

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**  
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**  
4 **SPRING ROADS, ON THURSDAY, JUNE 24, 2010, AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH JUNE 3,**  
6 **2010 AND JUNE 10, 2010.**

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**Members Present:** Elizabeth G. Dwyer, Chairman  
Helen E. Harris, Vice Chairman  
James W. Nunnally  
Robert Witte  
R. A. Wright

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

8  
9 **Ms. Dwyer -** The June 24, 2010 session of the Henrico County  
10 **Board of Zoning Appeals is now in session. Welcome to everyone who is here.**  
11 **Please rise and say the Pledge of Allegiance.**

12  
13 **Good morning, Mr. Blankinship. If you would please review the rules of the**  
14 **Board for all those In attendance.**

15  
16 **Mr. Blankinship -** The rules for this meeting are as follows. Acting as  
17 **secretary, I will call the case and as I'm speaking, the applicant should come on**  
18 **down to the podium. We'll then ask everyone who intends to speak to that case**  
19 **to stand and be sworn In. Then the applicant will present their testimony. Then**  
20 **anyone else who wishes to speak will be given the opportunity. After everyone**  
21 **has had a chance to speak, the applicant will then have an opportunity for**  
22 **rebuttal. After the Board has heard all the evidence and asked any questions,**  
23 **they will take the matter under advisement and proceed to the next case. They**  
24 **will render all of their decisions at the end of the meeting. So If you wish to know**  
25 **their decision on a specific case, you can either stay until the end of the meeting,**  
26 **or you can check the Planning Department website this afternoon, or you can**  
27 **call the Planning Department this afternoon.**

28  
29 **This meeting is being recorded, so we'll ask everyone who speaks to speak**  
30 **directly into the microphone on the podium, state your name, and please spell**  
31 **your last name so we get it correctly in the record. Out in the foyer, there is a**  
32 **binder that contains the staff report for each case, including the conditions that**  
33 **have been recommended by the staff. Particularly those of you who are**  
34 **applicants on use permit cases, you need to be familiar with those conditions.**

36 I said finally, but Madam Chairman, there is one other item. I would like to  
37 introduce Jina Yoo, who is joining us this week from the Republic of Korea. She  
38 is part of an exchange program to observe each other's government operations.  
39 Thank you for coming, Jina.

40  
41 Ms. Dwyer - Welcome. Is she here for a period of time?

42  
43 Mr. Blankinship - Is it two weeks? Right. She'll be in the Planning  
44 Department for one day.

45  
46 Ms. Dwyer - Does Henrico County have anyone in Korea?

47  
48 Mr. Blankinship - I don't know that. Do you? Second one from Korea.

49  
50 Ms. Dwyer - Okay. So we welcome you this morning. Please let  
51 us know afterwards if you have any questions. Mr. Blankinship, are there any  
52 deferrals or withdrawals?

53  
54 Mr. Blankinship - There is one withdrawal, which is UP-007-2010. The  
55 Steward School requests a conditional use permit pursuant to Sections 24-52(a)  
56 and 24-12(b) to build an athletic field and a conservation area at 2000  
57 Lauderdale Drive. That request was withdrawn by The Steward School.

58  
59 UP-007-10 THE STEWARD SCHOOL requests a conditional use  
60 permit pursuant to Sections 24-52(a) and 24-12(b) to build an athletic field and a  
61 conservation area at 2000 Lauderdale Drive (Parcel 732-744-7564), zoned A-1,  
62 Agricultural District (Tuckahoe).

63  
64 The Board allowed withdrawal of UP-007-10, The Steward School, as  
65 requested by the applicant.

66  
67 Ms. Dwyer - All right, let's call the first case then.

68  
69 A-006-10 MR. AND MRS. J. MERCER WHITE JR.  
70 request a variance from Section 24-94 to build a carport at 9323 Westmoor Drive  
71 (Westmoor) (Parcel 747-741-1131), zoned R-2A, One-family Residence District  
72 (Tuckahoe). The least side yard setback and total side yard setback are not met.  
73 The applicants have 10 feet least side yard setback and 24 feet total side yard  
74 setback where the Code requires 12 feet least side yard setback and 30 feet  
75 total side yard setback. The applicants request a variance of 2 feet least side  
76 yard setback and 6 feet total side yard setback.

77  
78 Ms. Dwyer - Is there anyone here who is in opposition to A-006-  
79 10, Mr. and Mrs. J. Mercer White, Jr.? Seeing no one in opposition, would the  
80 applicant please state your case?

