

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, JANUARY 24, 2008, AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **JANUARY 3, 2008 AND JANUARY 10, 2008.**

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8  
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 Jr., Assistant Director of Planning  
Benjamin Blankinship, Secretary  
Paul Gidley, County Planner  
Carla Brothers, Recording Secretary

9  
10 Mr. Kirkland - All right, ladies and gentlemen. Welcome to the  
11 January Board of Zoning Appeals meeting. Before we get started, if we could all  
12 rise and say the **Pledge of Allegiance to the Flag of Our Country**. Mr.  
13 Secretary, if you would read the rules of the meeting please.

14  
15 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,  
16 ladies and gentlemen. The rules for this meeting are as follows. Acting as  
17 Secretary, I will call each case and while I’m reading, the applicant should come  
18 down to the podium. We will then ask all those who intend to speak in favor or  
19 opposition to that case to stand and be sworn in. The applicant will then present  
20 their testimony. After the applicant has spoken, anyone else who wishes to will  
21 be given an opportunity to speak. After everyone has spoken, the applicant, and  
22 only the applicant, will have an opportunity for rebuttal. After everyone has  
23 spoken and the Board has asked their questions, the Board will take the matter  
24 under advisement. They will render all of their decisions at the end of the  
25 meeting. If you wish to know their decision on a specific case, you can either  
26 stay until the end of the meeting, or you can check the Planning Department  
27 website this afternoon—we usually get it updated about a half an hour after the  
28 meeting ends—or you can call the Planning Department this afternoon.

29  
30 This meeting is being tape recorded, so we’ll ask everyone who speaks to speak  
31 directly into the microphone on the podium, state your name, and please spell  
32 your last name so we get it correctly in the record.  
33

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

37

38 Mr. Kirkland - Do we have any requests for withdrawals or  
39 deferrals?

40

41 Mr. Blankinship - No sir.

42

43 Mr. Kirkland - All right, then, call the first case.

44

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

53

54 Mr. Kirkland - Does anyone else wish to speak on this case? If not,  
55 ma'am, would you raise your right hand and be sworn in?

56

57 Ms. Waldrop - Good morning.

58

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

61

62 Ms. Waldrop - I do.

63

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

65

66 Ms. Waldrop - Lestra Waldrop.

67

68 Mr. Kirkland - Okay, ma'am, what are you requesting of this Board?

69

70 Ms. Waldrop - Well, I'm an agent with Varina and Seelmann Realty.  
71 We were deferred from last month's hearing. The requirements for road frontage  
72 are not met on this lot. Mr. Tyler wants to sell this lot. He has come to the  
73 conclusion that he wants to sell the property. There is a concept road that goes  
74 through we believe one end of the property. The gentleman who has the  
75 contract to purchase the property did send me building plans. You all wanted to  
76 see the house plans. I have, embarrassingly, misplaced them and I have been  
77 looking for them for two days in all my other files thinking that I may have misfiled  
78 them. They've vanished. It is a standard 1,200 to 1500 square-foot vinyl rancher  
79 with a country front porch and a deck off the back. We believe that this will

80 certainly not impact the neighborhood. It is in keeping with the house that is  
81 located behind this property. He was concerned about the impact of the concept  
82 road. We have another hurdle to clear and we have not done that. We wanted to  
83 get the variance first to make sure that we had a buildable lot. We also have to  
84 have the lot perked. So, we have that hurdle to get over once we get this  
85 variance accepted.

86  
87 Ms. Dwyer - I believe last month we talked about a reservation of  
88 property for the concept road and that was something you were going to go back  
89 and discuss with your client.

90  
91 Ms. Waldrop - We did. We did discuss it. He's out of town, of  
92 course, this week, the purchaser of the property. We realize that we have to  
93 have land set on either side of this concept road to allow for a barrier.

94  
95 Mr. Blankinship - Have you contacted the Department of Public Works  
96 to make any progress on that?

97  
98 Ms. Waldrop - No. The purchaser was going to do that and he did  
99 not. I talked to them yesterday and we have not physically. All I have is your  
100 maps here. I've asked him to do that.

101  
102 Ms. Dwyer - In my view, the case is not right for decision if we  
103 don't have a resolution to the concept road.

104  
105 Ms. Waldrop - What you're saying is that you want something in  
106 writing from the purchaser stating that he will indeed give the land?

107  
108 Mr. Kirkland - I guess we need to see also the concept road, your  
109 50 feet, and where the location of this home would be in reference to that 50 feet.

110  
111 Ms. Waldrop - Right. It's a two-acre parcel and it is a rectangular  
112 parcel. The concept road goes, we estimate, over the right-hand property barrier  
113 about a third, a quarter to a third of the way in.

114  
115 Ms. Dwyer - I guess my perspective, at least, is that what you're  
116 asking us is to undo the law. The law requires you to have 50-foot frontage. The  
117 law requires you to meet certain lot depth or width requirements that you don't  
118 meet. In order for us to, in effect, say the law doesn't apply to you in this case,  
119 which to my mind is a very extraordinary thing—

120  
121 Ms. Waldrop - Well, I understand that.

122  
123 Ms. Dwyer - —we need to have some assurance that some of the  
124 issues that are raised by the fact that this is a substandard, non-complying lot are  
125 resolved before we consider that. One of those is the future of this concept road,

126 so we would want to have it clear that the owner and the prospective purchaser  
127 agree and are able to reserve that 50-foot strip for the concept road. We need to  
128 have some idea of where that is in relation to where the house is going to be  
129 because this is an extraordinary request. Those are the reasons, I think, why we  
130 feel like we need that information before we make a decision.

131

132 Ms. Waldrop - Okay. Do you want that in writing and then a drawing  
133 showing the footage, maybe, of one of the house from that 50-foot right-of-way?  
134 Is that what you're asking?

135

136 Mr. Blankinship - I'm looking at the letter that I sent you right after the  
137 last meeting and it says, "You and your client should meet with the Department of  
138 Public Works at your earliest convenience to determine the location of the  
139 concept road crossing the property." I give you the name and phone number.

140

141 Ms. Waldrop - Right.

142

143 Mr. Blankinship - "Once you determine the location of the concept road,  
144 you should submit a plat showing reservation of right-of-way, and the location  
145 and orientation of the proposed dwelling.

146

147 Ms. Waldrop - I understand.

148

149 Mr. Blankinship - Those are the two steps.

150

151 Ms. Waldrop - I understand it. Okay. Well, we will take care of that.  
152 Can we defer until next month then, bring this up in February?

153

154 Mr. Nunnally - I think it would be wise if you brought the builder down  
155 here, too, with you.

156

157 Ms. Waldrop - Okay, I can do that. I will do that.

158

## 159 **DECISION**

160

161 Mr. Kirkland - Can we make a motion to defer now?

162

163 Mr. Nunnally - Yes. I move we defer this until next month.

164

165 Mr. Kirkland - Second please.

166

167 Ms. Dwyer - Second.

168

169 Mr. Kirkland - Motion made by Mr. Nunnally, seconded by Ms.  
170 Dwyer. All those in favor say aye. All those opposed say no. The ayes have it;  
171 the motion passes. It's been deferred.

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After an advertised public hearing the Board **deferred** application **A-043-07**, until the February 28, 2008 meeting at the request of the applicant.

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

Mr. Blankinship - I should announce at this point that this is one of two cases that was deferred from last month. The previous case was also deferred (3 total), but this case and the next one were deferred with the understanding that the public hearing was closed. The Board needed some additional information primarily from staff and may ask questions of applicants, but the public hearing itself will not be reopened for these two cases.

**UP-018-07** **GILLIES CREEK INDUSTRIAL RECYCLING, LLC** requests a conditional use permit pursuant to Section 24-88(c) to develop a wetlands mitigation bank at 5500 White Oak Drive (Parcels 864-704-2093, 860-709-5622 and 863-706-3470), zoned C-1, Conservation District (Varina).

Mr. Kirkland - If you would, sir, and anyone else that might give testimony, please raise your right hand and be sworn in.

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

Mr. Morgan - I do.

Mr. Kirkland - All right, sir, if you'll state your name for the record.

Mr. Morgan - Kelby Morgan.

Mr. Kirkland - Have you come to an agreement on the questions that we asked last month?

Mr. Morgan - Yes sir.

Mr. Kirkland - If you would state them, please. One thing was the trucks.

Mr. Morgan - Yes. We had a meeting a couple of weeks ago with Henrico, New Kent, VDOT, and ourselves and mutually came to agreement on how the property is going to be accessed and the volume of trucks that will be coming in and out. Everyone is in agreement on how the CUP is currently written.

218 Mr. Wright - Are these the conditions that are set forth in the staff  
219 report, Mr. Blankinship?  
220  
221 Mr. Blankinship - Yes sir. That has been reviewed by the applicant, by  
222 New Kent County staff, by VDOT staff, and our staff.  
223  
224 Mr. Wright - So, New Kent is in accord with these.  
225  
226 Mr. Blankinship - Yes sir and Mr. Vaughn is here if you have any  
227 questions.  
228  
229 Mr. Wright - Are these now incorporated in our conditions, the  
230 conditions that were agreed upon?  
231  
232 Mr. Blankinship - Yes. The one change that staff would recommend  
233 that is not reflected in what's in front of you—and this will catch both of them by  
234 surprise—is in condition #29. Look at the second sentence of that condition. It  
235 reads, "Restoration shall not be considered completed until the disturbed area is  
236 covered completely with permanent vegetation and is approved as a wetlands  
237 mitigation bank," etc. The Corps of Engineers commented that a lot of the  
238 property is going to remain as standing water which is not covered with  
239 vegetation. So strictly speaking, their proposed plan does not show the entire site  
240 covered with vegetation. We have proposed just striking those words so that it  
241 reads, "Restoration shall not be considered completed until the disturbed area is  
242 approved as a wetlands mitigation bank by the U. S. EPA, U. S. Army COE  
243 Mitigation Bank Review Team."  
244  
245 Mr. Wright - Okay.  
246  
247 Ms. Dwyer - Essentially, we're just putting the restoration of this  
248 property in the hands of the EPA and the Corps—  
249  
250 Mr. Blankinship - Right.  
251  
252 Ms. Dwyer - —because that's their jurisdiction.  
253  
254 Mr. Blankinship - Right.  
255  
256 Ms. Dwyer - Were you finished, Mr. Wright?  
257  
258 Mr. Wright - Yes.  
259  
260 Ms. Dwyer - I have a question about condition #20, the last  
261 sentence, last two sentences, I guess. It reads, "At the request of the New Kent  
262 County Zoning Administration, the Henrico County Planning Director may  
263 approve exceptions from this condition," which is the number of vehicles per day.

