

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**  
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**  
4 **SPRING ROADS, ON THURSDAY, FEBRUARY 24, 2011 AT 9:00 A.M.,**  
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **FEBRUARY 3, 2011 AND FEBRUARY 10, 2011.**

7  
Members Present: Helen E. Harris, Chairman  
Robert H. Witte, Jr., Vice Chairman  
Lindsay U. Bruce  
James W. Nunnally  
R. A. Wright

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning  
Benjamin Blankinship, Secretary  
Paul Gidley, County Planner  
R. Miguel Madrigal, County Planner

8  
9  
10 Ms. Harris - Good morning and welcome to the February 24, 2011  
11 session of the Board of Zoning Appeals for Henrico County. Would you please  
12 stand and recite the **Pledge of Allegiance**.

13  
14 Good morning, Mr. Blankinship. Would you read the rules please that govern this  
15 meeting?

16  
17 Mr. Blankinship - Good morning, Madam Chairman, members of the  
18 Board, ladies and gentlemen, the rules for this meeting are as follows. Acting as  
19 secretary I will call the case and as I'm speaking Mr. Baker should approach the  
20 podium. We will then ask everyone who intends to speak to the case to stand  
21 and be sworn in. Mr. Baker will have his opportunity to make his presentation,  
22 then anyone else who wants to speak will be given the opportunity. After  
23 everyone has spoken, Mr. Baker will have an opportunity for rebuttal. After that,  
24 the Board will proceed with its decision on the case.

25  
26 The meeting is being recorded, so we'll ask everyone who speaks to speak  
27 directly into the microphone on the podium, state your name, and please spell  
28 your last name so we get correctly in the record. Everyone is familiar with the  
29 staff report.

30  
31 *Deferred from Previous Meeting*

32 **VAR2010-00002 LIBERTY HOMES, INC.** requests a variance from  
33 Sections 24-95(t), 24-95(u)(1)b and 24-95(c)(4) of the County Code to build a  
34 one-family dwelling at 11510 Greenwood Road (Lakeview) (Parcel 772-774-  
35 9333), zoned A-1, Agricultural District (Brookland). The total lot area  
36 requirement, rear yard setback, and front yard setback are not met. The

37 applicant proposes 8,085 square feet lot area outside the floodplain, 25 feet front  
38 yard setback, and 10 feet rear yard setback, where the Code requires 30,000  
39 square feet lot area, 35 feet front yard setback and 20 feet rear yard setback.  
40 The applicant requests a variance of 21,915 square feet lot area, 10 feet front  
41 yard setback, and 20 feet rear yard setback. **(A-002-10)**

42  
43 Ms. Harris - All persons who wish to speak to this case please  
44 stand and raise your right hand.

45  
46 Mr. Blankinship - Let's go ahead and swear you in just in case you  
47 want to make any comments. You can stay in your place but raise your right  
48 hand, please. Do you swear the testimony you're about to give is the truth and  
49 nothing but the truth so help you God?

50  
51 Ms. Harris - If you would present your case. Thank you.

52  
53 Mr. Baker - Good morning, my name is Mark Baker—B-a-k-e-r.  
54 I'm with Baker Development Resources. I'm here on behalf of Mr. Tuttle with  
55 Liberty Homes and here to talk about 11510 Greenwood Road. That case  
56 contemplates the reduction of lot area requirements exclusive of the floodplain  
57 with construction of a single-family dwelling. The standard is 30,000 square feet  
58 and this lot actually exceeds 30,000 square feet. It's closer to an acre. With the  
59 floodplain constraint, we need to have enough lot area outside of the floodplain  
60 to accommodate the 30,000 square feet. An 8,085-square-foot buildable area is  
61 proposed outside of the floodplain. A reduction in front and rear yard setbacks is  
62 also requested. The front yard requirement is 35 feet; 25 is proposed. Twenty-  
63 five is to the front porch. It's actually closer to 30 to get to the main face of the  
64 home. In the rear, 20 feet is required and 10 is proposed. Again, the floodplain is  
65 a constraint here. It's not that the site is not large enough to accommodate —  
66 typically—. It's a 270-plus deep lot. But because of that floodplain requirement,  
67 the buildable area is compressed and at the front of the lot. Therefore the front  
68 yard and the rear yard setback variances are required.

69  
70 About the background, the property is located on the west side of Greenwood  
71 Road and it's north of the intersection of Chiles Road. It's six 25-foot-wide lots.  
72 They were purchased in March 2006 in the hope that at that time there would be  
73 more than one buildable lot. The request would consolidate all six of those lots  
74 into one. It would authorize construction of a single home. The lot is 41,670  
75 square feet; again, almost an acre. It's physically large enough; however, the lot  
76 area calculation is to exclude the floodplain.

77  
78 The owner first applied in December 2009. We were advised at that time that a  
79 flood study needed to be completed before being heard by the BZA. The study  
80 was completed by an engineer and it's been reviewed by the County. It proposed  
81 a balanced cut-and-fill that creates that 8,085-square-foot buildable area. It  
82 doesn't affect the 100-foot flood level. Designing that buildable area such that it

83 minimizes the impact on the floodplain necessitates the front and rear yard  
84 setbacks.

