

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, MARCH 27, 2008, AT 9:00 A.M., NOTICE**  
5 **HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MARCH**  
6 **6, 2008 AND MARCH 13, 2008.**

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

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

8  
9  
10 Mr. Kirkland - Good morning, ladies and gentlemen. Welcome to the  
11 March Board of Zoning Appeals meeting. Before we get started, could we please  
12 stand for the **Pledge of Allegiance to the Flag of Our Country**. Before we get  
13 started this morning, we're going to use a time limit on the cases today. Ten  
14 minutes for the applicant, ten minutes for opposition. We can waive those at any  
15 time, but I think with the long agenda we have today, we need to kind of shorten  
16 it up somewhat. So, if you would read the rest of the rules, Mr. Blankinship.

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

36 staff. Particularly those of you who are applicants for use permit cases need to  
37 be familiar with the conditions that have been recommended.

38  
39 Mr. Chairman, I think we left one erroneous piece of information on your desk. It  
40 is not a withdrawal request. We'd like it to be a withdrawal request, but the  
41 applicant has not yet closed the deal, so they have asked for a deferral once  
42 again on A-001-08, Emerald Land Development. Is anyone here this morning to  
43 speak on A-001-08, Emerald Land Development?

44  
45 **A-001-08 EMERALD LAND DEVELOPMENT** requests a  
46 variance from Section 24-95(b)(7) to build a one-family dwelling at 3921 Grayson  
47 Street (Providence Park Annex) (Parcel 793-737-0345), zoned R-5, General  
48 Residence District (Fairfield). The lot width requirement and total lot area  
49 requirement are not met. The applicant has 35 feet lot width and 3,445 square  
50 feet total lot area, where the Code requires 50 feet lot width and 6,000 square  
51 feet total lot area. The applicant requests a variance of 15 feet lot width and  
52 2,555 square feet total lot area.

53  
54 Mr. Kirkland - Did they want a deferral or withdrawal?

55  
56 Mr. Blankinship - Well, they've been trying to acquire the property to  
57 north for months and they think they're very close, but the e-mail said that there  
58 was still one piece of paperwork that was not complete. They don't want to  
59 withdraw the application until it's complete.

60  
61 Ms. Dwyer - I think we want to encourage that, the acquisition of  
62 that property because then they wouldn't need the variance.

63  
64 Mr. Blankinship - Yes, right.

65  
66 Ms. Dwyer - So, I move that we—Do we need to make a motion on  
67 the deferral?

68  
69 Mr. Kirkland - Yes we do.

70  
71 Ms. Harris - I second that.

72  
73 Mr. Kirkland - Motion by Ms. Dwyer, seconded by Mrs. Harris. All  
74 those in favor say aye. All those opposed say no. The ayes have it; the motion  
75 carries. It will be deferred for 30 days until the next meeting.

76  
77 After an advertised public hearing, **A-001-08, Emerald Land Development**, has  
78 been **deferred** until the April 24, 2008 meeting.

79  
80 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
81 Negative: 0

82 Absent: 0

83

84

85 **UP-024-08** **MARTHA WAGNER** requests a conditional use  
86 permit pursuant to Sections 24-12(b) and 24-52(a) to operate a private  
87 noncommercial riding club at 6301 Hines Road (Parcel 853-692-4325), zoned A-  
88 1, Agricultural District (Varina).

89

90 Mr. Kirkland - Does anyone wish to speak on this case? Please  
91 stand and be sworn in and the applicant can come forward.

92

93 Mr. Blankinship - Is the applicant here?

94

95 Mr. Kirkland - Yes, there she is.

96

97 Mr. Blankinship - Oh, okay. Sorry. I looked the wrong way.

98

99 Mr. Kirkland - Yes ma'am. Can you raise your right hand and be  
100 sworn in please?

101

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

104

105 Ms. Wagner - I do.

106

107 Mr. Kirkland - Okay, thank you. Would you state your name for the  
108 record?

109

110 Ms. Wagner - Martha Wagner.

111

112 Mr. Kirkland - We heard this case two months ago. You can give  
113 your name, too. I'm sorry, sir.

114

115 Mr. Wagner - Robert Wagner.

116

117 Mr. Kirkland - Okay. The case was deferred for two months  
118 because of the ruling by the Zoning Administrator Planning Director on the  
119 distance requirement. Do you have anything you wanted to add to the zoning  
120 requirement, the distance requirement?

121

122 Ms. Wagner - Only that we will abide by whatever the court decides  
123 today.

124

125 Mr. Kirkland - Have you read the conditions of the case?

126

127 Ms. Wagner - Yes.

128  
129 Mr. Kirkland - Do you have any problems with those? Anything else  
130 you wish to add?  
131  
132 Ms. Wagner - No.  
133  
134 Mr. Kirkland - All right.  
135  
136 Mr. Wright - Let me just ask one question, Mr. Wagner. You have  
137 10 horses. Is that the number of horses?  
138  
139 Ms. Wagner - That's the amount we have, yes. Ten horses.  
140  
141 Mr. Kirkland - Anyone else wish to speak?  
142  
143 Mr. Wright - And those 10 horses are there every day?  
144  
145 Ms. Wagner - Yes.  
146  
147 Mr. Wright - Do you have additional horses which are brought in  
148 for other types of events?  
149  
150 Ms. Wagner - We have had some horses brought in for events in  
151 the past, yes, for a couple of hours during the day.  
152  
153 Mr. Wright - I was looking at something that was given to us. I  
154 don't know what it is. Haven't had a chance to really study it. It looks like some  
155 sort of advertisement for people to bring their horses in and you provide lunch.  
156  
157 Ms. Wagner - Are you talking about the New Bridge Christian—  
158  
159 Mr. Wright - They're called the Christian Corral 2008 Schedule.  
160 So, that's pretty current, isn't it?  
161  
162 Ms. Wagner - Yes.  
163  
164 Mr. Wright - What is that all about?  
165  
166 Ms. Wagner - That is a training session that we offer to our  
167 volunteers to learn how to work with our horses in the manner that we have them  
168 trained so that they can lead them in a therapeutic class. This is also offered to  
169 the public. They are permitted to bring their horse to that event. All proceeds from  
170 that event are given as a donation to Horses In Service. It's a fundraiser training  
171 type event.  
172  
173 Mr. Wright - I understand that. That's all wonderful, but I'm

174 concerned about the traffic in and out. Is there a lot of traffic on that day? Is it on  
175 Saturday?

176  
177 Ms. Wagner - It's on a Saturday. It happens once or twice a year  
178 and it might be one or two horse trailers on that day, at the maximum.

179  
180 Mr. Kirkland - So, you would go over the 10-horse limit.

181  
182 Ms. Wagner - Yes.

183  
184 Mr. Wright - How can that be if they bring additional horses in on  
185 that Saturday?

186  
187 Mr. Kirkland - They wouldn't be able to do it if we approve the case  
188 with those conditions, I assume.

189  
190 Ms. Wagner - Correct.

191  
192 Mr. Kirkland - So, what you're saying is if this is approved, you  
193 would not have that event any more?

194  
195 Ms. Wagner - Not with horses being brought in from outside, no.

196  
197 Mr. Wright - Do you offer any other services to people with  
198 horses? Do you board horses for them?

199  
200 Ms. Wagner - No. Only for Horses In Service.

201  
202 Ms. Harris - I have a question, too, when you finish.

203  
204 Mr. Wagner - If I might add something. The event you're talking  
205 about is a ground training event. There's no riding involved. It's teaching people  
206 how to handle their horse on the ground. That's why people would like to bring  
207 their own horse rather than to use one of Martha's horses. In the past, she's  
208 done this probably five times, held this class about five times. It actually started  
209 as a Sunday school class. It's using horses to explain and try to show you the  
210 way that God patterns your life and it uses horses in this class. It also is useful to  
211 these people because it teaches them to handle their horse on the ground.  
212 There's no riding involved. The horses are there for that amount of time and then  
213 they leave. They're never pastured, they're never stabled. They're taken out of  
214 the horse trailer into the arena. They do the event, they eat lunch, and they go  
215 home. The money that she charges for this is donated to Horses In Service as a  
216 fundraiser.

217  
218 Mr. Wright - I understand, Mr. Blankinship, the way these  
219 conditions are written, if this were approved, they couldn't bring any additional

220 horses on the property, could they.  
221  
222 Mr. Blankinship - That's correct. The only thing that's being considered  
223 here this morning is the Horses In Service activity with the description and hours  
224 of operation and all that has been included in the application since December.  
225 The condition that we've drafted says that only the activities directly associated  
226 with Horses In Service and the improvements shown on the plot plan filed with  
227 the application are authorized.  
228  
229 Mr. Wright - So, they couldn't bring any additional horses in.  
230  
231 Mr. Blankinship - Right.  
232  
233 Mr. Wright - I just want to make sure it was in the record.  
234  
235 Mr. Nunnally - I think Ms. Wagner said that she could do this training  
236 with your horses, right?  
237  
238 Ms. Wagner - That's correct.  
239  
240 Mr. Nunnally - None would be brought in.  
241  
242 Ms. Wagner - I don't have a problem with that.  
243  
244 Ms. Dwyer - Okay. Mr. Blankinship, this application is for Horses In  
245 Service. If there are any other activities that the Wagener's are engaged in, then  
246 that wouldn't be subject to this approval, but it would be subject to the law still.  
247 So, for example, if they boarded horses outside of the Horses In Service activity,  
248 that would be prohibited under other provisions of the law.  
249  
250 Mr. Blankinship - Right. That would be a violation of the Zoning  
251 Ordinance.  
252  
253 Ms. Dwyer - Okay.  
254  
255 Ms. Harris - Mr. Wagner, how long have you resided on Hines  
256 Road?  
257  
258 Ms. Wagner - Since 1993.  
259  
260 Ms. Harris - How long have you boarded horses, since the same  
261 time?  
262  
263 Ms. Wagner - No. We started boarding horses for Horses In  
264 Service in I believe it was 2005 we received the first horse.  
265

266 Ms. Harris - Have you had complaints from your neighbors since  
267 that time, since 2005?  
268  
269 Ms. Wagner - No, just recently with this case.  
270  
271 Ms. Harris - Recently. Okay. Can those horses be relocated to an  
272 area more remote from your neighbors who are complaining?  
273  
274 Ms. Wagner - Not at the present time they cannot.  
275  
276 Ms. Harris - You don't have room on your property to move your  
277 pasture back a bit?  
278  
279 Ms. Wagner - We do have some room in the back, but it would have  
280 to be fenced in with a new fence. It has an old fence right now, which would not  
281 contain horses.  
282  
283 Mr. Wright - Let me ask another question. The entire property is  
284 not fenced in, is that correct?  
285  
286 Ms. Wagner - It is fenced in, yes.  
287  
288 Mr. Wright - Are the horses allowed to roam throughout the  
289 property?  
290  
291 Ms. Wagner - No. The fencing between our property and the Acres'  
292 property is old and it would not hold horses.  
293  
294 Mr. Wright - In your application, you talk about a large pasture and  
295 a small pasture.  
296  
297 Ms. Wagner - Yes.  
298  
299 Mr. Wright - The large pasture is 3.73 acres.  
300  
301 Ms. Wagner - It's probably more than that. The footage on there  
302 was a guestimate.  
303  
304 Mr. Wright - Is that shown on our maps here?  
305  
306 Ms. Wagner - Yes. The large green area.  
307  
308 Mr. Wright - The large green area is the large pasture.  
309  
310 Ms. Wagner - Yes.  
311

312 Mr. Wright - And that's fenced in?  
313  
314 Ms. Wagner - Yes.  
315  
316 Mr. Wright - How many horses do you keep in there?  
317  
318 Ms. Wagner - Ten.  
319  
320 Mr. Wright - Ten horses in there.  
321  
322 Ms. Wagner - Yes.  
323  
324 Mr. Kirkland - Any other questions?  
325  
326 Ms. Dwyer - I have one question. What is the relationship between  
327 you and Horses In Service? Do you have a contract with them that governs how  
328 you apply the money you receive from participants in the program? How can you  
329 help us understand that relationship?  
330  
331 Ms. Wagner - We lease our property, the arena and the boarding  
332 facility to Horses In Service.  
333  
334 Ms. Dwyer - Is Horses In Service just a national organization, a  
335 national non-profit.  
336  
337 Ms. Wagner - It's a non-profit, North American Riding for the  
338 Handicapped Association certified riding center.  
339  
340 Ms. Dwyer - You lease the stables, four stalls?  
341  
342 Ms. Wagner - And the arena.  
343  
344 Ms. Dwyer - What about the horses themselves?  
345  
346 Ms. Wagner - Four of the horses are owned by Horses In Service.  
347 Those are the four that I rent stalls to.  
348  
349 Ms. Dwyer - Okay. Then the other six horses, do you use those for  
350 Horses In Service?  
351  
352 Ms. Wagner - Two of them are used.  
353  
354 Ms. Dwyer - Two of your horses.  
355  
356 Ms. Wagner - Yes.  
357



358 Ms. Dwyer - What's the financial arrangement there?  
359  
360 Ms. Wagner - I lease those also to Horses In Service.  
361  
362 Ms. Dwyer - Okay. That leaves four more horses.  
363  
364 Ms. Wagner - Correct. Those are just private horses that are pets.  
365  
366 Ms. Dwyer - It seems to me that six of the horses are affiliated with  
367 Horses In Service, four are private horses and that exceeds the statutory limit for  
368 horses that are permitted to be maintained and used for personal use. Is that  
369 correct, Mr. Blankinship?  
370  
371 Mr. Blankinship - I think paragraph 24-10(b) has been a source of a lot  
372 of confusion on this case and previously. That's the paragraph that has both a  
373 separate distance requirement for horses and that limitation of one horse per  
374 acre. That was added to the code in 1985 in response to a particular subdivision  
375 called Bridlewood where they were marketing that subdivision as an equestrian  
376 subdivision. They intended for people to have, in addition to a house on roughly  
377 an acre lot, a small stable with one or two or three horses for their own use. The  
378 problem was that when you applied what was then 24-10—what is now 24-  
379 10(a)—measuring from the lot lines it was impossible to put the stable anywhere  
380 on any of those lots. So, that separate paragraph was amended solely for the  
381 purpose of providing a less restrictive distance requirement for that very narrowly  
382 defined use of a stable that would have one, two, or three horses for personal  
383 use. There is no statement anywhere in the code that says if you have horses on  
384 your property, you are limited to one per fenced acre. Only if you want to come  
385 under that less restrictive distance requirement does the more restrictive  
386 limitation on the number of animals come into play.  
387  
388 Mr. Wright - You could have 50 horses.  
389  
390 Mr. Blankinship - Right. A horse farm—  
391  
392 Mr. Wright - A hundred horses.  
393  
394 Mr. Blankinship - Yes. It's not limited—  
395  
396 Mr. Wright - On a 10-acre parcel?  
397  
398 Mr. Blankinship - It's not limited by zoning.  
399  
400 Mr. Wright - I don't believe that.  
401  
402 Mr. Blankinship - Whatever limitations they're subject to are the  
403 limitations of other codes. The Zoning Ordinance did not address that issue at all

404 until that amendment was added and that amendment was added for the specific  
405 purpose of allowing private stables on individual lots in the Bridlewood  
406 subdivision.

