Wright - You could not have any additional animals.
1098
1099 Mr. Czarnecki - Yes, and I agree.
1100
1101 Mr. Wright - If one died or whatever, you could not replace that
1102 one.
1103
1104 Mr. Czarnecki - Yes, that is the plan. My wife likes that plan very
1105 much. That's what we intend to do. We intend to let them expire at their natural
1106 life and not replace them until this entire group is gone.
1107
1108 Mr. Wright - How did you come to have four dogs? Some of the
1109 dogs had dogs?
1110
1111 Mr. Czarnecki - No, they're all spayed and neutered. They all were
1112 rescued from a kennel. One came from a relative who could no longer take care
1113 of her dog. She decided to keep the boyfriend, who was allergic to the dog. Two
1114 of the cats, one came from that same relative and the other one came from my
1115 father when he passed away. We only actually adopted three and two of the cats.
1116 The rest we just decided to take care of from relatives.
1117
1118 Mr. Nunnally - Did you say you had pictures of them?
1119
1120 Mr. Czarnecki - [Off mike.] I have their medical records with me and
1121 their current license and rabies vaccinations.
1122
1123 Ms. Dwyer - You're aware obviously now that two of the neighbors
1124 in your potential neighborhood are not happy with this proposal.
1125
1126 Mr. Czarnecki - Yes. What seems to be their concern is the noise.
1127 They are not barking dogs.
1128
1129 Ms. Dwyer - Do you have any plans to discuss this with your
1130 neighbors?
1131
1132 Mr. Czarnecki - If they are here, yes, and later on when we get the
1133 house. I can assure the Board, though, they don't bark very much. They pretty
1134 much greet us when we come to the door, when someone comes to the door. At
1135 their age, that little bit of barking usually requires a two-hour nap afterwards.
1136

1137 Ms. Dwyer - Just from experience, if this were approved, that
1138 would be an important thing to do, given the fact that they already seem to be
1139 opposed.
1140

1141 Mr. Czarnecki - I would be glad to have them over to meet the dogs
1142 and to see that they won't be a nuisance.
1143

1144 Mr. Wright - Have you had a chance to talk to either one of these
1145 folks, these people?
1146

1147 Mr. Czarnecki - This is the first I've seen of this.
1148

1149 Mr. Wright - I think sometimes when it's advertised that you're
1150 going to have a kennel, they're thinking that you're going into a big business and
1151 have a lot of animals there and all that business, which is what you would
1152 normally think a kennel would do.
1153

1154 Mr. Czarnecki - Yes.
1155

1156 Mr. Wright - Unfortunately, under our ordinance, this is the only
1157 way that we can address this issue where you want to have more than three
1158 animals, because we're limited to three.
1159

1160 Mr. Czarnecki - I understand, yes. We adopted them, basically, out of
1161 the goodness of our heart. We cannot have children, so they've basically become
1162 our children.
1163

1164 Mr. O'Kelly - Would you have any objection to adding a condition
1165 that would prohibit any outside pens or enclosures?
1166

1167 Mr. Czarnecki - I have no objection to that. We have no plans for that.
1168

1169 Ms. Harris - Mr. Blankinship, is there something that we could
1170 attach a time limit to so that we could approve it for a year, for example, or six
1171 months or some period of time and then have a chance to determine whether this
1172 is a problem to the neighborhood?
1173

1174 Mr. Blankinship - You have that power. We try not to do that because
1175 we like people to be able to rely on your decisions and make investments based
1176 on them, but I guess they're not really investing anything here.
1177

1178 Ms. Dwyer - They're buying a house.
1179

1180 Mr. Blankinship - Well—But if in a year from now a renewal was not
1181 allowed, then they would just have to find a place for some of these animals.
1182 They'd have to pick which ones they liked best.

