

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, JUNE 26, 2008, AT 9:00 A.M., NOTICE HAVING**
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH JUNE 5, 2008 AND**
6 **JUNE 12, 2008.**

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

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

8 Mr. Kirkland - Good morning, Ladies and Gentlemen, welcome to
9 the June 2008 Board of Zoning Appeals meeting. Before we get started, if you
10 would all rise and say the **Pledge of Allegiance to the Flag of Our Country**.
11 Mr. Secretary, if you would, please read the rules.

12
13 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
14 ladies and gentlemen. The rules for this meeting are as follows. Acting as
15 Secretary, I will call each case, and as I'm announcing it, the applicant should
16 come down to the podium. We will then ask everyone who intends to speak on
17 that case to stand and be sworn in. The applicant will then have an opportunity to
18 speak, and then anyone else who wishes to speak will be given an opportunity.
19 Then the applicant, and only the applicant, will be given an opportunity for
20 rebuttal. After the Board has heard all of the testimony and asked questions, they
21 will take the matter under advisement, and they will render all of their decisions at
22 the end of the meeting. So, if you wish to hear their decision on a specific case,
23 you can either stay until the end of the meeting, or you can check the Planning
24 Department website this afternoon—we usually update it within about half an
25 hour of the end of the meeting—or you can call the Planning Department later
26 this afternoon. This meeting is being tape-recorded, so I will ask everyone who
27 speaks to speak directly into the microphone on the podium, state your name,
28 and please spell your last name so we get it correctly in the record. Finally, out in
29 the foyer, there are two binders that contain the staff report for each case,
30 including the conditions that have been recommended by the staff. Particularly if
31 you're the applicant for a use permit case, it's very important that you be familiar
32 with those conditions.

33
34 Mr. Chairman, as you know, we have two cases on the agenda this morning that
35 were carried forward from last month. Both of those were cases where the public

36 hearing was held and closed, and then the vote was taken, but there was a tie
37 vote. Since one member was absent, the decision was made in both cases to
38 carry the cases over so that the full five members could vote on them. We can
39 either open the public hearings, or hear from applicant, or simply proceed to the
40 discussion—whatever the Board decides.

41
42 Mr. Kirkland - I think we should have the applicant at least state the
43 case.

44
45 Mr. Blankinship - All right.

46
47 Mr. Kirkland - Then if Ms. Dwyer has any questions, since she was
48 the one that was not here last month for the applicant, that would be the only
49 thing, and then we could discuss it.

50
51 Mr. Blankinship - All right. The first case is A-009-08.

52
53 **A-009-08** **DOROTHY BOWLES** requests a variance from
54 Section 24-9 to build a one-family dwelling at 2060 Valentine Road (Parcel 778-
55 756-4794 (part)), zoned R-2, One-family Residence District (Fairfield). The public
56 street frontage requirement is not met. The applicant has 0 feet public street
57 frontage where the Code requires 50 feet public street frontage. The applicant
58 requests a variance of 50 feet public street frontage.

59
60 Ms. Dwyer - Mr. Chairman, if I may say something at this junction.
61 I have read the minutes from last month, so I'm familiar with all the evidence and
62 testimony that was taken last month. If you would like, you may just amplify or
63 add to whatever was said last month. I don't need to hear the entire case, unless
64 you prefer to present that.

65
66 Mr. Kirkland - If you would, though, please read into the record what
67 you want, so that we can have it taped.

68
69 Mr. Blankinship - That mike's flexible. You're a little taller than the last
70 group.

71
72 Mr. Craft - My name is David Craft.

73
74 Mr. Blankinship - We also need to swear them in.

75
76 Mr. Kirkland - If you would all raise your right hands and be sworn
77 in.

78
79 Mr. Blankinship - Do you swear the testimony you're about to give is
80 the truth and nothing but the truth so help you God?

81

82 Mr. Craft - I do. Mr. Wright, the only thing that I would have to
83 add from the last meeting that we had, I know Mr. Wright has some questions as
84 to why we couldn't build a home that faced Lydell Drive on that property,
85 specifically to the south of Ms. Bowles' house. The answer to that question,
86 which I didn't get a chance to do last time, was that there is a creek that runs
87 through that treeline right there. It's not just a treeline at all, there's actually a
88 creek that starts right there in the middle of those two fields. With the VEPCO
89 easement that runs through there, and that creek that runs through that treeline,
90 it's impossible to put the house, at least the house we're looking to build in there
91 between those two tree lines. My wife was not able to be present last time, so I'm
92 going to let her present the rest of everything.

93
94 Ms. Craft - Good morning. My name is Heidi Craft. There are
95 some things that we wanted to bring to your attention. This property has been in
96 my family for at least six generations. We know that the house is 140 years old,
97 or maybe even older. We're hoping that by building there, that not only do we
98 continue the legacy of living on the land, but also I'm living my inheritance, I'm
99 getting to be right beside my parents and my grandmother. My grandmother is
100 91. Our plan when we move there is to help her, because she's 91 and has this
101 land and this farm, and a large house to take care of. Even though we are in
102 Varina, it's still a commute. It's 25 minutes one way to help out. My father, who is
103 a County employee, has recently been diagnosed with a heart condition. In fact,
104 he goes for another heart cath—his third in three months—tomorrow. So, his
105 health is rapidly declining and my family needs help. Those are a lot of the
106 reasons why we would like to build there, besides it's my family's inheritance.

107
108 We wanted to remind the Board of how generous our family has been over the
109 years. There is a distribution easement that is on the property already—Virginia
110 Power, C & P Telephone, cable TV service—and all that services the community.
111 There is a transmission easement that runs through there that serves Lakeside
112 and the ACCA Yard. Adjacent to my grandmother's house, there are telephone
113 lines and also cable lines that feed her house. A couple years ago, about three
114 years ago, Virginia Power and C & P established an easement for the
115 commercial establishments that are right there, and ran a 20-inch waterline
116 through her property that continues down Parham Road, but there was land that
117 was required for that 20-inch line there at the corner of Lydell and Parham.
118 Brookland Middle School was built in 1958, and that was using some of my
119 grandmother's lane. Lydell Drive, which divided the farm, that land was provided
120 by the family, as was Parham Road. As you can see, this family has been a
121 supporter of the County for years. We're just asking that we can continue to
122 support the County, but by living on the property and continuing to improve the
123 property by the house that we're going to build.

124
125 I'll be glad to answer any questions, if you have any. We're very excited about
126 the opportunity to live on this side of the County, but want to do so on our family's
127 land.

128
129 Mr. Wright - The one question I have is why can't you build it on
130 Parham Road?
131
132 Ms. Craft - I'm glad you brought that up, because that's one of
133 the things we talked about. Hopefully, you're familiar with the land. The way that
134 the land lays, all the land that is on Parham Road is farmed, and because the
135 taxes are extremely high, the land that is farmed, the profits she makes from the
136 crops that are raised on that land go to pay her taxes. Where we have positioned
137 the land, that acre of land that she has given to us, she told us that's where she
138 wanted us to build because it has the least amount of impact on the farm. If we
139 were to take a substantial amount of that farmland, it would then impact her
140 income, therefore further impacting her well-being and her financial status.
141
142 Mr. Kirkland - Any other questions? If you would, step to the
143 microphone and state your name first.
144
145 Ms. Bowles - I'm Dorothy Bowles and I own the land at Lydell and
146 Parham. At the end of Lydell, the County has put pavement there so we cannot
147 build on that. It can be worked, the farm can be worked, but you can't build on it.
148
149 Ms. Dwyer - What are you speaking of now?
150
151 Ms. Bowles - At the end of Lydell and Parham.
152
153 Ms. Dwyer - At that corner?
154
155 Ms. Bowles - Yes.
156
157 Ms. Craft - That's where I mentioned the 20-inch line that was
158 coming through, and then that continues down Parham. There is also a high-
159 pressure waterline that has been proposed to run down the transmission line. My
160 husband had alluded to where you had suggested maybe that we build on Lydell.
161 But that land where that dry creek bed—well, it's called a dry creek bed, but it's
162 not. Where that creek bed lies, we have the easement. Because it's a 100-foot
163 easement, the house won't fit, which is the reason why the land that she had
164 given us, where she'd asked for it to be placed, that satisfies that 100-foot
165 easement. That high-pressure waterline—I believe it's a 54-inch line—is
166 supposed to come down that transmission line. Currently, it stops right at Lydell
167 Drive.
168
169 Mr. Kirkland - Mr. Blankinship, do you know anything about that?
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171 Mr. Blankinship - About the proposed waterline?
172
173 Mr. Kirkland - Yes.

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Mr. Blankinship - No sir.

Ms. Harris - I did go by again to check out that site. The Board suggested at the last meeting that maybe the property should be relocated. I could visibly see the wires, the electric wires. I think you want to build a home of 2700+ square feet, and I would think if you're going to put that much in a home, you would not want the wires directly adjacent to your home.

Ms. Craft - Right.

Ms. Harris - I had another concern. We are in a position to deny or approve, but it's a tendency for us to deny the 50-foot frontage because we don't know just what future plans would cause us to put a house right in the middle of a mixed-use neighborhood, or a residential complex, or something of that nature. From that standpoint, too, I can see keeping as much of that farmland intact so that you would open up possibilities for future development. Right now, it's zoned for residential.

Ms. Craft - Right.

Ms. Harris - Single-family dwellings.

Ms. Craft - Right.

Ms. Harris - Being adjacent to the office complex and adjacent to J. Sargeant Reynolds, that zoning might change to even mixed-use.

Ms. Craft - Right.

Ms. Harris - If we put a house in the middle of that farmland where there is plenty of land, I think that the future of the County for that Parham Road corridor might be at stake.

Ms. Craft - Right. That's part of the reason, too, that we moved it to where it is, because those are all things we had certainly thought about. We know that the land is valuable, and we're trying not to destroy the value of the land by placing the house where we would like to. On the screen, you'll see the red dotted line that shows where the placement of our house would be. To the right touching that, there's six acres that shows all the different structures that are on my grandmother's property. That six acres is actually her acreage and the rest of it is where the family subdivision falls. We are trying to be mindful of those six acres that are specifically here, and then, of course, the other property that's surrounding us, that's in the family subdivision. Again, that was what our purpose was, so we could have the least amount of impact on the land as a whole. You had asked, I believe, at the last Board meeting if there was any type

220 of proposal that we knew of. No, there is nothing on record as far as proposals
221 for what will happen with this land. There is nothing that has been officially drawn
222 up. Of course, there is always conversation, but that's family conversation.

223

224 Mr. Kirkland - Any other questions? All right, that concludes the
225 case. Would it be your pleasure to discuss it now or vote at the end?

226

227 Ms. Dwyer - Let's do it now.

228

229 Mr. Kirkland - Want to do it now?

230

231 Mr. Wright - Since we deferred it.

232

233 **DECISION**

234

235 Mr. Kirkland - Okay. Do I have a motion on this case?

236

237 Ms. Harris - I move that we approve this permit for a variance.

238

239 Mr. Nunnally - I seconded it.

240

241 Mr. Kirkland - Motion by Ms. Harris, seconded by Mr. Nunnally. Any
242 discussion?

243

244 Ms. Dwyer - I will make some comments since I wasn't here last
245 month to do that. I certainly appreciate all that this family has done for the
246 County. They've certainly enumerated a number of ways in which utilities have
247 affected the land, and land has been sold for a school, for roads, and that sort of
248 thing. That's certainly admirable. The issue, though, for us today is purely a legal
249 issue. We are governed by both the law that gives us a certain limited amount of
250 authority, and we're governed by the Supreme Court, which has interpreted that
251 law, which also sets boundaries for the kinds of decisions that we can make. The
252 key issue here in my assessment of this case is whether this case passes the
253 Cochran standard for determining whether this Board has the authority to grant a
254 variance in this case. In the Cochran case, the Supreme Court said if the land
255 that you're considering has any reasonable use without the variance, then this
256 Board does not have the authority to grant the variance. In this case, this
257 property does have a reasonable use; it's presently being used as farmland. In
258 my view, from a purely legal standpoint, we do not have the authority to grant this
259 variance. It's a difficult thing to say, because it's a very reasonable request in
260 many ways, and we know that you prefer this lot and this particular location for a
261 lot of very good reasons. But if we don't have the authority, we don't have a legal
262 authority to do it.

263

264 Secondly, and this is purely dictum, as a practical matter, there are other options.
265 There is quite a bit of road frontage on this particular site. In addition, under our

266 ordinance, this is a recurring issue, and we have to be able to make a finding that
267 this is not a recurring issue in order to have, again, the authority to grant the
268 variance. So, I see that we really have no choice in here but to deny the case.

269
270 Mr. Kirkland - The motion has already been made to approve. All
271 those in favor of approving the case, signify by saying aye. All those opposed
272 say no. Three to two; the motion is denied.

273
274 Affirmative: Harris, Nunnally 2
275 Negative: Dwyer, Kirkland, Wright 3
276 Absent: 0

277
278 Ms. Dwyer - Should we have a specific motion for denial?

279
280 Mr. Blankinship - Yes, we should. No action's been taken.

281
282 Mr. Kirkland - All right. Could I have a motion that we deny this
283 case?

284
285 Ms. Dwyer - I'll make a motion that this case be denied.

286
287 Mr. Kirkland - Do I have a second?

288
289 Mr. Wright - Second.

290
291 Mr. Kirkland - Any discussion? Motion by Ms. Dwyer, seconded by
292 Mr. Wright. All those in favor of having this motion denied, signify by saying aye.
293 All those opposed say no. It's three to two; the motion is approved.

294
295 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
296 Mr. Wright, the Board **denied** application **A-009-08, Dorothy Bowles'** request
297 for a variance from Section 24-9 to build a one-family dwelling at 2060 Valentine
298 Road (Parcel 778-756-4794 (part)), zoned R-2, One-family Residence District
299 (Fairfield). The public street frontage requirement is not met.

300
301 Affirmative: Dwyer, Kirkland, Wright 3
302 Negative: Harris, Nunnally 2
303 Absent: 0

304
305
306 **A-010-08 KEN BROADWATER HOMES, LLC** requests a
307 variance from Section 24-9 to build a one-family dwelling at 11936 Old
308 Washington Highway (Parcel 773-778-8430), zoned A-1, Agricultural District
309 (Brookland). The public street frontage requirement is not met. The applicant has
310 0 feet public street frontage where the Code requires 50 feet public street
311 frontage. The applicant requests a variance of 50 feet public street frontage.

312
313 Mr. Kirkland - All right. This case has the same similar scenario. If
314 you would, sir. Anyone else wish to speak, only to be asked questions by Ms.
315 Dwyer since she was not here? If you would, all of you who are going to answer
316 questions, please raise your right hand and be sworn in. Stand please.
317
318 Mr. Blankinship - If you're likely to speak.
319
320 Mr. Kirkland - If you get asked a question, you need to be sworn in.
321 Go on and stand up. Everybody get sworn in. We'll cover it all at once here.
322
323 Mr. Blankinship - Raise your right hand, please. Do you swear the
324 testimony you're about to give is the truth and nothing but the truth so help you
325 God?
326
327 Mr. Broadwater - I do.
328
329 Mr. Kirkland - Sir, would you state your name for the record?
330
331 Mr. Broadwater - Yes, I'm Ken Broadwater.
332
333 Mr. Kirkland - Please state the request you want to make in front of
334 this Board, so it can be put on the record.
335
336 Mr. Broadwater - Yes. We wish to obtain a variance to build a single-
337 family home on a lot that I guess has no street frontage.
338
339 Mr. Kirkland - Okay.
340
341 Mr. Broadwater - Just, I guess, to kind of recap. The threshold, I think,
342 of course, is what we were working on the last time. Of course, some of the
343 suggestions that were provided by the Board, all I believe except the one, of
344 course, has been met, and that is, of course, the road maintenance agreement.
345 To recap on what we went through before is that the—I guess if we are denied
346 the variance then, of course, it is actually, I guess, an impossible and
347 unreasonable use of the property. The sole purpose of this property, of course, is
348 a building lot. There's been a home on it since 1937. The lot was, of course,
349 subdivided and I think it's 1.6 acres that was given to Mr. Keeton, I guess to build
350 another home there. The original home had been torn down, and we would like
351 to, of course, build a home on this.
352
353 There is an 800-foot easement that runs though there, which actually gives us
354 legal right-of-way to get to the property. However, without actually being able
355 to—if this road maintenance agreement is the deterring factor on getting this,
356 then, again, I think that this poses a hardship in the fact that it's basically the

357 same thing as just taking the property from us, because the use of this property
358 is none.