85

86 Again this is an owner; it's not a speculative situation. It's not a contract  
87 purchase; they own the property. Between the purchase of the property and the  
88 work along the lines of the flood study and addressing this point, their overall  
89 investment is \$35,000.

90

91 Looking at the Cochran case and the threshold question as to whether the effect  
92 of the Zoning Ordinance upon the property under consideration as it stands  
93 interferes with all reasonable beneficial use of the property taken as a whole;  
94 that is the case. The properties in their current configuration predate the  
95 establishment of the guidelines for developments within special flood hazard  
96 areas and they also predate the County's regulations or provisions which exclude  
97 the flood hazard area from the lot area requirement. Even when the six lots are  
98 combined, the current regulations substantially limit or prevent the use of the  
99 property, the consolidated property. So taken as a whole, there is no reasonable  
100 beneficial use of the property absent the requested variance.

101

102 The first test talks about an extraordinary situation, is there exceptional  
103 narrowness, shallowness, size or shape, topographic condition, or other  
104 extraordinary situation or condition. Of course in this case the exceptional  
105 condition is the special flood hazard area which occupies approximately 80% of  
106 the property. This condition, as we've shown, can technically be overcome. The  
107 buildable area is small by necessity in order to prevent any impact on the 100-  
108 year floodplain or the impact of that floodplain on adjacent properties by virtue of  
109 creating a larger buildable site. Release from the Code in terms of lot area and  
110 setback is required to make the proposed buildable area work. There's definitely  
111 a valid exceptional condition.

112

113 The second test is that the variance will not be of substantial detriment to the  
114 adjacent property and that the character of the district will not be changed, so it's  
115 really two tests in one. With regards to substantial detriment, that's applied to the  
116 adjacent property. It can't be substantial detriment to adjacent property. There's  
117 really nothing in the report to suggest that there's substantial detriment or  
118 substantial damage that would be incurred to adjacent properties. To the extent  
119 that there is discussion of the second test, it's more related to character, and this  
120 applies to the overall district. Staff discusses the following issues and those are  
121 that they feel there are consistency issues with the existing front yard setbacks  
122 and they feel that the size of the lot area that's proposed outside of the floodplain  
123 leads to limitations on the lot in terms of use.

124

125 If you look at the statute, it actually says that the character of the district will not  
126 be changed. Well, what is the character of the district? The staff refers to it as  
127 semi-rural, but what does that really mean? I've brought cases before you that  
128 have been in more suburban subdivisions, very clear character, sort of a rigid,

129 more cohesive character that has consistent setbacks, consistent front yard and  
130 side yard setbacks, where there is consistent architectural detail, those types of  
131 things. But that's not really the case here. While some rural areas can exhibit  
132 well-defined character, there are instances where in rural areas you may find  
133 uniform architectural design for instance. That's really not the case here either.  
134 In fact, the variety in the district is as striking as the similarities.

135

136 Within the stretch between Chiles Road and Old Washington Highway, if you  
137 want to consider that the block that this is located in, you have varied uses. You  
138 have single families, you have a church, and you have commercial uses. You  
139 have varied architectural styles—you have Capes, Craftsmen, ranchers, and  
140 two-story dwellings. You have varied building materials. There are masonry  
141 materials, siding, and vinyl. You have varied ages of construction dating from  
142 pre-World War II to the present. You have lots that have been substantially  
143 cleared for homes that are open and occupied by principally the home. And you  
144 have lots that are wooded but for the home site, where it's difficult to even see  
145 the home through the vegetation that's been left on the site. And even the front  
146 yard setback varies. And that is staff's principal character concern. They note a  
147 wide range in front yard setbacks of single-family dwellings and they say 60 feet  
148 to 130 feet is what is typical. But again, this isn't a suburban neighborhood where  
149 we're dealing with 35 feet all the way down the line and we're coming in and  
150 trying to do 25 feet. And if you look at the block, staff did not mention that there  
151 is at least one structure within that area that has no setback.

152

153 Mr. Witte - Is that a single-family dwelling?

154

155 Mr. Baker - My thought is that it's a commercial building that was  
156 converted for residential use.

157

158 Mr. Blankinship - If it's the one I think you're talking about, it's about  
159 twelve feet from the right-of-way.

160

161 Mr. Baker - Right. It's very close. I'll show a picture of it in a  
162 second. So looking at some photos of the area, you have a variation of uses.  
163 You have commercial uses, you have single-family, and you have older  
164 structures. You can see on the bottom left where a site has been cleared to a  
165 greater extent than on the right where there is a substantial amount of vegetation  
166 left. Here is the building that I was discussing on the top left. Again, I believe  
167 that's a residential building that was originally constructed as commercial. You  
168 have varied age of construction, you have varied building design. On the top right  
169 you have a nice building. It's a Craftsman style. There's a two-story on the  
170 bottom right and I guess what would be maybe a 1-1/2 story on the bottom left.  
171 Brand new bottom left; probably pre-World War II top right. So a wide variety in  
172 the character.