264 I assume if the request comes from New Kent, then the request would be to  
265 reduce the number of trucks.

266

267 Mr. Blankinship - It would be to allow them an exception from the  
268 limitation. We modeled this on a condition that we use for two of the landfills in  
269 the County where they are not permitted to accept any refuse on Sunday. If  
270 there is some kind of an emergency and there is 50 tons of refuse outside, we  
271 would rather have it in the landfill than outside of the landfill. We had that the  
272 Planning Director has the authority to grant them an exception and to allow them  
273 to bring that material in for good cause shown.

274

275 Ms. Dwyer - The idea is that the applicant would speak to New  
276 Kent and then New Kent would make the request to Henrico to allow more trucks  
277 or to allow trucks—

278

279 Mr. Blankinship - Right.

280

281 Ms. Dwyer - —to come at a time when they're not presently  
282 allowed.

283

284 Mr. Blankinship - Right. If he can convince New Kent County that it's in  
285 their best interest to allow an exception to this—

286

287 Ms. Dwyer - Okay.

288

289 Mr. Blankinship - —then we'll go along with their finding.

290

291 Ms. Dwyer - Could it also mean that New Kent could apply to  
292 Henrico and say I want a reduction in the number of trucks?

293

294 Mr. Blankinship - No. I think it would only be an exception to this  
295 condition and the condition is a limitation on the number. It's a maximum number.  
296 We would have the authority to make an exception from that limitation on the  
297 number.

298

299 Ms. Dwyer - I think that it possibly could be ambiguous and it could  
300 read that New Kent could come in and say we think 28 is too many, we want to  
301 have fewer so we want to change this condition.

302

303 Mr. Blankinship - So, you think instead of saying, "Director of Planning  
304 may approved exceptions from this condition," it should say something like, "The  
305 Henrico County Director of Planning may approve more trucks than would be  
306 allowed by this condition"?

307

308 Ms. Dwyer - Couldn't you read "exception" to mean that the cap  
309 could be lowered?

310  
311 Mr. Blankinship - I don't think so.  
312  
313 Ms. Dwyer - Okay.  
314  
315 Mr. Blankinship - The meat of the condition is a limit on the maximum  
316 number. It shall not exceed.  
317  
318 Mr. Nunnally - On this evaluation thing you have here, Ben, on #3 for  
319 nine months he has the average number of trucks entering and leaving the site  
320 shall not exceed 28 per day. Number 4, for three months of each year they have  
321 the number of trucks entering and leaving the site shall not exceed 56 per day.  
322  
323 Mr. Blankinship - Right.  
324  
325 Mr. Nunnally - Then #5, the Zoning Administration, which is you,  
326 may grant exceptions to the limitation on the number of trucks. What does that  
327 mean?  
328  
329 Mr. Blankinship - That was the compromise that everyone at that  
330 meeting agreed to that allows New Kent County to be comfortable knowing that  
331 there are maximum numbers in place, but it also allows Gillies Creek to be  
332 comfortable knowing that if they get a call out of the blue saying, "We've got x-  
333 thousand yards of material that we need removed this weekend, can you take it,"  
334 they'll be able to say, on a short-term basis, "Yes, we'll accept that material from  
335 you." They didn't want to be turning away customers and nobody wants trucks  
336 full of material to be traveling a hundred miles if they can only travel twenty miles.  
337 New Kent wanted a maximum in place of some sort. They were not comfortable  
338 leaving the meeting without some sort of a maximum. This was the solution that  
339 everyone was willing to agree to.  
340  
341 Mr. Kirkland - I agree with Ms. Dwyer that the last two sentences do  
342 kind of give it an open end.  
343  
344 Mr. Blankinship - Do you want to propose something more precise?  
345  
346 Mr. Kirkland - It could go either way. It could be up or down.  
347  
348 Mr. Wright - Well, so what? If they're happy with it—  
349  
350 Mr. Kirkland - Yes, that's fine, but I want them to understand that.  
351  
352 Ms. Dwyer - I just don't want to have an ambiguous condition. That  
353 was my reason for raising it. Mr. Morgan, do you understand what—  
354



355 Mr. Morgan - Yes. The condition was set for a higher number, not  
356 a lower number.  
357  
358 Ms. Dwyer - Right.  
359  
360 Mr. Morgan - If someone perceives it differently than that, that's a  
361 misconception because that's not what—  
362  
363 Ms. Dwyer - Of what it's intended.  
364  
365 Mr. Morgan - Yes. We agreed that if all of a sudden we need a big  
366 flux, that we can notify New Kent. If they agree, then it goes down the line. The  
367 point being was that New Kent could notify their sheriff's office that for x-number  
368 of days there are going to be a lot of trucks coming in here.  
369  
370 Mr. Kirkland - I just want to make sure you guys understand that.  
371  
372 Mr. Morgan - Yes.  
373  
374 Mr. Blankinship - New Kent can always say no as well. If it's a day  
375 when there's some event going on at Patriot's Landing, they're just going to say  
376 no.  
377  
378 Ms. Dwyer - I know what you intended. I understand that. My  
379 question is, does what is written, accurately and unambiguously convey what you  
380 intended. As I read it, it's possible that New Kent could come in and say, "We  
381 don't like the 28, we want 25," and then Henrico would look at it—  
382  
383 Mr. Morgan - We would not want that, no.  
384  
385 Ms. Dwyer - Right.  
386  
387 Mr. Morgan - We would not want to agree to that.  
388  
389 Ms. Dwyer - The question is does this language allow that.  
390  
391 Mr. Morgan - Yes. I don't know.  
392  
393 Mr. Blankinship - I think now that this conversation is on record we'll  
394 know how to interpret it. I'll be happy to change the wording if you want to  
395 propose something.  
396  
397 Mr. Morgan - I don't want to speak for New Kent, but I don't think  
398 would agree to—  
399

400 Mr. Blankinship - If you want to propose something more precise, I'll be  
401 happy to change it.  
402  
403 Ms. Dwyer - Okay, well—  
404  
405 Mr. Kirkland - As long as they understand, Ms. Dwyer, do you have  
406 any change?  
407  
408 Ms. Harris - Question. Where do the 56 trucks per day come in?  
409 Did we mention that at the last meeting? I don't recall mentioning that.  
410  
411 Mr. Blankinship - I think the technical term is horse-trading.  
412  
413 Mr. Kirkland - Compromise.  
414  
415 Mr. Morgan - Yes. It's nothing magic about it.  
416  
417 Ms. Harris - I like the sentence that deals with including exceptions  
418 from this condition because we really don't know how all of this is going to impact  
419 the safety on that highway or the road. I like having this clause in so that we can  
420 adjust it upwards or adjust it down depending on the results that we actually see.  
421 We want no one to be injured or no one's safety to be affected adversely, so I  
422 like the flexibility of this particular statement.  
423  
424 Ms. Dwyer - To comply with what the parties have intended, you  
425 might say, "The Director of Planning may approve increases in the volume of  
426 trucks."  
427  
428 Mr. Blankinship - That's fine.  
429  
430 Ms. Dwyer - It could be the number or the day or the month. I  
431 think that's specifically what you all agreed to as I read the summary of your  
432 meeting.  
433  
434 Mr. Blankinship - That's correct.  
435  
436 Ms. Dwyer - Personnel changes and often people aren't going to  
437 bother to come back and read our minutes. It's better to have it in the condition  
438 itself.  
439  
440 Mr. Blankinship - Sure. I'm happy to make that change.  
441  
442 Ms. Harris - Is this okay with New Kent?  
443  
444 Mr. Kirkland - Any other questions by Board members? Anyone  
445 else wish to speak? That concludes the case. Thank you, sir.

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**DECISION**

Mr. Wright - I move we approve it.

Mr. Nunnally - Second.

Mr. Wright - With a condition changed to the language that Ms. Dwyer put in there to make sure there was no ambiguity.

Ms. Dwyer - Condition 20. The applicant, I believe, agreed to that.

Mr. Kirkland - Right, yes. Motion made by Mr. Wright, seconded by Mr. Nunnally. All those in favor say aye. All those opposed say no. The ayes have it; the motion passes. The case was approved.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application **UP-018-07**, Gillies Creek Industrial Recycling's request for a conditional use permit pursuant to Section 24-88(c) to develop a wetlands mitigation bank at 5500 White Oak Drive (Parcels 864-704-2093, 860-709-5622 and 863-706-3470), zoned C-1, Conservation District (Varina). The Board granted the use permit subject to the following conditions:

1. This conditional use permit supersedes UP-031-06 and UP-002-07, which are hereby revoked.
2. The operation shall be conducted in accordance with the plans and narrative submitted with the application, except as noted below.
3. Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of \$226,200, guaranteeing that the land will be restored to a wetlands mitigation bank. This permit does not become valid until the financial guaranty has been approved by the County Attorney. The financial guaranty may provide for termination after 90 days notice in writing to the County. In the event of termination, this permit shall be void, and work incident thereto shall cease. Within the next 90 days the applicant shall restore the land as provided for under the conditions of this use permit. Termination of such financial guaranty shall not relieve the applicant from its obligation to indemnify the County of Henrico for any breach of the conditions of this permit. If this condition is not satisfied within 90 days of approval, the permit shall be void.
4. Before beginning any work, the applicant shall apply for and obtain approval of erosion and sedimentation control plans from the Department of Public Works (DPW). The erosion control bond necessary for approval of the plan shall remain active throughout the life of the project until release by DPW. Throughout the life

492 of the operation, the applicant shall continuously satisfy DPW that erosion and  
493 sedimentation control is performed and maintained in accordance with the  
494 approved plan. The applicant shall provide certification from a licensed  
495 professional engineer that dams, embankments and sediment control structures  
496 meet the approved design criteria as set forth by the State. If this condition is not  
497 satisfied within 90 days of approval, the use permit shall be void.

498  
499 5. Before beginning any work, the applicant shall obtain all necessary permits  
500 from the United States Army Corps of Engineers and the Virginia Department of  
501 Environmental Quality. If this condition is not satisfied within 90 days of approval,  
502 the use permit shall be void.

503  
504 6. In the event that the approval of this use permit is appealed, all conditions  
505 requiring action within 90 days will be deemed satisfied if the required actions are  
506 taken within 90 days of final action on the appeal.

507  
508 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
509 state and local regulations administered under such act applicable to the  
510 property, and shall furnish to the Planning Department copies of all reports  
511 required by such act or regulations.

512  
513 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight  
514 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

515  
516 9. No operations of any kind are to be conducted at the site on Saturdays,  
517 Sundays, or national holidays.

518  
519 10. All means of access to the property shall be from the established entrance  
520 onto U.S. Route 60 in New Kent County. This condition shall be enforced in  
521 cooperation with the Virginia Department of Transportation and New Kent  
522 County.

523 11. Before beginning excavation or filling operations, the applicant shall obtain  
524 all necessary approvals for the access road from the Virginia Department of  
525 Transportation and New Kent County. These shall include, but shall not be  
526 limited to, site plan approval of the road, including stormwater management and  
527 erosion and sediment control, County land disturbance permit and VDOT Land  
528 Use Permit.