81

82 Ms. White - My name is Amy White.  
83  
84 Mr. White - My name is Marshall White. I'm going let my wife  
85 speak.  
86  
87 Ms. Dwyer - Okay. Would you please raise your hand to be sworn.  
88  
89 Mr. Blankinship - Do you swear the testimony you're about to give is  
90 the truth and nothing but the truth so help you God?  
91  
92 Ms. White - We do, thank you.  
93  
94 Mr. Blankinship - It feels funny to swear in a retired judge.  
95  
96 Ms. White - We're requesting that we be able to put a single  
97 carport on our driveway attached to our home. This carport would enable us to  
98 protect our car, but also with aging and health issues, it would help us to be able  
99 to go into the side door and not be in the weather. It would be a great help for us,  
100 particularly for my husband and also for my mother who is 96. We have a letter  
101 that we have attached from our neighbors who have no objection to this at all.  
102 The builder has built a downstairs bedroom for us and he does quality work. He  
103 really does a nice job. We trust him in all matters. I'm sure you have copies of  
104 the plans that he submitted as well.  
105  
106 I don't know what else I'm supposed to say. Just that we would appreciate  
107 consideration of this single carport.  
108  
109 Mr. Witte - I notice that the carport is only ten feet wide.  
110  
111 Ms. White - Right.  
112  
113 Mr. Witte - That's pretty narrow.  
114  
115 Ms. White - It is. It's just enough for one car. It's longer so that  
116 possibly if there's a snow storm or something, bad weather, that we could pull  
117 both of our cars—they're both small—back to back. But it is supposed to be very  
118 narrow. Originally, we had hoped to put a double one, but were told not to even  
119 bother to request that. So it is a single.  
120  
121 Mr. Witte - But you're comfortable you can get in and out.  
122  
123 Ms. White - Yes sir.  
124  
125 Ms. Dwyer - Would it be possible for you to put a garage or carport  
126 in the rear of your house as opposed to the side?  
127

128 Ms. White - Not the way it is at this time, no. The thing that would  
129 be so great is that we do have a side door there that we could use for an  
130 entrance.  
131  
132 Mr. White - We can't put it in the backyard because our bedroom  
133 goes off the back of our house and it would be too close to where we park the  
134 car.  
135  
136 Ms. Dwyer - When you made this application, did the County staff  
137 make you aware of the Supreme Court case, the Cochran Case?  
138  
139 Ms. White - I don't believe so. Everybody's been very nice that  
140 we've talked to. I don't recall that being mentioned.  
141  
142 Mr. Blankinship - That was the discussion that we had in my office  
143 regarding the standards the Board has to apply, that are passed down to them  
144 from State that they don't have any discretion over. That's the hardship about  
145 how if there's any reasonable use of the property, they don't really have  
146 jurisdiction.  
147  
148 Ms. Dwyer - The test that the Supreme Court has formulated for  
149 Boards of Zoning Appeals based on the State law and the Constitution is that a  
150 variance is an extraordinary remedy that is only to be granted to avoid an  
151 unconstitutional result. So they use a test, what they call the threshold question  
152 for the BZA in order for us to have jurisdiction over any variance request. The  
153 way they have worded it is that we have to examine whether the effect of the  
154 zoning ordinance on the property interferes with all beneficial use of the property.  
155 If it does not, then we don't have authority to grant the variance. In other words, if  
156 you still have use of the property, if you can still use and enjoy your home  
157 without this variance, then we do not have the authority. That was the Supreme  
158 Court case, the Cochran case. I just wanted to make you aware of that.  
159  
160 Mr. White - In other words, you don't consider, say, a little garage  
161 there for parking cars inside of that as a necessity.  
162  
163 Ms. Dwyer - If you still have beneficial use of your home without  
164 this variance, that's the test.  
165  
166 Mr. White - I suppose I'd have to say yes to that. But, I mean, this  
167 is just an improvement to our home really. That's the way I look at anyway.  
168  
169 Ms. White - And to help for the aging process and health issues.  
170  
171 Ms. Dwyer - Any other questions or comments by Board  
172 members?  
173

174 Ms. Harris - Just one observation. From you neighbor Wayne and  
175 Jo Anne [0:08:59]\* [unintelligible]?

176  
177 Ms. White - Yes ma'am.

178  
179 Ms. Harris - I noticed that they said they were not opposed to it  
180 providing that the granting of such a variance complies with applicable laws and  
181 the rules of the Board of Zoning Appeals. So that sort of gives a disclaimer, you  
182 know, when it comes to our following the rules as applicable.

183  
184 Ms. White - They have a carport as well and we have an azalea  
185 garden in between the two. It would mean a lot to us to be able to have that; it  
186 would help a lot.

187  
188 Ms. Dwyer - Any questions by Board members? That concludes  
189 your case.

190  
191 Ms. White - I guess so, yes ma'am. Thank you.

192  
193 Ms. Dwyer - Thank you so much.

194  
195 [After the conclusion of the public hearings, the Board discussed the case  
196 and made its decision. This portion of the transcript is included here for  
197 convenience of reference.]

198  
199 **DECISION**

200  
201 Ms. Dwyer - Is there a motion on the case? All right, I will move to  
202 deny the case. However much I might like to approve it, I believe I am duty-  
203 bound to follow the dictates of the Supreme Court. The Supreme Court has said  
204 that if the applicant for a variance has beneficial use of the property without the  
205 variance, then we simply do not have authority or jurisdiction to hear and  
206 approve the case. So, for this reason, I would need to move to deny the case.

207  
208 Ms. Harris - I second the motion.

209  
210 Ms. Dwyer - It's moved and seconded. All in favor say aye. All  
211 opposed say no. The ayes have it; the motion passes.

212  
213 After an advertised public hearing and on a motion by Ms. Dwyer seconded by  
214 Ms. Harris, the Board denied application A-006-10 , Mr. and Mrs. J. Mercer  
215 White, Jr.'s request for a variance from Section 24-94 to build a carport at 9323  
216 Westmoor Drive (Westmoor) (Parcel 747-741-1131), zoned R-2A, One-family  
217 Residence District (Tuckahoe). The least side yard setback and total side yard  
218 setback are not met.