1183
1184 Mr. Kirkland - Any other questions by Board members? Ms. Harris?
1185
1186 Ms. Harris - No.
1187
1188 Mr. Kirkland - Would you have any problem with that if we did it for a
1189 year?
1190
1191 Mr. Czarnecki - To a point. It's very hard to find a place, a no-kill
1192 shelter or a sanctuary for an animal, and they are dear to our hearts. They are
1193 members of our family. It would seem like we'd have to come back every year to
1194 renew a family member.
1195
1196 Mr. Kirkland - Just wanted to get your point of view.
1197
1198 Mr. Czarnecki - I know. I can assure the Board, though, we do take
1199 care of them with our whole hearts. They are not barkers now and they listen
1200 very well. We will make sure they are not a nuisance.
1201
1202 Mr. Kirkland - One question. The cats, they stay in all the time?
1203 They don't wander, do they?
1204
1205 Mr. Czarnecki - Yes. I don't believe in outdoor cats. They're all indoor
1206 cats.
1207
1208 Mr. Kirkland - Okay. Ms. Dwyer? All right. Any opposition to this
1209 case? Anyone else wish to speak on this case? Sir, come forward. Come on up
1210 front. Raise your right hand. Did you get sworn in?
1211
1212 Mr. Chin - I have not.
1213
1214 Mr. Kirkland - Okay.
1215
1216 Mr. Blankinship - Do you swear the testimony you are about to give is
1217 the truth and nothing but the truth so help you God?
1218
1219 Mr. Chin - I do.
1220
1221 Mr. Kirkland - Please state your name, sir.
1222
1223 Mr. Chin - My name is Ken Chin.
1224
1225 Mr. Kirkland - Okay.
1226

1227 Mr. Chin - I am Mr. Czarnecki's real estate agent. If you have
1228 any questions for me, or concerns, I'd be happy to address them. Other than
1229 that, I do not have anything to say.
1230
1231 Mr. Wright - Where do you live, sir?
1232
1233 Mr. Chin - Myself? I'm part of Hanover County, Battlefield Green
1234 subdivision.
1235
1236 Ms. Harris - Have you run into this problem before?
1237
1238 Mr. Chin - This is the first time I have run into it. This is the first
1239 time my entire agency has run into it. This is a stepping-stone for us and
1240 everybody in my office has been more than happy to ask me questions about
1241 what's going to happen.
1242
1243 Mr. Kirkland - You haven't been to his home in Pennsylvania, have
1244 you?
1245
1246 Mr. Chin - I have not. I am a dedicated real estate agent, but not
1247 that dedicated.
1248
1249 Mr. Blankinship - Have you met any of the neighbors on Warner Road
1250 back behind?
1251
1252 Mr. Chin - I have not. When we did our initial home search and
1253 we looked around, there are a lot of tree lines. It's a very private, private lot. The
1254 only visible neighbor that you can see is in the rear. The space in between is
1255 substantial. The neighbor in the rear I believe is on—
1256
1257 Mr. Wright - Can you get up closer to the mike, please, sir?
1258
1259 Mr. Chin - Sure, I'm sorry. The neighbor in the rear I believe is
1260 on 2.91 acres. Mr. Czarnecki's lot is on 1.34 acres, I believe. So, the space in
1261 between is pretty substantial.
1262
1263 Ms. Harris - How far is the hunt club from this property? I noticed
1264 that one of the neighbors was complaining about the noise, the barking coming
1265 from some other facility.
1266
1267 Mr. Chin - I'm not sure.
1268
1269 Ms. Harris - "From the Hunt Club. We can already hear dogs very
1270 clearly from a hunt club a little further away," a little farther away. You do not
1271 know—
1272