529  
530 12. Before beginning excavation or filling operations, the applicant shall construct  
531 a 30-foot wide entrance, a right turn lane with 200 feet of taper and 100 feet of  
532 storage, and a left turn lane with 200 feet of taper and 200 feet of storage, all to  
533 Virginia Department of Transportation specifications.

534  
535 13. Before beginning excavation or filling operations, the applicant shall erect  
536 and maintain gates at all entrances to the property. These gates shall be locked  
537 at all times, except when authorized representatives of the applicant are on the

538 property. This condition shall be enforced in cooperation with the Virginia  
539 Department of Transportation and New Kent County.

540

541 14. Before beginning excavation or filling operations, the applicant shall post and  
542 maintain a sign at the entrance to the mining site stating the name of the  
543 operator, the use permit number and the telephone number of the operator. The  
544 sign shall be 12 square feet in area and the letters shall be three inches high.  
545 This condition shall be enforced in cooperation with the Virginia Department of  
546 Transportation and New Kent County.

547

548 15. Before beginning excavation or filling operations, the applicant shall post and  
549 maintain "No Trespassing" signs every 250 feet along the perimeter of the  
550 property. The letters shall be three inches high. The applicant shall furnish the  
551 Chief of Police a letter authorizing the Virginia State Police, the New Kent County  
552 Sheriff's Office and the Henrico County Division of Police to enforce the "No  
553 Trespassing" regulations, and agreeing to send a representative to testify in court  
554 as required or requested.

555

556 16. Before beginning excavation or filling operations, standard "Truck Crossing"  
557 (MUTCD W8-6) signs shall be erected on U.S. Route 60 on each side of the  
558 entrances to the property, at locations approved by the Virginia Department of  
559 Transportation. These signs will be placed at the applicant's expense. This  
560 condition shall be enforced in cooperation with the Virginia Department of  
561 Transportation and New Kent County.

562

563 17. Before beginning excavation or filling operations, the applicant shall post and  
564 maintain at its expense any traffic sign or signal required by the Virginia  
565 Department of Transportation or New Kent County at the entrance to U.S. Route  
566 60. This condition shall be enforced in cooperation with the Virginia Department  
567 of Transportation and New Kent County.

568

569 18. Before beginning excavation or filling operations, the entrance road shall be  
570 paved for a distance of 300 feet from its intersection with U.S. Route 60 and a  
571 width of 24 feet. All roads used in connection with this use permit shall be  
572 effectively treated with calcium chloride or other wetting agents to eliminate any  
573 dust nuisance. Wash racks shall be installed as necessary to prevent the tracking  
574 of mud onto any public street. This condition shall be enforced in cooperation  
575 with the Virginia Department of Transportation and New Kent County.

576

577 19. The operation shall be so scheduled that trucks will travel at regular intervals  
578 and not in groups of three or more.

579

580 20. For nine months of each year, the average number of trucks entering and  
581 leaving the site shall not exceed 28 per day. For three months of each year, the  
582 average number of trucks entering and leaving the site shall not exceed 56 per  
583 day. This condition shall be enforced in cooperation with the Virginia Department

584 of Transportation and New Kent County. The applicant shall maintain records on  
585 site documenting all trucks entering or leaving the site. Such records shall be  
586 available to staff of Henrico County, New Kent County and the Virginia  
587 Department of Transportation during normal hours of operation. At the request of  
588 the New Kent County Zoning Administrator, the Henrico County Director of  
589 Planning may approve increases in the volume of trucks. All requests for  
590 exceptions shall contain the reason, duration and magnitude of the exception  
591 requested.

592

593 21. To limit the total number of truck trips into and out of the site, no truck shall  
594 be allowed to haul material away from the site unless that truck was also used to  
595 haul a full load of material to the site.

596

597 22. Trucks shall be loaded in a way to prevent overloading or spilling of  
598 materials of any kind onto any public road. This condition shall be enforced in  
599 cooperation with the Virginia Department of Transportation and New Kent  
600 County.

601

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

604

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

610

611 25. If water wells located on surrounding properties are adversely affected, and  
612 the operations on this site are suspected as the cause, the effected property  
613 owners may present to the Board evidence that the operation is a contributing  
614 factor. After a hearing, the Board may revoke or suspend this use permit, and  
615 the operator may be required to correct the problem.

616

617 26. All offsite-generated materials deposited on the mining site shall be  
618 documented in a monthly report to the Director of Planning. The operator shall  
619 submit a report stating the origin, nature and quantity of material deposited, and  
620 certifying that no contaminated or hazardous material was included. The material  
621 deposited on the site shall be limited to imperishable materials such as stone,  
622 bricks, tile, sand, gravel, soil, concrete and like materials, and shall not include  
623 any hazardous materials as defined by the Virginia Hazardous Waste  
624 Management Regulations.

625

626 27. A superintendent, who shall be personally familiar with all the terms and  
627 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
628 terms and conditions of this use permit, shall be present at the beginning and

629 conclusion of operations each work day to see that all the conditions of the Code  
630 and this use permit are observed.

631

632 28. Progress reports shall be submitted to the Board, with a copy to the New  
633 Kent County Zoning Administrator, on or about July 31, 2008; January 31, 2009  
634 and July 31, 2009. This progress report must contain information concerning  
635 how much rehabilitation has been performed, when and how the remaining  
636 amount of land will be rehabilitated, and any other pertinent information about the  
637 operation that would be helpful to the Board.

638

639 29. Operations shall be discontinued by January 31, 2010, and restoration  
640 accomplished by not later than January 31, 2011, unless a new permit is granted  
641 by the Board of Zoning Appeals. Restoration shall not be considered completed  
642 until the disturbed area is approved as a wetlands mitigation bank by the U. S.  
643 Environmental Protection Agency and U. S. Army Corps of Engineers Mitigation  
644 Bank Review Team.

645

646 30. Failure to comply with any of the foregoing conditions shall automatically  
647 void this permit.

648

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

650 Negative: 0

651 Absent: 0

652

653 **UP-024-07** **MARTHA WAGNER** requests a conditional use  
654 permit pursuant to Section 24-52(g) to operate a riding academy and stable at  
655 6301 Hines Road (Parcel 853-692-4325), zoned A-1, Agricultural District  
656 (Varina).

657

658 Mr. Kirkland - Is the applicant here? If you would come forward  
659 please. Anyone else? Well, we've already heard all the testimony from the  
660 public.

661

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

664

665 Ms. Wagner - I do.

666

667 Mr. Kirkland - Would you state your name, please?

668

669 Ms. Wagner - My name is Martha Wagner.

670

671 Mr. Kirkland - I believe we had some questions last month  
672 concerning this case. I'm trying to find my notes.

673

674 Mr. Wright - The question is, did we get the information that we  
675 were looking for. From what's stated in the staff report, we haven't received it  
676 yet.

677  
678 Mr. Blankinship - Right. We've had a couple of meetings. As you know,  
679 we've changed directors of Planning since that meeting. The Director of Planning  
680 was promoted and an Acting Director has been appointed. We have met with him  
681 and gone over this. We have exchanged some e-mail with the County Attorney's  
682 Office, but we have not reached a conclusion that everyone is satisfied with at  
683 this time.

684  
685 Ms. Dwyer - Do we have a time schedule for when we will have  
686 something from the Director of Planning and legal counsel, if that's deemed  
687 necessary? Are they aware that this meeting has come up today?

688  
689 Mr. Blankinship - Yes, they are aware of the urgency of the matter.

690  
691 Mr. O'Kelly - In our discussions with the Acting Director, he felt  
692 comfortable with perhaps suggesting a 60-day deferral.

693  
694 Ms. Dwyer - From today.

695  
696 Mr. O'Kelly - From today. The implications on the setback  
697 requirements can affect the vast majority of agricultural operations in Varina. We  
698 need to be absolutely careful where we land on this subject.

699  
700 Ms. Dwyer - So it has far-reaching impact.

701  
702 Ms. Harris - Mr. Blankinship, who did you meet with when you said  
703 "everyone"?

704  
705 Mr. Blankinship - Mr. O'Kelly and I met with Joe Emerson, who is now  
706 the Acting Director of Planning, and Paul Gidley was involved. I'm trying to keep  
707 my meetings straight. Was anyone else at that one?

708  
709 Mr. O'Kelly - Not that I recall.

710  
711 Mr. Wright - I assume the County Attorney's going to have get  
712 involved in it because you have a legal question here, too.

713  
714 Mr. Blankinship - Yes. We have been corresponding with them. They  
715 didn't attend our meetings, but we have been keeping them informed of the  
716 conversations.

717  
718 Ms. Dwyer - Should we suggest that they get involved?

719



720 Mr. Wright - It's not fair to the applicant for them to have to keep  
721 coming back. You say they want a 60-day extension? From when?  
722  
723 Mr. O'Kelly - From today.  
724  
725 Mr. Kirkland - So that means March. Is that what you're saying, the  
726 March meeting? They can still continue their operation can't they?  
727  
728 Mr. Wright - Well sure.  
729  
730 Mr. Kirkland - Mr. Blankinship?  
731  
732 Mr. Blankinship - Yes. They are not under a Notice of Violation; they've  
733 just been informed that they needed to apply for this.  
734  
735 Mr. Kirkland - Okay.  
736  
737 Mr. Blankinship - I guess they're doing all they can to comply.  
738  
739 Mr. Wright - As long as they can continue to operate, it's not going  
740 to hurt them except the inconvenience of having to come back down to the  
741 County. They want to extend it until the March meeting.  
742  
743 Mr. Blankinship - Yes sir.  
744  
745 Ms. Dwyer - I would like to specifically state that we would like the  
746 County Attorney's Office to be involved upfront. This is a matter of far-reaching  
747 importance and I would hate for us to spend time discussing this administratively  
748 and then get to the Legal Department and at the eleventh hour have them say—I  
749 would just like them involved upfront.  
750  
751 Mr. Blankinship - As I'm sure you're aware, the statute assigns the  
752 responsibility for interpretations of the Zoning Ordinance to the Zoning  
753 Administrator, which is the Director of Planning in Henrico County. We ask the  
754 Attorney's advice, but the final word actually rests with the Planning Director.  
755  
756 Ms. Dwyer - I would just hate to—  
757  
758 Mr. Nunnally - After you have the County Attorney and all of these  
759 people decide on what it's going to be, would they have to come back or could  
760 we notify them that it's been approved or it's been disapproved? Why would we  
761 keep running them back and forth down here? We have nothing negative about  
762 it. The Commonwealth of Virginia checked it out and said that there's nothing  
763 wrong with the operation they have.  
764