219

220	Affinnative:	Dwyer, Harris, Nunnally, Witte, Wright	5
221	Negative:		0
222	Absent:		0

223  
224

225 Mr. Wright - Madam Chairman, I've made this point many times in  
 226 these cases. I think it's unjust to the property owner for this to happen. I think the  
 227 Supreme Court gave leeway to the legislature and/or the Board of Supervisors to  
 228 implement legislation that would enable this Board to exercise some discretion in  
 229 these matters. The Supreme Court has taken away all of our discretion. As you  
 230 know, we haven't been able to approve a variance in years because of that. It's  
 231 there. If we could get our legislature or the Board of Supervisors to pursue  
 232 legislation that would not be based upon the constitutional Issue, which the Court  
 233 said they could do. But nobody will do anything about it. And as such, property  
 234 owners suffer. It pains me to have to follow this. The Supreme Court is so clear  
 235 on that, we don't have any discretion at all. It takes away our discretion to really  
 236 act on variances. I think it's against what the whole idea of the variance is. We  
 237 are supposed to be able to grant relief from the ordinance. Maybe the judge  
 238 could pursue that. I've been asking somebody to pursue that. We had that with  
 239 the pool situation and we finally changed that to a use permit so we would have  
 240 some discretion. They still have us locked in on these variances. Somebody  
 241 can't even just add a foot onto their house and encroach in a side yard or a  
 242 backyard because of the Cochran decision. We don't have the authority to even  
 243 consider the case. It's not right.

244

245 Mr. White - [Off microphone.] Thank you, Mr. Wright.

246

247 Ms. Dwyer - Any other comments. Ms. Harris?

248

249 Ms. Harris - I didn't mention some of what I was going to say. We  
 250 did have a case to come up before us very similar in which they had to go before  
 251 the Board, I believe, the Board of Supervisors. Finally I think they were satisfied  
 252 and you might want to consider that. That has happened. But as far as we are  
 253 concerned, the BZA is concerned, we are trying to follow the dictates of the  
 254 Supreme Court.

255

256 Mr. Wright - It's not a complicated issue, really, if somebody would  
 257 address it. But evidently the squeaking wheel gets it.

258

259 Mr. Witte - The only reason you're here for the variance is  
 260 because it's attached to the house. Is that correct? Was it detached?

261

262 Mr. Wright - We can't give any variance at all if the property owner  
 263 has a useful use of the property. The house is there and the have a beneficial  
 264 use.

265

266 Mr. Witte - Well, I know, but—  
267  
268 Mr. Blankinship - A detached accessory structure would have to be ten  
269 feet from the house and three feet from the property line. The way their property  
270 is configured, that wouldn't have worked either. We did explore that with them.  
271 That wouldn't have worked either.  
272  
273 Mr. Wright - So we're in a bind, we really are. You can judge that  
274 by our agenda. We don't have any variance cases anymore.  
275  
276 Ms. Dwyer - Any other comments by Board members?  
277  
278 Female - [Off microphone; inaudible.]  
279  
280 Mr. Wright - That's my recommendation.  
281  
282 Ms. Dwyer - That would entail a change to the County ordinance.  
283 But that's certainly something any citizen could do to try to—  
284  
285 Mr. Wright - The Virginia law is where it should begin and that's  
286 what the Supreme Court said, that our statute is based on the unconstitutional  
287 situation. That would be alleviated if the statute would be changed.  
288  
289 Female: [Off microphone; inaudible.]  
290  
291 Mr. Wright - Talk to your legislature. That's where to begin.  
292  
293 Ms. Dwyer - All right.  
294  
295 [At this point, the transcript continues with the public hearing on the next  
296 case.]  
297  
298 UP-012-10 STRATFORD UNIVERSITY requests a temporary  
299 conditional use permit pursuant to Section 24-116(c)(1) to allow a temporary  
300 office trailer at 11100 W. Broad Street (Parcel 744-761-3043), zoned M-1, Light  
301 Industrial District (Three Chopt).  
302  
303 Ms. Dwyer - Is there anyone here in opposition to UP-012-10,  
304 Stratford University? No opposition. Would you please raise your right hand to  
305 be sworn.  
306  
307 Mr. Blankinship - Do you swear the testimony you're about to give is  
308 the truth and nothing but the truth so help you God?  
309  
310 Mr. Dustin - I do.  
311