359

360 I know it was in 2003 that the variance was granted to subdivide this lot, and
361 given to build a fourth home, which was on this same easement. They applied
362 for this same variance that had zero street frontage, and the variance was
363 granted due to that fact, to build a fourth home on this thing. Mr. Taggart has sent
364 us a draft of a road maintenance agreement, which really, to me, was not a road
365 maintenance agreement. It's an agreement to maintain the paved, their paved
366 driveway. It's unfortunate that they paved through an easement that is actually
367 access for four homes to travel on. I'm not opposed to an agreement on a road,
368 but I'm not into the road maintenance agreement just to make sure that only their
369 part of the road is maintained, if there's an 800-foot road. I myself live on a road
370 that's a half-mile long, and every person on that road pays exactly the same
371 amount of money to maintain that road. It doesn't start at the guy at the
372 beginning that drives on a hundred feet, and the guy at the back that has a half a
373 mile. Road maintenance is what we're looking for.

374

375 Even without the road maintenance agreement, the use of this property without it
376 being a home is really—without this variance, the property is useless. I have a
377 tax bill here that—The County assessed this land at \$74,900, so there has to be
378 value. If it's not a building lot, it has to be a high priced piece of farmland.

379

380 Mr. Blankinship - That assessment was set when there was a non-
381 conforming dwelling on the property, right? Then that dwelling was torn down.

382

383 Mr. Broadwater - This was this year's tax bill, so, whatever. Yeah. But
384 I'm saying just the land itself. Without this variance, this property is really
385 worthless. The hardship, I think, imposed on this is literally the County taking the
386 property back, because it is of no use.

387

388 Ms. Dwyer - Mr. Broadwater, do I understand you, then, to be
389 saying that you do not have an agreement as to the maintenance of this access
390 drive?

391

392 Mr. Broadwater - Correct. There has been no agreement established.
393 There's been negotiation back and forth, but we're not willing to agree to the
394 agreement to just maintain the asphalt part of the road.

395

396 Ms. Dwyer - So, you're willing to do what, then? What are you
397 willing to do?

398

399 Mr. Broadwater - Well, if it was an equal share all the way through, then
400 yes, we would—If there's going to be a maintenance agreement on this roadway,
401 it's for the entire length of the road, and it would be just the way the thing is
402 written up with the exception that it's not just the first 400 feet, it's the entire road.

403

404 Ms. Dwyer - The maintenance agreement proposed is just for the
405 part of the road that is—

406

407 Mr. Broadwater - Paved and used by the first two.

408

409 Ms. Dwyer - Okay, but it doesn't include the part of the road that
410 extends behind your neighbor's house toward this lot or the lot next door.

411

412 Mr. Broadwater - Correct. It does not include—Yes, exactly. It doesn't
413 include the two back lots, only the pavement. From Mr. Taggart I had that their
414 specific instruction when they wrote this was to have only that part included, that
415 they were not interested in maintaining the road. They wanted everybody to
416 maintain their part of the road. It is also stated in here about the house plans. I
417 do have a set of plans, if somebody would like to see it. We have actually filed
418 for the building permit. I have the soil work. We actually have a health permit. I
419 have an approved well, approved septic system. All this is done. So, I mean, I
420 have that today, if anybody would need to see that for reference. Shrink/swell
421 soil work. Everything on those suggestions, with the exception of that road
422 maintenance agreement.

423

424 I have no problem even repairing the road if we mess it up with whatever we
425 have going on. If we build a home back there and mess up, I mean, I will bring
426 that asphalt road back to the condition that it's in now. It's not fair for my
427 homeowners—and we actually have a contract to build for a customer—to
428 impose a maintenance agreement that only maintains their asphalted part of the
429 road. It still comes back to me, I guess, the fact that they put this asphalt in an
430 easement. There's nothing keeping anybody from driving back and forth over
431 this. The hardship comes in that we can't build a home back there. I had the
432 right to drive back and forth on the easement, as anybody else does.

433

434 Ms. Dwyer - I think this illustrates the problem of granting
435 variances for houses that don't have road frontage, and that's one of the main
436 reasons I think the legislature in its wisdom said that houses have to have 50 feet
437 of public road frontage. That's to avoid this exact kind of issue coming up. That's
438 not something that the County really wants to get in the middle of. You have, I'm
439 sure, legitimate arguments, as do your neighbors, but that truly illustrates the
440 reason why we shouldn't be granting these variances. I'll just make that
441 comment.

442

443 Mr. Broadwater - I can understand that, but I guess to go back and
444 correct these issues is something we cannot do now. The home has been
445 recorded back in 1937. It's never had street frontage, never. So, between then
446 and now, nothing has actually changed, except for the old home was torn down.
447 The Board approved a variance to build a fourth home back there on this same
448 easement, and now we want to replace this old home with a new home. Again,

449 like I said, there's nothing we can do. We'll never obtain road frontage, so if the
450 variance isn't granted, then this property is, basically, of no use.

451
452 Mr. Kirkland - When you purchased the property, Mr. Broadwater,
453 you knew at the time that it would need a variance to be used as a home site.

454
455 Mr. Broadwater - No, I did not. I knew it did not have road frontage, but
456 I was not aware that the variance would be required.

457
458 Mr. Kirkland - When you tore down the existing home, which I
459 assume you did last year?

460
461 Mr. Broadwater - I didn't tear it down.

462
463 Mr. Blankinship - That was the previous owner.

464
465 Mr. Kirkland - The previous owner tore it down?

466
467 Mr. Broadwater - Correct.

468
469 Mr. Kirkland - Okay. All right. So, when you bought it, you bought it
470 with the understanding that you could build a home there.

471
472 Mr. Broadwater - Exactly.

473
474 Mr. Kirkland - No one explained this to you.

475
476 Mr. Broadwater - Exactly. I mean, there was a home existing. We knew
477 the home was torn down. Like I said, there's no other means to get to this
478 property but through this same easement that the people that have lived there
479 from the 1930's have used. The rules, I think, on the zoning have changed in
480 2004 or 2005, whatever. The granting of the fourth home on this easement was
481 back in 2003. There was no mention of road maintenance agreements then.
482 There were four homes occupied or using this same exact easement. The Board
483 approved the home to be built, a fourth home. Subdivide and built another home.

484
485 Mr. Kirkland - That was before things happened with the Virginia
486 Supreme Court.

487
488 Mr. Blankinship - It was also a family division.

489
490 Mr. Kirkland - It was a family division.

491
492 Mr. Broadwater - From my understanding, the family division, all that
493 was complied with and that's not an issue. At the same time, we're back now to
494 where we have the actual original piece of property, the one that was actually cut

495 off from, to build a home. Without the home, literally, the property is worthless. I
496 don't know of anybody that would be interested. There's no use for this property
497 without it.

498
499 Ms. Harris - Is it okay if we ask a question?

500
501 Mr. Kirkland - Sure, sure.

502
503 Ms. Harris - Mr. Broadwater, would you rather see this defeated
504 than to have an acceptable road maintenance agreement?

505
506 Mr. Broadwater - No. I think an acceptable road maintenance
507 agreement would be good.

508
509 Ms. Harris - What would you propose as acceptable, one in which
510 the property owners share equally in the road maintenance? Is this what you are
511 proposing?

512
513 Mr. Broadwater - Yes, that would be acceptable to me, that the four
514 homes on that easement would share equally one-fourth of the expense to
515 maintain the road from Old Washington Highway to the beginning of my lot,
516 which is at the end of the 800 feet.

517
518 Ms. Harris - Mr. Kirkland, can we ask the other persons involved if
519 they would be amenable to having an agreement that would state that their share
520 of the maintenance would be one-fourth? Are they here?

521
522 Mr. Kirkland - Yes, I think.

523
524 Ms. Dwyer - Before they—

525
526 Ms. Harris - I just want to ask this one question.

527
528 Ms. Dwyer - Oh, okay.

529
530 Ms. Harris - Would you—

531
532 Mr. Kirkland - Come up to the podium, please sir, and state your
533 name for the record. Ms. Harris would like to ask you a question.

534
535 Mr. Taggart - I'm John Taggart.

536
537 Ms. Harris - Would you be amenable to an agreement that stated
538 one-fourth of the road maintenance would be your responsibility?

539

540 Mr. Taggart - No. The reason I say that, we keep referring to it as a
541 road—it's my driveway. We refer to it as a road, but Henrico County gave us
542 ownership to the middle of that; that's my driveway. They did that back in 2005,
543 so we paved it. Mr. Werner and I paved it. We spent 20-some thousand dollars
544 on it because we were granted ownership to the middle. Yes, there's an
545 easement for the Keeton's behind us, but they tore down their old house to build
546 a new one. We were never talking about four houses. So, if I were to accept an
547 agreement where I have to pay 25% of 800 feet, that's just—I can't understand
548 how that's fair. Mr. Werner and I spent 20+ thousand dollars to pave this after we
549 were granted ownership of our driveway, and now we're supposed let other
550 people drive on it and have no responsibility, or we're supposed to be 25%
551 responsible for what they do behind us. I've never driven the next 600 feet
552 behind me and I've been there for 15 years, and I never plan on it.

553
554 Ms. Harris - How many feet are we talking about for the entire
555 driveway?

556
557 Mr. Taggart - Our driveway that we paved is approximately 400
558 feet. I'd say off the cuff, it's probably another 3 to 400 feet back to where Mr.
559 Broadwater is proposing to build.

560
561 Mr. Kirkland - So, it's an 800-foot stretch, and you've paved 400 of
562 it.

563
564 Mr. Taggart - We've paid 400, which takes it past my driveway
565 entrance that turns into me, and Mr. Werner's driveway entrance that turns into
566 him.

567
568 Mr. Kirkland - Mr. Blankinship, the half of the road that they own,
569 how much remaining footage is left on the other half?

570
571 Mr. Blankinship - It's between 3 and 400 feet. Depends on exactly
572 where you—

573
574 Mr. Kirkland - I'm talking about the width.

575
576 Mr. Blankinship - Oh.

577
578 Mr. Kirkland - He said he—

579
580 Mr. Blankinship - See, prior to the building of Thomasville subdivision, it
581 was an easement that went back and served a lot of properties. When
582 Thomasville was built, as you see on your maps, public streets were built
583 everywhere else, except to serve these houses. At that point, that's when he's
584 saying, "The County gave us." In fact, it was already a private road, but at that

585 point, everyone else was served by the public streets, so they were left with
586 these lots served by the private street, the one private drive.

587
588 Ms. Harris - That driveway is your only access to your property?

589
590 Mr. Taggart - Yes ma'am.

591
592 Ms. Dwyer - But you do have road frontage.

593
594 Mr. Taggart - I do have road frontage, yes.

595
596 Ms. Dwyer - You said this is your driveway, and it's your private
597 property, basically, this access drive. In fact, if there's an easement across that
598 driveway, then legally, while it may be your property, others do have a legal right
599 to cross and use that road to get to their property. Is that your understanding?

600
601 Mr. Taggart - From a laymen's term, yes. It was my understanding
602 that the Keeton's had an easement, which we never had an issue with. That's
603 why we didn't come to the 2003 hearing, because that was transferring in the
604 family. We understood that there was 12 feet from my land easement, 12 feet
605 from Mr. Werner's land, and 24 feet that ran through there where the Keeton's
606 had an easement. Yes, that was our understanding.

607
608 Ms. Dwyer - The reason I mention that is because when you were
609 talking, it sounded like you were saying that this is my private property and I'm
610 sort of, by the generosity of my heart, letting these people use it. That's really
611 not the case because they have a legal right to use that to have access to the
612 lots behind because there is an easement.

613
614 Mr. Taggart - Oh, I agree. The Keeton's definitely have the
615 easement. We never had an issue with that whatsoever. I kind of take it personal
616 because we were granted the ownership to the middle, even though there's an
617 easement. If I'd known something like this was even remotely possible, I would
618 have not spent all that money on that driveway.

619
620 Ms. Dwyer - Okay. I just wanted to make sure we were on the
621 same page about what rights are granted when there's an easement on private
622 property. It's still your property, yet you've kind of lost some ownership to it, in a
623 sense, because the easement has been granted.

624
625 Mr. Wright - Is this recorded? It has to be a recorded easement, I
626 take it.

627
628 Mr. Blankinship - Yes sir.

629
630 Mr. Taggart - Yes.

631
632 Mr. Wright - How wide is it?
633
634 Ms. Dwyer - Twenty-four feet.
635
636 Mr. Wright - Twenty-four feet is the easement.
637
638 Ms. Dwyer - Mr. Blankinship, a road maintenance agreement,
639 that's pretty standard when these variances are granted. In 2003 when the
640 variance was granted for 11934, wasn't there a road maintenance agreement
641 requirement as a condition to that case?
642
643 Mr. Blankinship - I don't believe there was. Again, that was a family
644 division. There were some other requirements that the property had to be
645 cleaned up, because there were a lot of Community Maintenance violations on it
646 at the time. I think that was the only real issue at that point.
647
648 Ms. Harris - Mr. Taggart, what percentage would you consider fair
649 for your part of using your driveway?
650
651 Mr. Taggart - What we proposed in the road maintenance
652 agreement with Mr. Broadwater was the first 400 feet that's paved. The rest of it
653 is dirt, and I don't know what they're going to do back there. But we proposed
654 that the four of us—the Werner's, the Taggart's, the Keeton's, and Mr.
655 Broadwater or whoever purchases it—equally address that. Now, Mr. Werner
656 and I did the initial investment, but from this point on, maintain the paved area. I
657 don't know if they will ever pave in the back or not. That's what we propose, the
658 first 400 feet equally shared because it's equally driven on.
659
660 Ms. Harris - Okay. So, you're saying one-fourth of 400.
661
662 Mr. Taggart - Yes, one-fourth of 400 is how I broke it up. Yes
663 ma'am.
664
665 Ms. Harris - I need to ask the other neighbor if he agrees with that.
666
667 Mr. Wright - Just one?
668
669 Mr. Kirkland - If you would, sir, state your name for the record.
670
671 Mr. Werner - Yes. James Werner. Like John said, the County,
672 whatever happened between B & B Development and Attack Properties in
673 Thomasville, told us now we—they sent me a paper, "You own the road to the
674 center." One section, I own all of it, kind of behind me, past where I paved. I
675 don't see why I have to maintain something that I'm not going to use.
676

677 Ms. Harris - I just called you up here for one question. That is,
678 would you be amenable to paying one-fourth of the entire—
679

680 Mr. Werner - No ma'am.

681

682 Ms. Harris - One-fourth of the 400.

683

684 Mr. Werner - No ma'am.

685

686 Ms. Harris - One-fourth of the area that goes to your—
687

688 Mr. Werner - Yes, oh yes.

689

690 Ms. Harris - That's all I needed.

691

692 Mr. Werner - Yes. I didn't want to go—
693

694 Mr. Kirkland - One quarter of the paved area.
695

696 Ms. Harris - Okay. I'm back to Mr. Broadwater. You're not willing
697 to pay one-fourth of the paved area, even though you're going to cross over that,
698 too, now.