407

408 Ms. Dwyer - What you're saying is paragraph B of 24-10 does not  
409 limit the maintenance of horses for private use to three.

410

411 Mr. Blankinship - Right. If you have a horse farm, we don't go out to  
412 every horse farm in the County and compare the acres of fenced pasture to the  
413 number of horses.

414

415 Ms. Dwyer - In this case, for example, the Wagner's could have 50  
416 horses on their property and say they're all for private use and there's nothing in  
417 the statute that would prohibit that.

418

419 Mr. Blankinship - Nothing in the Zoning Ordinance. Now, I don't know  
420 what the Animal Protection codes or whatever the Agriculture Service regulations  
421 are. I don't know who else regulates numbers of animals. I know there are state  
422 regulations on how the waste is handled and that sort of thing. In terms of the  
423 Zoning Ordinance, that restriction was drafted in 1985 to apply in that narrow  
424 circumstance.

425

426 Mr. Wright - It looks to me that 24-10(b) says that there shall be no  
427 more than one horse or pony permitted on the premises for each acre of  
428 enclosed land. That doesn't apply to anything else.

429

430 Mr. Blankinship - The first clause of that paragraph is about having a  
431 private stable on an individual lot for no more than three animals only for  
432 personal use. So, that doesn't apply to a horse farm. We don't limit the number of  
433 cows that you can have on a piece of property or any other animals.

434

435 Mr. Wright - While we're on this, let's take a look at 24-11(c). That  
436 applies to everything, doesn't it?

437

438 Mr. Blankinship - Yes sir.

439

440 Mr. Wright - No livestock shall be permitted to run at large.

441

442 Mr. Blankinship - Right.

443

444 Mr. Wright - Any building or yards for the enclosure or the feeding  
445 of animals shall observe the distance requirements of 24-10.

446

447 Mr. Blankinship - Yes. Then 24-10(a), if you look at the first clause of  
448 24-10(a) it says for any use for which compliance with this paragraph is  
449 stipulated elsewhere in this chapter.

450  
451 Ms. Dwyer - Why wouldn't horses come under—Let's say the  
452 Wagner's wanted to have 50 horses. Why wouldn't that come under 11C, which  
453 refers back to 10A—  
454  
455 Mr. Blankinship - It does  
456  
457 Ms. Dwyer - —which imposes a distance requirement?  
458  
459 Mr. Blankinship - Yes. To 10A, yes.  
460  
461 Mr. Wright - You would have an enclosure, which is this pasture of  
462 3 acres. Looks like to me the distance requirements would apply to that.  
463  
464 Mr. Blankinship - The problem with that interpretation is that you would  
465 end up with—In Hines Road in this area there are several other properties where  
466 there are horses on the property and the fences are on the property line. By the  
467 interpretation you're suggesting, that fence would have to be 200 feet on each  
468 side of the property line with a 400-foot no man's land in between them. The  
469 people on one side would have to be 200 feet and the people on the other side  
470 would have to be 200 feet.  
471  
472 Mr. Wright - You have to have 200 feet from a house to protect the  
473 house—  
474  
475 Mr. Blankinship - Not from the house, from the lot line. Paragraph A is  
476 measured from the lot line. You'd have to go down Hines Road and see a 400-  
477 foot strip aligned on each property line with a fence 200 feet on one side and 200  
478 feet on the other.  
479  
480 Ms. Dwyer - Getting back to this case, then, the Wagner's have  
481 four horses that they maintain for private use. Why doesn't that come under 24-  
482 11(c), which refers back to the distance requirement 24-10(a), which requires  
483 200 feet from any other lot?  
484  
485 Mr. Blankinship - It does, but our interpretation is that that distance  
486 requirement is not measured simply to a pasture. It's to a yard or a structure  
487 where animals are confined.  
488  
489 Mr. Wright - It says uses. It doesn't specifically say—It says uses,  
490 comma, buildings or premises.  
491  
492 Mr. Blankinship - For which.  
493  
494 Mr. Wright - Yes. For which the requirement—A use is putting the  
495 horses in the pasture. That's where you get the protection for the adjoining

496 homeowners.  
497  
498 Mr. Blankinship - Then in 11C where it stipulates compliance with 24-  
499 10, it says yards and buildings where the animals are confined. So, the question  
500 is—  
501  
502 Mr. Wright - What's a yard?  
503  
504 Mr. Blankinship - Yes. The question is what's a yard and what is meant  
505 by confined? Does that mean just a fence that keeps them from wandering off  
506 the property or does it mean a place where they're confined for the purpose of  
507 feeding or bedding or whatever?  
508  
509 Mr. Wright - I think that pasture should be 200 feet from the lot  
510 line.  
511  
512 Mr. Blankinship - All right. If that is the case, then every horse pasture  
513 in the County would have to be 200 feet off the lot lines. In agricultural areas,  
514 you're going to have a lot of land between the fence and the property line that's  
515 not used.  
516  
517 Mr. Wright - I'm just reading the code. I think that's an issue here.  
518 I don't have any problem with the therapeutic program, I love it. Let's forget that  
519 entirely and say somebody comes in—let's just be absurd—and they have 50  
520 horses on a 12-acre parcel. You mean to tell me that we can't apply this in such  
521 in a way to protect the houses that are around it? I don't believe that. I think you  
522 have to use some discretion in applying this. It starts referencing no livestock.  
523 That includes horses.  
524  
525 Mr. Blankinship - Yes.  
526  
527 Mr. Wright - We've had this before and required certain distances  
528 in these type situations.  
529  
530 Mr. Blankinship - Right. We've had chicken houses and similar uses  
531 before this Board where someone had requested to have it closer than 200 feet.  
532  
533 Mr. Wright - This is what I thought we were going to get some  
534 legal assistance from.  
535  
536 Mr. Blankinship - That's what we provided last month.  
537  
538 Mr. Wright - I haven't seen it. I haven't seen a real analysis of this  
539 issue that we're talking about by the County Attorney.  
540  
541 Mr. Blankinship - Last month we gave you two documents. One was a

542 memorandum concerning this case and which code section it should fall under.  
543 The other was a written interpretation.

544  
545 Mr. Wright - This hasn't been addressed, though.

546  
547 Mr. Blankinship - The other was a written interpretation of how to  
548 measure the distance requirements. That was reviewed and consented to by the  
549 County Attorney's Office.

550  
551 Ms. Dwyer - That interpretation excludes pastures from 24-10(a).

552  
553 Mr. Blankinship - Right. For the reasons that I've just explained.

554  
555 Ms. Dwyer - Did you see that?

556  
557 Mr. Wright - I don't agree with it. That's his opinion. I have an  
558 opinion, too.

559  
560 Mr. Blankinship - Right.

561  
562 Mr. Wright - I don't have any problem with the operation at all. I  
563 think what we've overlooked is if somebody just came in and they had 50 horses  
564 on a 10-acre parcel and a neighbor came in and complained, what would we do  
565 about it?

566  
567 Mr. Blankinship - There are other agencies that regulate animals.

568  
569 Mr. Wright - I know, but we're—

570  
571 Mr. Blankinship - It's not zoning.

572  
573 Mr. Wright - We're the Board of Zoning Appeals. We regulate the  
574 use of the property.

575  
576 Mr. Nunnally - If somebody else comes in with 50 horses, they have  
577 to get it approved. These people already agreed to 10 horses.

578  
579 Mr. Wright - What I'm saying, Mr. Nunnally, is I don't have any  
580 problem with the 10 horses, as long as they observe what I consider the  
581 ordinance's application of the distances. I say it's the pasture not just the  
582 buildings. They're out there a great deal of time, I'm sure, in that pasture. That  
583 creates just as much problem as the stable. That's my interpretation of this thing.  
584 If they can meet the pasture requirements, fix it so it will work, I don't have any  
585 problem.

586  
587 Ms. Dwyer - Horses In Service comes under 24-12(b), as I

588 understand it. What distance requirements apply to 24-12(b), then?

589

590 Mr. Blankinship - There is not a specific distance requirement there  
591 because that has to come before this Board. So, you can set whatever distance  
592 requirement you feel is appropriate.

593

594 Mr. Wright - What I'm saying is to get the riding club and whatever  
595 they're doing on the property, that's a separate thing. I'm talking about having  
596 livestock, horses on the property under 24-11(c). No livestock shall be permitted  
597 to run at large and that any building, a yard—and I consider a yard a pasture the  
598 enclosure or feeding of animals shall observe the distance requirements of 24-  
599 10. That's what it says. That's livestock. That doesn't have anything to do with  
600 riding academies or anything. Forget all of that. That's not my concern. I think we  
601 have to address the livestock question first and then get around to the use.

602

603 Ms. Dwyer - As Mr. Blankinship said, because 24-12(b) doesn't  
604 state a specific distance requirement, but a conditional use is required by this  
605 Board and we have the authority to impose conditions, we could impose  
606 whatever distance requirement we think is appropriate for the Horses In Service  
607 operation.

608

609 Mr. Wright - What I'm saying is you have to deal with the livestock  
610 issue first before you even consider the use.

611

612 Ms. Dwyer - But we consider it livestock and then impose the  
613 livestock distance requirement.

614

615 Mr. Kirkland - Any other questions?

616

617 Ms. Harris - I have a question. Mr. Wright, do you think they're  
618 running at large when there's a fence encircling?

619

620 Mr. Wright - Ma'am?

621

622 Ms. Harris - Do you consider the horses running at large when  
623 there is a fence enclosing them?

624

625 Mr. Wright - Well, that says you can't have them running at large,  
626 you have to enclose them. I say the enclosure is a pasture.

627

628 Ms. Harris - Okay.

629

630 Mr. Wright - That makes sense to me.

631

632 Ms. Harris - I have one more question of the Wagner's. Are you  
633 officers in Horses In Service, that business? Are you officers in that business?

634

635 Ms. Wagner - I am the executive director of that.

636

637 Mr. Kirkland - Any other questions? All right. Anyone else wish to  
638 speak on this case?

639

640 Mr. Wagner - Could I just say one thing?

641

642 Mr. Kirkland - Sure.

643

644 Mr. Wagner - This is getting strange to me, now, because now  
645 we've gone on past horses in Horses In Service and now we're talking about all  
646 livestock in the County. If a ruling of 200 feet from the property line is imposed,  
647 can you imagine the amount of fences and landowners that will be affected?  
648 Every farm that I know of, every place where animals reside, be they cows,  
649 horses, whatever, their fence is on the property line. If they can't have their fence  
650 on the property line, not only will it do away with the animals at a whole lot of  
651 places, but it will force every homeowner or every person who raises livestock or  
652 has livestock in Henrico County to move their fence 200 feet off the property line.  
653 I cannot see that this was ever the Zoning Board or whoever's intent when they  
654 made any of these rules because that's what you'll in effect today be deciding. If  
655 you decide that our pasture has to be 200 feet from the property, well, it can't be  
656 200 feet from the Sharpe's property line. It's 14 feet from the Sharpe's property  
657 line, the fence is. It's a good 160 feet from the Acres' property line. It's 16 feet off  
658 the road, 18, 20 feet, 25 feet. We moved it back. It was on the property line all  
659 the way around the property. The original property was fenced in its entirety and  
660 animals were allowed to roam the whole property. As the fence decayed, we had  
661 the front pasture fence replaced last year. I couldn't afford to do the whole  
662 peripheral of the property at one time or I would have replaced it all.