173

174 And of course I'm not showing you the picture on the top left to try to insult your  
175 intelligence. I'm not showing you that and suggesting that it's not a unique  
176 situation. I'm not suggesting that having no setback or a setback similar to that  
177 building would be appropriate in this situation. My point is the existence of that  
178 building. It's a building that I think adds positively to the character of the district. It  
179 suggests that it's variety that helps define the character of the corridor. And in a  
180 corridor with such variety it's hard to substantiate that a 25-foot setback would  
181 change the character of the district.

182

183 And I think you need to look at the existing zoning, which are 35-foot setbacks.  
184 Were this property not encumbered by the floodplain issues, you could come in  
185 tomorrow and apply for a building permit for a 35-foot setback. Is that correct?  
186 Of course 35 feet is not within that range of 60 to 130, but I would argue that 35  
187 feet would also not be detrimental to the character of the neighborhood. I would  
188 suggest that if it was detrimental to the character of the neighborhood that would  
189 probably not be the appropriate zoning classification to be in place.

190

191 As to the limited enjoyment and restricted use, we feel this is not really a  
192 character issue; it's more of a matter of preference. Staff references this is the R-  
193 4 District in discussing the buildable area of the lot. If you read that, it sort of  
194 makes it seem as though we're trying to shoehorn an R-4 lot into an A-1 area.  
195 We respectfully disagree, at least with the context in which we're reading that.  
196 Our concern is that the actual lot size at .98 acres, almost an acre, is consistent  
197 with the surrounding properties in terms of the lot pattern. Due to the size of the  
198 lot, the buildable area would be buffered by three-fourths of an acre of  
199 undisturbed woodland. This would not be the case in an R-4 lot that was inserted  
200 into an A-1. This is a small buildable area that's surrounded and buffered by  
201 three-quarters of an acre of undisturbed land.

202

203 Further, with regards to livability, you do have R-4 zoning. You have the 8,000-  
204 square-foot exception standard for non-conforming lots. Obviously these things  
205 are on the books, they're in your Zoning Ordinance, and they suggest that at  
206 8,000 square feet, even without the three-fourths of an acre of buffer around  
207 you, that there is adequate livability. So an 8,000-square-foot parcel absent the  
208 three-quarters of an acre of buffer that's being proposed here is livable in those  
209 instances. We think that actually runs counter to the suggestion that this wouldn't  
210 be livable.

211

212 So clearly many owners in the corridor have restricted their own use of the  
213 property. Going back to the pictures I showed you, there are several properties  
214 that are substantially wooded. The fact that only the portion of the parcel which  
215 was built upon, the footprint of the home, has been cleared in terms of trees.  
216 They've obviously limited themselves in terms of sheds and pools and those  
217 sorts of things. So I would argue that this lot would be consistent with that  
218 smaller buildable area.

219

220 Then there are other cases where accessory buildings and storage within that  
221 corridor probably could be argued as though they cause an issue. There are  
222 instances where there are multiple outbuildings. There is at least one instance  
223 where there is a boat, where there are recreational vehicles, the types of things  
224 that can actually lead to blight, which would not be a concern on this piece of  
225 property, but can be a concern—.

226

227 Again, being substantially vegetated is consistent in character. It would lead to  
228 greater buffering between the homes based on the fact that this is a retention of  
229 three-quarters of an acre. Again, we feel it's a matter of preference. With the  
230 right buyer or the owner who understands the constraints, a surrounding  
231 undisturbed area could actually add to the peaceful enjoyment of the property.

232

233 And then of course finally it would be less maintenance with a smaller buildable  
234 area, which might appeal to some owners.

235

236 The third test is that the condition or situation, the property concerned, is not of  
237 so general a recurring nature as to make reasonably practical the formulation of  
238 a general regulation to be adopted as an amendment to the ordinance. Staff  
239 notes in their report that these types of requests are not of a general recurring  
240 nature. That's probably true. And even more importantly, perhaps, is that it's not  
241 a recurring issue in the district. I've brought cases before you where my sense  
242 was that there may have been a concern that we're dealing with a smaller infill  
243 lot and [unintelligible] consideration was appropriate, but there may have been  
244 concern that there was going to be a precedent with regards to other small lots in  
245 the neighborhood. That's clearly not the case here; it's a very unique situation.  
246 It's not something that I think you'd anticipate happening in this corridor multiple  
247 times.

248

249 There are a few other issues that I just wanted to discuss. We were in a position  
250 where we deferred a couple of times. In the beginning, we had received some  
251 late DPW concerns. There were some site drainage design issues and they've  
252 been addressed by the owner's engineer. The solution requires that a drain  
253 structure be built. The owner understands the extent of the issue and the cost  
254 associated with it.

255

256 It was also discussed, I believe at the first meeting, when the first deferral took  
257 place that it might be wise to look into purchasing the adjacent property. That  
258 has been done. The owner's representative had, actually prior to that time,  
259 contacted the adjacent owner. They were unable to come to an agreement with  
260 regards to trying purchase property. It's important to understand that the  
261 adjacent property is similarly impacted and it might not provide the needed relief.  
262 Whereas they could potentially pick up more lot area, it definitely would not  
263 eliminate the setback waiver request and it would also increase the cost or the  
264 hardship of the owner. The owner is already \$35,000 down the road towards

265 trying to develop the piece of property and now they're having to purchase more  
266 land. But at any rate, they weren't able to reach an agreement.