699

700 Mr. Broadwater - Exactly.

701

702 Ms. Harris - Okay.

703

704 Mr. Broadwater - Like I said, I mean, yes—
705

706 Ms. Harris - Your answer is no.

707

708 Mr. Broadwater - The answer is no.

709

710 Ms. Harris - Thank you, that's all I needed. Thank you.
711

712 Mr. Kirkland - Mr. Wright, Ms. Dwyer, Mr. Nunnally, do you have any
713 questions?
714

715 Mr. Wright - The way this condition is written, if this were
716 approved, it would be subject to their obtaining a road maintenance agreement.
717 So, if they couldn't do it, then the condition would knock the thing out to begin
718 with, wouldn't it? I'm looking at Condition #.
719

720 Ms. Dwyer - Except that it says that the condition—Well, you're
721 right. My concern about the second sentence in that condition is that it puts the

722 Director of Planning in the middle of this neighborhood dispute, and I think that
723 would be unwise.
724
725 Mr. Blankinship - And now that we have all the parties in the room, I
726 don't think we need that second sentence anymore. We put that there because at
727 that point when we drafted this, we had not heard everyone's input. Now that we
728 know where everyone stands, I think we could strike that second sentence.
729
730 Mr. Wright - Then that pretty well causes the case to be denied. If
731 it was approved and they don't get the road maintenance agreement, then they
732 can't go forward with it.
733
734 Mr. Blankinship - They can't build a house, that's right.
735
736 Mr. Broadwater - I think it says that we'll make a good faith effort, which
737 I am.
738
739 Mr. Wright - Well, that's a matter of opinion.
740
741 Mr. Kirkland - We just polled the landowners, and all of them
742 agreed. Well, there's one still missing.
743
744 Ms. Dwyer - It doesn't say, "Good faith effort," it says, "The
745 applicant shall present proof with the building permit application that a legal
746 access to the property has been obtained, and that a road maintenance
747 agreement has been recorded." There's no good-faith effort. There has to be a
748 road maintenance agreement recorded.
749
750 Mr. Wright - We'll strike that last sentence.
751
752 Mr. Blankinship - The next sentence mentions a good-faith effort.
753
754 Ms. Dwyer - Right, right. But we're saying we would strike this
755 second sentence.
756
757 Mr. Wright - Therefore, if you don't get a road maintenance
758 agreement that's recorded, you couldn't get a building permit.
759
760 Mr. Broadwater - Again, are these not also just suggestions?
761
762 Mr. Wright - It puts the burden upon you for you all to work it out,
763 or if you don't work it out, you're—
764
765 Ms. Harris - No, they're conditions.
766

767 Mr. Blankinship - They're suggestions from the staff to Board. If the
768 Board adopts them, then they're part of the approval.
769
770 Mr. Broadwater - So, then for us to get a permit to build a home has
771 nothing to do with the case? I have the right to drive over this property without a
772 road maintenance agreement, you know. I think it's established the fact that we
773 have a legal right to go on this road.
774
775 Mr. Blankinship - You have the right to drive over it, but you don't have
776 the right to build a house on it.
777
778 Mr. Broadwater - Right. So, there's where—We're looking for the
779 variance to build a home and it's all conditioned based on a road maintenance
780 agreement, nothing to do with the home itself?
781
782 Mr. Blankinship - One of the findings the Board has to make in order to
783 grant a variance is that there will be no substantial detrimental impact on other
784 property in the area. I think the finding that they're leaning toward, just hearing
785 the discussion, is that building another house back there will have a substantial
786 detrimental impact on these people because it'll put more traffic on a road that
787 they built and that they maintain. So, the Board is requiring that if you're going to
788 put that additional traffic on the road that they built, you have to agree on, more
789 or less, their terms, and it's up to the Board to determine whether their terms are
790 reasonable.
791
792 Mr. Broadwater - What about whether or not—
793
794 Mr. Blankinship - If the Board says that they're making you a
795 reasonable offer of a road maintenance agreement, then in order for you to put
796 that additional burden on their road, you have to agree to their request of a
797 maintenance agreement. Of course, that's a judgment call. I don't vote, so.
798
799 Mr. Broadwater - I mean, this is—
800
801 Mr. Blankinship - I'm just interpreting what I'm hearing.
802
803 Mr. Broadwater - Again, we're saying this is a road, and it's not a road,
804 it's an easement. Is that not the case?
805
806 Mr. Kirkland - This is an access to all the property owners—
807
808 Mr. Broadwater - Correct.
809
810 Mr. Kirkland - —in that area. If you want to use it that way. Now—
811
812 Mr. Blankinship - If it were a public street, we wouldn't be here.

813
814 Mr. Kirkland - Correct. Mr. Blankinship stated it perfectly. If you're
815 going to use it, you need to pay for it.
816
817 Mr. Broadwater - And I have no problem with that.
818
819 Mr. Kirkland - You need to pay your share.
820
821 Mr. Broadwater - I have no problem with that either.
822
823 Mr. Kirkland - You just stated you wouldn't pay for that part.
824
825 Mr. Broadwater - No, we'll pay for the whole road, its road
826 maintenance.
827
828 Mr. Kirkland - No, no. Why should those gentleman pay for a road
829 that they don't use past the 400 feet? They don't even go back there. The
830 gentleman just stated he hadn't been back there in 15 years.
831
832 Mr. Broadwater - What about Mr. Keeton? What are his thoughts?
833 We're waiting on Mr. Keeton as well, you know.
834
835 Mr. Kirkland - All right.
836
837 Mr. Wright - The ordinance gives this Board the prerogative to put
838 whatever conditions we deem appropriate on anything that we approve. If we
839 approve this and we leave this in, if you don't get the road maintenance
840 agreement somehow or another, you couldn't get the building permit. We've
841 done all we can do, and that's the way we see it.
842
843 Mr. Broadwater - I understood this to be suggestions, that this is what
844 you would like for us to be able to come to an agreement.
845
846 Mr. Wright - These are conditions.
847
848 Mr. Kirkland - These are conditions that we include—
849
850 Mr. Blankinship - They're suggestions from the staff to the Board.
851
852 Mr. Kirkland - To us.
853
854 Mr. Wright - They actually suggested these, but it's up to us to
855 take them or leave them. If we like them, we would keep them. We would
856 approve it subject to these conditions.
857

858 Mr. Broadwater - So, then non-compliance of the suggestions, or the
859 threshold of it being, basically, a hardship, as opposed to us not getting the use
860 of the property, how do those two compare to one another? I mean, if we are not
861 to build a home on this property, then to whom would this home have value?
862 What is the value and where do we stand with that?

863
864 Mr. Blankinship - The threshold question is one of four questions that
865 the Board has to make affirmative findings on. It's called the threshold because
866 they ask that one first. If you can't get over that hurdle, then the hearing's over.

867
868 Mr. Broadwater - Right.

869
870 Mr. Blankinship - If they determine that there is a reasonable case, that
871 there's no other use of the property, then they look at the other three questions.
872 One of those is will there be a substantial detrimental impact on the other
873 properties. That's really the legal basis behind this portion of the discussion.

874
875 Mr. Kirkland - All right, gentlemen.

876
877 Mr. Broadwater - If we were to agree to this road maintenance where
878 we have maintenance on the first 400 feet of this road, then we've met all the
879 conditions that we have here?

880
881 Mr. Blankinship - Well, the Board hasn't voted yet.

882
883 Mr. Kirkland - That would be something in your favor; let's just put it
884 that way.

885
886 Mr. Blankinship - It would be a means of addressing that issue.

887
888 Mr. Kirkland - That would take care of that issue.

889
890 Ms. Dwyer - We don't have to know today whether you're going to
891 come to an agreement. If we decide to approve the case and include this as a
892 condition, that, in effect, prevents you from getting a building permit unless you
893 have a maintenance agreement. So, even if we approved it, as a practical matter,
894 you couldn't build unless you had the agreement. It's really not our purpose to
895 get involved, to get in the middle of these disputes, and draft out the
896 maintenance agreements. That's really something among the people who use
897 the road. Our purpose is to just make sure that there is a maintenance
898 agreement that will take care of this private drive access before we allow it to
899 happen.

900
901 Mr. Broadwater - Okay.

902
903 Mr. Kirkland - All right.

904
905 Ms. Harris - And to me, it's something you need to consider. I
906 don't know how much it cost to construct that road that we're talking about that
907 you will cross over, but one-fourth of that, is that dollar amount worth your not
908 going forth with your plans. I imagine even the buyers might agree that you need
909 to move forward. But that, of course, is your choice. We need everybody to work
910 together on this particular agreement.
911
912 Mr. Broadwater - Yes. I was hoping that Mr. Keeton was to be here as
913 well. We've checked with a couple of asphalt companies, as far as continuing the
914 asphalt on back to our home. Again, if it's going to be prorated 25% up front, and
915 50% for the guy in the middle, and 75% for the guy in the back, it just makes it
916 difficult. The asphalt is relatively low maintenance, to some degree.
917
918 Mr. Kirkland - We're only discussing what's here today.
919
920 Mr. Broadwater - Exactly.
921
922 Mr. Kirkland - We can't plan on what's going to happen in the future.
923
924 Mr. Broadwater - Right.
925
926 Mr. Kirkland - So, I think we've had enough testimony on this. Do I
927 have a motion on this case?
928
929 **DECISION**
930
931 Mr. Wright - I move we approve it on the grounds that by granting
932 this variance, we will alleviate a clearly demonstrable hardship. I base that on
933 the fact that I think, "taken as a whole," means the 2.2-acre parcel, since that was
934 a legal subdivision back when it was done.
935
936 Mr. Kirkland - Mr. Wright, do you want to scratch the second
937 sentence on the—
938
939 Mr. Wright- Strike the second sentence of Condition 4. The other
940 conditions I would move to be included as a part of this case for approval.
941
942 Mr. Kirkland - Do I have a second?
943
944 Mr. Nunnally - Second.
945
946 Mr. Kirkland - Motion by Mr. Wright, seconded by Mr. Nunnally. Any
947 discussion?
948
949 Ms. Dwyer - Yes.

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Mr. Kirkland - Okay.

Ms. Dwyer - I think this is a very complicated case in terms of how we apply both Cochran and Cherrystone and the statute. If I may, I'd like to just go through some of my analysis of it.

Mr. Kirkland - Sure.

Ms. Dwyer - Then maybe that will spark some discussion. It certainly will at least lay some foundation in the record for why we've made our decision.

This case clearly satisfies Cochran. This is a lot that has no use without the granting of this variance, so I think it passes the threshold question raised in Cochran. I agree with Mr. Wright that the property taken as a whole, in this case, is the 2.2 acres and not the original 3.8 acres. The reason I think that is because this is not a case like some we've had where a homeowner or a landowner just simply decides on their notion that, "I'm going to divide my parcel into a bunch of lots," and then say, "I can't use them." This is a case in which this Board in 2003 authorized the subdivision of this property. I think because of our intervention and our creation of this other lot, that that cannot be included in the property taken as a whole. For those reasons, I think the property taken as a whole under Cochran and Cherrystone is the 2.2 acres.

That is only the threshold question. We then have to turn to the statute and look at all the different findings that we're required to make. There are three bases for granting a variance. The one I think applies in this case is that we, as Mr. Wright said, alleviate a clearly demonstrable hardship approaching confiscation. If we don't grant the variance, there is no use for the property.

Then we also must find several other things, including that the variance is required to preserve substantial property rights. I think that's true in this case. But we also have to find that it's not of a substantial detriment to the adjacent properties, and I think that's where we get into the question of the road maintenance agreement. I think there must be a road maintenance agreement in order for us to make that finding that a granting of this variance will not be of substantial detriment to the neighbors. So, I would agree with Mr. Wright that Condition 4 should stay in, as stated without the second sentence, because that assures the neighbors that the impact of this development will not negatively affect their driveway. I would hope there would be something in the maintenance agreement about if there's damage caused during the construction process, and allocate who's responsibility that might be so that you all don't end up in court over that. But that's just opinion.

995 The final question we have to answer is whether this variance is of a recurring
996 nature, this situation that gives rise to this variance is of a recurring nature. That's
997 a stumbling block for me because this is a recurring situation. We have these
998 cases every month. But I think what may be unique about this case is the fact
999 that we have already permitted a subdivision of the property is 2003. There was
1000 a dwelling in use for some 68 years on the property, and it was torn down not by
1001 this owner, but the previous one. This was a roadway that was in use for almost
1002 70 years. So, I'm going to argue that although it's a recurring kind of situation,
1003 that it's a fairly unique case because we have granted a variance that authorized
1004 the subdivision as the BZA, and because there has been a dwelling on the land
1005 for some almost 70 years.

1006
1007 I would agree with Mr. Wright that we should grant the variance, but I will also
1008 say that I think this is a little taste of the kinds of issues and problems that arise
1009 when we do grant variances for properties that do not have road frontage, and
1010 generally, I'm opposed to that.

1011
1012 Mr. Kirkland - Thank you, Ms. Dwyer.

1013
1014 All right. Motion was made by Mr. Wright, seconded by Mr. Nunnally to approve
1015 the variance. All in favor say aye. All opposed say no. The ayes have it; the
1016 motion carries.

1017
1018 After an advertised public hearing and on a motion by Mr. Wright, seconded by
1019 Mr. Nunnally, the Board **approved** application **A-010-08, Ken Broadwater**
1020 **Homes', LLC**, request for a variance from Section 24-9 to build a one-family
1021 dwelling at 11936 Old Washington Highway (Parcel 773-778-8430), zoned A-1,
1022 Agricultural District (Brookland). The public street frontage requirement is not
1023 met. The Board granted the variance subject to the following conditions:

1024
1025 1. This variance applies only to the public street frontage requirement for one
1026 dwelling only. All other applicable regulations of the County Code shall remain in
1027 force.

1028
1029 2. Approval of this request does not imply that a building permit will be issued.
1030 Building permit approval is contingent on Health Department requirements,
1031 including, but not limited to, soil evaluation for a septic drainfield and reserve
1032 area, and approval of a well location.

1033
1034 3. At the time of building permit application, the applicant shall submit the
1035 necessary information to the Department of Public Works to ensure compliance
1036 with the requirements of the Chesapeake Bay Preservation Act and the code
1037 requirements for water quality standards.

1038

1039 4. [AMENDED] The applicant shall present proof with the building permit
1040 application that a legal access to the property has been obtained and that a road
1041 maintenance agreement has been recorded.

1042

1043 5. The owners of the property, and their heirs or assigns, shall accept
1044 responsibility for maintaining access to the property until such a time as the
1045 access is improved to County standards and accepted into the County road
1046 system for maintenance.

1047

1048 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1049 Negative: 0

1050 Absent: 0

1051

1052 Mr. Kirkland - Mr. Blankinship, you did get the note on #4.

1053

1054 Mr. Blankinship - Yes sir.

1055

1056 Mr. Kirkland - Okay. Next case, sir.

1057

1058

1059 **A-011-08** **NORMA ANDERSON** requests a variance from
1060 Section 24-95(k) to build an attached garage at 11200 Blendon Lane (Tuckahoe
1061 Village) (Parcel 738-744-4764), zoned R-2, One-family Residence District
1062 (Tuckahoe). The street side yard setback is not met. The applicant has 18 feet
1063 street side yard setback where the Code requires 25 feet street side yard
1064 setback. The applicant requests a variance for 7 feet street side yard
1065 setback.