663

664 Ms. Dwyer - Mr. Wagner, if I could interrupt you just for a minute. I  
665 understand your point. I think what the statute says is it has to be 200 feet from  
666 any lot occupied by a dwelling as opposed to a farm. So, if you have two  
667 adjacent farms, the 200-foot requirement would not apply to the pasture fence.  
668 It's only when the pasture is next to a home as opposed to another farm. So, if  
669 it's a farm dwelling, that is it's a home that's on a farm, it doesn't count, the 200-  
670 foot requirement wouldn't count. It's only as development encroaches and you  
671 start to have residential areas bumping up against agricultural uses that it's  
672 possible that this 200-foot limit would apply. The reason is obvious. If you have  
673 two farms together, you don't really need that protection. If you have a  
674 residential area next to a farm area where horses and cattle and livestock are  
675 kept, you might need that 200 feet as a protection. That's how I read the statute.

676

677 Ms. Wagner - Are we not in an agricultural area?

678

679 Ms. Dwyer - You're in agricultural zoning, but the way the statute is

680 written is it's 200 feet from other lot occupied by a dwelling other than a farm  
681 dwelling. That's the case here because your next-door neighbor is a dwelling not  
682 a farm dwelling.

683

684 Mr. Wagner - So, that's why they took their tree farm sign down off  
685 the tree, so they wouldn't be designated as a farm. They, until recently, had a  
686 sign on their property that said that it was a tree farm. I wouldn't call a tree farm a  
687 farm, but trees are an agricultural product. I don't know if that changes the  
688 definition of what their property is.

689

690 Ms. Dwyer - Thank you.

691

692 Mr. Kirkland - All right. Any other questions by Board members? All  
693 right. Anyone else want to speak in favor? In favor first. All right, let's hear from  
694 the opposition.

695

696 Ms. Sharpe - Good morning, I'm Ann Sharpe, resident of 6443  
697 Hines Road, adjacent to the east from the Wagner property. My grandfather  
698 purchased this farm in 1903 and I've lived there all of my life. I also have to say  
699 after this discussion that I live on a farm and my dwelling is classified a farm  
700 dwelling, but that's okay.

701

702 I understand that Horses In Service is a 501 C3 non-profit status organization.  
703 However, that does not mean that it is not a business and that salaries are not  
704 paid. Martha Wagner is listed on the website as Executive Director and Equine  
705 Manager. I feel sure she receives compensation from the organization. This  
706 "riding club" not only benefits handicapped persons, but also the Wagner's. In  
707 consideration of the neighbors, I request that a waste management plan be  
708 developed. The ten horses are living 24 hours a day on the 3.73 acres of  
709 pasture. They are fed in that pasture. I do not see or read on the website any  
710 plans for waste management. Someone rides a lawnmower on the pasture  
711 cutting up leftover hay and breaking up manure piles. Why can't the manure be  
712 picked up and maybe sold. I know this is labor intensive, but there seems to be  
713 volunteers for other services. In the staff report, item six, it says, "Manure should  
714 be stored and disposed of in compliance with the Department of Agricultural  
715 regulations." The manure is not being stored, it is being ignored. Who enforces  
716 compliance with the Agricultural Department standards? Due to the number of  
717 horses in a small space, the odor issue will not go away, but is going to become  
718 more of a problem. If the Wagner's truly want to be good neighbors, visible  
719 efforts will be made to address this problem. Mr. Wagner did state to me prior to  
720 this meeting in the foyer that he is looking at purchasing some way to vacuum  
721 the manure or do something with it. As a neighbor, I would like to see the waste  
722 management issue addressed.

723

724 If this farm was not the site of the Horses In Service organization, would ten  
725 horses be allowed to reside there? I think that's the question. Thank you.



726  
727 Ms. Dwyer - Ms. Sharpe? Your recommendation for the waste  
728 management plan, do you have a specific recommendation that the manure be  
729 hauled offsite? Is that your request?  
730  
731 Ms. Sharpe - It should be hauled offsite. I'm sure they can't do that  
732 every day, but there should be some way to manage the manure. I do see other  
733 areas that people have bought five acres of land out in the country. They have a  
734 horse, two horses on a fenced area and I see them picking it up in a  
735 wheelbarrow. Now, that's going to be a massive job with ten horses, but you  
736 cannot continue to ignore the manure issue. That's my whole point. I've lived  
737 down there all my life. We've had lots sold and there are people that come out  
738 and have horses. Ten horses on the amount of space that is fenced in for them  
739 is a lot of hoses any way you look at it.  
740  
741 Ms. Dwyer - You'd like more specificity in the condition that's been  
742 proposed.  
743  
744 Ms. Sharpe - I would like the issue about the waste management  
745 addressed.  
746  
747 Ms. Harris - Ms. Sharpe? You mentioned item, I think it was six.  
748 You do have the conditions, right?  
749  
750 Ms. Sharpe - Yes.  
751  
752 Ms. Harris - Okay. Are we not addressing waste management in  
753 the second sentence?  
754  
755 Ms. Sharpe - About the agricultural people? "Manure should be  
756 stored and disposed of."  
757  
758 Ms. Harris - Right.  
759  
760 Ms. Sharpe - Okay. What does that really mean and who's going to  
761 enforce that?  
762  
763 Mr. Blankinship - It's addressed, but there's no requirement in the  
764 condition that's currently drafted that they have a waste management plan.  
765  
766 Ms. Sharpe - Exactly.  
767  
768 Mr. Blankinship - We could certainly add that to the condition.  
769  
770 Ms. Sharpe - Thank you.  
771

772 Mr. Kirkland - Thank you, Ma'am. Next please?  
773

774 Ms. Akers - Hi. I appreciate the opportunity to comment today.  
775 My name is Carol Akers. I'm the daughter of the neighboring property owners,  
776 Jerry and Ann Akers.  
777

778 Before I start in on my specific comments, I wanted to address a couple of issues  
779 that were raised and discussed a little bit earlier. I'm not sure exactly to whom  
780 Mr. Wagner was referring when he was talking about a sign and a tree farm. I  
781 can assure you that my parents' property has never operated a tree farm.  
782 They've planted trees, but they have never operated a tree farm. There has  
783 never been a sign for a tree farm. All they have done with their land is have a  
784 garden and let their dogs run around. That's all that they do. The only signs that  
785 are up on their property are posted no hunting, no fishing, and you enter at your  
786 risk and you might get your rear end shot. As far as the fence, my parents and I,  
787 when I was living there—We moved in there in 1977. The Allen's lived at that  
788 property beforehand where the Wagner's are now. There was never at any time  
789 a fence that entirely encompassed that entire piece of property. It was always  
790 open at the front. The pasture was pretty much fenced as it is and fencing along  
791 Ms. Sharpe and to the rear. But there was not fence along the front road and the  
792 driveway. All that was open. It was open to the rear of the property. The fence  
793 that runs from Hines Road bordering the Wagner's and my parent's property runs  
794 down through the wetlands, the creek, and the pond. That, in part, was knocked  
795 down in the late 1980's with a storm and trees, and then Barry Allen, the son of  
796 Mr. Allen, cut that fence back in 1990. It was never repaired. We have never  
797 seen that fence up. It has always been open.  
798

799 As to my specific comments, I have a couple of different classes of comments.  
800 But my first comment deals with the shell game. Now the latest switch from  
801 calling this an operation that falls under the ordinance of 24-52(c) for Riding  
802 Stables and Academies to 24-12(c), Riding Clubs. I think that you all, when you  
803 asked for some clarification on the distance requirements and for legal counsel,  
804 basically, they did not come out and say pastures are not included in that 600-  
805 foot definition. What they said is pastures are included if you're in 24-52(c). So,  
806 rather than do 24-52(c), we're now going to change it and say it's 24-12(b), a  
807 riding club and not a stable and academy. It's in that way that they decided  
808 pastures aren't an issue.  
809

810 The BZA has been advised that the application for UP-024-07 should now be  
811 considered under the auspices of a riding club and not a stable or academy  
812 because #1, Horses In Service is a 501-C3 non-profit corporation and therefore  
813 better considered as a private non-commercial recreational area; #2, Horses In  
814 Services does not generate the high volume of traffic that a commercial boarding  
815 stable would; and #3, while Horses In Service is reasonably considered a riding  
816 academy, it is nowhere as intensive as a fairground or racetrack. This was all  
817 taken verbatim from the memorandum from Mr. Blankinship to you all talking

818 about why they were switching the applicable ordinance under this operation.

819

820 I have some comment regarding some of those statements. First off, nowhere on  
821 the application that was filed by Mrs. Wagner does it say anything about Horses  
822 In Service. She has filed in her name and her property. It does state to operate  
823 a therapeutic riding facility, but it does not mention which one, it does not limit  
824 which one. Horses In Service is nowhere on that application.

825

826 The second thing is Horses In Service is not the only entity that operates on that  
827 site. They're saying, okay, we're going to call that a club. Horses In Service is a  
828 club because it's a private, non-commercial. So, now we should look at this as a  
829 club rather than a riding stable or academy. I trust you all have copies, because  
830 Mr. Blankinship received them on Monday and said you would be given copies,  
831 but I've included copies that I pulled off my Internet from their web page to  
832 demonstrate some of the things that I'm saying here. Basically, the Wagner's—  
833 and they've admitted to this—lease land and horses and board horses for Horses  
834 In Service in exchange for money. They're getting paid for this. They also get  
835 salaries. But the Wagner's are also allowing a group that is referred to as the  
836 New Bridge Christian Corral to operate on their site at various times during the  
837 year. This group gives riding lessons, too, and charges money from the general  
838 public. I've provided you with a picture of the website. Down at the bottom on  
839 the first one it says, "Horses in training, New Bridge Christian Corral." By the  
840 way, this is part of the New Bridge Christian Church, New Bridge Baptist Church.  
841 Mrs. Wagner is currently the executive director. Her sister and the wife of the  
842 pastor of that church was originally executive director, even at the time that we  
843 started the complaints and when the applications were first filed.

844

845 Ms. Dwyer - Ms. Akers, may I stop you for a minute because I  
846 know you're going to have a lot of points and I'd like to ask my points as you go  
847 along—

848

849 Ms. Akers - Sure.

850

851 Ms. Dwyer - —if you don't mind. That way I won't get lost. On your  
852 statement the application doesn't say Horses In Service, I don't see that as  
853 controlling here because if they're operating a therapeutic riding center and then  
854 through evidence that we glean from this hearing that it is Horses In Service, we  
855 find out that that is a 501-C3 corporation. That's sufficient to me. She might go  
856 with a different type of therapeutic riding center at a different time and that would  
857 be okay in my view. I don't see that as controlling.

858

859 Ms. Akers - And that's fine. These are just my comments in  
860 response to his statement that it's private, it's only this, and it doesn't say any of  
861 that.

862

863 Ms. Dwyer - Okay. But we can consider evidence that's come

864 before the Board as equally compelling. The non-profit status. All non-profits  
865 pay salaries to staff people and I don't see that as being unusual in this case.

866

867 Ms. Akers - My point in raising that is the Wagner's and their  
868 property are not owned by Horses In Service. They're two different entities. They  
869 are leasing facilities. It's the same way that there are a number of therapeutic  
870 riding academies operating all over the state of Virginia, several of them  
871 operating in Henrico County. They operate at a boarding facility, at a riding  
872 stable. They go to the state fairgrounds and operate there. They go to Deep Run  
873 Park and operate there. They're going to facilities that are in compliance with  
874 applicable ordinances. They're not going to a private farm and saying we're going  
875 to do this here and we don't have to do what everybody else has to do. There are  
876 facilities that are operating, but they're going to other venues to do this. So, the  
877 Wagner's and their property are not the same as Horses In Service. They are  
878 providing a service and leasing land to Horses In Service, but they're not the  
879 same entity. That's what I'm trying to point out.

880

881 Also, they are not limiting their operations. For the last four years, they have not  
882 limited their operation to Horses In Service. They also allow the New Bridge  
883 Christian Corral. It says on their website they offer lessons to their volunteers.  
884 They also offer lessons to the general public. Anybody who comes in waiving  
885 money and wants to take lessons can go there and take lessons when they  
886 schedule these facilities. In fact, their website says the cost to the general public  
887 is \$50 per person or \$85 per family. Sure, it says that they donate those  
888 proceeds to Horses In Service, but still, it is open to the general public. If  
889 something is open to the general public, how, then, is it private?

890

891 Mr. Wright - Let me add something. It's pretty clear, I think, that  
892 through all this discussion—and we've had several meetings and all this  
893 information—that this therapeutic riding situation is not covered specifically by  
894 the County ordinance. What we've done—and Mr. Blankinship has done—is try  
895 to blend these things. The key thing is this Board, when we grant a use permit,  
896 can put whatever conditions we deem proper to protect the neighboring property.  
897 That's my point. I don't think whether it's 600 feet in the ordinance or 400 feet or  
898 200 feet makes any difference because if we said the pasture is what we need to  
899 protect against, we could say that could be 200 feet from a residence rather than  
900 the property line, I think.

901

902 Mr. Blankinship - Or you can simply deny the permit.

903

904 Mr. Wright - Excuse me?

905

906 Mr. Blankinship - Or you can simply deny the permit.

907

908 Mr. Wright - The key issue I think we need information on is the  
909 distance requirements. That was the whole idea of this deferral. What distance

910 requirements would you suggest for us to consider? We're not bound by the  
911 statute. That's what I'm saying. We can impose whatever we think is proper to  
912 protect neighboring properties. What would you suggest?