1273 Mr. Chin - I have not been made aware of any of the complaints.
1274
1275 Ms. Harris - I wonder how could they distinguish the barks if there
1276 is a hunt club nearby. How could they tell that those are not your dogs barking?
1277
1278 Mr. Czarnecki - Not as an animal expert, but if it's a hunt club, they're
1279 probably a form of hound, like a Beagle or a Fox Hound. Those dogs have a
1280 howl to them. I had one growing up. It always howled and made noises. That
1281 seems to go along with hounds. I don't have any hounds, so I think it would pretty
1282 easy to distinguish the sound.
1283
1284 Mr. Nunnally - Sir, if this Board approves this case, you say you
1285 didn't want a one-year or two-year permit. But if this Board approves this permit
1286 and they have any complaints, it can be taken away from you if they can prove
1287 that you're causing a disturbance down there.
1288
1289 Mr. Czarnecki - I understand, sir.
1290
1291 Mr. Kirkland - Mr. Blankinship, can we include in the case that the
1292 rear yard must be fenced?
1293
1294 Mr. Blankinship - Yes, I think you could, because then they would have
1295 the option of not fencing the rear yard but not having the animals there.
1296
1297 Mr. Wright - How about the electronic fence?
1298
1299 Mr. Kirkland - Could we put some sort of a condition that would
1300 either say invisible fence or fence, something to keep the animals in once they
1301 were let in the yard?
1302
1303 Mr. Wright - He may be subject to the covenants of his area.
1304 Where I live, you couldn't put either one.
1305
1306 Mr. Blankinship - Mr. Chin might know that.
1307
1308 Mr. Chin - Currently, the homeowners association does allow for
1309 fences. The only restrictions are that it cannot be higher than six feet and there
1310 cannot be a front fence. It can only be in the rear, which is what Mr. Czarnecki
1311 plans on doing regardless.
1312
1313 Mr. Blankinship - He would, of course, have to agree to whatever
1314 condition we impose.
1315
1316 Ms. Dwyer - The County requires that animals be under the control
1317 of the owner at all times, so the concept that they would be running loose would
1318 violate the County's ordinance.

1319
1320 Mr. Kirkland - The control rule is very vague. It is really vague and I
1321 prefer some sort of a closure like a fence. Not an enclosure but a fence, invisible
1322 or otherwise.
1323
1324 Ms. Dwyer - I also like Mr. O'Kelly's idea of a condition that there
1325 be no outside pens or other enclosures for housing the animals outdoors.
1326
1327 Mr. Blankinship - I believe the applicant's agreed to that.
1328
1329 Ms. Dwyer - I really think the problem is leaving animals outdoors
1330 and they bark. That's what in my experience bothers people.
1331
1332 Mr. Kirkland - All right. Any other questions? That concludes the
1333 case. Would you call the Emerald case one more time, Mr. Blankinship?
1334
1335 Mr. Nunnally - I move we approve it with the conditions that have
1336 been mentioned.
1337
1338 Ms. Dwyer - Those are the conditions for some sort of fencing,
1339 whether electronic or otherwise, and no enclosures.
1340
1341 Ms. Harris - No enclosures, no pens.
1342
1343 Mr. Nunnally - Right.
1344
1345 Mr. Blankinship - And that the animals be kept indoors.
1346
1347 Mr. Kirkland - Adding those three conditions.
1348
1349 Mr. Nunnally - The condition that Mr. O'Kelly said about no buildings
1350 built out there.
1351
1352 Mr. Wright - I'll second the motion. I don't know if we've had a
1353 second on it yet or not.
1354
1355 Mr. Kirkland - No, we have not.
1356
1357 Mr. Wright - I'll second the motion.
1358
1359 Mr. Kirkland - Motion made by Mr. Nunnally, seconded by Mr.
1360 Wright. Any other discussion?
1361
1362 Ms. Dwyer - I think we should make some statement about why we
1363 think it's all right to do this.
1364

1365 Mr. Nunnally - I don't think it will be detrimental to anything down
1366 there. The only people we have opposed are these letters we received today. If
1367 it's true that the dogs and cats are going to be inside all the time and if he doesn't
1368 abide by the rules on this case, we can take it away from him.

1369
1370 Ms. Dwyer - It's important to note that even though it says a
1371 kennel, this is not a kennel in the way that most people understand a kennel as a
1372 place where dogs are boarded or bred. These are pets. I think it's also important
1373 in mitigating that we're not allowing these animals to be replaced.

1374
1375 Mr. Nunnally - Right.

1376
1377 Ms. Dwyer - I think that's important from the neighbor's aspect.

1378
1379 Mr. Wright - It's not in the condition. I didn't notice that.

1380
1381 Mr. Kirkland - Mr. Blankinship, if we get several calls, you can
1382 explain that to the neighbors, that they'll be inside and the other conditions we
1383 put on the case.