1065

1066 Mr. Kirkland - Does anyone else wish to speak on this case? If you
1067 would please all stand and be sworn in.

1068

1069 Mr. Blankinship - Raise your right hands, please. Do you swear the
1070 testimony you're about to give is the truth and nothing by the truth so help you
1071 God?

1072

1073 Mr. Kirkland - All right, ma'am, if you would, state to the Board what
1074 you're requesting.

1075

1076 Ms. Anderson - I bought this property in 2004.

1077

1078 Mr. Kirkland - Get a little closer to the microphone.

1079

1080 Mr. Blankinship - And state your name.

1081

1082 Ms. Anderson - Norma Anderson. In 2004, I bought this property—it
1083 was a fixer-upper—down the street from my parents for my seven year old and I
1084 to live in. At the time, I had many plans for the property. I was going to fix it up,

1085 and I did indeed put a lot of sweat equity and a lot of money into fixing it up. I
1086 also called the County to ask what the setbacks were for an intended garage
1087 when I could eventually afford it, and I was given the 25 feet. They said 25 feet
1088 from Stoneycreek, so I took it from the road. I didn't know it had to be from the
1089 property line. I was under the impression that I could ultimately build a garage
1090 there. I am now able to afford to build it, and am finding that they're not liking
1091 where I want to put it. So, I'm here to try to argue my case and say that I think
1092 it's unreasonable for me not to be able to put the garage where I want to put it.
1093 The house itself is not compliant with the 25-foot setback. I have about 18-and-
1094 some feet from the road, or from my line, but it's not compliant with the 25-foot
1095 setback and I would like to build a garage in line with it. I need the extra space.
1096 The only other place I can put the garage, as they said a detached garage, only
1097 gives me about 16 to 18 feet on the other side of the house, which is not at an
1098 entrance point. I'd have to put a new driveway in on that opposite side, on the
1099 Stoneycreek side of the street.

1100

1101 Mr. Kirkland - Any questions by Board members?

1102

1103 Ms. Harris - Yes. Do you have a picture, a plan for the garage with
1104 you, the proposed garage that you want to build?

1105

1106 Ms. Anderson - I don't have the plans with me. You all have them. Of
1107 course, I've already applied. My builder has the other copy. I have a picture of a
1108 similar house in my neighborhood—setback of something similar—that they've
1109 built.

1110

1111 Ms. Harris - What is the height? Do you know the height there?
1112 I'm concerned about people being able to see. When they approach that
1113 intersection, with the garage there, can they see the ongoing traffic or?

1114

1115 Ms. Anderson - There is no ongoing traffic; it's a dead-end road.

1116

1117 Ms. Harris - So, there is no traffic period? All you need is one
1118 accident.

1119

1120 Ms. Anderson - No, you would not be able to see it. It would be no
1121 higher than my house is now.

1122

1123 Ms. Harris - You have a two-story or a tri-level?

1124

1125 Ms. Anderson - It's a Cape.

1126

1127 Ms. Harris - It's a Cape. Okay.

1128

1129 Ms. Anderson - It would be a garage with an attic above.

1130

1131 Mr. Kirkland - Any other questions?
1132
1133 Ms. Dwyer - Ms. Anderson, how long have you lived in the house,
1134 did you say?
1135
1136 Ms. Anderson - Since 2004.
1137
1138 Ms. Dwyer - 2004. And you've used it as your primary residence.
1139
1140 Ms. Anderson - Yes.
1141
1142 Ms. Dwyer - So, you've had a reasonable use of the property since
1143 you—
1144
1145 Ms. Anderson - Well, it has been.
1146
1147 Mr. Kirkland - Okay. Any other questions from the Board members?
1148 All right, that concludes the case.
1149
1150 Ms. Dwyer - We have some opposition.
1151
1152 Mr. Kirkland - Oh, excuse me, I'm sorry. I'm sorry, I'm sorry. I
1153 forgot you were there. My fault. If you would, please sit down. You will have
1154 time to rebut their comments. I apologize. Yes ma'am. All right, this opposition,
1155 come on down. I apologize, sir. You all were so quiet back there, I didn't even
1156 see you. If you would, sir, state your name for the record.
1157
1158 Mr. Grant - Robert Grant.
1159
1160 Mr. Kirkland - Where do you live?
1161
1162 Mr. Grant - Pass this down and let them look. [Off mike.] Let me
1163 put—
1164
1165 Mr. Blankinship - [Off mike] I'm going to put them up on the screen.
1166
1167 Mr. Grant - Good, good.
1168
1169 Mr. Kirkland - Sir, what is your address?
1170
1171 Mr. Grant - I'm at 1409 Stoneycreek Drive. Right there. You have
1172 a little hand on it now. That's where I live.
1173
1174 Mr. Kirkland - Okay
1175

1176 Mr. Grant - Just to start off, I have no objection to her putting a
1177 garage there. She bought this house and it needed a lot of repair. She has
1178 restored this home greater than it was when it was new. Everything she does
1179 really enhances the property and improves the value of the house. She wants to
1180 build a garage similar to someone else that has one at Ryandale. And I can't
1181 think of the name of the street, but it's right off Gayton. He's going to put a
1182 picture up of what she wants to build; just like that guy's. It's really a beautiful
1183 garage/home combination with about the same setback that she has right now on
1184 hers. [Unintelligible] & Wilton built these houses. The lower picture there, that is
1185 on Ryandale, the side street, and that setback is what she has. You have
1186 allowed them to do it. I just can't understand why she can't do it. Wilton built
1187 these houses, and if he didn't put enough setback and all, it was not her fault that
1188 when she bought this home that it was like that. Henrico County allowed Wilton
1189 to do a lot of things, as you all well know. A couple of you all are gray-headed
1190 and losing hair, too.
1191
1192 Mr. Kirkland - Thank you.
1193
1194 Mr. Grant - I'm glad to see you all here because I was dreading it
1195 would be all young people, like these ladies and all, that—
1196
1197 Ms. Harris - Bless you.
1198
1199 Mr. Grant - I was afraid I would be speaking to someone that
1200 would say, "Well, that was before us, back then. They did things different then."
1201 Well, this would only be right to allow her to do something like that and she'd
1202 have shelter between her house—that's just a breezeway that's under that so
1203 she can go from the garage back and forth with her child. I have no objection to
1204 her building it, and I know it would enhance the property, and it would not
1205 obstruct that intersection, as someone mentioned. I live right there at the end
1206 where Blendon comes in. It would just be an enhancement.
1207
1208 Mr. Kirkland - So, you're not in opposition, you're—
1209
1210 Mr. Grant - No. I'm in favor of her building it. I'd like to see it start
1211 tomorrow.
1212
1213 Mr. Kirkland - Okay. Thank you, sir. Next please? Come on down,
1214 sir.
1215
1216 Mr. Blankinship - I'm sorry, I missed your name.
1217
1218 Ms. Harris - Robert Grant.
1219
1220 Mr. Blankinship - Thank you.
1221

1222 Mr. Kirkland - If you would state your name for the record, sir.
1223
1224 Mr. Hilliard - Yes. My name is Norman Hilliard.
1225
1226 Mr. Kirkland - Okay. What is your address?
1227
1228 Mr. Hilliard - I'm at 1411 Hillsboro Drive. I've been there for 42
1229 years. My property is no more than two blocks up Blendon. I'm on the corner of
1230 Blendon and Hillsboro. This is my daughter's property that you're reviewing now.
1231 As Mr. Grant has said to you, she has worked hard to develop what is now a
1232 handsome property on a corner that had been allowed to sort of go down. All the
1233 old cedar siding that had been on that house was warped, twisted. She had it all
1234 pulled down. New insulation, new siding, new piers under the house for
1235 support—that's lots and lots of work. New windows. As she said, she bought
1236 that because it was something that she could afford at the time and renovate,
1237 with the notion that ultimately, she could have a garage for her car and the little
1238 trailer that she uses to haul various and sundry things that she needs. There's
1239 also a little seven-year-old boy who needs a little more room for bikes, sporting
1240 equipment. Right now, he'd like to have a little railroad train layout that's in my
1241 family room that I keep there for him because he doesn't have room in the house
1242 for it; he would in the garage. Mr. Grant has pointed out that it would be an
1243 enhancement.
1244
1245 I keep hearing the word, "Cochran." As best I can determine, there's also
1246 another phrase in the decision rendered on Cochran, and it dealt with
1247 reasonableness. It is unreasonable to allow a garage to be put on the same
1248 property, but just moved onto the other side of the house, as opposed to on the
1249 side where all the other garages in the neighborhood are, next to your entrances.
1250 It would also entail having to install a new driveway from Blendon, since her
1251 house is a Blendon Road house, and it was built in accordance with all the
1252 setback of Blendon Road. The houses behind her property on Stoneycreek were
1253 built much later than the house that she occupies on Blendon. So, a Stoneycreek
1254 setback is unreasonable. I think that meets part of the doctrine or whatever it is
1255 that Cochran has. It doesn't always have to be no use of the property, but
1256 reasonable. Denying of the variance would cause unreasonableness of the use
1257 when other property owners do have garages. I know there have been changes
1258 in the laws, in the rules governing property, but that house has been sitting on
1259 that corner for 40 years and there was never any question about not being able
1260 to use it.
1261
1262 I'm here to speak for my daughter and hope that you people see it as being a
1263 reasonable request.
1264
1265 Mr. Kirkland - Thank you sir
1266
1267 Mr. Hilliard - Thank you.

1268
1269 Mr. Wright - One thing—Sir?
1270
1271 Mr. Hilliard - Yes?
1272
1273 Mr. Wright - She could build an 18-foot-wide garage or single-car
1274 garage without any variance at all.
1275
1276 Mr. Hilliard - I'm sorry. Am I missing something?
1277
1278 Mr. Wright - She has 18 feet of buildable area. Evidently, this is a
1279 two-car garage, which is, what, 24-feet, 25-feet wide.
1280
1281 Mr. Hilliard - Well, the garage that's at my house was built some
1282 time ago and it's 24 by 24.
1283
1284 Mr. Wright - No, I say—
1285
1286 Mr. Hilliard - But I don't understand the 18 feet. She can build an
1287 18-foot attached garage?
1288
1289 Mr. Wright - That's our information. She has 18 feet of buildable
1290 area is what you say in our information.
1291
1292 Mr. Blankinship - For a detached garage.
1293
1294 Mr. Hilliard - Yes. For the detached garage, it would still be on the
1295 other side of the lot—the best information we were given.
1296
1297 Mr. Wright - Isn't it true that she could build a single-car garage on
1298 there?
1299
1300 Mr. Blankinship - She could build either an attached garage set back 25
1301 feet, or she could build a detached garage on the opposite side.
1302
1303 Mr. Hilliard - It's the 25 foot that's the unreasonable thing because
1304 that puts it out of line with the established house. The house is there and been
1305 there for years.
1306
1307 Mr. Blankinship - Right. Mr. Wright is making the point that it would be
1308 out of line, but she could build a garage.
1309
1310 Mr. Hilliard - Oh, that's right. But it's not within reason to build a
1311 garage in the middle of your backyard, when all the other garages—If you were
1312 to go through Tuckahoe Village and look at the driveways, the driveways at every
1313 house go to the side of the houses where your utility room or your entrance or

1314 exit would be. Several of the houses on the corners do not have the driveways
1315 coming in off the address side, but coming off the side street. That's where you
1316 need to have access to your entrances and exits and whatnot from the house. If
1317 she were to go with the 18 feet, it puts the house, or the garage, far removed
1318 from the entranceway. It doesn't make sense that it couldn't stay in line with the
1319 house that's there. The fact that that house was built where it is, and doesn't
1320 meet the 25-foot thing, is obviously not her fault. She can't pick the house up and
1321 move it. Putting a garage on the same line, the same plane has no detriment to
1322 anybody else. Thank you.
1323

1324 Mr. Kirkland - Thank you. I think we had one more gentleman that
1325 might want to speak.
1326

1327 Male - [Off mike] [Inaudible]
1328

1329 Mr. Kirkland - Thank you, sir. No, you've already stated yours.
1330 Now, she can speak because she rebut—No, she can't, because you were all for
1331 it.
1332

1333 Male - [Off mike] [Inaudible]
1334

1335 Mr. Kirkland - All right, sir. I figured you'd have to say something.
1336

1337 Mr. Blankinship - Nice try, anyway.
1338

1339 Mr. Kirkland - All right. State your name for the record.
1340

1341 Mr. Bryant - Frederick Bryant.
1342

1343 Mr. Kirkland - What is your address?
1344

1345 Mr. Bryant - I live at 1411 Stoneycreek.
1346

1347 Mr. Kirkland - Oh, okay.
1348

1349 Mr. Bryant - My wife and I have no objections whatsoever, and
1350 everybody else has stated reasonable arguments as to why. I think a two-car
1351 garage is perfectly legitimate, and a one-car garage is almost always not quite
1352 enough garage. Thanks.
1353

1354 Mr. Kirkland - Thank you. All right. Since no one was opposed,
1355 rebuttal time is waived.
1356

1357 Ms. Dwyer - I have a question for Mr. Blankinship.
1358

1359 Mr. Blankinship - Yes ma'am.

1360
1361 Mr. Kirkland - Mr. Blankinship.
1362
1363 Ms. Dwyer - I think the applicant said something about originally
1364 she had measured from the edge of the pavement as opposed to the property
1365 line, and I see the fence is set in. Is there County-owned right-of-way between
1366 her fence line and the edge of the pavement there? This is not the right picture
1367 for this case. There we go.
1368
1369 Mr. Blankinship - Okay. We are looking from—
1370
1371 Ms. Dwyer - Another picture that shows the fence in the back.
1372
1373 Mr. Kirkland - See the fence right there?
1374
1375 Mr. Blankinship - Yes. This is roughly looking along her property line.
1376
1377 Ms. Dwyer - Right.
1378
1379 Mr. Kirkland - Is her fence on her property?
1380
1381 Mr. Blankinship - Oh, that's the question, isn't it. Okay. I do not know.
1382
1383 Ms. Dwyer - There's another picture, Paul.
1384
1385 Mr. Blankinship - Is there a survey that indicates the location of the
1386 fence?
1387
1388 Ms. Dwyer - See if there's another picture.
1389
1390 Mr. Blankinship - The applicant says it's three feet over.
1391
1392 Ms. Dwyer - That's it.
1393
1394 Mr. Kirkland - All right.
1395
1396 Mr. Blankinship - Yes, okay. It shows on the survey plat, which I'm
1397 sorry is not in the presentation this month, but you do have a copy. In your
1398 packet, there's a survey and it does show that the fence is three feet over, as the
1399 applicant said. Three feet onto the right-of-way.
1400
1401 Ms. Dwyer - It encroaches on the right-of-way?
1402
1403 Mr. Blankinship - Yes ma'am.
1404

1405 Ms. Dwyer - That's not what I was looking for. That's not an issue.
1406 Sometimes you can acquire property—I don't know if this is one of those cases
1407 or not, but that was my thinking, that this is a dead-end street, looks like it dead-
1408 ends into a wetland or swamp. So, it's unlikely, depending on whether you like to
1409 use euphemisms or not, so it's unlikely, certainly that this road will be extended,
1410 and that that right-of-way would need to be used. I have no idea what the status
1411 of that is; I just think that might be a couple of feet that the applicant could pursue
1412 acquiring. Essentially, to have an attached garage, the garage would have to be
1413 set in seven feet to the interior of the property from the outside edge of the home.
1414

1415 Mr. Blankinship - Yes ma'am.

1416
1417 Mr. Kirkland - Any other questions? If not, that concludes the case.
1418

1419 **DECISION**

1420
1421 Ms. Dwyer - I move we deny the case.
1422

1423 Mr. Kirkland - Motion made by Ms. Dwyer to deny. Do I have a
1424 second?
1425

1426 Mr. Wright - Second.
1427

1428 Mr. Kirkland - Second by Mr. Wright. Any discussion?
1429

1430 Ms. Dwyer - Yes, I would like to make a few statements. First of
1431 all, you have a beautiful home and you've obviously done a great deal to improve
1432 it. It's obvious driving by how much care you have taken with the property. This is
1433 one of the occasions when I don't like this job, but I just see our authority under
1434 the law as limited in this case. There is reasonable use of the property. Let me
1435 talk about that word, "reasonable," because that was raised by the applicant's
1436 supporters. The test is if you don't get the variance, are you deprived of all
1437 reasonable use of the property. So, when you use the word, "reasonable," in that
1438 context, it's clear that you have a use of the property—you use it as a home and
1439 you've used it as a home for many years. So, under the Supreme Court
1440 decision, we don't have the authority to grant the variance. As much as it is an
1441 appropriate location and an attractive addition, it would increase the value of the
1442 property itself, and it would improve the neighborhood—all those things are in its
1443 favor. Everything looks good in the case except for the law, and the law says we
1444 don't have the authority to grant the variance under Cochran.
1445

1446 Male - [Off mike – inaudible]
1447

1448 Mr. Kirkland - You can't speak, sir. We are discussing it between us
1449 for the vote. Any other comments? Any other discussion? All right.
1450

1451 We have a motion by Ms. Dwyer, seconded by Mr. Wright that we deny the case.
1452 All in favor say aye. All opposed say no. The ayes have it; the motion passes.
1453 This case is denied.