765 Mr. O'Kelly - I think it's always in the applicant's best interest to be  
766 at the hearing.  
767  
768 Ms. Dwyer - What product will we get from these meetings? Will  
769 we get an official opinion from the Director of Planning or Acting Director of  
770 Planning on these two issues that could be sent to the applicant and those who  
771 oppose so that they could review it prior to the next meeting? Have we thought  
772 that far?  
773  
774 Mr. Kirkland - March meeting.  
775  
776 Ms. Dwyer - Right. The next meeting where it's going to be heard.  
777  
778 Mr. Kirkland - Is that possible, Mr. Blankinship?  
779  
780 Mr. Blankinship - That's what I anticipate, yes.  
781  
782 Mr. Kirkland - They need to have some information before they  
783 show up at this meeting to see what happens.  
784  
785 Mr. Blankinship - Yes. I anticipate that we would have a written  
786 interpretation.  
787  
788 Ms. Dwyer - That would be available to us, and the applicants, and  
789 anyone interested prior to the time that we consider it.  
790  
791 Mr. Blankinship - I would think so, yes ma'am.  
792  
793 Ms. Dwyer - That would be a goal I would like to suggest in  
794 fairness to everyone.  
795  
796 Mr. Kirkland - Hopefully, this will resolve it in the month of March so  
797 these people can plan their year out.  
798  
799 Mr. Wright - Since you can continue on with your operation, is that  
800 fair with you people?  
801  
802 Mr. Wagner - Yes.  
803  
804 **DECISION**  
805  
806 Mr. Kirkland - Mr. Nunnally, do you want to make a motion?  
807  
808 Mr. Nunnally - Yes. I'll make a motion that we defer it until the March  
809 meeting.  
810

811 Ms. Dwyer - What's the date on that?  
812  
813 Mr. Wagner - A delay is no problem.  
814  
815 Mr. Wright - March 27<sup>th</sup>.  
816  
817 Mr. Wagner - We just want it to be settled, so that it's not a  
818 recurring thing, so that we have some conditions or requirements to meet so that  
819 we'll know what to do and won't have to have this keep coming back up and back  
820 up.  
821  
822 Mr. Kirkland - That's what Ms. Dwyer was stating, that you would  
823 get a report prior to the meeting in March and then you would have some time to  
824 study it to see what would be the County's decision. Then in March when we  
825 have the meeting—  
826  
827 Mr. Wagner - We want to be able to do what the County decides we  
828 need to do.  
829  
830 Mr. Kirkland - Right.  
831  
832 Mr. Wagner - Realistically.  
833  
834 Mr. Kirkland - Yes, we understand.  
835  
836 Mr. Wright - We'd have an opportunity to respond to the report.  
837  
838 Mr. Kirkland - Right.  
839  
840 Ms. Harris - I second the motion.  
841  
842 Mr. Kirkland - Motion made by Mr. Nunnally, seconded by Ms.  
843 Harris. All in favor say aye. All opposed say no. The ayes have it; the motion  
844 passes. It's been deferred until the March 27, 2008 meeting.  
845  
846 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
847 Ms. Harris, the Board **deferred** application **UP-024-07**, to the March 27, 2008  
848 meeting at the request of the applicant.  
849  
850 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
851 Negative: 0  
852 Absent: 0  
853  
854 Mr. Wright - Thank you.  
855

856 Ms. Akers - [Off mike.] Is there any rule or provision for raising  
857 questions [unintelligible]?

858  
859 Mr. Kirkland - Ma'am, we said we were going to take only the  
860 information from the applicant that was answering the question.

861  
862 Ms. Akers - [Off mike.] I understand that. I just wanted, for the  
863 record, to put out an official objection.

864  
865 Mr. Kirkland - Okay.

866  
867 Ms. Akers - [Off mike.] [Unintelligible] in the last meeting it was  
868 only at the end of the last meeting after—

869  
870 Mr. Kirkland - If you would, ma'am, come down and state your name  
871 for the record. That way we will make sure we have it in the record.

872  
873 Ms. Akers - My name is Carol Akers. I'm the daughter of the  
874 neighbors Jerry and Ann Akers. I wanted to raise an official objection and have it  
875 put into the record for not being allowed to comment on the distance  
876 requirement. While I understand during the last meeting the Board said that it  
877 was going to defer the matter in order to get this interpretation and would not  
878 take further comment, I wanted to point out that the public notice that was mailed  
879 to us said anyone may attend and express an opinion on the above request. This  
880 is for the January 24<sup>th</sup> meeting. The letter that went to the Wagner's said the  
881 public hearing will not be reopened and no new testimony will be accepted  
882 except regarding the interpretation of the distance requirement. I would like to be  
883 able to comment on the interpretation of the distance requirement and the  
884 deferral for another 60 days when it's being said that nobody's being harmed by  
885 this. My parents are being harmed by this.

886  
887 Mr. Kirkland - Ma'am, we've asked the County Attorney to look into  
888 this so therefore we're going to get the defining—

889  
890 Ms. Akers - That's fine, but I think the public has a right to  
891 comment.

892  
893 Mr. Kirkland - And that's the only way we can go with this issue.

894  
895 Ms. Akers - Well, the public has a right to comment.

896  
897 Mr. Kirkland - You can come next month in March and state your  
898 opinion then.

899  
900 Ms. Akers - Why can I not give my opinion now when the public  
901 notice said I could give my opinion?

902  
903 Ms. Dwyer - We've deferred the case.  
904  
905 Mr. Kirkland - We've deferred the case.  
906  
907 Ms. Dwyer - We have some information in the record that you  
908 have sent in the mail. What I would prefer to do would be to wait until the March  
909 meeting. As I understood your comment, I don't know if you wanted to speak only  
910 today or if you'd be willing to wait until March to speak to that issue. I would  
911 rather wait and have all commentary on the interpretation of the statute held at  
912 one time after we've gotten the official opinion of the Director of Planning.  
913 You've raised a good issue because we did say there would be no more  
914 testimony, but I think that was on the health, safety, and welfare issue. We did  
915 not take any testimony last month on the issue of the interpretation of the statute.  
916 My understanding is maybe we should discuss whether we should have public  
917 comment on the interpretation of the statute in March. I think that we should  
918 because we haven't had any yet and we don't even have the opinion yet of the  
919 Attorney and/or the Director of Planning. I think in March we should hear  
920 testimony and have discussion. Only on the issue of the interpretation.  
921  
922 Ms. Akers - If I may interject.  
923  
924 Mr. Blankinship - Mr. Chairman, we need to move on with this meeting.  
925  
926 Mr. Kirkland - I would prefer that you make your comments at the  
927 March meeting. Therefore, you will get a copy also. Mr. Blankinship, make sure  
928 you mail her a copy—  
929  
930 Mr. Blankinship - Yes sir.  
931  
932 Mr. Kirkland - —of all the comments made by the County Attorney  
933 and Director of Planning. Therefore, we can discuss this all at one time.  
934  
935 Ms. Akers - Will I be offered the right to one, review what is being  
936 recommended to you from that interpretation coming from Zoning and the  
937 Attorney, and two, will I be offered an opportunity to provide input on that  
938 interpretation? Or is it going to simply be again, here's what they said, and then  
939 you rule, and we're excluded from offering comments?  
940  
941 Mr. Kirkland - In March you can give testimony.  
942  
943 Ms. Akers - Okay, but I am today. It would take me all of about  
944 two minutes to give my comments.  
945  
946 Mr. Kirkland - We've deferred the case.  
947

948 Ms. Akers - The note did say that I was allowed to give my—Yes,  
949 you deferred the case, but you deferred the case before you offered me the  
950 opportunity to comment, which is stated in the public notice.

951  
952 Mr. Kirkland - I'm sorry, it's been deferred.

953  
954 Ms. Dwyer - When we defer, that means the case is not going to  
955 be heard.

956  
957 Mr. Kirkland - Nothing.

958  
959 Ms. Akers - Well, I stood here and heard about five minutes worth  
960 of discussion before you deferred. So, you absolutely didn't hear anything? We  
961 were sitting here and somebody was talking—

962  
963 Mr. Kirkland - The discussion that you heard was amongst the  
964 County making—

965  
966 Ms. Akers - Well, I also heard discussion that no one was being  
967 harmed by—

968  
969 Mr. Blankinship - Mr. Chairman, we need to move on.

970  
971 Ms. Akers - —continued deferral.

972  
973 Mr. Kirkland - If you would, have a seat, we're going to move to the  
974 next case.

975  
976 **UP-001-08 CAROL AND LARRY MONEYPENNY** request a  
977 conditional use permit pursuant to Section 24-95(i)(4) to build an addition to an  
978 existing garage at 7624 Glendale Acres Place (Glendale Acres) (Parcel 855-  
979 690-9157), zoned A-1, Agricultural District (Varina).

980  
981 Mr. Kirkland - Anyone else wish to speak on this case? If you  
982 would, raise you right hand and be sworn in please.

983  
984 Mr. Blankinship - Do you swear the testimony you're about to give is  
985 the truth and nothing but the truth so help you God?

986  
987 Ms. Money penny - I do.

988  
989 Mr. Kirkland - All right. If you would, state you name please,  
990 whoever's going to speak first.

991  
992 Ms. Money penny - Carol Money penny.

993

994 Mr. Kirkland - If you could pull that microphone a little closer to you.  
995  
996 Ms. Moneypenny - Carol Moneypenny.  
997  
998 Mr. Kirkland - Yes ma'am, what would you like us to do for you?  
999  
1000 Ms. Moneypenny - We've requested a conditional use permit for an  
1001 addition to an existing garage.  
1002  
1003 Mr. Nunnally - Do you have a garage now?  
1004  
1005 Ms. Moneypenny - Yes sir.  
1006  
1007 Mr. Nunnally - Where is that located on your property?  
1008  
1009 Ms. Moneypenny - Right next to the house on the left-hand side.  
1010  
1011 Mr. Nunnally - You want to put an additional garage on your house?  
1012  
1013 Ms. Moneypenny - We want to add an additional 24-feet towards the  
1014 front of the house.  
1015  
1016 Mr. Kirkland - How long will that make your garage?  
1017  
1018 Mr. Moneypenny - Forty-eight feet.  
1019  
1020 Mr. Wright - How many feet?  
1021  
1022 Ms. Moneypenny - Forty-eight feet.  
1023  
1024 Mr. Moneypenny - Forty-eight feet long, twenty-four feet wide.  
1025  
1026 Ms. Dwyer - So, you'll have a 48-foot garage. How will the front of  
1027 the garage relate to the front of your house?  
1028  
1029 Ms. Moneypenny - It'll come to the corner of the section that's to the left.  
1030  
1031 Ms. Dwyer - It'll come to the front of the house, essentially.  
1032  
1033 Mr. Moneypenny - Yes. It won't come past it, I'll come dead even.  
1034  
1035 Ms. Moneypenny - Dead flush with it.  
1036  
1037 Ms. Dwyer - It is only 7-1/2 feet from the house.  
1038  
1039 Ms. Moneypenny - Yes.