312 Ms. Dwyer - Please state your name and your case.  
313  
314 Mr. Dustin - My name is Chip Dustin—D-u-s-t-i-n. Stratford  
315 University has requested a temporary trailer to facilitate operations to register  
316 students. The facility is currently under construction. Anticipated completion date  
317 is September 15<sup>th</sup> and classes will start mid-October. Starting in July, they would  
318 like to be able to register students for classes and the facility is not going to be  
319 ready. There were some suggested conditions, which I'm aware of. Should I  
320 address those at this point?  
321  
322 Mr. Wright - Sure, we need you to address those.  
323  
324 Ms. Dwyer - If you agree with them, you can just state that. If you  
325 have any problems with any of them, that's what we'd like to hear.  
326  
327 Mr. Dustin - We accept the conditions. There is one point that  
328 we'd like to make. We would suggest moving the trailer forward to the west to the  
329 first bank of islands, right in there. We would position the trailer there and then  
330 have fencing behind the trailer from the front of the property to the corner and  
331 then running along from the building. I have a diagram, if that would be helpful.  
332  
333 Ms. Dwyer - That would be helpful.  
334  
335 Mr. Dustin - The red notation designates where we originally  
336 indicated the trailer would be. You can see we've moved it to the west about 30  
337 feet. It is now designated in blue and the dashed line indicates where the fencing  
338 would be. So we would effectively screen that entire front lot for students. We're  
339 going to use standard construction fencing; that's also attached in that package  
340 and you can see the signage that we're recommending that will go at the  
341 entrance.  
342  
343 Mr. Wright - You're comfortable with suggested condition number  
344 two?  
345  
346 Mr. Dustin - Yes. The parking lot at this point we expect to be  
347 complete June 30<sup>th</sup> and we anticipate trailer delivery on July 1<sup>st</sup> or 2<sup>nd</sup>. So we  
348 accept that. That trailer will not be in place until asphalt and curb-and-gutter is  
349 complete.  
350  
351 Mr. Blankinship - That would be the main concern for staff, just looking  
352 at this. You know if you'd put on your application the day after this meeting as  
353 your starting time, which is reasonable, the site clearly is not ready, so we just  
354 wanted to make sure that we weren't going to have students out there—of  
355 course, you'd have a lot of issues if you had students going through an active  
356 construction site to register.  
357



358 Mr. Dustin - Yes.  
359  
360 Mr. Blankinship - You don't need us to tell you that.  
361  
362 Ms. Dwyer - You have one access from Broad Street?  
363  
364 Mr. Dustin - There's one entrance to the property from Broad  
365 Street.  
366  
367 Ms. Dwyer - I'm wondering if there will be a conflict between  
368 students and construction traffic at that point, at that entrance. That entry drive  
369 that's not blocked off that goes to the rear of the building. I assume that's where  
370 you're going to funnel the construction?  
371  
372 Mr. Dustin - Yes, that's correct. There will be a merging of traffic  
373 at that intersection. Student traffic, as you look at it from Broad Street to the  
374 right, the construction traffic will be directed to the rear of the building.  
375  
376 Mr. Blankinship - You can also get to this property off of Brookriver. Is  
377 that correct?  
378  
379 Mr. Dustin - You can, yes.  
380  
381 Ms. Dwyer - But construction traffic will be coming from Broad.  
382  
383 Mr. Dustin - Yes.  
384  
385 Ms. Dwyer - It just looks like there's a lot of potential for conflict at  
386 that entry drive.  
387  
388 Mr. Wright - Well, there's a separate access when you come off  
389 the interstate. You pull over to come in there. There's a separate lane to access  
390 this property.  
391  
392 Ms. Dwyer - Right. But I'm saying that both students and  
393 construction traffic will probably be using that same entrance. There's a potential  
394 for conflict at that first part of the parking area. So where will your signage be to  
395 make it clear?  
396  
397 Mr. Dustin - If you look at the parking lot site plan, as you turn into  
398 that drive, there's an island that's essentially in front that you're facing. The  
399 signage will be right there.  
400  
401 Ms. Dwyer - It will direct students to the right and prohibit  
402 construction traffic in that area.  
403

404 Mr. Dustin - That's correct.

405

406 Ms. Harris - Mr. Dustin, on the aerial photo, if we can see that,  
407 could you point out—I think this shows the entrance from Broad Street. Will you  
408 point out where this trailer would be placed and let us know why you changed the  
409 placement of the trailer from one place to the other.

410

411 Mr. Dustin - When we initially submitted this plan, the electrical  
412 access required for the trailer was going to come essentially from the corner of  
413 this building. But once we determined that there was still going to be construction  
414 work being done on the exterior of the building—there's some facing work that  
415 will not be complete by July 1<sup>st</sup>—we determined it would be a safer condition to  
416 move the trailer to this location and then essentially fence behind the trailer and  
417 then across the front. So essentially, we're trying to accommodate a safety issue  
418 for the students.

419

420 Ms. Harris - On this, can you point out the entrance and exit?

421

422 Mr. Dustin - This is Broad Street and the entrance is right here.  
423 We would have signage right here directing students to this parking area.  
424 Construction traffic would continue along this side of the parking lot. They'd have  
425 access to the front of the building behind the fencing so they can continue to the  
426 back of the lot where we'll stage deliveries.

427

428 Ms. Dwyer - This is just a question. Would it be a good idea, do  
429 you think, to continue the fencing along that access drive to keep the  
430 construction traffic out of that parking area?

431

432 Mr. Dustin - We would certainly be willing to add additional fencing  
433 on a third side. It is a six-foot high standard construction fence, which is fairly  
434 visible. But from a safety standpoint, I'd be happy to add that.

435

436 Ms. Dwyer - You're on a very tight time schedule and sometimes  
437 there are construction delays. That has happened. What happens if you need  
438 the trailer beyond the date that you have—

439

440 Mr. Dustin - We have allowed two weeks at this point. We are on  
441 a tight construction schedule. The construction team assures me that we'll have  
442 the certificate of occupancy mid-September. We have the trailer through October  
443 1<sup>st</sup>. At this point, we don't anticipate going over schedule.

444

445 Ms. Dwyer - I don't know how the rest of the Board feels, but if you  
446 wanted to add some time to that October 1<sup>st</sup> date, I would be certainly—

447

448 Mr. Dustin - If we have the ability to modify that and add 30 days,  
449 that would certainly give us an extra window.