1454
1455 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
1456 Mr. Wright, the Board **denied** application **A-011-08, Norma Anderson's** request
1457 for a variance from Section 24-95(k) to build an attached garage at 11200
1458 Blendon Lane (Tuckahoe Village) (Parcel 738-744-4764), zoned R-2, One-family
1459 Residence District (Tuckahoe). The street side yard setback is not met.

1460
1461 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1462 Negative: 0
1463 Absent: 0

1464

1465

1466 **UP-011-08 RUTH H. HENLEY** requests a conditional use permit
1467 pursuant to Section 24-95(i)(4) to allow a carport to remain in the front yard at
1468 1204 Bentbrook Drive (Foxboro North) (Parcel 803-706-1023), zoned R-3, One-
1469 family Residence District (Varina).

1470

1471 **A-012-08 RUTH H. HENLEY** requests a variance from Sections
1472 24-95(i)(2)(c) and (d) to allow a carport to remain in the front yard at 1204
1473 Bentbrook Drive (Foxboro North) (Parcel 803-706-1023), zoned R-3, One-family
1474 Residence District (Varina). The accessory structure setback and least side yard
1475 setback are not met. The applicant has 0 feet least side yard setback and 3 feet
1476 accessory structure setback where the Code requires 3 feet least side yard
1477 setback and 10 feet accessory structure setback. The applicant requests a
1478 variance of 3 feet least yard setback and 7 feet accessory structure setback.

1479

1480 Mr. Blankinship - Mr. Chairman, the next two are companion cases.

1481

1482 Ms. Dwyer - Mr. Chairman?

1483

1484 Ms. Henley - The statement is not accurate, sir.

1485

1486 Mr. Kirkland - Hang on just a second.

1487

1488 Ms. Dwyer - In reference to the last case, because we made
1489 decisions immediately after the first two cases. Typically, we make all of our
1490 decisions at the end of the meeting, so I just wanted you to know that so you're
1491 not wondering why we didn't make a decision at this point. Okay.

1492

1493 Mr. Kirkland - All right. Anyone else wish to speak on this case? All
1494 right, ma'am. Since there is no one else, would you raise your right hand and be
1495 sworn in.

1496

1497 Mr. Blankinship - Ma'am, would you raise your right hand? Do you
1498 swear the testimony you're about to give is the truth and nothing but the truth so
1499 help you God?
1500

1501 Ms. Henley - I do.
1502

1503 Mr. Blankinship - Thank you.
1504

1505 Mr. Kirkland - If you would, ma'am, state your name for the record.
1506

1507 Ms. Henley - My name is Ruth Henley.
1508

1509 Mr. Kirkland - Okay. If you could, get a little closer to that mike. For
1510 some reason, it's not doing a real good job.
1511

1512 Ms. Henley - I want to first say that given the types of cases that
1513 I've heard so far this morning, it confirms what I originally thought is that this case
1514 really shouldn't even be here. It's about a carport that has been in place for
1515 several years, and I was amazed to hear from the County that there was an issue
1516 regarding it. In my application that I submitted to the County, I submitted, under
1517 recommendation of an attorney, a gallery of pictures of my neighbors' carports,
1518 similarly located, and throughout the County of Henrico. Again, I even
1519 questioned that I should be here trying to argue a case for a carport that has
1520 been in place for several years, and it's similarly located to many, many
1521 hundreds, maybe thousands in the same area of the County. I just question why
1522 I'm here.
1523

1524 Mr. Wright - Ms. Henley, did you get a building permit to have this
1525 carport built?
1526

1527 Ms. Henley - No—
1528

1529 Mr. Wright - Well, that's why you're here. You didn't get a building
1530 permit, and you're supposed to get a building permit.
1531

1532 Ms. Henley - No, what I'm suggesting that I followed proceed—May
1533 I make a correction on page 2 of this application, first of all? Under the second
1534 paragraph, it says, "The applicant has 0 feet least side setback." That is
1535 incorrect. The setback on the side is 6 feet, and—
1536

1537 Mr. Blankinship - I'm sorry to interrupt you, but do you have a survey of
1538 the property that shows the property line and the existing carport?
1539

1540 Ms. Henley - I have this picture, actually, which came with a County
1541 document. Do you want to see this?
1542

1543 Mr. Blankinship - No, that's fine. The reason why we put 0 was to leave
1544 the Board the flexibility to approve a setback variance, if it is necessary. Because
1545 we don't have a survey that shows both the property line and the carport, we
1546 can't be certain whether it complies or not. The worst case would be if everyone
1547 thought it was 6 feet, the Board did not grant a variance, and then you had a
1548 survey done that showed it was 5.9 feet. Then we'd be back here again. By
1549 putting 0 and giving the Board the flexibility to grant or not grant that variance, we
1550 cover all the bases in case a previous—
1551
1552 Ms. Henley - But my case is that it shouldn't be an issue if it's in
1553 compliance. That's my case.
1554
1555 Ms. Dwyer - Well, ma'am, just to address that question. You're not
1556 allowed to have carports in your front yard, and you didn't get a building permit.
1557
1558 Ms. Henley - It's not in a front yard. And again, I asked you to take
1559 a look at this picture. Can we show this picture?
1560
1561 Mr. Blankinship - Sure.
1562
1563 Ms. Henley - If you look at this picture, how could it possibly be in
1564 the front yard, when you see daylight through the carport?
1565
1566 Mr. Kirkland - Because —
1567
1568 Ms. Henley - If you were in the front yard, you would see the
1569 house. This is another picture that shows—[Goes away from the mike]—
1570 [inaudible]—That's the house there. [Comes back to the mike.] The carport is
1571 clearly on the side in front of a garage.
1572
1573 Mr. Kirkland - Yes ma'am, but does the carport in any way intrude in
1574 the front line of your house?
1575
1576 Ms. Henley - Now, the front line, there's a red line there and you
1577 see the carport is circled.
1578
1579 Mr. Wright - I can't see it.
1580
1581 Mr. Kirkland - It's kind of fuzzy on ours.
1582
1583 Mr. Wright - I can't see it.
1584
1585 Mr. Kirkland - So, the red line that we see on this sketch—
1586
1587 Ms. Henley - [Off mike] The red line that you see here is supposed
1588 to be the boundary lines for the front of house.

1589
1590 Mr. Kirkland - And—
1591
1592 Ms. Henley - [Off mike] The carport is circled.
1593
1594 Mr. Kirkland - And have you drawn that out at the porch line?
1595
1596 Ms. Henley - [Off mike] The line was drawn by the County. This
1597 picture [inaudible] supplied by the County. [Back at the mike.] This is not a
1598 picture that I made or something that I made up.
1599
1600 Mr. Kirkland - Okay.
1601
1602 Ms. Henley - This picture was supplied by the County. The carport
1603 is in the circled area. The red lines were drawn by the County.
1604
1605 Mr. Kirkland - So, you're saying it's in the side yard?
1606
1607 Ms. Henley - It is in the side yard.
1608
1609 Mr. Wright - Can't be in the side yard.
1610
1611 Ms. Dwyer - Could we have someone from staff explain why it is or
1612 is not in the front, and why the case has been presented as it has been?
1613
1614 Mr. Blankinship - Paul, would you put up the picture that's labeled,
1615 "From Southeast"? That shows pretty clearly, Ms. Dwyer, where the front line of
1616 the house is and where the carport is. I think it's pretty clear that the carport is in
1617 front of the house.
1618
1619 Ms. Henley - No, the house is beside that. You can see the
1620 chimney. The chimney's on the side of the house.
1621
1622 Mr. Gidley - [Off mike] [Inaudible] front.
1623
1624 Ms. Henley - It's on the side.
1625
1626 Mr. Kirkland - Ma'am, I—
1627
1628 Mr. Wright - It's not—
1629
1630 Mr. Kirkland - I see the edge of the house.
1631
1632 Ms. Dwyer - Can we define the front yard, and define what is and
1633 is not allowed?
1634

1635 Mr. Blankinship - The front yard is the area between the street right-of-
1636 way and the nearest point of the structure moving back from the street right-of-
1637 way. By definition, the front yard extends from one side lot line all the way to the
1638 other side lot line. The side yard is behind the front yard, if you will, and in front of
1639 the rear yard.
1640
1641 Ms. Dwyer - Okay. So—
1642
1643 Mr. Blankinship - But it doesn't matter, because a carport's not allowed
1644 in the front or the side yard. If it were entirely within the side yard, we'd still be
1645 exactly where we are.
1646
1647 Ms. Dwyer - I think what's maybe the issue is the applicant's
1648 thinking if the carport is not aligned in front of the house, then it's not in the front
1649 yard. If it's to the side of the house, then you're saying it's in the side yard. What
1650 we're saying—
1651
1652 Ms. Henley - But that's just only one of the issues. The other
1653 issues—
1654
1655 Ms. Dwyer - If I may just clear this matter up for the record. Even if
1656 it's sort of to the side of the house, but technically in front of it, that counts as
1657 front yard. What we're saying is even if it's in the side yard, that's also not
1658 allowed. That's why you're here.
1659
1660 Ms. Henley - Okay. Then explain to me why I was able to
1661 document thousands, actually hundreds of cases. I've submitted a gallery of
1662 pictures with my application with carports similar to this, and I have some with me
1663 today.
1664
1665 Mr. Kirkland - Yes ma'am, and probably a lot of them are not right.
1666
1667 Ms. Henley - And maybe you're opening a floodgate if you deny
1668 this.
1669
1670 Mr. Kirkland - We've had a lot of these, ma'am.
1671
1672 Ms. Henley - You're probably opening a floodgate, then.
1673
1674 Mr. Wright - Well, let's open it.
1675
1676 Ms. Henley - Because if you're going to say this about one
1677 residence of the County, I don't see but how you can allow the others.
1678

1679 Mr. Wright - We don't allow it. We don't have enough people in
1680 the Department of Planning to go out and check every house in Henrico County.
1681 When it comes to our attention, we deal with it.
1682

1683 Mr. Kirkland - I know of two since I've been on the Board that they
1684 have dismantled and removed.
1685

1686 Ms. Henley - I think that the issue is actually something that you do
1687 on your discretion because my neighbor—In one of those pictures that the
1688 County took and included with the application that came to me that you probably
1689 have access to, you see a carport in my neighbor's side yard that does not have
1690 the property side line, side yard lot variance.
1691

1692 Mr. Kirkland - Ma'am, it's your right to complain about that if you
1693 choose. You can always pick up the phone and call the County.
1694

1695 Ms. Henley - I don't have an issue with it.
1696

1697 Mr. Kirkland - Yes ma'am, I know. I understand that, but I'm saying
1698 this is an issue now. There was no building permit issued on it. You have been
1699 cited, I assume, since we have a Code—
1700

1701 Ms. Henley - You know, in a court of law you're supposed to face
1702 your accuser. Who was this citer?
1703

1704 Mr. Kirkland - I believe this was the Community Maintenance and
1705 Revitalization person that came out and probably noted that it was not permitted.
1706

1707 Ms. Henley - Oh, but he didn't notice that my neighbor right next
1708 door to it was—
1709

1710 Mr. Kirkland - Well, most of the time when they appear, they're
1711 acting on a complaint made by one of your neighbors. They don't just ride
1712 through the neighborhood looking for this. Most of the Planning complaints are
1713 complaint-driven. People call and then the inspector goes out. There are not
1714 enough inspectors to ride around all day long and just pick out things. They
1715 would never end. So, most likely, someone has complained about this. It's not
1716 stated in our report, but that's normally when these come in front of us.
1717

1718 Ms. Henley - Well, in a court, I should be able to face—
1719

1720 Mr. Kirkland - No, that doesn't work that way.
1721

1722 Mr. Blankinship - If you go to court charged with a violation, then you
1723 will have that opportunity, but that's not our purpose here this morning.
1724

1725 Mr. Kirkland - Yes ma'am.
1726
1727 Mr. Blankinship - Our purpose this morning is to review your
1728 applications for a use permit and for a variance. We're here this morning
1729 because you submitted applications, and the Board's here this morning to hear
1730 those applications and decide on them.
1731
1732 Ms. Henley - Okay. Could you show that other picture showing the
1733 front view that you took? No, another one. Okay. There's one other that shows
1734 the—Yes. There is the six feet that I referred to, and you see the carport there of
1735 the neighbor, who is much closer to the sideline, but was not cited. It just seems
1736 so unfair that you would want to even consider having me disassemble this
1737 carport. It's much better. It's a much better model. It's sturdier. It's more in line
1738 with the architectural style of my house. It adds to the neighborhood where cars
1739 are parked on the street, except for today when they paved it. It just seems
1740 unthinkable that I am even here defending that, when I have documented so
1741 many cases that are really worse than this.
1742
1743 Mr. Kirkland - Well, it's our job to interpret the Code and to go by the
1744 ordinances in the County. The architectural prettiness of it, as you may say, and
1745 everything else really doesn't count. We have to go by what the rules are.
1746
1747 Ms. Harris - Mr. Chairman, I have an update that I asked Mr.
1748 Blankinship to bring to this meeting. I don't know if any of us—Since the
1749 swimming case that we had?
1750
1751 Mr. Kirkland - Yes ma'am.
1752
1753 Ms. Harris - There's a revision in the Code. We've talked about
1754 accessory structures, location in the side or front yard of a one-family, two-family
1755 semi-detached dwelling. They talk about accessory buildings or structures,
1756 including swimming pools may be approved by conditional use permit. I
1757 wondered, are we talking about carports in this case?
1758
1759 Mr. Blankinship - Yes ma'am. Any accessory structure could be
1760 reviewed under that.
1761
1762 Mr. Kirkland - That's for a use permit, correct?
1763
1764 Ms. Harris - For a use permit.
1765
1766 Mr. Blankinship - Yes. We're hearing both the use permit and a
1767 variance.
1768
1769 Ms. Dwyer - So, we're considering that today. That's the reason
1770 we're here.