267

268 So in summary or conclusion, the owner has worked with the County agencies  
269 on an acceptable design for the buildable area so it meets the technical merits.  
270 Staff has reviewed the flood study and has found the proposal would have no  
271 impacts on the 100-year flood level or negative impacts with regards to the  
272 floodplain level on adjacent properties. We have demonstrated without doubt  
273 that absent this variance this is regulatory taking. The owner has reasonable  
274 expectations for the beneficial use of the property. The owner has invested  
275 \$35,000 in pursuing the property and pursuing this request. Again, this is an  
276 owner; it's not a contract purchaser. The floodplain and the resulting buildable  
277 area represent a qualifying exceptional circumstance that warrants  
278 consideration. We've shown that the existing character is not so well defined that  
279 this request would threaten to change it. We've addressed the livability and  
280 restrictive use issue and we find that's likely more a matter of preference. This  
281 issue is not recurring countywide and because it's recurring locally, we talked  
282 about the benefits of that in terms of no further requests in the immediate vicinity.  
283 The applicant has met the burden of proof with evidence and presented them on  
284 all three tests. And this request represents the minimal relief required to address  
285 this very unique circumstance and avoid a taking while remaining as true to the  
286 district character as possible.

287

288 That concludes my presentation. I'll take any questions you may have at this  
289 time.

290

291 Ms. Harris - The fill-in area that you were speaking of, for what  
292 purpose what that be used?

293

294 Mr. Baker - It was a cut-and-fill. It was used to take the add site,  
295 which was large enough to accommodate a house. It's used for in part the home  
296 site and in part for rear yard area.

297

298 Ms. Harris - So a home might be constructed on that filled-in  
299 area? Is that what you're saying?

300

301 Mr. Baker - Yes.

302

303 Ms. Harris - And you have cleared that? There's no settling when  
304 you fill areas like that?

305

306 Mr. Baker - That can be accommodated. That's not an issue.

307

308 Ms. Harris - Have you considered that Greenwood Road may be  
309 widened and you're already ten feet short?

310

311 Mr. Baker - The owner has considered that and an engineer has  
312 talked with Public Works. I think that's on your plan, but it's not something that's  
313 been funded as a capital improvement. It could happen in the future, but there—  
314  
315 Ms. Harris - Will the owner live in this house?  
316  
317 Mr. Baker - No, the owner would be selling it.  
318  
319 Ms. Harris - So it is speculation, investment.  
320  
321 Mr. Baker - Well, the request is not speculative; it is an  
322 investment.  
323  
324 Mr. Witte - I have a question about the drain field. What's the  
325 depth of the drain field?  
326  
327 Mr. Baker - I apologize. Our engineer is—  
328  
329 Mr. Witte - It appears to me that if the drain field is standard  
330 depth, it's going to be substantially below the 100-year floodplain.  
331  
332 Mr. Blankinship - Do you happen to know whether it's a traditional drain  
333 field or alternatively engineered?  
334  
335 Mr. Baker - I just don't know. I've spoken with the engineer  
336 several times leading up to this meeting. He felt confident he could  
337 accommodate that as part of his design. It's certainly been reviewed by the  
338 County as to the location and the details. I personally can't speak to it.  
339  
340 Mr. Blankinship - But it is an alternative system not the traditional.  
341  
342 Mr. Witte - Some of the alternative systems can be very shallow  
343 from my understanding. But some of them are also deeper. I would be  
344 concerned about the depth of it being below the floodplain level. It could cause  
345 serious damage. Being so close to the floodplain, it looks to me like it's maybe a  
346 foot away.  
347  
348 Mr. Blankinship - When the engineer designed the system and when  
349 the health department reviewed it, were they aware of the floodplain as far as  
350 you know?  
351  
352 Mr. Baker - Oh yeah. It was submitted as a package. It's my  
353 understanding that they're all aware of that and it's met the tests. I wasn't aware  
354 that was an issue.  
355



356 Mr. Blankinship - I'm sure they couldn't have done a conventional  
357 system or I presume they could not have done a conventional system.  
358  
359 Ms. Harris - The site that the owner decided not to negotiate with  
360 the owners, is that 11520 that we see on this map?  
361  
362 Mr. Baker - I believe that was 11440. As you look at the property  
363 it's to the left, the negotiation with the adjacent owner. I have a letter regarding  
364 that.  
365  
366 Mr. Blankinship - The owners at 11520 are here this morning.  
367  
368 Ms. Harris - Okay. These are the owners you referred to in your  
369 report, right, 11520?  
370  
371 Mr. Baker - It was Mr. Henderson they had spoken to.  
372  
373 Mr. Witte - Do you have the address?  
374  
375 Mr. Blankinship - That's 11520.  
376  
377 Ms. Harris - And you're saying that if you had purchased this  
378 property that you still may not be able to build on this lot? I'm looking at the site  
379 map that's on the screen. It seems they don't have the floodplain problem that  
380 11510 has.  
381  
382 Mr. Baker - I think the issue is how much of that property would  
383 you have to purchase until you got to the point where you had substantial depth  
384 to accommodate 35 feet. You can see that the floodplain—as you're moving  
385 from the home towards 11520, the floodplain actually comes around the corner  
386 of the building. At this point right here it's actually fairly close. At what point  
387 would they be able to accommodate enough buildable area. You'd have to get to  
388 the point where the floodplain was receding to the extent that you could put the  
389 home over in this area and not have a front yard or rear yard setback issue.  
390  
391 Ms. Harris - It would seem to me it has less of a front yard—rear  
392 yard issue than the one your person purchased. Any other questions from Board  
393 members?  
394  
395 Mr. Wright - Yes, Mr. Blankinship, a question. There is no diagram  
396 here showing how far this would be set back from the road.  
397  
398 Mr. Blankinship - That should show on the plan. The one that folds out.  
399 That shows the front yard setback. It's 29.66 to the dwelling with the porch  
400 extending four feet into that, which the Code provides for.  
401