450  
451 Mr. Blankinship - We took the October date just off of their application,  
452 so staff doesn't have any objection to that either.  
453  
454 Mr. Wright - I think we should add something just to give you a  
455 little leeway.  
456  
457 Mr. Dustin - Very good.  
458  
459 Ms. Dwyer - Other questions by Board members? Anything else  
460 you'd like to add to your presentation?  
461  
462 Mr. Dustin - No. Thank you for your consideration.  
463  
464 Mr. Nunnally - What time are you going to change that to,  
465 November?  
466  
467 Ms. Dwyer - November 1<sup>st</sup>. Is that 30 days?  
468  
469 Mr. Blankinship - Yes.  
470  
471 Mr. Dustin - Thanks again.  
472  
473 [After the conclusion of the public hearings, the Board discussed the case  
474 and made its decision. This portion of the transcript is included here for  
475 convenience of reference.]  
476  
477 DECISION  
478  
479 Ms. Dwyer - Is there a motion on the case?  
480  
481 Mr. Wright - I move we approve this with the relocation of the  
482 trailer as proposed and the date change to November 1<sup>st</sup>.  
483  
484 Ms. Dwyer - Get clarification on the condition number. That was  
485 Condition #7. Change that from October to November. And we are incorporating  
486 this new drawing, these new presentations are part of this case that shows the  
487 new location of the trailer, the type of fencing, and the sign. Right. Motion by  
488 Mr. Wright. Is there a second?  
489  
490 Mr. Witte - I second it.  
491  
492 Ms. Harris - I have a question. Did we not say we would also add  
493 the extended fencing?  
494

495 Mr. Wright - I think Mr. Blankinship noted that. That should be  
496 included. He agreed to that.

497  
498 Ms. Dwyer - That's a notation staff is going to make on the— All  
499 right. Any other discussion?

500  
501 Motion to approve the case with amendments. That's been seconded. All in  
502 favor say aye. All opposed say no. The ayes have it; the motion passes.

503  
504 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
505 Mr. Witte, the Board approved application UP-012-10, Stratford University's  
506 request for a temporary conditional use permit pursuant to Section 24-116(c)(1)  
507 to allow a temporary office trailer at 11100 W Broad Street (Parcel 744-761-  
508 3043), zoned M-1, Light Industrial District (Three Chopt). The Board approved  
509 the use permit subject to the following conditions:

510  
511 1. [AMENDED] Only the improvements shown on the plot plan and building  
512 design filed with the application, as modified by the plan submitted at the public  
513 hearing, may be constructed pursuant to this approval. Any additional  
514 improvements shall comply with the applicable regulations of the County Code.  
515 Any substantial changes or additions to the design or location of the  
516 improvements may require a new use permit.

517  
518 2. The trailer shall not be placed on the property until the construction of the  
519 parking lot is completed.

520  
521 3. The trailer shall only be used for those items directly related to the operation  
522 of Stratford University.

523  
524 4. The trailer and any parking area used by prospective students or staff shall be  
525 fenced off by temporary fencing at least five feet in height. The fencing shall be  
526 removed at the same time as the trailer is removed.

527  
528 5. A sign shall be placed at the entrance to the site directing prospective  
529 students to the trailer and making clear that no construction equipment shall be  
530 allowed within the fenced area around the trailer and its associated parking.

531  
532 6. Any exterior lighting associated with the trailer shall be shielded to direct light  
533 away from adjacent property or streets.

534  
535 7. [AMENDED] The trailer shall be removed from the property on or before  
536 November 1, 2010 at which time this permit shall expire.

537  
538 8. The trailer shall be skirted on all sides with a durable material as required by  
539 the building code for a permanent installation.

540

541 9. The bathroom in the trailer shall be connected to sanitary facilities approved  
542 by the Virginia Department of Health. This facility shall be screened from  
543 adjacent property.  
544

545  
546 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
547 Negative: 0  
548 Absent: 0  
549

550  
551 [At this point, the transcript continues with the public hearing on the next  
552 case.]  
553

554 UP-013-10 LEONARD MCGHEE requests a conditional use  
555 permit pursuant to Section 24-95(i)(4) to allow a swimming pool in the side yard  
556 at 10245 Greenwood Road (Greenwood Park) (Parcel 780-764-2262), zoned R-  
557 4, One-family Residence District (Fairfield).  
558

559 Ms. Dwyer - Is there anyone here in opposition to this case? No  
560 opposition. Would you please raise your right hand to be sworn.  
561

562 Mr. Blankinship - Do you swear the testimony you're about to give is  
563 the truth and nothing but the truth so help you God?  
564

565 Mr. McGhee - Yes.  
566

567 Ms. Dwyer - Would you please state your name and state your  
568 case.  
569

570 Mr. McGhee - Leonard McGhee.  
571

572 Ms. McGhee - Rae Anne McGhee.  
573

574 Mr. McGhee - M-c-g-h-double e.  
575

576 Ms. Dwyer - Ma'am, your first name was?  
577

578 Ms. McGhee - Rae, R-a-e.  
579

580 Ms. Dwyer - All right.  
581

582 Ms. McGhee - I purchased the house back in March when we had  
583 moved down here from Western Maryland. The house that I sold had a pool. So  
584 I didn't know there were any problems with putting a pool on our property when  
585 we bought this, so I've already purchased the pool. That's when we started  
586 checking into things. We have a septic system and where I wanted to put the

587 pool it cannot be put because of the drain field. We would have to move the pool  
588 closer to the front of the house and that's where we are right now. We're just  
589 here for any kind of advice you could give us. I can't put the pool in the back of  
590 the house because that's where the driveway runs in. And then there is another  
591 property behind us with a privacy fence. From what I understand, the house used  
592 to face Davis Street and then when they did the remodel, they made it facing  
593 Greenwood. So I guess that's why the driveway comes in off of Davis Street. All I  
594 can say is it's a nice pool. I can put a privacy fence up. The property is a nice  
595 piece of property. Basically, that's all.