1771
1772 Mr. Kirkland - Right.
1773
1774 Ms. Dwyer - Otherwise, they wouldn't have a case. It's because of
1775 that ordinance that allows her to apply for a use permit. Is that what you're
1776 thinking?
1777
1778 Ms. Harris - Right. Yes. In other words, we're saying that it may be
1779 acceptable, it may be approved, according to this document.
1780
1781 Ms. Dwyer - Right.
1782
1783 Ms. Harris - Okay. It may be approved by the conditional use
1784 permit. So, we are considering whether or not this one will be approved.
1785
1786 Mr. Blankinship - The use permit and also a variance. The carport is
1787 required to be—Any accessory structure is required to be at least 10 feet from
1788 the principal structure, and this is clearly not in compliance with that. There is
1789 also the question about the side lot line. The applicant has stated that it does
1790 comply with the side yard setback. If that's the case—
1791
1792 Ms. Henley - Let me ask the question, Mr. Blankinship.
1793
1794 Mr. Blankinship - If that's the case, then you don't need a variance for
1795 the side yard.
1796
1797 Ms. Henley - The \$600 fee that I paid for this, shouldn't you have
1798 checked that already?
1799
1800 Mr. Blankinship - We went out and looked, but it's the applicant's
1801 responsibility to submit a survey that shows exactly what you're requesting.
1802
1803 Ms. Harris - What about the fence? I don't want to interrupt your
1804 testimony. Had you concluded making your case, because I have question about
1805 the fence.
1806
1807 Ms. Henley - I thought that was a separate issue.
1808
1809 Mr. Blankinship - It is, yes. The fence height would be heard by the
1810 Planning Commission.
1811
1812 Ms. Harris - Okay. Then I don't have any. I should have realized
1813 that.
1814
1815 Mr. Kirkland - All right.
1816

1817 Ms. Henley - It's not a fence, it's a panel.
1818
1819 Mr. Kirkland - Any other questions by Board members for either
1820 case? Mr. Wright? Ms. Dwyer? That concludes the case. There was no
1821 opposition, was there? I missed it if there was. I thought maybe somebody
1822 walked in. All right.
1823
1824 Ms. Harris - I don't know if we know the answer to this. In the letter
1825 that Ms. Henley sent and we have a copy in our packs, I have a question about
1826 the process. Do we have someone from that Community—What is that
1827 department called?
1828
1829 Mr. Blankinship - Community Maintenance?
1830
1831 Ms. Harris - Yes. Do we have anyone here from Community
1832 Maintenance?
1833
1834 Mr. Blankinship - Yes ma'am, we do.
1835
1836 Ms. Harris - Okay. I have a question about the process here.
1837
1838 Mr. Kirkland - If you would, sir, come forward, raise your right hand
1839 and be sworn in, and state your name. We're going to record what you say.
1840
1841 Mr. Blankinship - Would you allow the gentleman to use the podium,
1842 please?
1843
1844
1845 Mr. Kirkland - If you would, sir, come forward.
1846
1847 Mr. Blankinship - Do you swear the testimony you're about to give is
1848 the truth and nothing but the truth so help you God?
1849
1850 Mr. Hurt - I do. Steven Hurt, Zoning Enforcement Officer.
1851
1852 Ms. Harris - I just had a couple of questions. Do you have many
1853 cases in which summonses are issued to appear in General District Court
1854 because of non-compliance?
1855
1856 Mr. Hurt - Yes ma'am.
1857
1858 Ms. Harris - Side yard and front yard setbacks?
1859
1860 Mr. Hurt - The specifics of this particular type of violation, no.
1861
1862 Ms. Harris - No, okay.

1863
1864 Mr. Gidley - [Off mike] They go to court if people don't comply
1865 whether it—It may be a different issue, but they issue summons to go to court if
1866 people don't comply.
1867
1868 Ms. Harris - Right. Is the standard procedure to take the
1869 summons on the job?
1870
1871 Mr. Blankinship - Why don't you walk us through the procedure.
1872
1873 Ms. Harris - Yes, that's what I—
1874
1875 Mr. Hurt - Okay. Typically, we offer a card and brochure, and a
1876 few days for the property owner to give us a call so that we can explain in detail
1877 the nature of the violation and why it's in violation of the ordinance. Most often
1878 when we talk to them, we can give them a good understanding of what's
1879 happened, and they do comply. If they fail to call us or abate the violation, we
1880 return, and if the violation is in place, we have to write a Notice of Violation.
1881 Depending on the nature of the violation, it can be anywhere from 5 to 15 days
1882 for a due date. If it's still in violation at that point in time, we can issue a
1883 summons. I think what you're referring to is the service of the summons, which is
1884 not something that we do. We are not authorized, by law, to serve the process.
1885 That choice, I guess, was the officer who served the summons.
1886
1887 Ms. Harris - You're not familiar whether they go to the home or
1888 whether they go to the job?
1889
1890 Mr. Hurt - I will tell you, as a sheriff's appointed process server
1891 for many years in Florida, and having served some process here, we can go
1892 virtually anywhere that we want to, yes.
1893
1894 Ms. Harris - I know legally you can, but I'm sure that the Sheriffs
1895 Department would not do it illegally.
1896
1897 Mr. Hurt - And let me add that I offered no direction that that be
1898 served at her place of work. I offered the address of the violation near her home
1899 place. I would suspect that he had difficulty serving her there.
1900
1901 Mr. Wright - How does this come to your attention? Say this
1902 particular case, how was this brought to your attention?
1903
1904 Mr. Hurt - We had a complainant.
1905
1906 Mr. Wright - A complaint.
1907
1908 Mr. Hurt - Yes sir.

1909
1910 Mr. Wright - So, you only act on complaints, basically.
1911
1912 Mr. Hurt - For the most part, yes.
1913
1914 Mr. Wright - You're not cruising around the neighborhoods in
1915 Henrico trying to find violations.
1916
1917 Mr. Hurt - We do have a proactive—If we do not have enough
1918 complaints, we need to fill our time, of course. To me, the duty is to help clean
1919 up the County of Henrico. So yes, if I see something, and particularly if it is
1920 egregious, I probably will stop by, drop off a card and brochure, and hope to talk
1921 to the property owner.
1922
1923 Mr. Blankinship - There are also times when we get several complaints
1924 in a particular neighborhood that we will decide to do some proactive
1925 enforcement throughout that neighborhood.
1926
1927 Mr. Hurt - Yes. Not only that, we do try to work—Let me back up
1928 a little bit. I inherited this case from a previous inspector, and I came aboard
1929 August of 2007. The case had already been established, but for whatever reason
1930 was not progressing. I went ahead and made it happen, created the Notice of
1931 Violation, and, of course, here we are now. Ms. Henley has been—
1932
1933 Female - [Off mike – inaudible]
1934
1935 Mr. Kirkland - No ma'am. You can continue with what you said.
1936
1937 Mr. Hurt - The nature of the job is that if we see a violation, we
1938 need to address it. I take that as a duty, and I'm very seriously involved in doing
1939 that, and I like to see resolution. Now, if it comes before the Board and the
1940 Board allows this to go, then that's fine. Otherwise, we have to, of course, see it
1941 through to ultimate resolution, satisfaction of the ordinance.
1942
1943 Mr. Kirkland - Any other questions of the inspector? Thank you, sir,
1944 for your comments. All right, that concludes the case.
1945
1946 **DECISION**
1947
1948 Mr. Wright - Mr. Chairman, I move that we deny UP-011-08.
1949
1950 Mr. Kirkland - Do we have a second?
1951
1952 Mr. Nunnally - Second.
1953

1954 Mr. Wright - It appears that neither of the abutting houses on
1955 either side of the street have structures in their front yard. The existing carport
1956 detracts from the neighborhood, as evidenced by the complaint, and I would
1957 further state that to grant this would not be in substantial accordance with what I
1958 consider the general purpose and objectives of Chapter 24 of the County Code.
1959
1960 Mr. Kirkland - Did you get that, Mr. Blankinship?
1961
1962 Mr. Blankinship - It's on the record.
1963
1964 Mr. Kirkland - Thank you, sir.
1965
1966 We have a motion from Mr. Wright, second by Mr. Nunnally to deny the case.
1967 Any discussion?
1968
1969 Ms. Harris - We're talking about the conditional use permit right
1970 now, right?
1971
1972 Mr. Kirkland - That's correct.
1973
1974 Ms. Harris - Okay.
1975
1976 Mr. Kirkland - Any questions, Ms. Harris?
1977
1978 Ms. Harris - No, that was it.
1979
1980 Mr. Kirkland - Any questions, Ms. Dwyer?
1981
1982 Ms. Dwyer - I would just add—and I may be repeating what Mr.
1983 Wright said, but just for the record—that I think it does impair the value of the
1984 properties in the surrounding area, which is one of the factors we need to
1985 consider in a special exception. The houses in the area are characterized by
1986 uniformed setbacks and uncluttered front yards, uncluttered by ancillary
1987 structures, and the fencing that has been placed in it, although that fencing is not
1988 before us today. I question whether there might even be some safety
1989 considerations with people coming out of the neighboring driveway with these
1990 kinds of obstructions along the driveway and in the front yard of the subject
1991 property.
1992
1993 Mr. Kirkland - Any other discussion?
1994
1995 Ms. Harris - I do think that Ms. Henley had a point when she was
1996 talking about many residences are in violation of this in the Varina District.
1997 However, because they are in violation, we have to stop the violations when they
1998 occur. I feel that we can't continue to let the violations exist. I would hope that

1999 the department that handles this would be vigilant in seeing that other properties
2000 conform.

2001
2002 Mr. Kirkland - Thank you, ma'am. All right. The motion's been
2003 made and seconded to deny. All those in favor say aye. All those opposed say
2004 no. The ayes have it; the motion passes. The case is denied.

2005
2006 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2007 Mr. Nunnally, the Board **denied** application **UP-011-08, Ruth H. Henley's**
2008 request for a conditional use permit pursuant to Section 24-95(i)(4) to allow a
2009 carport to remain in the front yard at 1204 Bentbrook Drive (Foxboro North)
2010 (Parcel 803-706-1023), zoned R-3, One-family Residence District (Varina).

2011
2012 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2013 Negative: 0
2014 Absent: 0

2015
2016 Mr. Kirkland - Next case, A-012-08.

2017
2018 **DECISION**

2019
2020 Mr. Wright - Mr. Chairman, I move we deny this case on the
2021 grounds that the property contains a one-family dwelling that the applicant has
2022 used beneficially since 1987, and under the Virginia Supreme Court Cochran
2023 decision, the dwelling constitutes a reasonable use of the property. Therefore,
2024 the Board does not have the authority to grant her request for a variance.

2025
2026 Mr. Nunnally - Second.

2027
2028 Mr. Kirkland - Motion by Mr. Wright, seconded by Mr. Nunnally. Any
2029 discussion?

2030
2031 Ms. Harris - Yes. I question why it was necessary to have both a
2032 conditional use permit allowing the carport to remain, and a variance to be
2033 considered allowing a carport to remain. Did this applicant have to pay two fees?

2034
2035 Mr. Blankinship - Yes ma'am.

2036
2037 Ms. Harris - I was wondering why one fee would not have sufficed.

2038
2039 Mr. Wright - I think the reason is because the location of the
2040 carport in the front yard violates the setback required, the distance from the
2041 house. That's it. If it could have been there without violating that, and we thought
2042 it was a reasonable use, I think we could have granted the use permit.

2043

2044 Mr. Blankinship - Our general rule of thumb on that is if it would make
2045 sense to approve one and deny the other, then they have to be considered
2046 separately. In this case, you could have approved the use permit and denied the
2047 variance. She would have been allowed to have a carport in the front yard, but
2048 not within 10 feet of the dwelling. That was why we required two applications.

2049
2050 Ms. Harris - Just considering the expense of this ordeal, if she had
2051 used the variance issue first, if we had, in fact, denied that, wouldn't that have an
2052 effect on the second?

2053
2054 Mr. Blankinship - She could have brought them at two separate
2055 meetings in order to know the result of one before the other, yes ma'am.

2056
2057 Ms. Harris - Right. And to save some money. That was just my
2058 concern.

2059
2060 Mr. Kirkland - All right. Motion's been made and seconded to deny.
2061 All those in favor say aye. All those opposed say no. The ayes have it; the motion
2062 passes. It's been denied.

2063
2064 After an advertised public hearing and on a motion by Mr. Wright, seconded by
2065 Mr. Nunnally, the Board **denied** application **A-012-08, Ruth H. Henley's** request
2066 for a variance from Sections 24-95(i)(2)(c) and (d) to allow a carport to remain in
2067 the front yard at 1204 Bentbrook Drive (Foxboro North) (Parcel 803-706-1023),
2068 zoned R-3, One-family Residence District (Varina). The accessory structure
2069 setback and least side yard setback are not met.

2070
2071 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2072 Negative: 0
2073 Absent: 0

2074
2075
2076 **UP-012-08 DAVID AND ELIZABETH ELLWANGER** request a
2077 conditional use permit pursuant to Section 24-95(i)(4) to build a detached garage
2078 in the front yard at 401 Lakeway Drive (Sleepy Hollow) (Parcel 751-736-5004),
2079 zoned R-1, One-family Residence District (Tuckahoe).

2080
2081 Mr. Kirkland - Who would like to speak on this case? I guess you
2082 guys are the only two. Raise your right hand and be sworn in.

2083
2084 Mr. Blankinship - Do you swear the testimony you're about to give is
2085 the truth and nothing but the truth so help you God?

2086
2087 Mr. Ellwanger - I do.
2088

2089 Mr. Kirkland - All right. Whoever's going to speak first, if you would
2090 state your name for the record.

2091
2092 Mr. Ellwanger - David Ellwanger.

2093
2094 Mr. Kirkland - What do you request from the Board?

2095
2096 Mr. Ellwanger - We are requesting a conditional use permit to allow
2097 us to build a garage quote/unquote in our front yard, to the side up next to the
2098 property line, adjacent to 403 Lakeway Drive. We are endeavoring to remove the
2099 driveway. If you look in the packet on the survey, in the asphalt area, the non-
2100 permeable surface, remove that area and re-landscape the back part of the
2101 property. This goes back to a year ago when we bought the property. Requested
2102 a zoning conformance letter from Mr. Blankinship, and oddly enough, I just saw
2103 it. It was a year ago today that he responded. The net result was that we, at
2104 that point in time, found out about the County's reassessment of the special flood
2105 hazard areas, where our property before the 100-year flood line on our original
2106 survey—I didn't check it, but I think in this particular packet, it may show that—
2107 Yes. Our original floodplain area on the topographic map was 182 feet, which is
2108 basically the bank of the lake that we live on. Now, it shows the water being up
2109 as high as approximately five to six feet inside the property. Therefore, part of
2110 what Mr. Blankinship's letter says is no new construction within that flood hazard
2111 area. That hems us in. Three-quarters of the house now is surrounded by water,
2112 and this particular site is the only site that we could effectively be able to put a
2113 garage, and it happens to be immediately adjacent to the kitchen area of the
2114 house, a separate entrance that would allow greater access. Because of the way
2115 the lot is so unique, that was the reason for applying for the zoning conformance
2116 opinion. On the topographic map, which is not included, that particular property
2117 rises up to the front corner of the property adjacent to 403 Lakeway so high that
2118 part of this structure would be behind that berm and buried in the ground on that
2119 one corner. I noticed that in the case study, it stated our case, I think, pretty
2120 effectively, so I don't think I need to review all of that.

2121
2122 We have spoken with the neighbors adjacent to us. Their only concern was how
2123 to screen it, and we've worked out an agreement with them that we will allow
2124 them to tell us what they want there to screen this building, this structure to make
2125 them satisfied with the building itself. That front corner is going to be, like I said,
2126 buried down into that berm on the property.

2127
2128 Mr. Kirkland - Boy, I bet it was a rude awakening when you found
2129 out half your house is going to be underwater.