402 Mr. Wright - If a house was built on either side, the house would  
403 be ten feet back further than this house.  
404

405 Mr. Blankinship - Yes sir. If you build to the south you have floodplain  
406 issues there as well. If a house is built at 11520 it would be farther back.  
407

408 Mr. Baker - I was curious about that 25 feet as it was written in  
409 the staff's report. Was there a provision to allow for the porch to exist within the  
410 front yard?  
411

412 Mr. Blankinship - There is, yes. A porch no more than six feet wide is  
413 allowed to project no more than four feet.  
414

415 Mr. Baker - So this is in reality then a request for a variance for  
416 29.  
417

418 Mr. Blankinship - When we are anticipating widening of a road, you're  
419 supposed to set back from the projected future right-of-way.  
420

421 Mr. Baker - But if a home adjacent to it left or right was adequate  
422 for another lot, it wouldn't be set back ten feet. If you were to ask for a permit  
423 today, you could have to set it back five feet, just over five feet.  
424

425 Mr. Blankinship - Right. It's 35 feet from the projected right-of-way. It  
426 appears from the information we have that 11520 is a little bit too small also to  
427 build a dwelling. If the two lots were combined, you'd have enough for one. You'd  
428 have 30,000 square feet of area outside the floodplain. But you would end up  
429 having to acquire the whole lot. It wouldn't be a matter of buying ten or fifteen  
430 feet from them; you'd have to acquire the entire property. Really the house would  
431 end up on that property.  
432

433 Ms. Harris - Do you know the assessment of that parcel? I thought  
434 from our notes that the owners were considering asking for at least the  
435 assessment.  
436

437 Mr. Baker - I do not know what the assessed value of 11520 is.  
438

439 Mr. Blankinship - It's \$38,000.  
440

441 Mr. Wright - I wonder if that would have been a better spend than  
442 the \$35,000 that was invested in circumventing all the other zoning  
443 requirements.  
444

445 Mr. Baker - That property isn't actively listed. It was purchased in  
446 2006. We are where we are with regards to the past purchase. They didn't  
447 understand—you need to understand they did not understand that there was an

448 issue with this property when they bought it. They weren't buying one lot; they  
449 were buying six lots. They thought they were buying six lots. We may have more  
450 than one buildable lot or worst case we can consolidate them and build one.  
451 That was the context in which the purchase was made. Now they realize that  
452 the— constrained. They've already made the purchase. They already have that  
453 investment. They've done the floodplain study on top of that. Now to talk about  
454 purchasing a \$38,000 lot to achieve one home, that did not work in the market. It  
455 increased the hardship, more of a hardship. It would be a deal killer, just that  
456 cost alone.

457  
458 Mr. Nunnally - The people that own the lot assessed at \$38,000,  
459 they're here today, aren't they.

460  
461 Ms. Harris - Yes.

462  
463 Mr. Nunnally - Do you have the assessment evaluation with you that  
464 you received from the County?

465  
466 Mr. Blankinship - I have it on the computer here. It's \$38,000.

467  
468 Mr. Nunnally - Okay. Thank you.

469  
470 Ms. Harris - The highlighted area in green, is that for the septic?

471  
472 Mr. Baker - That is.

473  
474 Ms. Harris - Should this property be improved, the perspective  
475 owners would have a difficult time—conditions and whatever else, landscaping  
476 and everything else.

477  
478 Mr. Baker - They would just need to understand the constraints. I  
479 think at the same time they would have some limitations and they would have  
480 some benefits in terms of buffering.

481  
482 Mr. Wright - I take it you've read the conditions.

483  
484 Mr. Baker - Yes.

485  
486 Mr. Wright - You're in accord with the conditions?

487  
488 Mr. Baker - [Inaudible; audio too low.]

489  
490 Ms. Harris - Mr. Baker, in your experience, have you seen  
491 anything like this done before in the County?