913

914 Ms. Akers - I appreciate that and I do have that in my talk and I  
915 will be happy to discuss that. But this is also my opportunity to comment on the  
916 entire proceeding. This was a major shift in the proceeding when they changed  
917 from riding stable and academies to riding club.

918

919 Mr. Wright - I don't think it makes any difference.

920

921 Ms. Akers - I believe I have the right to comment in that regard.

922

923 Mr. Wright - I don't think—

924

925 Ms. Akers - That's what I'm trying to point out. But I will be happy  
926 to talk about distance requirements.

927

928 Mr. Wright - I think it's a distance requirement here.

929

930 Ms. Akers - But there is also—Okay. If you want to push me to  
931 skip over those portions of my comment, I would appreciate an opportunity to—

932

933 Mr. Wright - I've read it. You've given us this information and I've  
934 read it. It's pretty set forth.

935

936 Ms. Akers - Well, it was not included in the record, so I have no  
937 idea that you actually have the—

938

939 Mr. Kirkland - We have it right here.

940

941 Mr. Wright - We have it right here and I've read it.

942

943 Ms. Akers - Well, anyway. As far as—If you want to talk about the  
944 distance requirement—

945

946 Mr. Wright - That's what this all about, okay?

947

948 Ms. Akers - Basically, what I've been able to determine, the  
949 distance requirement is something that's strictly the three times the 300 feet or  
950 the 600. Strictly goes with what falls under 24-10(b), the riding stable and  
951 academy, which Mr. Blankinship has already admitted—

952

953 Mr. Wright - I don't care what that—

954

955 Ms. Akers - —that the therapeutic riding facility is—

956  
957 Mr. Wright - What I'm saying to you is I don't care what—Let's get  
958 off the ordinance. We can impose whatever distance requirement we want as a  
959 condition. So, what distance requirement would you recommend that we impose?  
960 That's what I'm interested in.  
961  
962 Ms. Akers - I would recommend—  
963  
964 Mr. Wright - And the basis for it.  
965  
966 Ms. Akers - I would recommend three times the distance  
967 requirements for pastured land, because this whole analysis that a private  
968 individual operating with minimal horses and not for profit, and this concept  
969 that—  
970  
971 Mr. Wright - You're not addressing—  
972  
973 Ms. Akers - —somehow this is more dangerous than—  
974  
975 Mr. Blankinship - I think 600 feet is the answer she's giving.  
976  
977 Ms. Akers - I said three times the distance requirement—  
978  
979 Mr. Wright - All right.  
980  
981 Ms. Akers - —which is 600 feet to the pastured land.  
982  
983 Mr. Wright - And I'm not basing that on the ordinance; I'm basing it  
984 on what we can glean. Since this is not specifically covered, we can impose  
985 whatever we deem is necessary to protect the neighboring property. You think  
986 you need 600 feet from what?  
987  
988 Mr. Blankinship - From the pasture.  
989  
990 Ms. Akers - From the dwelling that's not a farm dwelling to the  
991 pasture, to the enclosed land.  
992  
993 Mr. Wright - From your parents' home to what?  
994  
995 Ms. Akers - To the fence, the pastured fence.  
996  
997 Mr. Wright - The pasture fence. You think we need 600 feet.  
998  
999 Ms. Akers - Mmm-hmm.  
1000  
1001 Mr. Wright - What's the basis for that? Forget the ordinance.

1002 What's the basis?  
1003  
1004 Ms. Akers - Well, the ordinance exists in order to control what the  
1005 County does and doesn't allow. Also, the state law in granting the localities the  
1006 ability to pass ordinances says they must be applied uniformly based on the kind  
1007 of use and the kind of building that's under consideration. So, you can't say  
1008 forget the ordinance, none of this applies. If we want to talk about exactly what  
1009 you should do because what's been done, if you want to call this strictly a riding  
1010 stable, then in June of 2005—and I brought excerpts of it here with me—  
1011  
1012 Mr. Blankinship - Mr. Chairman, if you don't mind my interrupting. Her  
1013 analysis of C-18C-05 is completely off base and completely irrelevant to this case  
1014 and we're at 15 minutes now on her 10 minutes.  
1015  
1016 Ms. Akers - I didn't get to talk those 10 minutes.  
1017  
1018 Ms. Dwyer - We've taken a lot of her time with questions.  
1019  
1020 Mr. Kirkland - Can I ask you a question?  
1021  
1022 Ms. Akers - Yes sir.  
1023  
1024 Mr. Kirkland - What is the distance from your parents' home to the  
1025 property line—of the fence, let's say, to that fence? What's the distance?  
1026  
1027 Ms. Akers - Which fence?  
1028  
1029 Mr. Kirkland - To the fence of the pasture. What's the distance  
1030 between the home and the fence of the pasture?  
1031  
1032 Ms. Akers - I don't know that I know that exactly. I've seen a  
1033 couple of—  
1034  
1035 Mr. Kirkland - Is it 100 feet, 200 feet, 300 feet, 400 feet?  
1036  
1037 Ms. Akers - It's probably more than 100 and less than 200.  
1038  
1039 Mr. Blankinship - I can give you an estimate of that in just a moment.  
1040  
1041 Ms. Dwyer - Why don't we give Ms. Akers her full 10 minutes.  
1042  
1043 Ms. Akers - Since I'm not allowed to go with what the ordinance in  
1044 itself says and comment in that regard—  
1045  
1046 Ms. Dwyer - You're allowed to comment—  
1047

1048 Ms. Akers - —I will look at the issue—  
1049  
1050 Ms. Dwyer - You are allowed to comment on anything you want to  
1051 comment on in your 10 minutes.  
1052  
1053 Ms. Akers - Okay. I would appreciate that. Then we'll look at the  
1054 issue of, okay, let's say it is a riding club. First and foremost, I just pointed out  
1055 how a riding club is included for the private, non-commercial, and how do you  
1056 define private if anybody and everybody can use it, what's private about that. But  
1057 then also looking at the riding stables. When it came to June of 2005—And this  
1058 had been going on for a number of months before that and a couple of months  
1059 after that. There's a facility less than three miles from my parents' property that  
1060 was going for zoning for a residential development. It's called The Ridings at  
1061 Warner Farm. It was a 600-plus-acre development. It's all agricultural. They  
1062 were looking to rezone portions of it to build homes. The whole concept was this  
1063 was going to be an equestrian community, 15 acres of which were set aside for  
1064 the riding stables, for use solely by the people that would live in this community.  
1065  
1066 In that discussion, Ray Jernigan—he's on the Planning Commission—and Mr.  
1067 Silber, who is the Planning Director, were discussing back and forth what applies  
1068 to riding stables. Specifically it was stated—and I can quote; I've highlighted it.  
1069 Mr. Jernigan says, when they were questioning why it was limited to the number  
1070 of horses—Line 656, if you were pull up a PDF file up off the Internet, says, Mr.  
1071 Jernigan is quoted, "That was me because by County Code, you are only allowed  
1072 one horse per acre. So, I didn't want to have it and even though these horses  
1073 would probably be grain fed or whatever, I felt that this is right around the 15  
1074 acres." This was the 15 acres that was set aside to be used for the riding club.  
1075 "We had discussed whether or not he might want to use more horses. If he  
1076 wanted to use more horses he had to redistribute some of the housing so that he  
1077 could have more land set aside for the horses." So, he's clearly—And in this, it  
1078 was a proffered amendment, a proffer that was under the A-1C, the conditional  
1079 agricultural zoning. They set aside the 15 acres for the riding stable for the  
1080 private use of the people that live there, even though it was a 600-plus-acre  
1081 community.  
1082  
1083 Also in this discussion, they talk about how this was necessary and the reason  
1084 this is done is not related to traffic, but it's related to horses and their impact on  
1085 the environment with their manure and manure management. It was talking about  
1086 how the aquifer in that location surfaces at the ground level and is in jeopardy of  
1087 being contaminated, which is exactly the situation on my parents' property. In  
1088 fact, it is exactly the same aquifer. It's only three miles away. I pulled up off the  
1089 County's 2010 Land Use document that basically the drastic map that highlights  
1090 the risk to the groundwater puts The Ridings at Warner Farm and the risk to the  
1091 springs that are there as the same level of risk—which is the second highest in  
1092 the County—as to the area that is under the Wagner's and Acres' property.  
1093



1094 So, basically—  
1095  
1096 Mr. Kirkland - Ms. Akers, can I ask a question?  
1097  
1098 Ms. Akers - Yes.  
1099  
1100 Mr. Kirkland - You talk about the pollution of the water. On your  
1101 parents' property, have you all found any problems?  
1102  
1103 Ms. Akers - Yes, we have had problems. First of all, the  
1104 groundwater is very shallow there.  
1105  
1106 Mr. Kirkland - I'm saying did you find any—I don't know how to use  
1107 it—  
1108  
1109 Ms. Akers - Well, number one—  
1110  
1111 Mr. Kirkland - Is there anything in the water table that is  
1112 documented that we could see?  
1113  
1114 Ms. Akers - No. We haven't gone out and done testing. That's  
1115 why we were coming to the County hoping the County would take matters into its  
1116 hands. Since they had been in violation of the ordinance for the last four years,  
1117 we figured that the County would be proactive and do some type of enforcement,  
1118 rather than just say, "Oh, well, come get a permit and we'll ignore the last four  
1119 years of operating in violation."  
1120  
1121 Mr. Blankinship - Did the County have the state send an inspector out  
1122 and check these complaints?  
1123  
1124 Mr. Kirkland - Yes. Mr. Blankinship, did the State have any—  
1125  
1126 Mr. Blankinship - Their response was that there was no need for any  
1127 further visits to the property.  
1128  
1129 Ms. Akers - I think you misspoke. First off, the agency, who came  
1130 out was the Virginia Department of Agriculture. They do not have—and I've  
1131 included portions of that in my presentation.  
1132  
1133 Mr. Kirkland - I saw that.  
1134  
1135 Ms. Akers - They do not have regulations that anyone is required  
1136 to abide by. They were created in order to try to circumvent and to assist property  
1137 owners with issues so they don't later become enforcement issues by entities  
1138 such as DEQ. Virginia Department of Agriculture has an Agricultural Assistance  
1139 Program, which sets out guidelines. They went down there and they said, "We

1140 don't think there's currently a problem." They think. They didn't analyze anything.  
1141 They also didn't look at the issue and weren't even away, because I spoke to the  
1142 gentleman that went out there, that this was in the Chesapeake Bay Preservation  
1143 Area and the creek and the pond. He didn't even see those while he was there.  
1144 But basically he said, "We don't think there's a problem currently, but we  
1145 recommend that they institute Best Management Practices," meaning they  
1146 weren't already doing so. So, one, that agency had no jurisdiction for any type of  
1147 regulation to require anything of anybody. Number two, they didn't say there's no  
1148 problem, they said, "We recommend they follow Best Management Practices,"  
1149 and we'll help them do that. But they haven't done that. They haven't gone and  
1150 they haven't done anything.

1151  
1152 Basically, all that the Wagner's are doing—and I've included some of this  
1153 information—is they keep the horses almost exclusively on the front pasture.  
1154 They even have on their website, "We believe our horses are more happy to live  
1155 outside. We take them in occasionally when the weather's bad." We've witnessed  
1156 and my mother's witnessed, and Ms. Sharpe will attest I'm positive that these  
1157 horses stay in their pasture in rain, in sleet, in snow, in hot days. They're always  
1158 in the pasture. The only time we never seem them in that front pasture is when  
1159 children are actively being walked around in the riding ring or up on the arena  
1160 when the therapeutic riding is going on. The droppings lay on the pasture; they  
1161 are never picked up. The only management that the Wagner's do is they take  
1162 their lawnmower out there and they cut it up.

1163  
1164 If you want to talk about what requirements apply, the Virginia Solid Waste  
1165 Management regulations are what apply to solid waste in the state of Virginia.  
1166 Basically, they have to comply just like anybody else. You can't landfill, you can't  
1167 abandon, you can't stockpile. The only exclusions are when you use agricultural  
1168 bedding and manures in agronomic rates for fertilizer. You're talking about land  
1169 that's under cultivation during the growing season. And there's no agronomic rate  
1170 on earth that exceeds two tons per acre. We're already talking about each horse  
1171 generating 50 pounds of manure a day.

1172  
1173 Mr. Kirkland - Do you think our condition 6, don't you think that  
1174 addresses the situation?

1175  
1176 Ms. Akers - I called in repeatedly for those conditions and was  
1177 never able to get a copy of those conditions. I glanced briefly, so you'll have to  
1178 refresh my memory on what condition 6 is.

1179  
1180 Mr. Kirkland - It says it will implement a plan to remove the manure.

1181  
1182 Ms. Akers - Can you tell me exactly what it says?

1183  
1184 Mr. Blankinship - Actually, Mr. Chairman, on some of the information  
1185 that I passed out to you this morning, we have recommended a revised condition

1186 based on Mrs. Acres' written submission. I'll just read it into the record. "The  
1187 applicant shall maintain the property so that odors, noise, and other impacts are  
1188 controlled. Manure shall be stored and disposed of in compliance with Virginia  
1189 Department of Agriculture and Consumer Services' requirements and any other  
1190 applicable standards including the Virginia Agricultural Stewardship Guidelines of  
1191 June 7, 2004. Manure shall be removed from the grounds weekly and may be  
1192 re-deposited only to areas under cultivation during the growing season and in  
1193 agronomic rates."