2130
2131 Mr. Ellwanger - It was, yes.

2132
2133 Mr. Kirkland - I know this happened all over the County. You're the
2134 first case I've seen where this is coming from it.

2135
2136 Mr. Ellwanger - Yes. It was a rude awakening, yes. We love the
2137 property and we're trying to figure out how to enhance the value of this property.
2138 We feel like this would do that. Because of the way we're hemmed in, we're not
2139 going to be able to add any additional square footage outside the footprint of the
2140 current house. So, we want to utilize those garage bays better downstairs now
2141 and finish them off, to re-landscape that area to alleviate the runoff issue, which I
2142 think the RPA officer had originally said, too, would be to our benefit, to remove
2143 the asphalt as an impermeable surface.
2144
2145 Mr. Kirkland - Sure.
2146
2147 Mr. Ellwanger - We're just endeavoring to do—You can see, I think,
2148 from the plans that we don't plan on building a structure that's not high quality
2149 either, because that neighborhood is a higher-quality neighborhood. We will
2150 resell the property; everybody resells their property eventually. When we do, the
2151 lack of a garage would be a great detriment, because that particular
2152 neighborhood has very much in excess of more than half the houses with
2153 garages, two cars in fact. I would venture to say it could be as high as 75 or 80%
2154 of those properties in that neighborhood have garages.
2155
2156 Ms. Dwyer - What is the distance between the proposed garage
2157 closest to Lakeway Drive, and Lakeway Drive?
2158
2159 Mr. Ellwanger - I think the measurement came out as 25 feet. That is
2160 from our property line. There is probably an additional 10 feet from our property
2161 line to the paved asphalt as well.
2162
2163 Ms. Dwyer - An additional how many?
2164
2165 Mr. Ellwanger - I would estimate about 10 more feet. I didn't measure
2166 it; I should have done that.
2167
2168 Ms. Dwyer - So, the house doesn't have a lower level garage in
2169 the rear.
2170
2171 Mr. Ellwanger - It does now.
2172
2173 Ms. Dwyer - It does now.
2174
2175 Mr. Ellwanger - We're endeavoring to remove that and the permeable
2176 asphalt area.
2177
2178 Ms. Dwyer - I drove by—
2179
2180 Mr. Ellwanger - We plan on taking—I'm sorry.

2181
2182 Ms. Dwyer - I said I drove by. I didn't go to the back of the house.
2183
2184 Mr. Ellwanger - Oh, okay. The driveway goes all the way around to
2185 the back; I think you can see it on the survey. We were going to take that
2186 driveway completely back around to the house and re-landscape that both with
2187 plantings and a grassy area.
2188
2189 Mr. Wright - Is that a two-car garage under the house?
2190
2191 Mr. Ellwanger - Yes sir. Well, it's a carport that's covered by a deck
2192 with a garage door on it, so it depends on your definition.
2193
2194 Mr. Kirkland - You have to have a lifeboat in there, right?
2195
2196 Mr. Ellwanger - Now we will, yes.
2197
2198 Mr. Kirkland - All right. Any other questions by Board members?
2199 Ms. Harris?
2200
2201 Ms. Harris - Yes. In the dry area of your lot, had you thought
2202 about attaching the garage to the house?
2203
2204 Mr. Ellwanger - This is the byproduct of a lot—I mean, it's taken us a
2205 year to get to this point, trying to figure out where to put it. The only way we
2206 could see—Actually, the only reason we applied for this particular conditional use
2207 permit was Mr. Gidley's suggestion. I wasn't aware that we could do that, so we
2208 thought we would try this way to do things, the proper channels. If we attach it to
2209 the house, I think the side setback, because of the way house is sited on the
2210 property, would not give us enough room. I think there's only about eight feet on
2211 that front corner to the side lot. I mean, eight feet of buildable area, because you
2212 have to stay 20 feet off that side lot line. We basically have, I think, that whole
2213 front line. Because it's a diamond shape, there's a very large front yard. If the
2214 house would have been sited differently in the beginning, we might have had that
2215 space in the dry area, as you call it.
2216
2217 Ms. Harris - Can we see the aerial photo? I want to ask what is
2218 this structure here. I see the house, but what's the structure—Is that the one?
2219 Yes, it's to the left of the house. I guess it depends on which way you hold your
2220 map. What is this structure? The top where it says it's near 401, where you see
2221 the—Yes. What is that right there?
2222
2223 Ms. Dwyer - A driveway, I think.
2224
2225 Mr. Ellwanger - I think it's the driveway, yes.
2226

2227 Mr. Kirkland - Paved driveway.
2228
2229 Ms. Harris - Oh, it's a paved driveway.
2230
2231 Mr. Ellwanger - It's actually a gravel driveway. There are no support
2232 structures; it's all under one roof, attached.
2233
2234 Mr. Kirkland - Okay. Any other questions, Ms. Harris?
2235
2236 Ms. Harris - No. Thank you.
2237
2238 Mr. Kirkland - Mr. Wright? Ms. Dwyer? Mr. Nunnally?
2239
2240 Mr. Kirkland - All right.
2241
2242 Mr. Ellwanger - Thank you.
2243
2244 Mr. Kirkland - Any opposition? I'll ask one more time. Okay, that
2245 concludes the case. Let's do the next one.
2246
2247 **DECISION**
2248
2249 Do I have a motion?
2250
2251 Ms. Dwyer - I'm going to move for denial of this case, and as part
2252 of my motion, I'll speak a little bit about the case. I'm familiar with your work in
2253 Westham and you do beautiful work. There's no question in my mind that this, if it
2254 would be allowed, would be an attractive addition to this particular lot. It has a lot
2255 to recommend it. I understand the constraints imposed by the floodplain. But the
2256 fact remains that this is an exceptional circumstance, to have an accessory
2257 structure in the front yard. In my mind, everything has to be positive. There can
2258 be no detrimental impact for us to allow this very exceptional situation. I think
2259 that having a garage in the front yard, even though it might be somewhat set into
2260 the hill, would be a structure much closer to the roadway than is in keeping with
2261 the neighborhood, which in an R-1 is generally a 50-foot setback. Also, of
2262 particular concern to me—and I know your neighbors didn't object and there are
2263 lots of reason why neighbors might not object. That's not what's controlling in our
2264 decisions. I think it's far too close to the neighbor's property line and, to me,
2265 would have a detrimental impact, given the spaciousness of the neighborhood,
2266 the size of the lots generally. So, I think that it would impair the character of the
2267 R-1 District, and be incompatible with the objective of the Land Use Plan
2268 because it is so close to the neighbor's property.
2269
2270 Mr. Wright - I second the motion.
2271

2272 Mr. Kirkland - Seconded by Mr. Wright. Any other discussion? All
2273 right. Motion made and seconded to deny this case. All those in favor say aye.
2274 All those opposed say no. The ayes have it; the motion passes. The case has
2275 been denied.

2276
2277 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by
2278 Mr. Wright, the Board **denied** application **UP-012-08, David and Elizabeth**
2279 **Ellwanger's** request for a conditional use permit pursuant to Section 24-95(i)(4)
2280 to build a detached garage in the front yard at 401 Lakeway Drive (Sleepy
2281 Hollow) (Parcel 751-736-5004), zoned R-1, One-family Residence District
2282 (Tuckahoe).

2283
2284 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2285 Negative: 0
2286 Absent: 0

2287
2288

2289 **A-014-08 MICHAEL HORTON** requests a variance from
2290 Section 24-9 to build a one-family dwelling at 3851 Woodview Drive (Parcel 845-
2291 713-3796), zoned A-1, Agricultural District (Varina). The public street frontage
2292 requirement is not met. The applicant has 0 feet public street frontage, where the
2293 Code requires 50 feet public street frontage. The applicant requests a variance of
2294 50 feet public street frontage.

2295
2296 Mr. Kirkland - Anyone wish to speak on this case, other than the
2297 applicant? All right sir, if you would, raise your right hand and be sworn in.

2298
2299 Mr. Blankinship - Do you swear the testimony you're about to give is
2300 the truth and nothing but the truth so help you God?

2301
2302 Mr. Horton - Yes.

2303
2304 Mr. Kirkland - Would you state your name for the record, sir?

2305
2306 Mr. Horton - Michael Horton.

2307
2308 Mr. Kirkland - What do you request from the Board?

2309
2310 Mr. Horton - I'm requesting to build a normal 1500-square-foot
2311 house on a piece of property that I thought was on road frontage when I
2312 purchased the property, because it had a 20-foot paved road going out to it. But
2313 after it was surveyed and everything else, they said no, this is a service road that
2314 was put there for that property, but it's not an actual public road. It's not
2315 maintained anymore by the Department of Transportation. I think I submitted
2316 some of the right-of-way material with this here. I spoke to the Department of
2317 Transportation down in Sandston, Virginia, and they said the road was there for

2318 that property, that if I decided to use it, then I have that right-of-way to go ahead
2319 and use it. When I first bought the property, because there's an old dead-end
2320 down there, everyone was throwing couches, water heaters, and anything else
2321 they had to discard down there. I've cleaned all that stuff up. Other than the
2322 house, I have no use for this property at all. It's close to two acres out there and
2323 it's been perked and everything. I put quite a bit of money into it before I realized
2324 it, and I got to the last step of the building permits and they're saying this is not
2325 road frontage. So, I went to the Department of Transportation and talked to
2326 them, and they said, no, that road was built back there 30-some years ago when
2327 they put 64 through and cut that lot in half, or cut seven acres up and kind of
2328 landlocked this little piece back there. They did give that right-of-way to that road
2329 so if that land was to be used for anything, it would convey to me. Other than to
2330 build a home on it, like I said, there's no use at all to that property.

2331
2332 Mr. Nunnally - Did you purchase this property in 2007?

2333
2334 Mr. Horton - Yes sir.

2335
2336 Mr. Nunnally - Did you purchase it from a real estate—

2337
2338 Mr. Horton - No, I purchased it from Mrs. Chalkler, who owned the
2339 original seven acres when they put 64 through there back in 1965 or whatever.

2340
2341 Mr. Nunnally - That's when they took the road frontage away from
2342 you, right?

2343
2344 Mr. Horton - Right.

2345
2346 Mr. Nunnally - They didn't mention that to you when they sold you
2347 the property?

2348
2349 Mr. Horton - Of course not.

2350
2351 Mr. Nunnally - That you were going to have to—

2352
2353 Mr. Horton - Of course not. Like I said, I sold my home in Prince
2354 George County to come move up here.

2355
2356 Mr. Nunnally - Oh, you're from Prince George?

2357
2358 Mr. Horton - Yes sir. I pretty much left that little part of town up
2359 there and wanted to come here to Henrico; that's where I'm originally from. It's a
2360 20-foot paved road. I thought this was just an extension of Woodview Drive, and
2361 only until I got all the way through the building permits—One correction on this
2362 old thing. I see that the road does not extend to my property, but it actually does,
2363 if you look at the plats and everything. That was done by an AOSE. It does

2364 actually go onto my property by about 15 feet, the dead-end. Then I've cut a little
2365 small road going up into the property itself. I've had it all perked out and
2366 everything. Other than that, I mean, the only use it gets is as a dumping ground
2367 for somebody down there. People have a habit of throwing washing machines
2368 and that kind of stuff. I took a backhoe down there and cleaned all of that up and
2369 was ready to go build a house on it. Then I found out that a little road frontage
2370 deal was going on.

2371

2372 Mr. Nunnally - What type of house are you going to put on there?

2373

2374 Mr. Horton - An approximately 1600-square-foot, two-bedroom
2375 home. Nothing special. I tell you, I can't afford these new house prices these
2376 days, so I said I better go build one myself, and try to be responsible about it. I
2377 tell you, I have improved this whole area down there by cleaning up the tires and
2378 everything people have had a habit of throwing back in there for the last 30
2379 years. In fact, if you guys had gone down there, the State just now put eight "No
2380 Dumping" signs down there. They thought I was down there dumping stuff, but I
2381 was actually—In fact, they sent Henrico Police down there because they knew
2382 someone was back there doing something, and they saw trash loads. But it was
2383 actually trash loads going out of there. I took a backhoe, like I said, and cleaned
2384 up water heaters, and tires, and any other thing you want to find around
2385 someone's yard.

2386

2387 Mr. Kirkland - Have you read the conditions for this case?

2388

2389 Mr. Horton - Yes sir.

2390

2391 Mr. Kirkland - Do you have any problem with them?

2392

2393 Mr. Horton - No sir.

2394

2395 Ms. Dwyer - Can you tell me the nature of the service road? I know
2396 we have the letter from VDOT saying that you have access, their permission to
2397 use it. Has an easement been granted, or what is the legal status of that?

2398

2399 Mr. Horton - Yes. Well, I talked to the Department of
2400 Transportation down in the Sandston office. He said that road was actually built
2401 for this lot and the large lot—I think it's 50-some acres—beside that. It was
2402 actually built for those two lots to have access out of that area, because when
2403 they built the interstate through there, they kind of blocked everyone off.

2404

2405 Ms. Dwyer - How wide is it?

2406

2407 Mr. Horton - It's about 20 feet. The power company was down
2408 there about a month ago to sit a pole on it, so we had to measure how far it went
2409 over. I was down there with them. It's approximately 20 feet.

2410
2411 Ms. Dwyer - For a public street, isn't it 50 that we normally
2412 require?
2413
2414 Mr. Horton - It's at a dead-end.
2415
2416 Mr. Blankinship - He's talking about the width of the actual—
2417
2418 Ms. Dwyer - I know, I know.
2419
2420 Mr. Blankinship - —pavement. The right-of-way is actually contiguous
2421 with the interstate right-of-way all the way over to the Twin Pine Road and
2422 Woodview Drive right-of-way. It's really all one contiguous property. So, the
2423 service road is on VDOT right-of-way.
2424
2425 Ms. Dwyer - Right.
2426
2427 Mr. Blankinship - Not County right-of-way, but VDOT.
2428
2429 Ms. Dwyer - Let me tell you where I'm going with this, and maybe
2430 my question will make more sense. I see a whole lot of undeveloped land back
2431 here that appears to be somewhat landlocked. So, I'm wondering if some point in
2432 the future, would access to the north of the property we're considering now—
2433 There's a huge amount of undeveloped land. Could this service road potentially
2434 provide access to that property in the future? Should we make provision for a
2435 public right-of-way from Woodview back to this property so that it could be
2436 accessed by other lots?
2437
2438 Mr. Horton - Ms. Dwyer, if I could interrupt. M-1C here, that's
2439 about the 50 acres. The only thing that's not accessed by that public road are
2440 those two little small lots. I think it's a half an acre behind—
2441
2442 Ms. Dwyer - Okay.
2443
2444 Mr. Horton - My lot.
2445
2446 Ms. Dwyer - All right.
2447
2448 Mr. Horton - If you see M-1C, they actually have about 60 feet
2449 between my property and the guy on Twin Pines. They do have frontage on that
2450 little service road.
2451
2452 Ms. Dwyer - But I mean, the service road would be—It sounds like
2453 it's a service road. As defined at this point, it's not wide enough to eventually be
2454 a public road, if it's only 20 feet.
2455

2456 Mr. Horton - It's about 20 feet. I thought it was an extension of
2457 Twin Pines or Woodview.
2458
2459 Ms. Dwyer - Woodview.
2460
2461 Mr. Horton - My AOSE has it listed as Woodview Drive.
2462
2463 Ms. Dwyer - Right.
2464
2465 Mr. Horton - If you look on the plat.
2466
2467 Ms. Dwyer - But that's the nearest public road to your house. Do
2468 you understand my question, Mr. Blankinship?
2469
2470 Mr. Kirkland - Does VDOT own this service road?
2471
2472 Mr. Blankinship - Yes.
2473
2474 Mr. Kirkland - So, it's on VDOT property.
2475
2476 Mr. Blankinship - Yes. It's all in the right-of-way.
2477
2478 Mr. Kirkland - So, we can't make it get wider. It's a VDOT road. So,
2479 VDOT services it, takes care of it, if they choose. If they plan to expand it in the
2480 future, it's on a state road so they would have to do the widening, correct?
2481
2482 Mr. Blankinship - Right. It could be extended into that industrial property
2483 before it reaches Mr. Horton's property.
2484
2485 Mr. Kirkland - Okay.
2486
2487 Ms. Dwyer - For example, VDOT could say, "We're going to
2488 dedicate this property to Henrico County for a public street to serve this
2489 property."
2490
2491 Mr. Blankinship - Right.
2492
2493 Ms. Dwyer - There's enough land to do that, I guess is my ultimate
2494 question.
2495
2496 Mr. Blankinship - Yes, yes.
2497
2498 Mr. O'Kelly - Ms. Dwyer?
2499
2500 Mr. Blankinship - There's enough land. I don't know if that's practical,
2501 Mr. O'Kelly.