596

597 Mr. McGhee - We do accept the suggested conditions. When you  
598 say the front plane of the house, are you including the porch? The porch stands  
599 eight feet off of the house. Are you calling the front of the porch the front plane or  
600 the main brick?

601

602 Mr. Blankinship - We were looking at the brick wall. If you do that, it's  
603 definitely going to squeeze you. You might not be able to use a 24-foot pool or  
604 you may need to relocate that drain field line. Don't be in too big of a hurry to  
605 agree to that condition. Let me just say that sometimes the staff puts a condition  
606 on that we anticipate the applicant will not accept and then it's between you and  
607 the Board members to negotiate a solution that will work for you. The Board  
608 wants to be as reasonable and flexible as they can be within the constraint of  
609 protecting the neighbors and the neighborhood. Don't feel like it's all or nothing,  
610 that if you don't accept that condition they're going to deny your permit. This is  
611 the opportunity to discuss the details.

612

613 Ms. McGhee - I would like to say one more thing. I can't do it right  
614 now because of the money constraints that I have, but I would like to eventually  
615 hook onto the County sewer. Due to just buying this house and relocating down  
616 here, I don't have the funds available to me right now. That would probably be  
617 about \$5600. I don't know if there are any grants or anything like that that I could  
618 apply for. However, my husband is Creek Indian and we have applied for a grant  
619 through his tribe for a home improvement loan to see if we could come up with  
620 the \$5600 to do that. Then I don't think there would be a problem. Then I could  
621 move the pool back to where I wanted it originally. But it's just with the economy  
622 the way it is and all the money I put out for my house I just bought, I really don't  
623 have the funding available to me unless I get a loan.

624

625 Ms. Dwyer - Where did you want the pool?

626

627 Ms. McGhee - I would like to have the pool right off the back porch.

628

629 Mr. Blankinship - Before you start. This is rotated so that north is at the  
630 bottom of this page.

631

632 Mr. McGhee - Correct. Back here where it says the board deck and  
633 steps, we would like to put it three to five feet off of that biggest portion sticking  
634 out of the house. That is the upstairs deck. The stairs you see closest to the  
635 house, those are going down. We would be within three to five feet of that, but  
636 at the time, I would be within like five feet also of the septic tank. So that's why  
637 we're trying to—  
638

639 Ms. McGhee - They told us we had to be ten feet away from the  
640 septic tank.  
641

642 Mr. Blankinship - Ten feet.  
643

644 Ms. McGhee - That's why that location won't work at this time.  
645

646 Mr. Wright - It would still be in the side yard, though, wouldn't it?  
647

648 Mr. Blankinship - Yes sir, it would still require the use permit.  
649

650 Ms. Dwyer - But it would not be in the front yard.  
651

652 Mr. Blankinship - That's correct.  
653

654 Mr. McGhee - No, it would not.  
655

656 Ms. Dwyer - If you removed the shed, could you put it in that back  
657 corner.  
658

659 Mr. McGhee - No, that's a concrete slab. I mean, I could remove the  
660 slab.  
661

662 Ms. McGhee - i think that would go into the drainage field. The  
663 problem with everything is the house was built in 1943. The Health Department  
664 person came out and told us that there's usually a cap on it that points to the  
665 direction of the drain field. There was not a cap on it that did that, I guess  
666 because of the age of it. So we're basically going by what we think is the drain  
667 field from what everybody's told us. The best thing I could do is probably—and  
668 I'm hoping that I can do it within the next—get hooked onto the County. I've  
669 never had a septic tank before so I'm not familiar with all the restraints and stuff  
670 that you have to have.  
671