1194  
1195 Mr. Kirkland - Any problem with that?

1196  
1197 Ms. Akers - I like that provided, if number one, it is enforced.

1198  
1199 Mr. Kirkland - It will have to be enforced if it's a condition.

1200  
1201 Ms. Akers - Okay. Yes sir, I understand. I understand—

1202  
1203 Mr. Kirkland - I can—

1204  
1205 Ms. Akers - —and would hope—See, you all are a body that sets  
1206 out what the conditions are, but you're not in charge of the enforcement. The  
1207 same way that they're—

1208  
1209 Mr. Kirkland - That gentleman over there that sits on the end makes  
1210 sure that's what in these conditions is enforced. That's his job.

1211  
1212 Ms. Akers - And what did he do for the last four years, then, when  
1213 this operation was going on without a permit?

1214  
1215 Mr. Kirkland - Do we go around looking for problems?

1216  
1217 Mr. Wright - Nobody called that to our attention.

1218  
1219 Ms. Akers - What did he do—

1220  
1221 Mr. Kirkland - Nobody called our attention or we would have seen  
1222 you four years ago.

1223  
1224 Ms. Akers - We called it to your attention back in 2004 when they  
1225 first started up. The only thing the Planning Office said was it's agricultural, they  
1226 can do anything they want to do.

1227  
1228 Mr. Kirkland - It didn't come to this body is what I'm saying.

1229  
1230 Ms. Akers - Right. It didn't come to this body, but once it leaves  
1231 this body, the enforcement is not up to this body either. So, I'm saying I like the

1232 provision provided it is enforced.

1233

1234 Mr. Wright - He didn't have anything to enforce prior to our ruling.  
1235 Now, if we set that as a condition, he has to enforce it.

1236

1237 Ms. Akers - Well, their operating at all was enforceable under the  
1238 ordinance. If I'm not mistaken, the ordinance says that's a Class 1 misdemeanor  
1239 that they engaged in for the last four years because they operated without a  
1240 permit. So, to say there was nothing to enforce before that—And also, we have  
1241 been complaining about the odors to the County since early September of 2007.  
1242 The County's response has always been, "We can do nothing about odor."  
1243 VDACS' website and VDACS' personnel clearly state, "We do nothing about  
1244 odors." The odors are out there, the odors persist. They've nothing to address  
1245 the odors. I mean, the odors are there this morning. So, to issue a permit saying  
1246 "control odors," what does that mean, continue to tick them off and bother my  
1247 parents? What does "control odors" mean?

1248

1249 Mr. Kirkland - I think #6, the new revised one, would address quite a  
1250 bit of those.

1251

1252 Ms. Akers - And I do appreciate that that was included. One, it's  
1253 not in the book, it's not in the file. I would hope that the Board would honestly  
1254 consider that. I do remind the Board that VDACS has no requirements; those are  
1255 only voluntary guidelines. So, I would suggest that—

1256

1257 Mr. Blankinship - But if the Board—

1258

1259 Ms. Akers - —the Board mandate those guidelines be followed  
1260 and applicable regulations, which would include the Solid Waste Regulations, the  
1261 weekly picking up of the manure and managing of that properly. I think that would  
1262 be wonderful. But we still get back to the number of horses and how far they  
1263 need to be.

1264

1265 Mr. Kirkland - Well, you've been speaking for about 10 minutes now,  
1266 would you like to kind of give us a little summary, your one-minute summary?

1267

1268 Ms. Akers - Okay. I just would like to comment that also when the  
1269 Board issues this or looks at issuing and approving the conditions, we also have  
1270 to also look at the likelihood that the Wagner's are actually going to comply. As  
1271 I've stated before and as they've also admitted, they operated for approximately  
1272 four years without a permit that's required by the County and required by the  
1273 ordinance. They have lawyers on their Board of Directors. They've had lawyers  
1274 since 2005. They have two lawyers now. They haven't been able to comply with  
1275 the law even though they have lawyers on their Board, so what makes us think  
1276 they're going to comply with this Board's conditions any more than they bothered  
1277 to comply with the law?

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Secondly—and I just found this out recently—they’ve been soliciting donations with their website, they’re been soliciting donations from the County, and they have not complied with the Virginia Solicitation of Contributions law. They’ve not registered in compliance with the law. So, we have two laws, one a local law and one a state law for which they have attorneys on their Board and they have not bothered to comply.

Mr. Kirkland - That really doesn’t affect us.

Ms. Akers - It looks at a history of compliance. You’re going to set out—

Mr. Kirkland - I’ll tell you what. Mr. Blankinship and other inspectors with this County, I know instances where we have made people comply from taking down their garages, tearing off the fronts of their homes—seems like it’s all worked—removing their sheds. I trust in the County employees and I believe Mr. Blankinship will reiterate what we have in this report to the Commonwealth of Virginia and they will enforce it because they don’t want look like fools.

Ms. Akers - Well, that was one of the reasons that I felt so uncomfortable about having to fight the County in the first place to even get them to admit these people needed a permit. It just seemed so foolish to me. But I can respect that. And believe me, that when we go home and we’re still having problems, we will be calling on Mr. Blankinship—

Mr. Kirkland - That’s the one to call.

Ms. Akers - I would also ask of the Board if this is to be considered a private, non-commercial club, that the activities clearly be restricted to therapeutic riding with Horses In Service.

Mr. Wright - We’ve already said that’s to be a condition in this.

Ms. Akers - I’m recommending that none of this New Bridge Corral lessons to the general public or anybody else be allowed, no horses be allowed to be brought in. And what’s also not included in here, the application set out specific hours. They were like 5:30 to 7:45 weeknights and 2 to 5:30 weekday and weekends. However, they have, at times, operated all day long. They bring in and they have port-a-potties and tents and lights. And they have an all-day celebration bringing people from everywhere. They have paid trail rides. These are all outside of the Horses In Service therapeutic riding and outside of those hours, so I recommend that it be very clearly specified that none of that’s allowed. Anything that’s outside of Horses In Service or outside those hours of operation for the purpose of allowing the children to ride for therapeutic purposes is the only thing that’s being allowed. No training of workers or any of that other

1324 stuff. They can take training at any other place.  
1325  
1326 Mr. Kirkland - We'll take that into consideration.  
1327  
1328 Ms. Harris - I have one quick question. Why don't you want people  
1329 trained? I don't understand the objection to training people who are going to be  
1330 handling children. I'm an educator so I don't have a problem with people—  
1331  
1332 Ms. Akers - I don't have a problem with people being trained;  
1333 however, I have a problem with this facility not complying with the law. Now they  
1334 have applied for a permit that's very specific in what they've asked to do. If it is to  
1335 be enforceable in any way, they should be held to that permit. That permit  
1336 doesn't say jack about training people, other hours during the day, other days of  
1337 the week, or the general public, or riding lessons. None of that was included in  
1338 the request; however, it was included in our complaints to the County back in the  
1339 fall.  
1340  
1341 Mr. Kirkland - I have all your input here and all the other Board  
1342 members have, too, so we will include a lot of this in the new conditions. That  
1343 pretty much wraps it up, don't you think? I appreciate it.  
1344  
1345 Ms. Akers - Thank you very much.  
1346  
1347 Mr. Kirkland - Anyone else? That concludes the case. All right,  
1348 next case.  
1349  
1350 Ms. Dwyer - Mr. Blankinship, before we get started on the next  
1351 case, I know that when we decide this case, we may want to add or change  
1352 some conditions and the Wagner's need to agree to that in order for us to pass  
1353 the case. I see that they've left. I'm just noting that because if we decide to  
1354 change some conditions, we'll either have to defer the case so that they can  
1355 agree to it—  
1356  
1357 Mr. Kirkland - They just walked out.  
1358  
1359 Ms. Dwyer - —or ask them to stay until the end of the whole  
1360 season.  
1361  
1362 Mr. Blankinship - I think Mr. Higginbotham's going to see if he can  
1363 catch them for us.  
1364  
1365 Ms. Dwyer - I don't mind deferring it for another month, but—  
1366  
1367 Mr. Wright - Let's get it out of the way.  
1368  
1369 Mr. Blankinship - I think he's going to catch them. Should we go on

1370 ahead or?

1371

1372 Mr. Kirkland - Yes.

1373

1374 Ms. Dwyer - Yes. I just wanted to—But time is of the essence on  
1375 that.

1376

1377

1378 **CONTINUATION OF CASE UP-024-07, MARTHA WAGNER.**

1379

1380

1381 Mr. Wright - Do you want to take up the first case?

1382

1383 Mr. Kirkland - Ms. Akers is here but the—Oh, there they are.

1384

1385 Mr. Wright - Yes, they're here.

1386

1387 Ms. Dwyer - Make a decision?

1388

1389 Mr. Kirkland - I've never done this before, but we can do it.

1390

1391 Ms. Dwyer - We could—

1392

1393 Mr. Kirkland - Change the docket.

1394

1395 Ms. Dwyer - We could postpone it.

1396

1397 Mr. Blankinship - There are three recommended changes to the  
1398 conditions since the draft that was sent out to you the other day. On condition  
1399 number one, we would add language that would limit this use permit to Horses In  
1400 Service and state that if you wanted to do any additional activities other than that,  
1401 you would need to come back for an amendment of this use permit or for a new  
1402 use permit. I'll let you read these two. Well, the last one, which has to do with  
1403 requiring you to submit a report, Mrs. Acres had recommended that it be  
1404 submitted within 30 days rather than waiting until September 1<sup>st</sup>. The reason we  
1405 put September 1<sup>st</sup> was to have it at the end of the summer when the impacts are  
1406 the greatest. This condition would require you to submit on May 1<sup>st</sup> of this year  
1407 and then September 1<sup>st</sup> and every September 1<sup>st</sup> thereafter. I'll let you read the  
1408 draft. Actually, I read this into the record earlier about the handling of manure.

1409

1410 Ms. Dwyer - Mr. Blankinship, do you have copies for us?

1411

1412 Mr. Blankinship - [Off mike.] Well, the two are on what I passed out  
1413 earlier that said Notes on Comments on behalf of.

1414

1415 Mr. Kirkland - Get this out again.

1416  
1417 Mr. Blankinship - [Off mike.] Paragraphs 5 and 6.  
1418  
1419 Ms. Dwyer - Okay.  
1420  
1421 Mr. Wagner - Where you speak of the regulatory activity after each  
1422 summer session, who—  
1423  
1424 Mr. Kirkland - Before we go any further, we're going back to the first  
1425 case and that's UP-024-07. The rules are that if you make any changes to the  
1426 case or any conditions, the applicant must be here for us to make them.  
1427 Therefore, the applicant has come back. We're now going to enter in to this case  
1428 in the agenda. Make sure they read all of the changes. We will make our decision  
1429 on this case now. Do you understand, sir?  
1430  
1431 Mr. Wagner - Where you have the draft conditions require an  
1432 annual report to be filed every September. The intent of that condition was to  
1433 provide a summary of regulatory activity after each summer session when  
1434 impacts are anticipated to be worse. Who is this regulatory agency supposed to  
1435 be?  
1436  
1437 Mr. Blankinship - The drafted condition is below you there. As it is now,  
1438 it says, "The applicant shall submit the necessary information to the Virginia  
1439 Department of Agriculture, the Virginia Department of Conservation and  
1440 Recreation, and the Henrico County Department of Public Works."  
1441  
1442 Mr. Wagner - Are we to contact these people to set up the  
1443 conditions?  
1444  
1445 Mr. Blankinship - This condition does not require an inspection or  
1446 anything, but if the information you submit to them triggers some kind of an  
1447 inspection.  
1448  
1449 Mr. Wagner - Is this a report as to the—It says "regulatory activity."  
1450 I'm assuming if it's a regulatory activity that somebody's regulating it. So, it would  
1451 be the Department of Agriculture?  
1452  
1453 Mr. Blankinship - Yes.  
1454  
1455 Mr. Wagner - Okay. So, we would contact them in order to set the  
1456 conditions of this?  
1457  
1458 Mr. Blankinship - To find out the information that they need you to  
1459 submit, yes.  
1460  
1461 Mr. Wagner - Okay, thank you.