1384
1385 All right. Motion by Mr. Nunnally, seconded by Mr. Wright. All those in favor say
1386 aye. All those opposed say no. The ayes have it; the motion passes.

1387
1388 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1389 Mr. Wright, the Board **approved** application **UP-003-08, Mark and Caroline**
1390 **Czarnecki's** request for a conditional use permit pursuant to Section 24-12(e) to
1391 operate a private noncommercial kennel at 6124 Bootsie Boulevard (Estates at
1392 Willis Church) (Parcel 852-685-5022), zoned A-1, Agricultural District (Varina).

1393
1394 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1395 Negative: 0
1396 Absent: 0

1397
1398
1399 Mr. Kirkland - Welcome to Henrico County.

1400
1401 **A-001-08 EMERALD LAND DEVELOPMENT** requests a
1402 variance from Section 24-95(b)(7) to build a one-family dwelling at 3921 Grayson
1403 Street (Providence Park Annex) (Parcel 793-737-0345), zoned R-5, General
1404 Residence District (Fairfield). The lot width requirement and total lot area
1405 requirement are not met. The applicant has 35 feet lot width and 3,445 square
1406 feet total lot area, where the Code requires 50 feet lot width and 6,000 square
1407 feet total lot area. The applicant requests a variance of 15 feet lot width and
1408 2,555 square feet total lot area.

1409
1410 Mr. Kirkland - Anyone here on this case?

1411
1412 Mr. Blankinship - I'm going to recommend, Mr. Chairman, that you
1413 defer the case and allow the applicant to withdraw it. If he withdraws in the next
1414 week or two, that won't cause us any—
1415
1416 Mr. Kirkland - Can I have a motion to defer this case?
1417
1418 Ms. Dwyer - I move that we defer.
1419
1420 Ms. Harris - Second the motion.
1421
1422 Mr. Kirkland - Motion made by Ms. Dwyer, seconded by Ms. Harris.
1423 All those in favor say aye. All those opposed say no. The ayes have it; the motion
1424 passes.
1425
1426 After an advertised public hearing, **A-001-08, Emerald Land Development**, has
1427 been **deferred** until the March 27, 2008 meeting, at the request of the Board.
1428
1429 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1430 Negative: 0
1431 Absent: 0
1432
1433
1434 Mr. Kirkland - I think that's all the cases. Let's go to the minutes.
1435
1436 Ms. Dwyer - I had a few.
1437
1438 Mr. Kirkland - We sure had a lot of people here that didn't speak. I
1439 guess we just had a lot of visitors today.
1440
1441 Ms. Dwyer - It's our fan club.
1442
1443 Mr. Blankinship - Well, we have three members of staff. That's about
1444 everybody.
1445
1446 Ms. Harris - Observers.
1447
1448 Mr. Kirkland - Okay.
1449
1450 Ms. Harris - I have a question I want to ask Mr. Blankinship before
1451 we move to the minutes. The progress on the riding stable academy, where are
1452 we with that?
1453
1454 Mr. Blankinship - That's the brown envelope that was left at your desk.
1455
1456 Mr. Kirkland - Right under your paperwork there.

1457
1458 Ms. Harris - Okay, thank you.
1459
1460 Mr. Kirkland - That's a good evening reading.
1461
1462 Mr. Blankinship - Yes. It's not very long, but we wanted to pass it out to
1463 you before we sent it to the applicant and the other interested parties. We'll be
1464 doing that tomorrow.
1465
1466 Ms. Dwyer - If we have any comments to make, we should make
1467 them immediately.
1468
1469 Mr. Blankinship - At your earliest convenience.
1470
1471 Ms. Dwyer - I guess what we have is the opinion of staff?
1472
1473 Mr. O'Kelly - Yes. It has been reviewed by the County Attorney.
1474
1475 Ms. Dwyer - Okay.
1476
1477 Mr. O'Kelly - They're in total agreement with the interpretation.
1478
1479 Ms. Dwyer - Great. So, we're all of one mind.
1480
1481 Mr. Wright - That's unusual.
1482
1483 Ms. Dwyer - Okay.
1484
1485 Mr. Kirkland - Any other questions, Ms. Harris?
1486
1487 Ms. Harris - That's it.
1488
1489 Mr. Kirkland - All right. Let's hear the minutes.
1490
1491 Ms. Dwyer - On page 5, top of the line. I think, Mr. Kirkland, you
1492 made the statement rather than I.
1493
1494 Mr. Kirkland - Yes.
1495
1496 Ms. Dwyer - That should say Mr. Kirkland, not Ms. Dwyer.
1497
1498 Mr. Kirkland - Yes, I was there that day.
1499
1500 Ms. Dwyer - On page 9, line 380. "Does what is written" should be
1501 "is" instead of "it, i-t." Just a typo there. Then page 18, line 796. Instead of