1040  
1041 Ms. Dwyer - Will the front of the garage be any closer than 7-1/2  
1042 feet or will it be—  
1043  
1044 Mr. Moneypenny - It looks like it's a straight shot even.  
1045  
1046 Ms. Dwyer - It looks, but you don't have a survey or any kind of  
1047 actual measurements? If it's 7-1/2 feet, it doesn't meet code.  
1048  
1049 Ms. Moneypenny - I don't know how it was done, how the builder got it  
1050 passed at 7-1/2 the first time when it states in here it should have been 10.  
1051  
1052 Ms. Dwyer - As I read the record, it looks like the builder stated it  
1053 would be 15 feet from the house but it ended up being 7-1/2. Mr. Blankinship,  
1054 don't they need a variance for the 7-1/2 feet distance from the house as well?  
1055  
1056 Mr. Blankinship - The variance would be a solution to the problem, but  
1057 from our perspective, I'm not sure how you could argue for a variance given that  
1058 they're already making not only reasonable use of the dwelling, but that they  
1059 already have a garage. I don't know. They could apply for a variance. If a  
1060 variance were granted, it would resolve that issue, but I'm reluctant to  
1061 recommend that to them because I don't see how they could make the argument  
1062 for a variance.  
1063  
1064 Ms. Dwyer - I guess I don't understand what you're saying. Are  
1065 you saying that they can't make a successful argument for a variance, therefore  
1066 we're not going to ask them to apply for one?  
1067  
1068 Mr. Blankinship - Right, more or less.  
1069  
1070 Ms. Dwyer - That's not the test for whether they need to apply for a  
1071 variance. If they want to build a garage that violates the distance requirement, it  
1072 seems to me they have to have a variance to do that.  
1073  
1074 Mr. Blankinship - They would have to have a variance in addition to the  
1075 use permit.  
1076  
1077 Ms. Dwyer - Okay.  
1078  
1079 Mr. O'Kelly - I think there might be some gray area here because if  
1080 the garage is located in the rear yard, it has to be ten feet away from the  
1081 dwelling. Correct, Ben?  
1082  
1083 Mr. Blankinship - Yes.  
1084



1085 Mr. O’Kelly - If the BZA is considering a use permit to locate a  
1086 structure in any other yard, I’m not sure we could have setback requirements. I  
1087 think as long as the BZA is assured that the health, safety, and welfare is met,  
1088 and the impacts on adjacent properties, it can be approved with any setback.  
1089

1090 Ms. Dwyer - I see what you’re saying. Because the ordinance  
1091 doesn’t contemplate anything in the side yard of this nature, then the ordinance  
1092 doesn’t set a distance requirement for something it doesn’t contemplate to begin  
1093 with.  
1094

1095 Mr. O’Kelly - Exactly.  
1096

1097 Ms. Dwyer - I guess our concern is that the reason for having the  
1098 10-foot distance requirement is for health, safety, and welfare, which is even  
1099 more critical and even more significant if you have 24 feet of garage 7-1/2 feet  
1100 from a house. That’s even more of a hazard than having it 7-1/2 feet from the  
1101 house when it’s located in the rear yard. Even though I understand what you’re  
1102 saying, it seems to me that we’re creating an even greater hazard than the one  
1103 contemplated in the statute.  
1104

1105 Mr. Gidley - [Off mike.] In that Fairfield case two months ago, they  
1106 were required to be at 10 feet specifically.  
1107

1108 Mr. Blankinship - Stated in a condition?  
1109

1110 Mr. Gidley - [Off mike.] Yes. It specifically had to be ten feet from  
1111 the house and they have to get a survey to make sure they meet the 10 feet.  
1112

1113 Mr. Blankinship - That’s correct.  
1114

1115 Ms. Dwyer - We’ve also denied cases. I think there was another  
1116 one in Fairfield where there was a garage in the side yard that we denied  
1117 because it was too close.  
1118

1119 Ms. Harris - How close will you be to your neighbor?  
1120

1121 Mr. Money Penny - We have letters signed by all the adjoining and across  
1122 the street neighbors.  
1123

1124 Ms. Harris - Do we have all of them?  
1125

1126 Mr. Money Penny - Yes.  
1127

1128 Ms. Harris - —who are adjacent? Okay. Your name is Lawrence  
1129 Money Penny?  
1130

1131 Mr. Moneypenny - Yes ma'am.  
1132  
1133 Ms. Harris - Okay. I don't know if you identified yourself.  
1134  
1135 Mr. Moneypenny - The only other thing we could do is put it on the other  
1136 side of the house.  
1137  
1138 Ms. Moneypenny - All of our utilities are over on that side of the house,  
1139 so that's the reason why we were requesting to try and build an addition to the  
1140 existing garage.  
1141  
1142 Ms. Dwyer - I'm sure there are issues that you have to overcome.  
1143 The question is as a matter of public policy, the Board has said that structures  
1144 have to be 10 feet away from the dwelling even if they're in the rear yard. The  
1145 whole garage is going to be along the whole side of the house at only 7-1/2 feet.  
1146 It seems to me that creates an even greater hazard and makes this clearly a  
1147 case in which the health, safety, and welfare is adversely affected. You do have  
1148 an option. You could attach it and put it on the other side. There are options  
1149 even though it might be as a practical matter more difficult. We have to consider  
1150 the public policy and the safety issues.  
1151  
1152 Mr. Wright - Suppose they ran an archway from the house to the  
1153 garage.  
1154  
1155 Mr. Blankinship - A breezeway, you mean?  
1156  
1157 Mr. Wright - A breezeway.  
1158  
1159 Mr. Blankinship - If they attached it, then I think it would be too close to  
1160 the rear lot line. They have a 50-foot rear yard setback in the A-1 District.  
1161  
1162 Mr. Wright - So, you can't attach it to the house in its present  
1163 location.  
1164  
1165 Mr. Blankinship - Right.  
1166  
1167 Ms. Dwyer - Unless you put it on the other side of the house.  
1168  
1169 Mr. Kirkland - I think he has his drainfield somewhere.  
1170  
1171 Ms. Dwyer - I think that's in the back.  
1172  
1173 Ms. Harris - What's being housed in the garage now?  
1174

1175 Mr. Moneypenny - We have two Mustang's in the garage and then I have  
1176 a truck and car that sit outside all day that we don't drive to work that I'd like to  
1177 put in a garage.  
1178

1179 Ms. Harris - You really need a four-car garage.  
1180

1181 Ms. Moneypenny - Yes ma'am.  
1182

1183 Mr. Kirkland - What is on the other side of the home? You said it  
1184 was utilities or something? What is there?  
1185

1186 Ms. Moneypenny - Virginia Power's there, cable, and also telephone.  
1187

1188 Mr. Kirkland - You have underground service that comes to your  
1189 home.  
1190

1191 Ms. Moneypenny - Yes.  
1192

1193 Mr. Moneypenny - Yes sir.  
1194

1195 Mr. Kirkland - Were you the first owner of this home?  
1196

1197 Mr. Moneypenny - No sir.  
1198

1199 Mr. Kirkland - The second?  
1200

1201 Mr. Moneypenny - I believe the third. I think the builder lived in it for a  
1202 little while before he sold it.  
1203

1204 Mr. Kirkland - Okay.  
1205

1206 Mr. Nunnally - How long have you lived there?  
1207

1208 Ms. Moneypenny - Four years.  
1209

1210 Ms. Harris - Mr. Blankinship, what implication would this have on  
1211 other cases where people wanted to do something similar, not seeking a  
1212 variance, but seeking the use permit?  
1213

1214 Mr. Blankinship - I'm not sure I understand your question.  
1215

1216 Ms. Harris - We've had cases before for garages, have we not?  
1217

1218 Mr. Blankinship - Yes ma'am.  
1219

1220 Ms. Harris - Did they ask for variances?

1221  
1222 Mr. Blankinship - I don't think we've had one that was closer than ten  
1223 feet to the house.  
1224  
1225 Mr. Kirkland - Never.  
1226  
1227 Mr. Blankinship - I can see Mr. O'Kelly's point, though. The ten-foot  
1228 setback is under paragraph 2 of the Code and this provision is under paragraph 4  
1229 of that subsection. So, it's certainly a strong argument that that requirement does  
1230 not apply in this case.  
1231  
1232 Mr. Kirkland - Do you think the health, safety, and welfare of the  
1233 applicant would be in jeopardy being 7-1/2 feet versus 10 feet? I believe that's a  
1234 fire issue. Is that correct?  
1235  
1236 Mr. Blankinship - I'm sure there's a good reason that that requirement  
1237 is in there.  
1238  
1239 Mr. O'Kelly - Could we perhaps defer this and see what the  
1240 building code requires for the separation between those structures?  
1241  
1242 Ms. Dwyer - I guess we could. I guess my thought is that in our  
1243 Code it's clear that as a matter of public policy, accessory structures, or detached  
1244 garages in this case, need to be ten feet away from the house, even if they're in  
1245 the rear yard. In this case, the body of the garage is even farther away from the  
1246 house, but by bringing it forward, seems to me they're violating that public policy.  
1247 Even if it's technically not going to require a variance, it seems to me it violates  
1248 the requirement in the use permit provision in that it can't adversely affect the  
1249 health, safety, and welfare. It seems to me that we use that public policy of ten  
1250 feet as a guide in evaluating the health, safety, and welfare issue. That's the way  
1251 I'm looking at it now, so there's really no need to defer it because we know that it  
1252 doesn't meet the public policy.  
1253  
1254 Mr. Wright - Suppose they moved it. It wouldn't be adjacent to the  
1255 other one, but would be in front of the other one but moved over to the side so it  
1256 would be more than ten feet away from the house. Could they do that? It's a 24-  
1257 foot garage. It could be a separate garage if they moved it to I guess the south  
1258 over toward the side lot line.  
1259  
1260 Mr. Blankinship - Was your plan to be able to drive through the new  
1261 portion of the garage into the existing portion?  
1262  
1263 Ms. Money Penny - Yes.  
1264  
1265 Mr. Blankinship - So the doors wouldn't line up.  
1266