1462  
1463 Mr. Blankinship - I have a copy of their recommendations that I can  
1464 provide to you.  
1465  
1466 Mr. Wagner - It says the activity directly associated with Horses In  
1467 Service and only the improvements shown on the plot plan. So, as long as my  
1468 wife is training her volunteers, that's not a problem? That's an activity that's  
1469 associated with Horses In Service. A training session is no different from a  
1470 regular riding session.  
1471  
1472 Mr. Kirkland - There are no more horses showing up.  
1473  
1474 Mr. Wagner - Right.  
1475  
1476 Mr. Kirkland - People walk up, you show them how to walk the  
1477 horses.  
1478  
1479 Mr. Wagner - Right. I mean, you don't have a problem with her  
1480 training her volunteers.  
1481  
1482 Mr. Kirkland - No. How many times does she do that a year.  
1483  
1484 Ms. Wagner - [Off mike.] Three times.  
1485  
1486 Mr. Kirkland - Three times a year.  
1487  
1488 Ms. Dwyer - I think any activity incident to the Horses In Service  
1489 activity would be all right, including training your volunteers, including having  
1490 fundraisers.  
1491  
1492 Mr. Blankinship - It would also have to be during these hours of  
1493 operation.  
1494  
1495 Mr. Wagner - So far, we've listened to the impact of the fundraiser,  
1496 that it was this huge gala event. It has happened twice. It was on a Saturday.  
1497 It's in the fall. It was done in order to show the community what these riders  
1498 accomplished. The riders put on a demonstration. We had hotdogs and  
1499 hamburgers. They had some games for the little children and a jumping thing for  
1500 the little ones to get in. It was so the community could come in and see what  
1501 Horses In Service did. Since Horses In Service is an entity which is attempting to  
1502 work within the community to do something for somebody, the community, my  
1503 wife felt, should be involved and know what was going on. As far as my  
1504 neighbors are concerned, they've been welcome at any time to come over and  
1505 look at any of it. I just wanted to make sure this wasn't going to keep her from  
1506 training her people.  
1507

1508 Ms. Dwyer - Mr. Wagner, do you feel like you need some time to  
1509 digest what these conditions are and determine whether or not you agree with  
1510 them? We can't rehear the case. We can't open it and have more testimony.  
1511  
1512 Mr. Wagner - Right.  
1513  
1514 Ms. Dwyer - It may be given—  
1515  
1516 Mr. Wagner - I had planned to come up with a plan to handle  
1517 manure. I believe I had contacted you once before about it.  
1518  
1519 Mr. Blankinship - Yes.  
1520  
1521 Mr. Wagner - You told me that that was fine, but it didn't answer the  
1522 distance requirement.  
1523  
1524 Mr. Blankinship - Right.  
1525  
1526 Mr. Wagner - From what I'm seeing here, the pasture would still be  
1527 available for the horses. The 300-foot distance requirement is for the barn,  
1528 stables, sheds, and riding arena.  
1529  
1530 Mr. Blankinship - Is there a suggestion that that condition be amended  
1531 as well?  
1532  
1533 Ms. Dwyer - Well, I think that we, as a Board, now engage in  
1534 discussions of what conditions we think should be applied and then ask the  
1535 Wagner's if they agree to those. Then make a decision. We were just asking  
1536 you, Mr. Wagner, to look over these conditions and see what changes had been  
1537 proposed by staff, but there also might be changes proposed by the Board.  
1538  
1539 Mr. Wright - We should let them have a seat and let's get on with  
1540 it.  
1541  
1542 Ms. Wagner - I just wanted to clarify one thing also that you had  
1543 said that any activity that's associated with Horses In Service would be okay, i.e.  
1544 like a fundraiser.  
1545  
1546 Ms. Dwyer - In my opinion, yes. That also adds to the intensity of  
1547 the use of the site, so that's something that we'll have to consider.  
1548  
1549 Ms. Wagner - Okay.  
1550  
1551 Ms. Dwyer - Unless we want to exclude that. In my view, that kind  
1552 of activity is appropriate to the non-profit purposes, which includes training your  
1553 riders, opening yourself up to the community to come see what you do. We could

1554 exclude that specifically, but I think, as written, it would include that. That may be  
1555 something the Board doesn't want to happen, but in opinion, as currently written  
1556 that would be allowed. Let's just go ahead and not have any more discussion.

1557  
1558 Mr. Kirkland - Do you understand what Mr. Blankinship gave you?

1559  
1560 Mr. Wagner - I think so, basically.

1561  
1562 Mr. Kirkland - That's the gist of it.

1563  
1564 Mr. Wagner - The question that I had is if these are the conditions,  
1565 then we're agreeable to these conditions. We're basically talking about three six-  
1566 week sessions. You're talking about 65 times a year out of 365 days that Horses  
1567 In Service does something at our house.

1568  
1569 Mr. Kirkland - That's fine. We've heard all that. Okay.

1570  
1571 **DECISION**

1572  
1573 Ms. Dwyer - Mr. Blankinship, did you say there were three  
1574 changes proposed? The one about the manure and then the one about—

1575  
1576 Ms. Harris - Limiting it to—

1577  
1578 Mr. Wright - Condition #6.

1579  
1580 Ms. Dwyer - Number six.

1581  
1582 Ms. Harris - Five, six, and limiting it to Horses In Service.

1583  
1584 Mr. Blankinship - Condition #1 would have language added that would  
1585 limit this only to the activities directly associated with Horses In Service.  
1586 Condition 6 would add the recommendations of the Virginia Agricultural  
1587 Stewardship Act Guidelines as something they would be required to comply with.  
1588 Number 7 would have them submitting their first report on May 1<sup>st</sup> and then  
1589 subsequently every September 1<sup>st</sup>.

1590  
1591 Ms. Dwyer - May 1, 2008. Okay. Well, there are other issues I  
1592 think we need to address as a Board that have been raised in the case.

1593  
1594 Mr. Kirkland - Do any of the Board members have any objection to  
1595 making our decision now?

1596  
1597 Mr. Wright - Let's go ahead. That's why we have them here. Let's  
1598 get it over with.

1599

1600 Mr. Kirkland - All right.  
1601  
1602 Ms. Dwyer - We clearly have a fairly intensive use on this property.  
1603 I think that we have a couple of options to reduce that intensity. I think we could  
1604 limit the horses to fewer than 10, for example, or we could be even more specific  
1605 about the waste management. I think what Mr. Blankinship has written is fine,  
1606 but it doesn't, for example, specifically require that—or does it require that all  
1607 manure shall be removed from the grounds weekly. Are you saying all manure  
1608 has to be removed weekly from the premises?  
1609  
1610 Mr. Wright - That's what it says.  
1611  
1612 Ms. Dwyer - That sounds like a waste management plan to me.  
1613 Mr. Blankinship?  
1614  
1615 Mr. Blankinship - I think I gave them my last—Oh, here it is.  
1616  
1617 Mr. Kirkland - You want to hear a motion first? Lets have a motion  
1618 on the issue. Can I hear a motion? Mr. Nunnally?  
1619  
1620 Mr. Nunnally - I make a motion that it be approved.  
1621  
1622 Mr. Kirkland - Do I have a second?  
1623  
1624 Mr. Wright - Second.  
1625  
1626 Mr. Kirkland - All right. Now we'll have the discussion. The motion is  
1627 on the floor it be approved and seconded.  
1628  
1629 Mr. Wright - Subject to getting these conditions straight.  
1630  
1631 Mr. Kirkland - That's correct.  
1632  
1633 Ms. Harris - Okay, what are the conditions?  
1634  
1635 Mr. Blankinship - That manure would be removed from the grounds  
1636 weekly.  
1637  
1638 Ms. Dwyer - All of it.  
1639  
1640 Ms. Harris - Would that be #6?  
1641  
1642 Mr. Blankinship - Yes.  
1643  
1644 Ms. Harris - Or are we going to strike the #6 we have in the record  
1645 and—

1646  
1647 Mr. Blankinship - Right. The indented paragraph on this page is  
1648 intended to replace condition 6.  
1649  
1650 Ms. Dwyer - Our intent is that all of the manure shall be removed  
1651 from the premises weekly.  
1652  
1653 Mr. Blankinship - Right.  
1654  
1655 Ms. Dwyer - All right. I think we should put "all" in there.  
1656  
1657 Mr. Nunnally - That's quite often. Weekly. I think that's asking too  
1658 much, don't you?  
1659  
1660 Ms. Dwyer - I don't know.  
1661  
1662 Mr. Nunnally - What do you think, Mr. Blankinship?  
1663  
1664 Mr. Wright - With ten horses, that's a lot.  
1665  
1666 Mr. Blankinship - I lifted that out of Mrs. Akers' written comments. I'm  
1667 not an expert on this subject at all.  
1668  
1669 Mr. Kirkland - I don't know about the accumulation inside as well as  
1670 the accumulation outside.  
1671  
1672 Ms. Harris - Maybe we wouldn't have to say all, because we want  
1673 to be realistic. We have an earth situation, the blending of manure with the earth.  
1674 I was wondering—  
1675  
1676 Mr. Blankinship - It does talk about re-depositing it.  
1677  
1678 Ms. Harris - Okay.  
1679  
1680 Ms. Dwyer - I just want to be clear what we need. If we just say  
1681 manure shall be removed, they could remove one wheelbarrow's worth and say  
1682 they're in compliance. I think we need to be specific.  
1683  
1684 Ms. Harris - Yes, I see.  
1685  
1686 Mr. Wright - How about saying, "substantially all"? "Substantially  
1687 all" would take care of any little something they didn't get.  
1688  
1689 Mr. Nunnally - Substantially all per week. Is that what you're saying?  
1690  
1691 Mr. Wright - Yes.

1692  
1693 Ms. Harris - That's fine with me, for want of a better way of dealing  
1694 with this.  
1695  
1696 Ms. Dwyer - I think we need to be specific.  
1697  
1698 Mr. Kirkland - Do you think "substantially" is only 80%?  
1699  
1700 Ms. Dwyer - Well, that's going to be really hard to monitor, it's  
1701 going to be hard to regulate, unless you say all. Then you can say, well, this is a  
1702 week's worth and it might be obvious that it's not. I think it's either all or it's  
1703 meaningless. Now, we might want to increase the time limit, like every two weeks  
1704 or every month. I'm not sure what the other Board members think, but I think that  
1705 given the situation here and the intensity—  
1706  
1707 Mr. Kirkland - I don't have an idea of how much "all manure" is. Is  
1708 that a dump truck load, a pickup truck load?  
1709  
1710 Ms. Dwyer - It's all that's generated.  
1711  
1712 Mr. Kirkland - Yes, but I mean, the same 10 are there all week every  
1713 week, so how much is that quantity? What is that quantity, a horse trailer full or  
1714 what? It could go two weeks if it was only a pickup truck, but if it's a dump truck  
1715 load every week, I think it needs to go every week.  
1716  
1717 Ms. Dwyer - Ms. Akers gave us some real specific quantities about  
1718 how much is generated by each horse the last time.  
1719  
1720 Ms. Harris - It would be a perpetual operation, though, wouldn't  
1721 you think?  
1722  
1723 Ms. Dwyer - But we have 10 horses on a fairly small piece of  
1724 property that's impinging upon a residential home. That's what we're looking at.  
1725 We're looking at ways to diminish the impact of that.  
1726  
1727 Mr. Wright - Why don't we say "all," and if it's just a minute  
1728 something that's not picked up, certainly you're not going to press them for that  
1729 as long as the do substantially all. That gives the discretion to the administrator.  
1730  
1731 Mr. Kirkland - "All" is all right with you?  
1732  
1733 Mr. Wright - Why don't you say "all"?  
1734  
1735 Mr. Kirkland - Okay. All.  
1736  
1737 Ms. Dwyer - And how often?

1738  
1739 Mr. Wright - I'd say weekly.  
1740  
1741 Mr. Nunnally - I hate to disagree with you there, Al, but I think two  
1742 weeks, at least two weeks.  
1743  
1744 Ms. Harris - So, biweekly?  
1745  
1746 Ms. Dwyer - Every two weeks. It's always confusion about what  
1747 biweekly means.  
1748  
1749 Mr. Wright - Well, there's one thing about it, if that doesn't work,  
1750 we can always come back and change it.  
1751  
1752 Mr. Nunnally - Right. So, let's start off with two weeks.  
1753  
1754 Mr. Wright - Yes. Start off with two weeks and if that doesn't  
1755 appear to be working, then we can cut it to one week.  
1756  
1757 Mr. Kirkland - Get that, Mr. Blankinship?  
1758  
1759 Mr. Blankinship - Yes sir.  
1760  
1761 Ms. Dwyer - What about the 10 horses? Do we think 10 horses is  
1762 too many?  
1763  
1764 Mr. Kirkland - I like 10.  
1765  
1766 Ms. Harris - I like 10.  
1767  
1768 Ms. Dwyer - What about the distance requirement?  
1769  
1770 Mr. Kirkland - Staff gave us a tentative 300 feet. That's #2.  
1771  
1772 Mr. Blankinship - That's based more or less on where those  
1773 improvements are now. Not that I think 300 is necessarily the right number, but  
1774 that would prevent them from moving any closer to the Acres.  
1775  
1776 Ms. Dwyer - What about the pasture Mr. Wright?  
1777  
1778 Mr. Wright - I'm willing to with it. I think it's a matter of checking  
1779 this and seeing how it works. If it doesn't work in the future, we could always  
1780 come back and do something else, call them back in. This is our best stab at it.  
1781  
1782 Mr. Kirkland - The staff and the State will strictly keep an eye on  
1783 this, correct, Mr. Blankinship?