1502 “about,” I think it should be “be” then a space, then “a.” “That would be a goal,”
1503 instead of “that would about a goal.” That’s all I have.

1504
1505 Mr. Kirkland - Any other corrections?

1506
1507 Ms. Harris - On page 9, what was the correction?

1508
1509 Ms. Dwyer - I think that was the “is” instead of “it.”

1510
1511 Ms. Harris - On what line?

1512
1513 Mr. Kirkland - On 380. Any other corrections? Do I have a motion
1514 on approving the minutes as changed?

1515
1516 Ms. Harris - I so move.

1517
1518 Ms. Dwyer - Second.

1519
1520 Mr. Kirkland - Motion by Ms. Harris, seconded by Ms. Dwyer. All in
1521 favor say aye. All opposed say no. The ayes have it; the motion passes. The
1522 minutes are approved.

1523
1524 On a motion by Ms Harris, seconded by Ms. Dwyer, the Board **approved as**
1525 **corrected** the **Minutes of the January 24, 2008** Henrico County Board of
1526 Zoning Appeals meeting.

1527
1528 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1529 Negative: 0
1530 Absent: 0

1531
1532
1533 Mr. Kirkland - Any other business to come before this Board?

1534
1535 Mr. Wright - I just want to ask Mr. Blankinship. Have you heard
1536 anything from the Board of Supervisors, staff, or anybody as to our request that
1537 something be done about these zero lot requests?

1538
1539 Mr. Blankinship - I have discussed it with our new Deputy County
1540 Manger, but it’s waiting in line I think behind the issue of home occupations.
1541 There has been some concern in the County lately over that and I think that’s
1542 taken precedence. I think he’ll be getting to that after home occupations is
1543 resolved. Mr. O’Kelly, do you have anything additional?

1544
1545 Mr. O’Kelly - No. I know it was almost a year ago that the Board
1546 asked for some help from the Board of Supervisors. It is on the list of items.
1547 Hopefully, we’ll get to it shortly.

1548
1549 Mr. Wright - They should visit the entire question of variances.
1550
1551 Mr. O'Kelly - We were hoping that the General Assembly would be
1552 helping us out some, but apparently, that's—
1553
1554 Mr. Wright - Well, evidently, there has not been a human cry,
1555 which usually the squeaking wheel gets the oil. Homeowners are pretty strapped
1556 right now with what they can do with their property. You can't even add a foot
1557 onto your property, even though it has no impact on anybody or anything,
1558 because we don't have the jurisdiction anymore to grant it if they already have
1559 reasonable use. I think the Supreme Court was addressing the constitutional
1560 issue, but it can be handled on a non-constitutional basis. I'm surprised that this
1561 much time has elapsed and something hasn't been done on it.
1562
1563 Mr. Kirkland - Any other comments?
1564
1565 Ms. Dwyer - I move we adjourn.
1566
1567 Mr. Kirkland - Motion made by Ms. Dwyer to adjourn.
1568
1569 Mr. Wright - Second.
1570
1571 Mr. Kirkland - All in favor say aye. All opposed say no. The ayes
1572 have it; the motion passes. Have a good evening.
1573
1574 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1575 Negative: 0
1576 Absent: 0
1577
1578 There being no further business, the Board adjourned until the March 27, 2008
1579 meeting at 9 a.m.
1580
1581
1582 Richard Kirkland, CBZA
1583 Chairman
1584
1585
1586
1587
1588
1589 Benjamin Blankinship, AICP
1590 Secretary