492

493 Mr. Baker - I've not personally been involved with anything similar  
494 to this.  
495  
496 Ms. Harris - I've seen a house that was built in a floodplain.  
497 Beautiful home, you can see the rooftop of it but they're having a difficult time  
498 maintaining ownership of that property. I'm wondering are we creating a monster  
499 here should this case be approved.  
500  
501 Mr. Blankinship - In the time I've been here, the Board has approved I  
502 think two or three variances of this nature. There was a case a couple of years  
503 ago where we actually rezoned some property from C-1 to A-1 and then they  
504 raised [inaudible; audio too low] out of the floodplain.  
505  
506 Mr. Wright - I'll go back to my question if he was in accordance  
507 with the conditions.  
508  
509 Mr. Baker - I didn't see anything in the conditions that—  
510  
511 Mr. Wright - I just want to know if we were to approve this, these  
512 conditions would be approved.  
513  
514 Mr. Baker - These seem fine.  
515  
516 Mr. Blankinship - Our biggest concerns in terms of how they would  
517 affect you are #8 requiring drainage improvements. You said that you've  
518 explored that already with Public Works. And #2, which specifies that the  
519 setback is measured from the right-of-way line.  
520  
521 Mr. Baker - In the previous meeting, we were up to eight. The  
522 most recent [unintelligible]. Can I see seven and eight?  
523  
524 Mr. Wright - These are a little different, aren't they.  
525  
526 Mr. Blankinship - Yes, they are.  
527  
528 Mr. Wright - That's why I wanted to review them.  
529  
530 Mr. Blankinship - You've been corresponding more with—.  
531  
532 Mr. Baker - Do you think I could have a moment to review  
533 these—  
534  
535 Mr. Blankinship - Absolutely.  
536  
537 Mr. Baker - —and discuss it?  
538

539 Ms. Harris - That'll be fine. We will give anyone else who wishes  
540 to speak to this case an opportunity. Is there anyone else who would like to  
541 speak to this case?

542  
543 Ms. Fenner, did you get a copy of the report in the lobby before you came in?  
544 We have your sworn testimony from the time you did speak before that's  
545 attached.

546  
547 Ms. Fenner - This is mine here. I just wanted to make mention  
548 that—.

549  
550 Ms. Harris - I should say please identify yourself and spell your  
551 last name.

552  
553 Ms. Fenner - My name is Jennie Fenner—F-e-n-n-e-r. I would like  
554 to know is there any additional information that you would like from me. My main  
555 concern is that any house that's going to be built on that property, when we sell our  
556 property the front of the house that's going to be built on our property would be  
557 facing the back of the property in question.

558  
559 Ms. Harris - Because of the setback requirements?

560  
561 Ms. Fenner - And also our concern was that any runoff from that  
562 property would possibly come over to ours. That would possibly be a problem.

563  
564 Ms. Harris - Yes, I think that was in your last testimony.

565  
566 Ms. Fenner - Yes it was.

567  
568 Ms. Harris - Anything else that you did not tell us before? Do you  
569 want to take a minute to look at what was just presented to you?

570  
571 Mr. Wright - While she's doing that I want to ask Mr. Blankinship a  
572 question.

573  
574 Ms. Harris - Okay.

575  
576 Mr. Wright - Could a house be built on this property without a  
577 variance?

578  
579 Mr. Blankinship - I don't believe so. I don't have enough information to  
580 answer definitively. The information in front of me looks like she has about  
581 28,000 square feet outside the floodplain, but I don't have a survey.

582  
583 Mr. Wright - The house could be built. That would be the only  
584 variance.

585  
586 Mr. Blankinship - Yes sir. She could meet the required setbacks. Again,  
587 assuming the floodplain on our County maps is accurate. It's not intended to be  
588 accurate to the foot.  
589  
590 Mr. Wright - When we granted these other ones [inaudible; audio  
591 fades out] floodplain basically. We weren't granting rear yards and front, I don't  
592 think.  
593  
594 Ms. Fenner - I don't see anything else; that was it. Thank you.  
595  
596 Mr. Wright - I think it's only fair that they be given an opportunity to  
597 review the restrictions, the conditions. They've been changed since the last time.  
598  
599 Ms. Harris - Exactly. Do we want to take a rest here until we can  
600 get the information? In the middle of this testimony, do we need a motion to table  
601 this?  
602  
603 Mr. Blankinship - It wouldn't hurt.  
604  
605 Ms. Harris - Can I have a motion to—  
606  
607 Mr. Witte - I'll make the motion to table this for ten minutes.  
608  
609 Ms. Harris - Is there a second?  
610  
611 Mr. Nunnally - Second.  
612  
613 Ms. Harris - Moved by Mr. Witte, seconded by Mr. Nunnally that  
614 we **table this presentation at this time for about ten minutes**. All in favor say  
615 aye. All opposed say no. The ayes have it; the motion passes.  
616  
617 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5  
618 Negative: 0  
619 Absent: 0  
620  
621 Ms. Harris - We will move on to look at the minutes. Are there any  
622 corrections to the minutes?  
623  
624 Mr. Witte - On line 324, on page 880. It says Mr. Bruce. That  
625 should actually be Mr. Witte.  
626  
627 Ms. Harris - Thank you. On page 10, line 421. The comment by  
628 Mr. Blankinship, I think he might have said, "so you'll see a couple of small  
629 changes." I think the word "see" has been omitted. Mr. Blankinship, do you  
630 agree?