2502
2503 Mr. O’Kelly - I don’t think that we would encourage industrial traffic
2504 through that adjacent roadway.
2505
2506 Ms. Dwyer - No, you’re right, not industrial. What if it were
2507 developed for residential?
2508
2509 Mr. O’Kelly - It’s currently zoned for industrial. It’s a prime
2510 economic development site and the access is going to be somewhere else
2511 besides through this residential subdivision.
2512
2513 Ms. Dwyer - Does it have road frontage, this parcel? I can’t tell
2514 from the map that I’m looking at.
2515
2516 Mr. Blankinship - It’s cut off by the railroad.
2517
2518 Mr. O’Kelly - No, I think it fronts on Meadow Road.
2519
2520 Mr. Blankinship - Yes, on the other side of the railroad. The railroad is
2521 between—
2522
2523 Mr. O’Kelly - Being a prime industrial development site, I mean,
2524 there may be possibilities for access from the interstate.
2525
2526 Ms. Dwyer - So, you don’t see in the future a need, then, for this
2527 service road to serve that parcel.
2528
2529 Mr. O’Kelly - Not based on the current zoning.
2530
2531 Ms. Dwyer - Okay. How about the other parcels to the west? My
2532 map shows three other parcels behind this one.
2533
2534 Mr. Blankinship - One of those is zoned industrial and is owned by the
2535 same owner as the large industrial tract.
2536
2537 Ms. Dwyer - Okay.
2538
2539 Mr. Blankinship - The other two are in sort of the same situation as Mr.
2540 Horton’s lot. The significant difference is the size of those lots. His lot does meet
2541 the zoning requirements for area and width, and those other two lots, even taken
2542 together, would not.
2543
2544 Ms. Dwyer - So, what’s the future of those two lots, would you
2545 guess?
2546

2547 Mr. Blankinship - I would think they would either be combined with Mr.
2548 Horton's lot, or combined with the industrial property, which would require
2549 rezoning.

2550
2551 Ms. Dwyer - Mr. Horton has something to say about that.

2552
2553 Mr. Blankinship - Yes. They're not at this point.

2554
2555 Mr. Horton - This guy has been trying to sell me those lots for the
2556 last year. They're no good for anything really. On mine, I can put my septic and
2557 everything in there. I've already been approved for all that from the Health
2558 Department. This guy back in the back, he was actually cut off years ago, too,
2559 and I think he's been trying to sell them to me for \$4,000 or \$5,000 just so he
2560 won't have to pay taxes on them anymore.

2561
2562 Mr. Kirkland - Anyone else have any questions? Any opposition?
2563 That concludes the case.

2564
2565 Mr. Horton - Thank you.

2566
2567 **DECISION**

2568
2569 Mr. Kirkland - A motion would be in order.

2570
2571 Mr. Nunnally - I make a motion we approve it. He has no use for this
2572 lot unless he has a variance on it, and I don't think it would detrimental for
2573 anything around there. There are two lots behind it, and they're too small to be
2574 built on.

2575
2576 Mr. Wright - I second the motion.

2577
2578 Mr. Kirkland - Motion made by Mr. Nunnally, seconded by Mr.
2579 Wright. Let's have some discussion. Any?

2580
2581 Ms. Dwyer - I'll just say that on the recurring issue, it's recurring in
2582 that it doesn't have road frontage, but it's not recurring for the *reason* it doesn't
2583 have road frontage, which is because I-64 has built in the original parcel. So, I
2584 think that distinguishes this case from other cases that lack 50-foot road frontage.
2585 Through no fault of anyone, any landowner, this property was cut off from
2586 Williamsburg Road originally because of the building of an interstate, which is a
2587 unique and extraordinary circumstance.

2588
2589 Mr. Kirkland - All right. Any other discussion? Okay. Motion made
2590 and seconded to approve. All those in favor say aye. All those opposed say no.
2591 The ayes have it; the motion passes. It's been approved.

2592

2593 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
2594 Mr. Wright, the Board **approved** application **A-014-08, Michael Horton's**
2595 request for a variance from Section 24-9 to build a one-family dwelling at 3851
2596 Woodview Drive (Parcel 845-713-3796), zoned A-1, Agricultural District (Varina).
2597 The public street frontage requirement is not met. The Board approved the
2598 variance subject to the following conditions:
2599

2600 1. This variance applies only to the public street frontage requirement for one
2601 dwelling only. All other applicable regulations of the County Code shall remain in
2602 force.

2603
2604 2. Approval of this request does not imply that a building permit will be issued.
2605 Building permit approval is contingent on Health Department requirements,
2606 including, but not limited to, soil evaluation for a septic drainfield and reserve
2607 area, and approval of a well location.

2608
2609 3. At the time of building permit application, the applicant shall submit the
2610 necessary information to the Department of Public Works to ensure compliance
2611 with the requirements of the Chesapeake Bay Preservation Act and the
2612 requirements for water quality standards.

2613
2614 4. The owners of the property, and their heirs or assigns, shall accept
2615 responsibility for maintaining access to the property until such a time as the
2616 access is improved to County standards and accepted into the County road
2617 system for maintenance.

2618
2619 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2620 Negative: 0
2621 Absent: 0

2622
2623
2624 Mr. Kirkland - All right, we have some minutes. Any corrections to
2625 the minutes?

2626
2627 Ms. Harris - I think I have one correction on page 21.

2628
2629 Mr. Kirkland - Okay.

2630
2631 Ms. Harris - Let me get the exact line. It should be "access" not
2632 "excess."

2633
2634 Mr. Nunnally - Where is that?

2635
2636 Ms. Harris - Let's see.

2637
2638 Mr. Kirkland - Line 938.

2639
2640 Ms. Harris - Line 938. Thank you.
2641
2642 Mr. Kirkland - Any other, Ms. Harris?
2643
2644 Ms. Harris - That's all I saw.
2645
2646 Mr. Kirkland - Any other corrections or additions? All right. May I
2647 have a motion to approve the minutes?
2648
2649 Ms. Harris - I so move.
2650
2651 Mr. Kirkland - Second, please?
2652
2653 Mr. Nunnally - Second.
2654
2655 Mr. Kirkland - Motion by Ms. Harris, seconded by Mr. Nunnally. All
2656 those in favor say aye. All those opposed say no. The ayes have it; the motion
2657 passes.
2658
2659 On a motion by Ms Harris, seconded by Mr. Nunnally, the Board **approved as**
2660 **corrected** the **Minutes of the May 22, 2008** Henrico County Board of Zoning
2661 Appeals meeting.
2662
2663 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2664 Negative: 0
2665 Abstain: Dwyer 1
2666
2667 Ms. Dwyer - I'll abstain.
2668
2669 Mr. Wright - I think you have a legitimate reason for that.
2670
2671 Mr. Kirkland - That's good. The video conferencing machine was
2672 broke that day.
2673
2674 Ms. Dwyer - It was, it was broken. I tried. I tried so hard.
2675
2676 Mr. Kirkland - Is there any other business?
2677
2678 Mr. Wright - Is there anything further from the Board on our
2679 request for dealing with these zero road frontage cases?
2680
2681 Mr. Blankinship - We had a meeting early this week, and I was hoping
2682 to have an update for you, but unfortunately, our masters have not had an
2683 opportunity to get together and authorize that. It is definitely moving forward.
2684 We're discussing it on a regular basis. We do expect to have some news for you

2685 of some sort next month. I had hoped to have an announcement today and we
2686 don't.

2687

2688 Mr. Kirkland - When all these applicants call you about the denials
2689 and what they can do, just tell them to pick up their phone and call their
2690 supervisors, and that the BZA has been working on trying to get this resolved for
2691 several years.

2692

2693 Mr. Blankinship - That is what we tell them.

2694

2695 Mr. Kirkland - Thank you, sir.

2696

2697 Mr. O'Kelly - I'd just like to add, Mr. Chairman, that the staff has
2698 done a considerable amount of work on the subject.

2699

2700 Mr. Kirkland - Good.

2701

2702 Mr. O'Kelly - At this point, Mr. Blankinship is correct. We're waiting
2703 for some guidance from the administration. Possibly, there will be a work
2704 session with the Board of Supervisors.

2705

2706 Mr. Kirkland - Good.

2707

2708 Mr. Wright - The other thing I'd like to mention is that we had a
2709 case today, reverse corner lot, side yard, where the lady wanted to put that
2710 garage. It would have improved the whole area. I think it's a shame that
2711 something can't be done legislatively through the County. Somebody should
2712 take the bull by the horns to get some relief for these people on a case like that.
2713 The Cochran result was based strictly on a constitutional issue, but the Supreme
2714 Court did state there could be legislation that could be adopted, that would not be
2715 based on a constitutional issue, that would give some discretion to this Board, or
2716 to a Board of Zoning Appeals, to consider cases of that nature when they would
2717 have no impact whatsoever. I think that's a shame.

2718

2719 Mr. Blankinship - I agree with you. That was a bad case. There's
2720 nothing I hate worse than a bad variance.

2721

2722 Mr. Wright - See, that points out the fact that somebody should be
2723 doing something to alleviate this problem with homeowners. We're caught. We're
2724 in a terrible situation here. People can't really beneficially use their property—
2725 Now, I know they have the beneficial use, but I'm talking about *really*.

2726

2727 Mr. Blankinship - All I can say, Mr. Wright, is you see one out of maybe
2728 10 or 20 of those people. The other 19 sit in my office and have this argument,
2729 but are persuaded not to bother applying. So yes, it is a bigger issue than the

2730 Board realizes because there are a lot of cases that would be coming to you that
2731 don't because we convince them they're wasting their money.

2732

2733 Mr. Wright - Do we need to write another letter to the Board of
2734 Supervisors evidencing our concern about this type of thing? It's a different issue
2735 then, it was zero road frontage, but it's the same idea.

2736

2737 Mr. O'Kelly - I hear what you're saying, Mr. Wright, but we're not
2738 hearing anything from other localities that this is an issue with them. Until the
2739 General Assembly does, I'm not sure—

2740

2741 Mr. Wright - I think it needs to go to the General Assembly. My
2742 concern is that should we as—I know you push types of legislation, I mean the
2743 County's pushed that to get before the General Assembly. I was just hoping that
2744 somebody in the County would proceed to do that.

2745

2746 Mr. O'Kelly - Without support from other localities, I'm not sure
2747 what kind of consideration we would get.

2748

2749 Ms. Dwyer - I'm reminded of one of the meetings that I went to
2750 with BZA members recently. You do hear about other localities and what their
2751 practices are, and I had lunch with this gentleman from Fauquier County and we
2752 talked about variances. He said, "We've granted one variance in five years." So,
2753 they're very averse to granting any variance at all. I thought that was an
2754 interesting perspective. Other localities have different policies and practices. I
2755 was shocked at that.

2756

2757 Mr. Blankinship - Was that the gentleman that you asked him how they
2758 were reacting to Cochran and he hadn't even heard of it?

2759

2760 Ms. Dwyer - Yes. He said, "We don't grant variances anyway, so."
2761 They never have, never will.

2762

2763 Mr. Kirkland - A lot of them north of us, this is not an issue. They
2764 just don't grant variances.

2765

2766 Mr. Blankinship - Exactly.

2767

2768 Mr. Wright - I don't like that approach.

2769

2770 Ms. Dwyer - I'm not saying that we should do that; I'm just saying
2771 what they do.

2772

2773 Mr. Wright - I think we should be here to try to help homeowners
2774 utilize their property in the best manner within the law. I just don't think it's fair for
2775 this to be handled in this manner.

2776
2777 Ms. Dwyer - I'm just saying that might account for why some other
2778 localities are not agonizing over this issue as we are.
2779
2780 Mr. Wright - You get a reputation, especially cities and counties.
2781 When somebody comes to the Administration or Planning Office, and you try to
2782 give them 10 reasons why they can't do something, rather than to help them
2783 figure out a way to do it. I'm on the side of trying to assist our property owners to
2784 find a way to do something so they can use their property in a beneficial manner.
2785
2786 Mr. Blankinship - Say amen, somebody.
2787
2788 Mr. Nunnally - Amen.
2789
2790 Ms. Harris - But you know, when I see a meeting go as this one
2791 went today, I question our being, I question our presence. "Variance," comes
2792 from the root word, "vary." We're not to vary the Code in any way because of
2793 reasonable—
2794
2795 Mr. Wright - Yes.
2796
2797 Ms. Harris - Because of reasoning, then why are we here?
2798
2799 Mr. Wright - That's right.
2800
2801 Ms. Harris - If we're going to go strictly by the Code and not apply
2802 any type of common sense or reason to decide which is an exception, then why
2803 are we here? I don't think we need to be here. I think we should go by the Code
2804 and say, that's it.
2805
2806 Ms. Dwyer - Well, I think that the Code does allow us some wiggle
2807 room. The Code gives us our authority to begin with, and as a constitutional
2808 government, we're not here to exercise, of course, our personal opinions, we're
2809 here to exercise our discretion within the limits set by the Code. I think the limits
2810 are very narrow, as defined by Cochran.
2811
2812 Mr. Blankinship - You did approve two cases today.
2813
2814 Ms. Dwyer - Okay.
2815
2816 Mr. Blankinship - There were two cases today that met those extremely
2817 narrow criteria.
2818
2819 Mr. Kirkland - And we had no mining cases, so...
2820

2821 Mr. Wright - Cochran really narrowed it. Before Cochran, we were
2822 using some discretion in these cases.

2823

2824 Mr. Kirkland - That was the case on Broadwater. The original 2003
2825 case was way ahead of the Cochran decision. That was a perfect example of
2826 how he kept mentioning that, yes, that was before Cochran.

2827

2828 Ms. Dwyer - In my view, that's a case that causes problems. When
2829 you grant a variance, what you're doing is you're saying the judgment of the
2830 legislature is something we're not going to abide by. But there's a reason why the
2831 legislature has set that rule, and when you don't abide by it, then you buy
2832 problems.

2833

2834 Mr. Kirkland - A lot of things happened in that case. A subdivision
2835 was pushed on them.

2836

2837 Mr. Wright - The Supreme Court cases go back to say the reason
2838 this Board was set up was to act as a relief valve, to give people some help.

2839

2840 Ms. Dwyer - Which we were in two cases today.

2841

2842 Mr. Kirkland - If there are no further comments, I move we adjourn.

2843

2844 Ms. Harris - Okay.

2845

2846 There being no further business, the Board adjourned until the July 24, 2008
2847 meeting at 9 a.m.

2848

2849

2850

2851

2852

2853

Richard Kirkland, CBZA
Chairman

2854

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Benjamin Blankinship, AICP
Secretary

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