1267 Mr. Moneypenny - It would be a deep four-bay, you know, two and two.  
1268  
1269 Mr. Blankinship - Unless you shifted it 12 feet.  
1270  
1271 Mr. Wright - Well, looks like to me it would be advantageous to be  
1272 able to drive into both of them at the same time.  
1273  
1274 Mr. Blankinship - I don't think they have room to move it over 24 feet,  
1275 though.  
1276  
1277 Ms. Moneypenny - No, because you have the well ditch.  
1278  
1279 Mr. Wright - How far does it have to be from the side lot line?  
1280  
1281 Mr. Blankinship - At least five feet.  
1282  
1283 Mr. Wright - Looks like to me you could do that. I don't know if you  
1284 understand what I'm saying.  
1285  
1286 Mr. Blankinship - Yes.  
1287  
1288 Mr. Wright - Move it over.  
1289  
1290 Mr. Blankinship - Maybe you could.  
1291  
1292 Mr. Wright - Do you see what I'm saying?  
1293  
1294 Mr. Blankinship - Yes sir.  
1295  
1296 Mr. Wright - Then they could access both garages and it would be  
1297 away from the house.  
1298  
1299 Mr. Kirkland - Oh, move it over the width of the existing garage.  
1300  
1301 Mr. Wright - Yes. Move it to the width of the existing garage.  
1302  
1303 Mr. Kirkland - Have two separate garages.  
1304  
1305 Mr. Wright - Exactly where it's located but over.  
1306  
1307 Mr. Kirkland - Did we get that in, Mr. Blankinship?  
1308  
1309 Mr. Blankinship - I'm thinking how you would go about accomplishing  
1310 that. Would you just approve this with a condition like the other one, that it has to  
1311 meet the 10-foot requirement and then leave it to them how they want to—  
1312

1313 Mr. Wright - Well, the other one is already there.  
1314  
1315 Mr. Blankinship - Right, right.  
1316  
1317 Mr. Wright - This would be a new garage.  
1318  
1319 Mr. Blankinship - Right, right. We're only talking about this one.  
1320  
1321 Mr. Wright - They'd want to just put it over closer to the lot line.  
1322  
1323 Mr. Blankinship - Rather than pinning them down to a location that they  
1324 did not propose, could you approve this case with a condition that they meet the  
1325 10-foot requirement and let them decide how to meet it.  
1326  
1327 Mr. Wright - We could. That's fine.  
1328  
1329 Mr. Money penny - If we were going to build a completely other garage, if  
1330 we have to built it somewhere on the lot, I'd just go to the right side of the house  
1331 if I can't get an addition into the front. On the left side of the garage, the property  
1332 line is like a pie shape and I think it would be too close to the property line if I  
1333 tried to put it on the left side. Plus, it would be closer to the well, which I was kind  
1334 of scared to get too close to the well. The lady up at the top of the hill has already  
1335 had well issues in the last two weeks. We already have the soil samples done  
1336 and everything. If we wanted to put the garage on the other end of the house  
1337 further than ten feet away, do you think it would be any problem, since it doesn't  
1338 look like we're going to get the addition on the front of it?  
1339  
1340 Mr. Wright - You have a lot of footage over there.  
1341  
1342 Mr. Money penny - Yes sir, on the right side if you're standing in the front.  
1343  
1344 Mr. Wright - You have 70 feet from the line.  
1345  
1346 Ms. Dwyer - Have you considered attaching it to your house on the  
1347 right side?  
1348  
1349 Mr. Money penny - I have LP gas for the stove and everything on the  
1350 other side of the house. I didn't really want to mess with all that. I could go on the  
1351 other side of the gate on the right side of the house.  
1352  
1353 Ms. Dwyer - Could you put it in the rear yard on the right side?  
1354 Looks like the drain field is more behind the house and maybe you have some  
1355 space.  
1356  
1357 Mr. Money penny - I could try and get it put in line with the garage that's  
1358 existing now on the other side of the house. It would be in the backyard.

1359  
1360 Ms. Dwyer - Then you wouldn't need a use permit or anything.  
1361  
1362 Mr. Wright - You wouldn't need the variance or use permit.  
1363  
1364 Mr. Money Penny - If I can't get it to the front addition, then that's really  
1365 the only other alternative. It's going to cost a lot more to do a whole garage over  
1366 there than the addition. That garage is right close to the property line.  
1367  
1368 Mr. Kirkland - Meet the ten feet and then they place it where they  
1369 wish, if it meets the requirements. Put in the condition that it meet the ten-foot  
1370 offset and then that would give them the flexibility to place the garage where  
1371 they'd like to as long as it still meets the requirements of the County code.  
1372  
1373 Ms. Dwyer - I guess I just have a general concern. We have a  
1374 garage that doesn't meet code as it is. By adding onto it or even allowing or  
1375 approving a case that would exacerbate an existing problem, I guess I have an  
1376 issue with that, particularly since it was built too close to the house as it is.  
1377  
1378 Mr. Kirkland - Any other questions or testimony? Anyone else wish  
1379 to speak? That concludes the case.  
1380  
1381 Ms. Money Penny - Thank you.

1382  
1383 **DECISION**  
1384

1385 Mr. Wright - I move we deny it. I would say that I'd move we  
1386 approve it with a 10-foot distance between the new garage and the house, but  
1387 the applicant said that wouldn't be practical, he didn't want to move it over there.  
1388 If we deny it, then he can build it on the other said, he said, without any problem.  
1389  
1390 Ms. Harris - Second.  
1391  
1392 Mr. Kirkland - Motion by Mr. Wright, seconded by Ms. Harris. All in  
1393 favor say aye. All opposed say no. The ayes have it; the motion carries. The  
1394 case is denied.

1395  
1396 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
1397 Ms. Harris, the Board **denied** application **UP-001-08**, Carol and Larry  
1398 Money Penny's request for a conditional use permit pursuant to Section 24-  
1399 95(i)(4) to build an addition to an existing garage at 7624 Glendale Acres Place  
1400 (Glendale Acres) (Parcel 855-690-9157), zoned A-1, Agricultural District  
1401 (Varina).

1402  
1403  
1404

1405 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 1406 Negative: 0  
 1407 Absent: 0

1408

1409 **A-001-08 EMERALD LAND DEVELOPMENT** requests a  
 1410 variance from Section 24-95(b)(7) to build a one-family dwelling at 3921 Grayson  
 1411 Street (Providence Park Annex) (Parcel 793-737-0345), zoned R-5, General  
 1412 Residence District (Fairfield). The lot width requirement and total lot area  
 1413 requirement are not met. The applicant has 35 feet lot width and 3,445 square  
 1414 feet total lot area, where the Code requires 50 feet lot width and 6,000 square  
 1415 feet total lot area. The applicant requests a variance of 15 feet lot width and  
 1416 2,555 square feet total lot area.

1417

1418 Mr. Kirkland - All right, sir, if you would raise your right hand and be  
 1419 sworn in.

1420

1421 Mr. Blankinship - Do you swear the testimony you're about to give is  
 1422 the truth and nothing but the truth so help you God?

1423

1424 Mr. Baker - I do.

1425

1426 Mr. Kirkland - Please state your name for the record, sir.

1427

1428 Mr. Baker - Mark Baker, Baker Development Resources. I'm here  
 1429 representing Emerald Land Development who is the contract purchaser. Really  
 1430 quickly I have this presentation. I have also handed out a few items. This  
 1431 presentation is included in those and there is also another exhibit, which is a  
 1432 letter I'll reference in a moment.

1433

1434 The property is 3921 Grayson Street. The subdivision is Providence Park Annex.  
 1435 It's Lot 22. It's in the Fairfield District and the request is for a variance to permit  
 1436 the construction of a single-family dwelling. There are two issues, a variance for  
 1437 lot area and lot width. Three thousand four hundred and forty-five square feet  
 1438 exist; six thousand required. That's a 2,555-square foot deficit on lot area. From  
 1439 a lot width standpoint, 35 exists and 50 are required, which is a 15-foot deficit.  
 1440 We submitted drawings for the house, which are included in the paperwork.

1441

1442 It's an infill lot in an existing subdivision. The subdivision was platted in 1916 and  
 1443 the lot is consistent in size with others in the subdivision. The majority of the lots  
 1444 in the subdivision were sold and developed as single lots. That was the case with  
 1445 this lot which was, in fact, sold as a single lot. There was no zoning ordinance at  
 1446 the time of the subdivision so there was no requirement for lot width or area at  
 1447 that time, and it was platted as such as a legal lot of record. The BZA recently  
 1448 approved a similar variance that was for 334 Grayson, Lot 32. In looking at the  
 1449 subject property, there's an abutting lot to the north which is vacant, and an



1450 abutting lot to the south which is developed with a single-family dwelling. To the  
1451 east, there is a multi-family dwelling complex. I believe it's called Belmont Court.

1452

1453 With regard to the vacant lot to the north, the first exhibit is a letter from Napier  
1454 Realtors which discusses repeated attempts at contacting the owner, so an  
1455 attempt has been made to purchase that property with the idea that consolidation  
1456 of those properties might alleviate the need for a variance. You'll see that's sort  
1457 of a theme through the staff's comments, which we understood. We have tried to  
1458 purchase that and have been unable to, or rather my client has tried to.

1459

1460 Looking at the evaluation criterion that was laid out by the Virginia Supreme  
1461 Court, the first one is the threshold question. Does zoning interfere with all  
1462 reasonable beneficial use of the property taken as a whole? Staff's comment  
1463 was that, generally, yes. The property was zoned separately since 1916. The  
1464 property was never combined with adjacent lots. The property taken as a whole,  
1465 as in the Virginia Supreme Court language, is Lot 22, which is the subject  
1466 property, and taken by itself as a whole, it's not suitable for any other reasonable  
1467 beneficial use.

1468

1469 Looking at the three tests. The first test is, is the property affected by exceptional  
1470 narrowness, shallowness, size, or shape, topographical conditions or other  
1471 extraordinary situations or conditions. Staff's comments were that it is in fact  
1472 exceptionally narrow and shallow by today's standards, and their concern about  
1473 the fact that it's not uncommon in Henrico neighborhoods, particularly older ones,  
1474 for lots to be sold as pairs and developed as such. We agree with staff that the  
1475 property is exceptionally narrow and it's shallow by today's standards. As for the  
1476 combination of the lots, I've indicated they've been unable to acquire to adjacent  
1477 vacant lot. The threshold established by the Virginia Supreme Court speaks to  
1478 the property taken as a whole, which is the subject property, and not necessarily  
1479 the property when combined with the adjacent lot, although that would have been  
1480 nice in terms of alleviating the need for the approval. We agree that it's not  
1481 unusual in some other subdivisions to combine lots, but that is actually not  
1482 necessarily the case in this neighborhood. There are some instances where  
1483 that's happened, but this is a unique subdivision being an older one. While the  
1484 combining of some lots has been done to some extent, it's again not the norm.  
1485 To demonstrate that, I'd like to look historically at how this thing has been  
1486 developed, meaning Providence Park Annex.

1487

1488 Exhibit #2 here is double lots versus single lots. What I've done is gone and  
1489 looked. There are 27 single-family dwellings that have been constructed in  
1490 Providence Park Annex. Twenty of those were in the County and seven were  
1491 developed in the City. The pink houses are the homes that were developed on  
1492 double lots. What you'll see is that five of those homes were developed in the  
1493 County, three of those in the City, and of the total number of homes that were  
1494 built, 25% of them in the County were developed on double lots and 29% overall  
1495 were developed on double lots.