672 Mr. Wright - Where is the hookup to that, Ben?  
673

674 Mr. Blankinship - It's in the street. It's in both Greenwood and Davis  
675 Road, I believe.  
676

677 Mr. Wright - It's accessible.

678  
679 Mr. Blankinship - Yes, it's definitely accessible.  
680  
681 Ms. McGhee - Yes It is.  
682  
683 Mr. Blankinship - They've meet with Public Utilities and been told that  
684 they can.  
685  
686 Mr. Wright - That would solve a lot of your problems.  
687  
688 Ms. McGhee - Yes, it's just money. I sold a house in Western  
689 Maryland and put basically the biggest part of the money on my house to buy it  
690 here because we had relocated. Then I, of course, bought the pool because I  
691 never thought in my wildest dreams there would be a problem with installing the  
692 pool on the property.  
693  
694 Mr. Witte - So you already have the pool.  
695  
696 Ms. McGhee - Yes, I've already bought and paid to have it installed.  
697 I wouldn't have done that if I knew there were any problems. I was just trying to  
698 get a house comparable to what I moved from up in Western Maryland.  
699  
700 Mr. McGhee - The two trees that you were talking about that are in  
701 our yard, the tops of them are practically falling out. It does bear leaves.  
702  
703 Ms. McGhee - But I'm not going to cut them down.  
704  
705 Mr. McGhee - There's one there, the oak, and the one right behind it  
706 is a cedar. The cedar tree was removed.  
707  
708 Mr. Blankinship - Is there another oak?  
709  
710 Mr. McGhee - There's another oak back—there it is, yeah.  
711  
712 Mr. Blankinship - I don't think there's a way to save the cedar tree.  
713 Either you have the pool or you have the cedar tree.  
714  
715 Ms. McGhee - Yes. And that's what I had planned to do is to take  
716 the cedar tree out and leave the other two, because I do like my trees on my  
717 property. Of course I can put the privacy fence up; that won't be a problem.  
718  
719 Mr. Blankinship - If you put the privacy fence where the staff  
720 recommended, that is in line with the front wall—not the porch, but the front wall  
721 of the house—your pool location as shown is not going to work.  
722  
723 Ms. McGhee - Mmm-hmm.



724

725 Mr. Blankinship - That size of a pool may not work unless you remove  
726 [unintelligible] [0:29:55]\*.

727

728 Ms. McGhee - Yes. The septic system is a biggie. And when I  
729 bought the house, I didn't even think, because I've never had a septic system. I  
730 didn't know there would be any problem.

731

732 Mr. Blankinship - Let me correct what I said earlier. The sewer is  
733 available in Greenwood Road, but not in Davis Street.

734

735 Mr. McGhee - It's right there almost right where that yellow sign is. I  
736 don't know if that's for a pipeline or whatever that is in the ditch there.

737

738 Ms. McGhee - So I've tried to look at all the options. I'll take any  
739 suggestions you may have. I don't know what else to do.

740

741 Ms. Harris - Ms. McGhee, have you considered a smaller pool?

742

743 Ms. McGhee - Well, I've already bought this pool and I don't know if  
744 they would trade it or not. I've already purchased it with case from Rec  
745 Warehouse. And I've already paid for the install. So I don't know if they have a  
746 policy where they would do that or not. I can check in on that. What I was  
747 hoping to do is be able to put the pool in. If not, I'm stuck with a pool I've already  
748 paid for.

749

750 Mr. McGhee - We had relatives in Richmond, so our pool—

751

752 Ms. McGhee - I don't know if it comes—I'd have to check into it. This  
753 is a 24-foot. And it's round; it's not rectangular.

754

755 Ms. Harris - Have you spoken with your neighbors to see how they  
756 feel about a pool?

757

758 Mr. McGhee - The one behind the privacy fence there that you see,  
759 he's the one that we bought the home from back in March. He has no—

760

761 Ms. McGhee - I really haven't associated with any of the neighbors  
762 because I run a group home and so I'm not home most of the time. Right there  
763 being on the corner, there's really—the house across from me on Davis Street is  
764 for sale so there's nobody there. Then there's a home across the street from us.  
765 She speaks to me and stuff like that, but I don't think she has a problem with  
766 anything. And then other than that, they've just built new houses behind us.

767

768 Mr. McGhee - We just installed the electrical outlet. You can see it  
769 right there on one of the posts. Watson Electric installed that for us. There's a  
770 flag that used to be sticking up out there, that doesn't represent any prior dogs.  
771  
772 Ms. McGhee - We have an electronic fence around the place for the  
773 dogs.  
774  
775 Mr. McGhee - If I did move it back further from the front plain of the  
776 house, I would be close to those six-by-sixes that hold the deck up. Would that  
777 create a problem?  
778  
779 Mr. Blankinship - You have to be six feet away from them.  
780  
781 Mr. McGhee - I have to be six feet away from that. From where the  
782 pool was going to go to where the outlet is, is 20 feet. It's where I was going to  
783 put the pad for the pool pump. It's 17 feet away from that. So that makes the  
784 pool about 20 feet. So I could still come this way 11 feet. That still puts me over  
785 in front of the house by a foot.  
786  
787 Mr. Witte - In your diagram, you have a pump pad. Is that for the  
788 pool?  
789  
790 Mr. McGhee - That's for the pool.  
791  
792 Mr. Witte - So you could actually move that pump pad back on  
793 the other side of the sewer line and slide the whole pool back.  
794  
795 Mr. McGhee - Yes sir. I can slide the pool back. I don't know how  
796 close I would be to the septic, because the way I have everything drawn and  
797 measured there, it might be right at the ten-foot mark for that septic tank. And my  
798 drain field is running the direction that I have it showing. Right now, the center of  
799 the pool is about midways of the porch.  
800  
801 Ms. Dwyer - Is it possible for you to get the pool—not the deck,  
802 just the pool—behind the front plain of the house? Is that possible? Or do you  
803 not know. You might need some more time.  
804  
805 Mr. McGhee - I think I can do it, but I would have to remove the  
806 cedar tree.  
807  
808 Ms. Dwyer - It might be possible to get the pool behind the front  
809 plane of the house and then you could put the deck somewhere else other than  
810 toward the front of the house.  
811

812 Mr. McGhee - Yes. I could put the deck on whatever corner of it  
813 would be suitable. I know I have to stay away from the house. I would like to  
814 attach it to the back deck.