1784  
1785 Mr. Blankinship - Oh, certainly, yes.  
1786  
1787 Mr. Wright - Did you figure out how far the pasture is from the  
1788 dwelling?  
1789  
1790 Mr. Blankinship - Yes I did. It's about 270 feet.  
1791  
1792 Mr. Wright - That satisfies me. I was thinking it's 200 feet. I was  
1793 kind of blending these things in, all the regulations, giving us some sort of  
1794 direction. I'm satisfied with that.  
1795  
1796 Ms. Harris - So, we're going to let #7 stay intact or are we  
1797 changing that?  
1798  
1799 Mr. Wright - Number 7 would be a change. You're changing #7,  
1800 aren't you, Mr. Blankinship?  
1801  
1802 Mr. Blankinship - Yes. Number 7 would be changed just with respect to  
1803 the dates.  
1804  
1805 Mr. Wright - The first one.  
1806  
1807 Mr. Blankinship - Right.  
1808  
1809 Mr. Wright - Yeah. May 1 to start with and then the rest of it would  
1810 be annual.  
1811  
1812 Mr. Blankinship - Right.  
1813  
1814 Ms. Harris - Instead of September 1<sup>st</sup> it would be May 1<sup>st</sup>.  
1815  
1816 Mr. Blankinship - May 1<sup>st</sup> and then September 1<sup>st</sup>.  
1817  
1818 Mr. Kirkland - We'll have a May 1<sup>st</sup>, September 1<sup>st</sup>, and then—  
1819  
1820 Mr. Blankinship - I want them to report after the summer session  
1821 because I think that's when they have the most impact.  
1822  
1823 Ms. Dwyer - So, we said it was 250 feet from the house.  
1824  
1825 Mr. Blankinship - Roughly, measuring on our GIS maps.  
1826  
1827 Mr. Wright - That's good enough to me.  
1828  
1829 Mr. Blankinship - Roughly 270 feet.



1830  
1831 Mr. Kirkland - All right. We have them all in here?  
1832  
1833 Ms. Dwyer - Let's review the conditions, just to be sure that we're  
1834 all in accord.  
1835  
1836 Mr. Kirkland - All right.  
1837  
1838 Mr. Blankinship - Number one: "Only the activities directly associated  
1839 with Horses In Service and the improvements shown on the plot plan filed with  
1840 the application are authorized by this approval. Any additional improvements  
1841 shall comply with the applicable regulations of the County Code. Any substantial  
1842 changes or additions to the operation or improvements may require a new use  
1843 permit." Number two: "The barns, stables, sheds, and riding arena shall be  
1844 located at least 300 feet from any lot occupied by a dwelling other than a farm  
1845 dwelling." Number three: "The riding club shall be operated on a non-profit basis  
1846 for the purpose of providing therapy to persons with disabilities." Number four:  
1847 "There shall be no more than 10 horses on the premises at any time." Number  
1848 five: "Hours of operation shall be limited to 5:30 to 7:45 p.m. Monday through  
1849 Friday, and 2 to 5:30 p.m. Saturday and Sunday." Number six: "The applicant  
1850 shall maintain the property so that odors, noise, and other impacts are controlled.  
1851 Manure shall be stored and disposed of in compliance with Virginia Department  
1852 of Agriculture and Consumer Services requirements and any other applicable  
1853 standards including the 'Virginia Agricultural Stewardship Guidelines' of June 7,  
1854 2004. All manure shall be removed from the grounds every two weeks and may  
1855 be re-deposited only to areas under cultivation during the growing season and in  
1856 agronomic rates." Number seven: "On May 1, 2008, September 1, 2008, and on  
1857 or about September 1 of each year thereafter, the applicant shall submit the  
1858 necessary information to the Virginia Department of Agriculture and Consumer  
1859 Services, the Virginia Department of Conservation and Recreation, and the  
1860 Henrico County Department of Public Works as required by the Director of  
1861 Planning, to ensure compliance with the requirements of the Chesapeake Bay  
1862 Preservation Act and the Code requirements for water quality standards."  
1863  
1864 Ms. Harris - I didn't hear you say anything about the two-week  
1865 intervals.  
1866  
1867 Mr. Wright - Yes, biweekly. Didn't we say biweekly?  
1868  
1869 Mr. Blankinship - The last sentence of number six.  
1870  
1871 Ms. Dwyer - All manure shall be removed from the grounds every  
1872 two weeks.  
1873  
1874 Mr. Blankinship - Yes.  
1875

1876 Mr. Kirkland - That's what he said.  
1877  
1878 Ms. Dwyer - Now we need to ask the Wagner's to make sure that  
1879 they agree with that. The reason that we're asking them that is because under  
1880 the Code, if they don't agree, then we have to disprove the case, we have to  
1881 deny the case. So, if you approve of those conditions, please let us know.  
1882  
1883 Ms. Wagner - [Off mike.] I have a question.  
1884  
1885 Mr. Kirkland - Yes. Come up to the mike.  
1886  
1887 Ms. Harris - While she's coming, are we going to say including  
1888 fundraising and the other activity we were talking about, training? When we deal  
1889 with the hours.  
1890  
1891 Ms. Wager - That was my question.  
1892  
1893 Ms. Harris - Including training and fundraising. Will that be  
1894 separate and apart from these hours?  
1895  
1896 Ms. Dwyer - I think you're limited to these hours. Everything.  
1897  
1898 Mr. Kirkland - You're at the hours for everything.  
1899  
1900 Mr. Wright - That's the idea.  
1901  
1902 Ms. Wagner - Our fundraisers are also limited to these hours?  
1903  
1904 Ms. Dwyer - Everything.  
1905  
1906 Mr. Kirkland - Everything that happens on the site is limited to these  
1907 hours.  
1908  
1909 Ms. Dwyer - Everything other than your personal use of horses is  
1910 limited to these hours. Everything associated with Horses In Service in any way.  
1911  
1912 Ms. Wagner - Okay.  
1913  
1914 Mr. Wagner - Can you speak to grounds? Can you tell me what  
1915 you mean by "grounds"? You say the manure shall be removed from the  
1916 grounds. Are you talking about getting it up from the field?  
1917  
1918 Mr. Kirkland - Yes sir.  
1919  
1920 Mr. Blankinship - I think that would be the entire property.  
1921

1922 Mr. Kirkland - That's why we put that in there.  
1923  
1924 Mr. Wagner - Yes sir. I have investigated that and come up with a  
1925 machine to do just that.  
1926  
1927 Mr. Kirkland - Yes sir.  
1928  
1929 Mr. Wagner - But normally what you do is put a concrete pad down  
1930 and start three piles. It sits for 30 days on this concrete pad and then you start  
1931 another pile and you take that pile and dispose of it. That's normally what you do  
1932 with that.  
1933  
1934 Mr. Kirkland - That's not normally what we're saying in this instance.  
1935  
1936 Ms. Dwyer - What do we mean by grounds? Do we mean from the  
1937 premises?  
1938  
1939 Mr. Wagner - That's what I'm trying to find out now. I want to do  
1940 what you're trying to tell me to do.  
1941  
1942 Ms. Dwyer - My thought would be—  
1943  
1944 Mr. Blankinship - I'd say the whole 12.79 acres.  
1945  
1946 Ms. Dwyer - Right, from the premises.  
1947  
1948 Mr. Kirkland - From the premises.  
1949  
1950 Ms. Dwyer - You should say maybe from the premises.  
1951  
1952 Mr. Wright - From the premises instead of grounds.  
1953  
1954 Mr. Wagner - That's what I'm trying to—  
1955  
1956 Mr. Kirkland - We just defined it. Premises.  
1957  
1958 Mr. Blankinship - Remove from the premises.  
1959  
1960 Mr. Kirkland - All right. Thank you very much. Are we ready to  
1961 vote?  
1962  
1963 Ms. Harris - Yes.  
1964  
1965 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Mr. Wright to  
1966 approve the case. All those in favor say aye. All those opposed say no. The ayes  
1967 have it; the motion passes. It's unanimous.

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After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board **approved** application **UP-024-07, Martha Wagner's** request for a conditional use permit pursuant to Sections 24-12(b) and 24-52(a) to operate a private noncommercial riding club at 6301 Hines Road (Parcel 853-692-4325), zoned A-1, Agricultural District (Varina), subject to the following conditions:

1. [AMENDED] Only the activities directly associated with Horses in Service, and the improvements shown on the plot plan filed with the application, are authorized by this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the operation or improvements may require a new use permit.
2. The barn, stables, sheds and riding arena shall be located at least 300 feet from any lot occupied by a dwelling other than a farm dwelling.
3. The riding club shall be operated on a nonprofit basis for the purpose of providing therapy to persons with disabilities.
4. There shall be no more than ten horses on the premises at any time.
5. Hours of operation shall be limited to 5:30 - 7:45 pm Monday through Friday and 2:00 - 5:30 pm Saturday and Sunday.
6. [AMENDED] The applicant shall maintain the property so that odors, noise and other impacts are controlled. Manure shall be stored and disposed of in compliance with Virginia Department of Agriculture and Consumer Services requirements and any other applicable standards, including the "Virginia Agricultural Stewardship Act Guidelines" of June 7, 2004. All manure shall be removed from the premises every two weeks and may be redeposited only to areas under cultivation during the growing season, and in agronomic rates.
7. [AMENDED] On May 1, 2008, September 1, 2008, and on or about September 1 of each year thereafter, the applicant shall submit the necessary information to the Virginia Department of Agriculture and Consumer Services, the Virginia Department of Conservation and Recreation and the Henrico County Department of Public Works, as required by the Director of Planning, to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.

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

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Mr. Kirkland - Do you want to take a five-minute break?

**BOARD TAKES A FIVE-MINUTE BREAK**

**UP-002-08 RESOURCE DEVELOPMENT ASSOCIATES**

requests a conditional use permit pursuant to Sections 24-103 and 24-52(d) to extract materials from the earth at 1801 Kingsland Road (Parcel 818-676-5915), zoned A-1, Agricultural District (Varina).

Mr. Kirkland - Anyone else wish to speak on this case? All right, sir, if you all would raise your right hand and be sworn in.

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

Mr. Hooker - I do.

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

Mr. Hooker - Good morning, Randy Hooker.

Mr. Cox - Harvey Cox.

Mr. Wright - Mr. Chairman, didn't we listen to all kinds of testimony on this? Isn't this supposed to be limited to the impact of the mining on the water table?

Mr. Kirkland - I believe so, Mr. Wright.

Mr. Wright - And also a preliminary layout of the proposed subdivision.

Mr. Blankinship - The preliminary layout is what I just passed out and the water table comments are addressed in an e-mail that was left on your desk. It should be highlighted.

Mr. Kirkland - If you would bear with us just one minute.

Mr. Hooker - I could provide you information on that as well.

Mr. Kirkland - Okay.

2060 Mr. Hooker - There is an existing sediment basin for erosion sub-  
2061 control measures on the site. The bottom of that basin is at 63 feet. The limits of  
2062 disturbance show that the elevation would be at 72 feet, so that puts us 9 feet  
2063 above the bottom of the sediment basin and the sediment basin is higher than  
2064 Roundabout Creek. So, we shouldn't have any impacts on any water tables.  
2065  
2066 Ms. Dwyer - So in the narrative description, you could change  
2067 paragraph 1C to, "All mining will occur above the water table," instead of  
2068 "generally all." I notice that other mining operations have stated all mining will  
2069 occur above the water table as well, so we're not asking you to do anything or  
2070 state anything that's unusual. I know that's not a condition, I just wanted to have  
2071 everything consistent.  
2072  
2073 Ms. Harris - Which condition are we changing?  
2074  
2075 Ms. Dwyer - Well, it's not a condition, it's a statement in their  
2076 narrative about what they're representing they will do. In our packet, it follows  
2077 the condition, but we could put that as a condition as well.  
2078  
2079 Mr. Wright - Would you like that as a condition?  
2080  
2081 Ms. Dwyer - I think so, yes.  
2082  
2083 Mr. Kirkland - Mr. Blankinship, did you get that?  
2084  
2085 Mr. Blankinship - Yes.  
2086  
2087 Mr. Kirkland - The next thing was the layout.  
2088  
2089 Mr. Hooker - Yes. Their layout does show four proposed lots, all  
2090 meeting minimum one-acre, exceeding 150-foot road frontage, and the buildable  
2091 area shown in the dashed line.  
2092  
2093 Ms. Dwyer - What about the rest of the property?  
2094  
2095 Mr. Hooker - Lots 2 and 3 would have the majority of the property.  
2096 Lots 1 and 4 would have just over an acre each. Lots 2 and 3 could possibly be  
2097 used for just agricultural or a pasture or something like that.  
2098  
2099 Ms. Dwyer - I'm wondering how they would obtain access to Lots 2  
2100 and 3.  
2101  
2102 Mr. Hooker - All access is from Kingsland.  
2103  
2104 Ms. Dwyer - Oh, I see.  
2105

2106 Mr. Kirkland - They would just be real deep lots, in other words.  
2107  
2108 Mr. Hooker - Yes sir.  
2109  
2110 Mr. Wright - Strath Road.  
2111  
2112 Mr. Kirkland - Strath and Kingsland. They would be almost 500-feet  
2113 deep, wouldn't they?  
2114  
2115 Ms. Dwyer - Well, you're not committing to this as a plan.  
2116  
2117 Mr. Hooker - No.  
2118  
2119 Ms. Dwyer - Another option would be to just have the four lots and  
2120 then have the rest of it in a common area that the lots could share, which would  
2121 be a much better design.  
2122  
2123 Mr. Hooker - It could be.  
2124  
2125 Ms. Dwyer - But that would be a different Board and a different  
2126 process. I just wanted to see what it would eventually look like. Thank you.  
2127  
2128 Mr. Kirkland - Thank you very much.  
2129  
2130 Ms. Harris - I have a question. How do we reconcile the fact that  
2131 reclamation was not done simultaneously, or did we reconcile that?  
2132  
2133 Ms. Dwyer - They explained it.  
2134  
2135 Mr. Kirkland - They explained it last meeting.  
2136  
2137 Mr. Hooker - We really can't go in and start reclamation until they  
2138 get to a point where they have claimed all they want to claim out of the site, after  
2139 removing the materials out of the site that they want to in a specific area. That  
2140 hasn't been done in either the front or the back of the property. So, we really  
2141 can't go in and fill anything if they haven't been able to remove all the materials.  
2142  
2143 Ms. Harris - So, that will be done now as you go along?  
2144  
2145 Mr. Hooker - There are still more materials on the front and the rear  
2146 that can be removed.  
2147  
2148 Ms. Dwyer - Mr. Blankinship, what is the status of this layout?  
2149 That's not part of a condition now, is it?  
2150  
2151 Mr. Blankinship - No ma'am. It's just a part of their submission, a part of