1496

1497 Looking at the single-family dwellings that are on a single lot, as what we're  
1498 proposing, you have 15 units in the County. That's 75% of the homes in this  
1499 subdivision were built on a single lot as platted. Nineteen overall, including the  
1500 City. That's 75% in the County and 70% for the City. I did put a star. #334, Lot  
1501 #32 is where construction of a single-family dwelling on a single lot occurred, the  
1502 same house that we're proposing today that was approved by the BZA.

1503

1504 Ms. Dwyer - You didn't include the other houses on the other side  
1505 of Loudon Street in your calculations, what's labeled Stratford Village. They look  
1506 like they're on large lots.

1507

1508 Mr. Baker - I did not because they were not part of this  
1509 subdivision, which was built, generally sold and developed as single-family  
1510 dwellings on single lots. I have another slide you can look at in a second, but the  
1511 homes that were built on double lots were built years after. You're talking about  
1512 the late 20's into the 30's for most of the single-family dwellings on a single lot,  
1513 and then getting into actually the 80's for some of the development that was  
1514 single-family dwellings on double lots.

1515

1516 Ms. Dwyer - There's a recent trend where all the development's  
1517 been on double lots. In the 20's, they were under 35 and then with more modern  
1518 development, they've been on double lots.

1519

1520 Mr. Baker - I think you could say that there is probably a trend  
1521 that would support that. I don't know if I have all the details in terms of all the  
1522 dates, but I have a slide that may help you look at that in a second.

1523

1524 Ms. Dwyer - Looking at the housing styles, that would seem to be  
1525 true.

1526

1527 Mr. Baker - Okay. So, historically, the majority of the single-family  
1528 dwellings were built on single lots. There are 12 vacant lots, so what about those  
1529 vacant lots moving forward? That's this slide. What I've done is—Just to get a  
1530 sense. There are 12 vacant lots. Ten are in the County and two are in the City.  
1531 The vacant lots, which as single lots have homes on either side for which there is  
1532 no opportunity for consolidation or combination, are yellow. There are three of  
1533 those in the County, five total. That represents 41% of the 12 outstanding lots in  
1534 the subdivision. That's really the most common situation at 41%. As for vacant  
1535 lots that are side-by-side, I broke those into two categories. The first one is  
1536 vacant lots, same owner. These are definitely suitable for combination. If that  
1537 one comes in, I'd fully expect that that person would be able to do that. There are  
1538 four of those lots. You have 3927, which is up in the far right-hand corner, and  
1539 an adjacent lot. You also have 326, which is actually adjacent to a lot that's in the  
1540 City, but they're both under the same ownership. In those two instances, it's very  
1541 clear cut, very easy to combine. Where the question mark comes in is on 328,

1542 the subject property, and 3923 where we have separate owners. In the case of  
1543 3921, we've made an attempt to contact that adjacent property owner without  
1544 any luck. What I would want you to take from that, I guess, would be that moving  
1545 forward, if the properties are to be fully developed as contemplated by the  
1546 original subdivision, in every case, and in fact in perhaps the majority of cases,  
1547 that consolidation or combination may not be possible.

1548  
1549 Getting into item #2, a variance will not be of substantial detriment to the  
1550 adjacent property and the character of the district will not be changed. Staff said  
1551 unlike the west side of the street where most of the individual lots are 35-foot  
1552 wide lots and contain dwellings—Basically what they're saying is that on the  
1553 western side of the street, you typically have single-family dwellings on a single  
1554 lot and on the eastern side, not necessarily the case. They've been combined to  
1555 a greater extent. What I've done there is just looked at a bird's eye view of the  
1556 neighborhood just to give you a better feel of what's actually happening out there.  
1557 I think there are just a couple of corrections. I don't think it really matters, but the  
1558 staff had said there were six houses on the east side of street; there are, in fact,  
1559 five and that they were all built on double lots. Four of those five, which is 3913  
1560 through 3919, were, in fact, built on double lots, but 3911 was, in fact, built on a  
1561 single lot in 1937.

1562  
1563 At any rate, I guess what I'd like to look at is the relationship between 3911 and  
1564 3913. 3911 was a ranch that was built in 1937. It is a 777-square-foot footprint  
1565 on a comparable, the same size lot. Yet, in 1982, 3913 Grayson was  
1566 constructed and that's a 1377-square-foot ranch. The ranch is situated on the  
1567 site in such a way that it doesn't necessarily give any greater setback than the  
1568 single-family on the single lot. Clearly, 3911 was there first and yet in a much  
1569 more modern time in 1980's, it didn't deter the construction of the 1,377-square-  
1570 foot ranch. If having a single-family dwelling on a single lot was a detriment to  
1571 the property, I would suggest that if it was that kind of a nuisance, that it would  
1572 have deterred the construction of the ranch that was built in 1982. I think the  
1573 comparison can be made to the subject property and 3919 Grayson, except in  
1574 this instance, instead of talking about a 777-square-foot footprint next to a 1,377-  
1575 square-foot footprint on the same size lots, we're talking about 486-foot-square  
1576 footprint, which is smaller, will have less impact, and take up less of that lot, next  
1577 to a 980-square-footprint, which is a smaller home on that double lot. I would  
1578 argue that from a negative impact standpoint, there would be less in that existing  
1579 condition than exists on the same street. Certainly, when you look across the  
1580 street, you can see that the homes on 330 through 346 Grayson were built on  
1581 single lots and they're 540 to 940 square-foot footprints. Those homes all occupy  
1582 a greater portion of the lot than we're suggesting for this new house. Again, you  
1583 see the lot where the most recent BZA authorization, 334 Grayson, was granted.

1584  
1585 Finally, number three. Well, I think the other thing I would talk about in terms of  
1586 negative impact is you really have to consider the market. I asked my client.  
1587 They did a little bit of research. They looked at home sales over the last seven

1588 years. There must have been some lots mixed into this, but the average price is  
1589 \$49,564 and the median price is \$34,650 and the maximum sale price of  
1590 160,000. I would ask what kind of a negative impact could a new home and a  
1591 homeownership opportunity have in that environment? I think you also have to  
1592 consider the proximity of the multi-family dwellings that have been built to the  
1593 east in close proximity to this home as well, this home site and the existing  
1594 homes.

1595

1596 Finally, going into number three. Again, is the condition or situation of the  
1597 property concerned not of so generally recurring in nature as to make reasonably  
1598 practical the formulation of a general regulation to be adopted as amended in the  
1599 ordinance. There's more discussion by staff about the idea of combining the  
1600 vacant lot. I would fully agree and I've seen that throughout the County it's not  
1601 uncommon in older neighborhoods to see lots doubled up and constructed upon.  
1602 This was a subdivision that was clearly envisioned as smaller homes on smaller  
1603 lots. It was built to a great extent in that same fashion. Here's a lot where we  
1604 have made an attempt to combine with the adjacent lot and not been able to.  
1605 We'd just like to go back in and build consistent with the what the original intent  
1606 was.

1607

1608 In summary, the inability to combine the lots doesn't diminish the ability to  
1609 demonstrate the hardship, in our opinion. We're dealing with a single lot taken as  
1610 a whole for which there is no use without a variance. The three tests are met,  
1611 when considered in the unique context of this subdivision, which was originally  
1612 sold and developed predominantly as single-family dwellings on single lots. I  
1613 thank you for your time.

1614

1615 Ms. Harris - The setback for 3919, is that the same as the subject  
1616 property will be?

1617

1618 Mr. Baker - I haven't been out to measure it, but eyeing it up, it  
1619 appears to be—

1620

1621 Ms. Harris - Be about the same?

1622

1623 Mr. Baker - —about the same ballpark.

1624

1625 Mr. Kirkland - Any other questions?

1626

1627 Ms. Dwyer - You haven't been refused the adjacent lot, it's just a  
1628 matter of not being able to find the person or to—

1629

1630 Mr. Baker - Yes ma'am.

1631

1632 Ms. Dwyer - So, it's possible to get that lot. There's no house on it,  
1633 just maybe a little more work.

1634  
1635 Mr. Baker - That's right. I don't know how much work they've put  
1636 in. The realtors have indicated they made multiple attempts.  
1637  
1638 Mr. Wright - What's the size of that 3923? Does it show us here?  
1639  
1640 Mr. Baker - I believe it's the same size.  
1641  
1642 Mr. Kirkland - Another identical lot.  
1643  
1644 Mr. Baker - Yes. They're all typically 35 by—  
1645  
1646 Mr. Wright - It looks bigger than 39.  
1647  
1648 Mr. Kirkland - It looks a little bigger on your drawing.  
1649  
1650 Mr. Baker - This CRS is not always accurate in terms of the size  
1651 of the lots.  
1652  
1653 Mr. Wright - Do you think that's still—  
1654  
1655 Mr. Baker - In the package, there's an actual plat.  
1656  
1657 Mr. Blankinship - It says that it's 35 by 98-1/2.  
1658  
1659 Mr. Kirkland - Same size.  
1660  
1661 Mr. Wright - How about 3927? Is that a buildable lot without a  
1662 variance?  
1663  
1664 Mr. Blankinship - There are two lots combined there on one tax parcel  
1665 and the two lots taken together would be buildable.  
1666  
1667 Mr. Wright - 3927 is two lots.  
1668  
1669 Mr. Blankinship - Yes sir.  
1670  
1671 Ms. Dwyer - I guess my concern, too, is the precedent that we're  
1672 setting because you already have a variance for 334. That had two houses on  
1673 either side, so that really wasn't reasonable to assume that you could acquire an  
1674 additional lot. Here, there is a possibility because there is the vacant lot and then  
1675 there are two more lots. My concern is if we allow this house to built on this 35-  
1676 foot lot, we have three more in a row here that could be asked for. What did you  
1677 say, we have 12 total vacant lots in this area?  
1678

1679 Mr. Baker - There are 12 total vacant lots and I think—I would  
1680 suggest that there would be a maximum of three where—Again, we've taking  
1681 about 3927 was two lots and it's reflected in the assessor's record as one parcel  
1682 from what I understand.

1683  
1684 Ms. Dwyer - What would keep one from coming in and building two  
1685 houses instead of one and getting a variance for both of those once we've set  
1686 this precedent?

1687  
1688 Mr. Baker - I guess it would depend on how it was worded. It's a  
1689 situation where the unique situation is that typically in the County you would be in  
1690 a situation where you'd expect these things to be combined. Clearly, this is a  
1691 neighborhood that was—There are subdivisions that when they were developed,  
1692 you don't see any single lots in there and yet every house is on a double lot. I  
1693 don't think that was the case here so I think it's a unique situation in that they  
1694 were sold as single lots. You have a bunch of single lots hanging around out  
1695 there that, what are you going to do with them. Are you going to force the  
1696 adjacent neighbors to deal with them? Is that really the intent of the Virginia  
1697 Supreme Court and that hardship regulation that you could go to that extent?  
1698 You're probably talking about three where you could argue. I think if it was  
1699 phrased the right way, you could indicate that this is only being done because  
1700 these were sold as individual lots initially and there's really no way to put the  
1701 pieces together in terms of making these people combine them and develop  
1702 them. Now, when you're talking about the owner of 3927, it's not an issue there  
1703 when it's 9316 and the adjacent lot is in the City. It might not be an issue there  
1704 either. You might be talking about three lots. Clearly, with, what is it, 4843 and  
1705 38, there's definitely an issue there and they're very similar to 334. I'd still argue  
1706 countywide that those are pretty unique lots. It's just the nature of the way the  
1707 development occurred. This really isn't unusual. If you go across the border, in  
1708 fact if you look at the history of cases in the City of Richmond, this, to me, feels  
1709 much more like a City of Richmond case.