815  
816 Ms. Dwyer - One thing you might want to think about is postponing  
817 our decision until you get those measurements. Staff has recommended that it  
818 be behind the front plane.

819  
820 Mr. McGhee - Yes, okay.

821  
822 Ms. McGhee - Are there any resources through the County if you  
823 want to hook onto the sewer system? Will they do a payment plan or anything  
824 like that?

825  
826 Ms. Dwyer - We can't answer that question. You might need to do  
827 some more research. If you postpone this case until next month, that might give  
828 you time to check with the County, check with whatever grant resources you  
829 mentioned, and also to take those measurements to see exactly what's possible  
830 for you to do rather than guessing. We don't like to guess.

831  
832 Ms. McGhee - Yes, I can understand.

833  
834 Ms. Dwyer - We don't want you to be in a situation of having made  
835 a commitment that you can't comply with and then have to come back. All right.  
836 Any other questions or comments by Board members?

837  
838 Mr. Blankinship, should we resolve this question of deferral at this point?

839  
840 Mr. Blankinship - I think you could do it either way.

841  
842 Mr. Wright - Ms. McGhee, you're in accord with postponing it?

843  
844 Ms. McGhee - Yes. Whatever I can do, because I'd like to get the  
845 pool put in. And like she said, I don't want to agree to something that I'm not  
846 even sure.

847  
848 Mr. Wright - There are some unanswered questions here.

849  
850 Ms. Harris - Is a motion in order at this point?

851  
852 Mr. Blankinship - Either way.

853  
854

855 **DECISION**

856

857 Ms. Harris - I move that this case be deferred until the next  
858 meeting to give the McGee's an opportunity to explore some of the points that  
859 were addressed in this session.

860  
861 Ms. Dwyer - Motion by Ms. Harris. Is there a second?

862  
863 Mr. Witte - Yes, I'll second.

864  
865 Ms. Dwyer - The motion has been seconded. All in favor say aye.  
866 All opposed say no. The ayes have it; the motion passes.

867  
868 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
869 Mr. Witte, UP-013-10, Leonard McGhee, has been deferred until the July 22,  
870 2010 meeting.

871  
872  
873 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
874 Negative: 0  
875 Absent: 0

876

877

878 Ms. Dwyer - That completes the hearing portion of our meeting.  
879 We will proceed then to make a decision on A-006-10.

880

881 [This concludes the public hearing portion of the meeting. The Board  
882 discussed the cases and made its decisions. For convenience of reference,  
883 each decision is located in the transcript with each individual case.]

884

885 [At this point, the transcript continues with the rest of the meeting.]

886

887 Ms. Dwyer - That concludes our cases for today. The next agenda  
888 item is approval of the minutes from our May meeting. Any changes to the  
889 minutes? Any additions or corrections?

890

891 Mr. Wright - On page 27, line 1205, I'm sure that's a typo. It  
892 should read, "They came in and bulldozed it." It has, "The came in."

893

894 Ms. Dwyer - Which line is that?

895

896 Mr. Wright - Page 27, line 1205. That's just a typo.

897

898 Ms. Dwyer - "They" instead of "the"?

899

900 Mr. Wright - Yes. "The" doesn't make any sense.

901

902 Ms. Dwyer - On line 1205?

903  
904 Mr. Wright - At the end of the sentence there.  
905  
906 Ms. Dwyer - Any other amendments? Hearing none, is there a  
907 motion to approve the minutes?  
908  
909 Mr. Wright - I move we approve the minutes as corrected.  
910  
911 Ms. Harris - I second the motion.  
912  
913 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. All in  
914 favor say aye. All opposed say no. The ayes have it; the motion passes.  
915  
916 On a motion by Mr. Wright seconded by Ms. Harris, the Board approved as  
917 corrected the Minutes of the May 27, 2010, Henrico County Board of Zoning  
918 Appeals meeting.  
919  
920 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
921 Negative: 0  
922 Absent: 0  
923  
924 Ms. Dwyer - New business?  
925  
926 Ms. Harris - Before we adjourn, I do have something. It says  
927 "Presented to Elizabeth G. Dwyer, Esquire. In recognition of service on the  
928 Henrico County Board of Zoning Appeals, March 25, 2004 to June 24, 2010.  
929 Including two years as Chair, August 28, 2008 to June 24, 2010," we want to  
930 wish you well in your new endeavors and it's been a real pleasure.  
931  
932 Ms. Dwyer - Well, I appreciate your thoughts on this. It's been a  
933 pleasure to be associated with the County again and to work with staff. I've  
934 gotten to know all of you on a professional level and a personal level, and I've  
935 just thoroughly enjoyed my experience here. I'm going to miss it. It was with a  
936 heavy heart that I turned in my resignation because I was looking forward to  
937 spending a lot more years with you. But this opportunity has come up and I'm  
938 going to give it a shot, so.  
939  
940 Mr. Wright - We wish you well in your future endeavor. I know you  
941 will succeed.  
942  
943 Ms. Dwyer - Thank you. Thank you very much.  
944  
945 There being no further business, the Board adjourned until the July 22, 2010  
946 meeting at 9 a.m.  
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*Helen E. Harris, Vice Chair*

*for*

Elizabeth G. Dwyer  
Chairman

*BW Blankinship*  
Benjamin Blankinship, AICP  
Secretary