631  
632 Mr. Blankinship - Yes ma'am.  
633  
634 Ms. Harris - Are there any other corrections to the minutes? A  
635 motion is in order to approve the minutes.  
636  
637 Mr. Bruce - I so move.  
638  
639 Ms. Harris - Do we have a second?  
640  
641 Mr. Nunnally - Second.  
642  
643 Ms. Harris - It have been moved by Mr. Bruce, seconded by Mr.  
644 Nunnally that the **minutes be approved as corrected**. Are there any questions  
645 on the motion?  
646  
647 Mr. Wright - I'll abstain since I wasn't here.  
648  
649 Ms. Harris - All in favor say aye. All opposed say no. The ayes  
650 have it; the motion passes.  
651  
652 Ms. Harris - Motion by Mr. Bruce, second by Mr. Nunnally that the  
653 minutes be approved as corrected. All in favor say aye. All opposed say no. The  
654 ayes have it; the motion passes.  
655  
656 Affirmative: Bruce, Harris, Nunnally, Witte 4  
657 Negative: 0  
658 Absent: 0  
659 Abstain: Wright 1  
660  
661 Ms. Harris - Now let's go back to our case. Mr. Baker, are you  
662 ready to proceed? Have you reviewed the conditions?  
663  
664 Mr. Baker - Yes. There aren't any issues with those.  
665  
666 Ms. Harris - No issues with the conditions.  
667  
668 Mr. Baker - To the extent that there are new issues, they appear  
669 to have developed out of conversations that have taken place since that first  
670 continuance. I heard that there was a concern. It sounded as though there might  
671 be some concern with regards to—. I was trying to listen while she was talking.  
672  
673 Mr. Blankinship - I think the two issues she raised were the setback  
674 issue that we had discussed briefly; she's afraid if she builds a house on her  
675 property the front of that will look into the back of the house you're proposing.

676 The other issue is that she's concerned that any change to your property may  
677 affect drainage going onto her property.

678

679 Mr. Baker - With regards to the drainage issue, this has been  
680 reviewed by the County to a great extent. Of course in that review of the cut-and-  
681 fill, he was not only determined that the house on that piece of property  
682 [inaudible; audio fades out] not be affecting the floodplain level. That's been  
683 approved by the County as far as I understand.

684

685 Mr. Blankinship - Do you know which way the water flows?

686

687 Mr. Baker - I believe it flows towards the property. Some drainage  
688 that comes actually across the—

689

690 Mr. Blankinship - Towards the property. From her property onto yours  
691 or from your property onto hers?

692

693 Mr. Baker - I don't know that. My assumption was that it went  
694 towards 11520. Is that correct?

695

696 Mr. Blankinship - I don't believe so. I believe it flows towards the south.  
697 I'm looking at a topo map here on my computer and it appears that the water  
698 flows from your property away from hers.

699

700 Mr. Baker - That would certainly benefit with regards to her. But  
701 again, you know, it's going to be skewed [inaudible; audio fades out]. And then  
702 with regards to the concern about building a home on the adjacent property,  
703 obviously constructing it as we're proposing and maintaining a quarter-acre  
704 buffer around it which is undisturbed is going to limit the impacts. For instance, if  
705 you see 11540 and the property north of that, those properties are clearly visible  
706 to each other. The pictures I showed you within this corridor, there are instances  
707 where you have lots that are substantially wooded. In those cases it's difficult to  
708 even see the home on the site. I would argue that from the perspective of 11520  
709 this home won't even be visible should you have a home that was set back  
710 further based on the fact that the fill and the floodplain the area would not be  
711 disturbed since it wraps around the back of that house and provides screening. I  
712 think as proposed there are factors that would—.

713

714 I did have an update if I could really quickly with regards to the adjacent property.  
715 We know there's a floodplain, but I think there were concerns on the part of the  
716 owner with regards to hydric soils and potential wetlands. Those are sort of  
717 question marks. Again, they're not building in the floodplain. I do understand—.

718

719 Ms. Harris - Let me ask you this. Would you conclude that two-  
720 thirds of this site is located in the floodplain?