1710  
1711 Mr. Wright - Just for the sake of argument, if the owner of 3923  
1712 categorically refused to convey anything to this lot it looks like to me that they're  
1713 in a box. Ms. Dwyer, your concern is you want to have some evidence that they  
1714 cannot purchase 3923.

1715  
1716 Ms. Dwyer - Well, I think as a practical matter, somebody wrote a  
1717 letter and they didn't get a response. Somebody called and didn't get an answer.  
1718 I just know my neighbor wanted a strip of property next to him that was owned by  
1719 some heir, distant heir in England. The builder couldn't do it and another owner  
1720 couldn't do it. He managed to do it. He just put the effort into it and managed to  
1721 get a 50-foot lot. I'm just concerned about the precedent because all the houses  
1722 on this side of the street are on double lots. If we allow this variance, then I don't  
1723 see how we could refuse a variance for 3923, 3927, or 0355.

1724

1725 Ms. Harris - All of the houses are not on double lots across the  
1726 street. Remember—  
1727

1728 Ms. Dwyer - No, not across the street, but on this side of the street  
1729 they appear to be on double lots.  
1730

1731 Mr. Baker - There's one on a single.  
1732

1733 Ms. Dwyer - Yes, the one on the end, but certainly in this row.  
1734

1735 Ms. Harris - I think if we go by the Code, we talk about reasonable  
1736 use of the lot as a whole, we can't say a lot and the lot adjacent to it and the lot  
1737 adjacent to that. If it's feasible, if you can locate the owner, I think that we have  
1738 to apply the Code to this case, too. The mere fact that it was 1916 when this  
1739 subdivision was mapped up tells me that you might be dealing with some heirs  
1740 who are not even living now.  
1741

1742 Mr. Wright - It's owned by a Christian charity it says. Evidently,  
1743 Richmond Christian Charities owned that lot, 3923.  
1744

1745 Ms. Harris - They don't have the owner there? I know the  
1746 Christian Charities' owner is deceased; he's been deceased for years. His wife  
1747 is, too.  
1748

1749 Mr. Wright - Who is the Richmond Christian Charities? It looks like  
1750 some sort of organization, isn't it?  
1751

1752 Ms. Harris - Yes, but—  
1753

1754 Mr. Kirkland - Who is paying the taxes? Let's just put it that way.  
1755 Who is paying the taxes?  
1756

1757 Mr. Baker - I believe they're listed on there, RCC, but I don't  
1758 know—  
1759

1760 Mr. Blankinship - They're probably tax-exempt.  
1761

1762 Mr. Nunnally - You say they tried to get in touch with them and the  
1763 telephone was disconnected. Did anybody go to where the Christian Charities is  
1764 located?  
1765

1766 Mr. Baker - I can't answer that question.  
1767

1768 Mr. Nunnally - You can't answer that.  
1769

1770 Mr. Baker - I can't answer that question.

1771  
1772 Mr. Kirkland - Ms. Harris?  
1773  
1774 Ms. Harris - I'm just wondering if my function will allow me to do  
1775 some detective work and find out, but I don't think that that is our mission.  
1776  
1777 Mr. Wright - If there is an issue here, I think it would be the ability  
1778 to purchase the adjacent lot. If they cannot purchase the adjacent lot, I think we  
1779 are bound to approve this because there is no reasonable use of the property.  
1780 It's been there since 1916. It doesn't need to be a constitutional issue here.  
1781  
1782 Mr. Kirkland - Do you think in 30 days you could come back with a  
1783 legal document that would show that you legitimately tried other than phone calls  
1784 and hang-ups and letters? Something that we could say you've done everything  
1785 you can do, or the developer or the real estate agent has done everything he can  
1786 do legally and therefore we would have something to hang our hat on to either  
1787 approve or deny.  
1788  
1789 Mr. Baker - I think that's fair. This realtor that they're dealing with  
1790 is the same one who, from what I understand, got this piece of property. If they're  
1791 able to come in and speak to what they've done and perhaps try a few more  
1792 times and see what else they can do.  
1793  
1794 Mr. Kirkland - Who did they purchase this property from?  
1795  
1796 Mr. Baker - They're a contract purchaser from Ms. King, I believe  
1797 is her name.  
1798  
1799 Mr. Kirkland - Okay.  
1800  
1801 Mr. Blankinship - Yes, Sandra King.  
1802  
1803 Mr. Kirkland - Sandra King. So she wasn't involved with the  
1804 Charities.  
1805  
1806 Mr. Blankinship - Right, no.  
1807  
1808 Mr. Kirkland - Okay. Ms. Harris, do you have any problem with  
1809 that?  
1810  
1811 Ms. Harris - Not at all.  
1812  
1813 Mr. Nunnally - What is the price of the home that you plan on  
1814 building there?  
1815  
1816 Mr. Baker - I think they plan on being in that 160 range, 155.



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**DECISION**

Mr. Kirkland - Would you like to make a motion, Ms. Harris?

Ms. Harris - Yes. I do wish to move that we defer this case for 30 days or until the next meeting.

Mr. Blankinship - February.

Ms. Harris - Until the February meeting.

Ms. Dwyer - Second.

Mr. Kirkland - Motion by Ms. Harris, seconded by Ms. Dwyer. All in favor say aye. All opposed say no. The ayes have it; the motion carries. It's been deferred.

Mr. Baker - Can I ask one last question?

Mr. Kirkland - Yes.

Mr. Baker - Just to clarify in terms of what you're looking for.

Mr. Kirkland - Ask Mr. Blankinship. He'll give you the official word.

Mr. Baker - Okay. Thank you very much.

Mr. Kirkland - Thank you.

After an advertised public hearing, **A-001-08**, Emerald Land Development, has been **deferred** until the February 28, 2008 meeting at the applicant's request.

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

Mr. Kirkland - I believe we have some minutes.

Mr. Wright - I have a correction to make. One concern I have is the number of references to unintelligible in these minutes. Is there anything we can do about that?

Mr. Blankinship - Get closer to your microphones. Every transcriptionist we've had has suggested that members sometimes lean away from their microphones while they speak.

1863  
1864 Mr. Wright - There is so much of it. I never had seen as much of it  
1865 as in this batch of minutes.  
1866  
1867 Mr. Blankinship - I know we had some problems with this recording.  
1868  
1869 Mr. Wright - Yes.  
1870  
1871 Mr. Kirkland - Yes, I see that.  
1872  
1873 Mr. Wright - That may have helped.  
1874  
1875 Mr. Blankinship - That may be related to that, I'm not sure. Carla, have  
1876 you had any problem hearing us today? Okay.  
1877  
1878 Mr. Wright - I have a correction on page 85.  
1879  
1880 Mr. Nunnally - Eighty-five.  
1881  
1882 Mr. Wright - Line 3845, if I can find it. There is no page 85, is  
1883 there?  
1884  
1885 Mr. Kirkland - Yes there is.  
1886  
1887 Ms. Harris - Next to the last page.  
1888  
1889 Mr. Wright - I must have pulled it out of here because I don't have  
1890 it. Do you see in line 3845?  
1891  
1892 Mr. Gidley - [Off mike.] It says [unintelligible].  
1893  
1894 Mr. Blankinship - Yes.  
1895  
1896 Mr. Wright - That's pretty obvious.  
1897  
1898 Mr. Kirkland - Thank you, Paul.  
1899  
1900 Ms. Dwyer - I had one on page 80. I think it's just a typo. Line  
1901 3645. Instead of "owner," it should be "owned." "Cox is wholly owned by," as  
1902 opposed to "owner by."  
1903  
1904 Mr. Wright - 3645?  
1905  
1906 Ms. Dwyer - Yes.  
1907  
1908 Mr. Nunnally - Yes, that would be "owned."

1909  
1910 Ms. Harris - On page 24, line 1046. I want to delete the word t-h-  
1911 e, comma, and the "a."  
1912  
1913 Mr. Gidley - [Off mike.] What line, Ms. Harris?  
1914  
1915 Ms. Harris - Line 1046 on page 24.  
1916  
1917 Mr. Gidley - [Off mike.] Okay.  
1918  
1919 Ms. Harris - Delete "t-h-e comma a."  
1920  
1921 Mr. Kirkland - Any other changes?  
1922  
1923 Ms. Dwyer - On the summary of the last case for which there were  
1924 no minutes, I was trying to look back at my notes and see what I may have  
1925 mentioned. I think I did mention the size of the parcel, that it was a 61-acre  
1926 parcel, that the pool house would be virtually invisible and that the existing  
1927 houses, the existing dependency has historic value or historic interest. That was  
1928 in my notes. I think I got it out. If not, it's in the staff report.  
1929  
1930 Mr. Gidley - [Off mike.] Okay.  
1931  
1932 Ms. Dwyer - If we could just—I wanted to have facts to justify the  
1933 motion.  
1934  
1935 Mr. Kirkland - Any other changes? Can I have a motion to approve  
1936 the minutes as changed?  
1937  
1938 Ms. Harris - I so move.  
1939  
1940 Ms. Dwyer - Second.  
1941  
1942 Mr. Kirkland - Motion by Ms. Harris, seconded by Ms. Dwyer. All  
1943 those in favor say aye. All those opposed say no. The ayes have it; the motion  
1944 carries. The minutes have been approved as changed.  
1945  
1946 On a motion by Ms Harris, seconded by Ms. Dwyer, the Board **approved as**  
1947 **corrected** the **Minutes of the December 20, 2007** Henrico County Board of  
1948 Zoning Appeals meeting.  
1949  
1950  
1951 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1952 Negative: 0  
1953 Absent: 0  
1954

1955 Mr. Kirkland - Any other information to come in front of this Board?  
1956 If not, can I have motion to adjourn?

1957  
1958 Mr. Wright - So move.

1959  
1960 Mr. Nunnally - Second.

1961  
1962 Mr. Kirkland - All those in favor say aye. All those approved say no.  
1963 We're adjourned.

1964  
1965 There being no further business, the Board adjourned until the February 28, 2008  
1966 meeting at 9 a.m.

1967

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1975 Richard Kirkland, CBZA  
1976 Chairman

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1982 Benjamin Blankinship, AICP  
1983 Secretary