721



722 Mr. Baker - [Inaudible; audio fades out] within the floodplain.  
723  
724 Ms. Harris - Are there any other questions from Board members?  
725  
726 Mr. Blankinship - I just have one thing, Madam Chairman. You had  
727 mentioned a couple of times, Mr. Baker, that with the right buyer, the right person  
728 living on this property the constraints could almost be seen—. Who is  
729 responsible for making sure that the buyer is fully aware of those constraints?  
730  
731 Mr. Baker - That's a good question. The seller obviously. I guess  
732 your question would be the second or third transaction down the road. Could it  
733 be addressed if you put a condition or something—? I'm sure there's some  
734 mechanism you could put in place that could make that clear to—I don't think it's  
735 going to be an issue first time around, but the question would be the person that  
736 five to ten years from now wants to go back in and clear for a shed here, etc. I  
737 think you could handle that.  
738  
739 Mr. Blankinship - Currently the buyer is responsible for doing due-  
740 diligence and discovering things like that. That's my concern.  
741  
742 **DECISION**  
743  
744 Ms. Harris - With reference to VAR2010-00002, what is your  
745 pleasure?  
746  
747 Mr. Witte - Madam Chairman, I'm going to make a motion that  
748 we deny this variance request. I think it is detrimental to the safety of the  
749 residents with the proposed widening of Greenwood Road. I also think that the  
750 flood plan requirements could be eased with the purchase of the other lot. I just  
751 don't see where this is going to benefit the community or future purchasers of the  
752 house.  
753  
754 Ms. Harris - Is there a second to this motion? I second the motion.  
755 I feel that if we use this case as a rule of thumb, we could almost go through  
756 Henrico County and build on floodplain areas. It's sort of negating the fact that  
757 there is a reason for this designation as a floodplain and to me justifies that it's  
758 an unbuildable site. To me that would be opening up problems for would-be  
759 purchasers.  
760  
761 There is one other concern that I had, too. As far as the zoning is concerned, I  
762 don't think we're in a position to change the zoning from this Board's standpoint.  
763 To do a spot zoning, I don't think that's our purpose, our mission. So I do  
764 second that motion.  
765  
766 Mr. Wright - I would like to address some of the legal concerns.  
767

768 Ms. Harris - Do you want me to just say that it's been moved and  
769 properly seconded? Okay. Moved by Mr. Witte, seconded by Ms. Harris that this  
770 request be denied. Now are there any questions.

771  
772 Mr. Wright - Yes, discussion. I don't think there's any question, but  
773 I think this case gets by the Cochran requirement. In other words, this ordinance  
774 or whatever has been done as far as the floodplain and the County ordinance  
775 certainly interferes with all reasonable beneficial uses of the property. So there's  
776 no Cochran question here.

777  
778 Then we have to apply the tests that the statute requires us to apply. First of  
779 which is if it's affected by exceptional narrowness, shallowness, etcetera, or  
780 other extraordinary situations. I think it certainly meets that. That one's okay.

781  
782 My concern is—and the ordinance says once you get by Cochran, no such  
783 variance shall be authorized by the Board unless it finds—and then we have  
784 these four tests. I think you get by test number one that strict application would  
785 produce an undo hardship; no problem with that. I think number two, that it's not  
786 shared generally by other properties except the ones in the immediate vicinity; I  
787 think you get by that. My concern is number three. Test number three says that  
788 the authorization of the variance will not be of substantial detriment to adjacent  
789 property and that the character of the district will not be changed. I don't think the  
790 applicant has satisfied that test because I think it does substantially affect and  
791 it's a detriment to adjacent properties. And also I think it affects the character of  
792 the district. Therefore, I favor the motion.

793  
794 Ms. Harris - Any more discussion on this motion?

795  
796 Mr. Witte - I do have a couple of things I want to bring up. One of  
797 my concerns is the drain field issue. If the road is widened, it could very possibly  
798 compromise or reduce the size of the drain field, being detrimental to the  
799 property owner. And I'm concerned with the depth of the rear yard, actually  
800 minimizing the use that people have of their property as far as a garage or any  
801 future—which may or may not occur. But even a deck may protrude into the  
802 area. In general I'm really concerned about the safety issue for the future. As we  
803 know, Henrico bought a substantial amount of property because it was so close  
804 to the floodplain in Lakeside years ago. I just have concerns with the widening of  
805 the road, which is proposed in close proximity to the drain field. I really believe  
806 it's going to end up being a safety issue.

807  
808 Ms. Harris - Is there any more discussion? Are we ready to vote?  
809 All in favor to deny this case say aye. All opposed say no. The ayes have it; the  
810 motion passes. It's a unanimous vote and this case has been denied.

811  
812 After an advertised public hearing and on a motion by Mr. Witte, seconded by  
813 Ms. Harris, the Board **denied** application **VAR2010-00002, Liberty Homes,**

814 **Incorporated's** request for a variance from Sections 24-95(t), 24-95(u)(1)b and  
815 24-95(c)(4) of the County Code to build a one-family dwelling at 11510  
816 Greenwood Road (Lakeview) (Parcel 772-774-9333), zoned A-1, Agricultural  
817 District (Brookland). The total lot area requirement, rear yard setback, and front  
818 yard setback are not met.

819  
820 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5  
821 Negative: 0  
822 Absent: 0

823  
824 Ms. Harris - Any more business before this body today? Mr.  
825 Blankinship, you did share something with us that pertains to the Cochran  
826 opinion.

827  
828 Mr. Blankinship - Yes. We can discuss that another time.

829  
830 Ms. Harris - Okay. A motion is in order to adjourn the meeting.

831  
832 Mr. Nunnally - So moved.

833  
834 Mr. Wright - Second.

835  
836 Ms. Harris - Moved by Mr. Nunnally, seconded by Mr. Wright that  
837 the meeting will be adjourned. All in favor say aye. All opposed say no. The  
838 ayes have it; the motion passes. The meeting is adjourned.

839  
840 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5  
841 Negative: 0  
842 Absent: 0

843

844

845

846

847

848 Helen E. Harris  
849 Chairman

850

851

852

853

854

855 Benjamin Blankinship, AICP  
856 Secretary

857