2152 their reclamation plan, if you will.  
2153  
2154 Ms. Dwyer - Okay.  
2155  
2156 Mr. Hooker - If I may. I felt that we just provided the layout as a  
2157 courtesy just to show that four lots could be put on the property.  
2158  
2159 Ms. Dwyer - Yes. I'm not suggesting that it be a condition.  
2160  
2161 Mr. Hooker - Okay.  
2162  
2163 Ms. Dwyer - I really think that the remainder of the area would be  
2164 better as area in common shared by the four lots.  
2165  
2166 Mr. Hooker - That can be considered.  
2167  
2168 Ms. Dwyer - Acres of long skinny lots, that's just not a good  
2169 design, so I didn't want it to be a part of the condition. I just wanted to clarify  
2170 what the status of it was.  
2171  
2172 Mr. Hooker - Thank you.  
2173  
2174 Mr. Kirkland - Any other questions by Board members? Anyone  
2175 else wish to speak on this case? That concludes the case.  
2176  
2177 **DECISION**  
2178  
2179 Ms. Dwyer - I think we were going to add that all mining work will  
2180 occur above the water table?  
2181  
2182 Mr. Kirkland - Yes you were.  
2183  
2184 Ms. Dwyer - That would be condition 32?  
2185  
2186 Mr. Kirkland - And he didn't have any problem with that. Any other  
2187 comments?  
2188  
2189 Mr. Nunnally - Is that a motion, Ms. Dwyer?  
2190  
2191 Ms. Dwyer - Oh. I was thinking we had a motion.  
2192  
2193 Mr. Kirkland - No, you just made it.  
2194  
2195 Ms. Dwyer - Well, I move we approve.  
2196  
2197 Mr. Nunnally - Second.



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Mr. Kirkland - Motion by Ms. Dwyer, seconded by Mr. Nunnally. All those in favor say aye. All those opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr. Nunnally, the Board **approved** application **UP-002-08, Resource Development Associates'** request for a conditional use permit pursuant to Sections 24-103 and 24-52(d) to extract materials from the earth at 1801 Kingsland Road (Parcel 818-676-5915), zoned A-1, Agricultural District (Varina), subject to the following conditions:

1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$3,000.00 per acre for each acre of land to be disturbed, for a total of \$ 47,400.00, guaranteeing that the land will be restored to a reasonably level and drainable condition, consistent with the elevation of the land prior to the beginning of excavation. This permit does not become valid until the financial guaranty has been approved by the County Attorney. The financial guaranty may provide for termination after 90 days notice in writing to the County. In the event of termination, this permit shall be void, and work incident thereto shall cease. Within the next 90 days the applicant shall restore the land as provided for under the conditions of this use permit. Termination of such financial guaranty shall not relieve the applicant from its obligation to indemnify the County of Henrico for any breach of the conditions of this use permit. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
3. Before beginning any work, the applicant shall submit erosion control plans to the Department of Public Works (DPW) for review and approval. Throughout the life of the operation, the applicant shall continuously satisfy DPW that erosion control procedures are properly maintained, and shall furnish plans and bonds that DPW deems necessary. The applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structures meet the approved design criteria as set forth by the State. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
4. Before beginning any work, the applicant shall obtain a mine license from the Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied within 90 days of approval, the use permit shall be void.
5. Before beginning any work, the areas approved for mining under this permit shall be delineated on the ground by five-foot-high metal posts at least five inches in diameter and painted in alternate one foot stripes of red and white. These posts shall be so located as to clearly define the area in which the mining

2244 is permitted. They shall be located, and their location certified, by a certified land  
2245 surveyor. If this condition is not satisfied within 90 days of approval, the use  
2246 permit shall be void.

2247

2248 6. In the event that the approval of this use permit is appealed, all conditions  
2249 requiring action within 90 days will be deemed satisfied if the required actions are  
2250 taken within 90 days of final action on the appeal.

2251

2252 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
2253 state and local regulations administered under such act applicable to the  
2254 property, and shall furnish to the Planning Department copies of all reports  
2255 required by such act or regulations.

2256

2257 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight  
2258 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

2259

2260 9. No operations of any kind are to be conducted at the site on Saturdays,  
2261 Sundays, or national holidays.

2262

2263 10. All access to the property shall be from the established entrance onto  
2264 Kingsland Road.

2265

2266 11. The applicant shall erect and maintain gates at all entrances to the property.  
2267 These gates shall be locked at all times, except when authorized representatives  
2268 of the applicant are on the property.

2269

2270 12. The applicant shall post and maintain a sign at the entrance to the mining  
2271 site stating the name of the operator, the use permit number, the mine license  
2272 number, and the telephone number of the operator. The sign shall be 12 square  
2273 feet in area and the letters shall be three inches high.

2274

2275 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
2276 along the perimeter of the property. The letters shall be three inches high. The  
2277 applicant shall furnish the Chief of Police a letter authorizing the Division of  
2278 Police to enforce the "No Trespassing" regulations, and agreeing to send a  
2279 representative to testify in court as required or requested by the Division of  
2280 Police.

2281

2282 14. Standard "Truck Entering Highway" signs shall be erected on Kingsland  
2283 Road on each side of the entrance to the property. These signs will be placed by  
2284 the County, at the applicant's expense.

2285

2286 15. The applicant shall post and maintain a standard stop sign at the entrance to  
2287 Kingsland Road.

2288

2289 16. The applicant shall provide a flagman to control traffic from the site onto the

2290 public road, with the flagman yielding the right of way to the public road traffic at  
2291 all times. This flagman will be required whenever the Division of Police deems  
2292 necessary.

2293

2294 17. All roads used in connection with this use permit shall be effectively treated  
2295 with calcium chloride or other wetting agents to eliminate any dust nuisance.

2296

2297 18. The operation shall be so scheduled that trucks will travel at regular intervals  
2298 and not in groups of three or more.

2299

2300 19. Trucks shall be loaded in a way to prevent overloading or spilling of  
2301 materials of any kind on any public road.

2302

2303 20. The applicant shall maintain the property, fences, and roads in a safe and  
2304 secure condition indefinitely, or convert the property to some other safe use.

2305

2306 21. If, in the course of its preliminary investigation or operations, the applicant  
2307 discovers evidence of cultural or historical resources, or an endangered species,  
2308 or a significant habitat, it shall notify appropriate authorities and provide them  
2309 with an opportunity to investigate the site. The applicant shall report the results of  
2310 any such investigation to the Planning Department.

2311

2312 22. If water wells located on surrounding properties are adversely affected, and  
2313 the extraction operations on this site are suspected as the cause, the effected  
2314 property owners may present to the Board evidence that the extraction operation  
2315 is a contributing factor. After a hearing by the Board, this use permit may be  
2316 revoked or suspended, and the operator may be required to correct the problem.

2317

2318 23. Open and vertical excavations having a depth of 10 feet or more, for a period  
2319 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to  
2320 protect the public safety.

2321

2322 24. Topsoil shall not be removed from any part of the property outside of the  
2323 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the  
2324 property for respreading in a layer with five inches of minimum depth. All topsoil  
2325 shall be stockpiled within the authorized mining area and provided with adequate  
2326 erosion control protection. If the site does not yield sufficient topsoil, additional  
2327 topsoil shall be brought to the site to provide the required five-inch layer of cover.  
2328 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as  
2329 recommended by the County after soil tests have been provided to the County.

2330

2331 25. The operator shall submit a quarterly report stating the origin, nature and  
2332 quantity of any off-site generated material deposited on the site, certifying that no  
2333 contaminated or hazardous material was included. The material to be deposited  
2334 on the site shall be limited to imperishable materials such as stone, bricks, tile,  
2335 sand, gravel, soil, asphalt, concrete and like materials, and shall not include any

2336 hazardous materials as defined by the Virginia Hazardous Waste Management  
2337 Regulations.

2338

2339 26. A superintendent, who shall be personally familiar with all the terms and  
2340 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
2341 terms and conditions of this use permit, shall be present at the beginning and  
2342 conclusion of operations each work day to see that all the conditions of the Code  
2343 and this use permit are observed.

2344

2345 27. A progress report shall be submitted to the Board on April 1, 2009. This  
2346 progress report must contain information concerning how much property has  
2347 been mined to date of the report, the amount of land left to be mined, how much  
2348 rehabilitation has been performed, when and how the remaining amount of land  
2349 will be rehabilitated, and any other pertinent information about the operation that  
2350 would be helpful to the Board.

2351

2352 28. Excavation shall be discontinued by April 1, 2010 and restoration  
2353 accomplished by not later than April 1, 2011, unless a new permit is granted by  
2354 the Board of Zoning Appeals.

2355

2356 29. The rehabilitation of the property shall take place simultaneously with the  
2357 mining process. The final grading of the site shall be consistent with the  
2358 elevation of the land prior to the beginning of excavation. Rehabilitation shall not  
2359 be considered completed until the mined area is covered completely with  
2360 permanent vegetation.

2361

2362 30. All drainage and erosion and sediment control measures shall conform to the  
2363 standards and specifications of the Mineral Mining Manual Drainage Handbook.  
2364 Any drainage structures in place prior to October 14, 1992 and which do not  
2365 conform to the Mineral Mining Manual Drainage Handbook may remain in place  
2366 until such time as any reconstruction is required at which time said structures  
2367 shall be brought into conformance with the Mineral Mining Manual Drainage  
2368 Handbook.

2369

2370 31. [ADDED] All excavation shall take place above the water table.

2371

2372 32. [AMENDED] Failure to comply with any of the foregoing conditions shall  
2373 automatically void this permit.

2374

2375 Affirmative: Kirkland, Harris, Dwyer, Nunnally, Wright 5

2376 Negative: 0

2377 Absent: 0

2378

2379 **A-003-08 MASONIC LODGE #351** requests a variance from  
2380 Section 24-94 to operate a church at 2213 National Street (Montrose Heights)  
2381 (Parcel 805-714-5217), zoned R-4, One-family Residence District (Varina). The

2382 total lot area requirement, lot width requirement, least side yard setback, and rear  
2383 yard setback are not met. The applicant has 100 feet lot width, 0.37 acre total lot  
2384 area, 20 feet least side yard setback and 38 feet rear yard setback, where the  
2385 Code requires 400 feet lot width, 3 acres total lot area, 25 feet least side yard  
2386 setback and 40 feet rear yard setback. The applicant requests a variance of 300  
2387 feet lot width, 2.63 acres total lot area, 5 feet least side yard setback and 2 feet  
2388 rear yard setback.

2389  
2390 Mr. Kirkland - If you would come forward, sir. Anyone else who  
2391 wishes to speak on this case, please stand and be sworn in. Raise your right  
2392 hand, please.

2393  
2394 Mr. Blankinship - Do you swear the testimony you're about to give is the  
2395 truth and nothing but the truth so help you God?

2396  
2397 Mr. Ellis - I do.

2398  
2399 Mr. Kirkland - All right. State your name for the record, sir.

2400  
2401 Mr. Ellis - My name is Donald Ellis. I'm a trustee of the Thomas  
2402 N. David Masonic Lodge 351.

2403  
2404 Mr. Kirkland - What would you want this Board to do for you?

2405  
2406 Mr. Ellis - Well, at the present time, Thomas N. Davis Lodge is  
2407 aging and dwindling in numbers. We have elected to consolidate with one of the  
2408 sister lodges in the Richmond Metropolitan area, basically in the East End. In  
2409 order to do this, we need to divest ourselves of this property. In talking with a  
2410 realtor, they recommended the best use for it is if we couldn't get another  
2411 Masonic Lodge to buy it and move into it would be to possibly sell it for a church  
2412 use. So, we're asking for the variance that it could be used as a church.

2413  
2414 Mr. Wright - Mr. Ellis, do you have a church in mind at this point?

2415  
2416 Mr. Ellis - Sir?

2417  
2418 Mr. Wright - Do you have a church that indicates they want to  
2419 purchase the property?

2420  
2421 Mr. Ellis - I think the realtor has someone who is interested at  
2422 this point.

2423  
2424 Ms. Dwyer - It could also be converted into residential property,  
2425 could it not?

2426  
2427 Mr. Ellis - It is what I reckon you would call a spilt foyer type of

2428 arrangement. The first floor level is above ground and the basement is about a  
2429 half basement, half depth basement. It has only two windows in the front of the  
2430 building and it would take a lot of converting to make it a residential property. It's  
2431 a brick building. It has a large dining type area in the basement and the meeting  
2432 room is upstairs.  
2433  
2434 Mr. Nunnally - Couldn't you knock that down, just sell it to somebody  
2435 and knock it down? That gives a lot of good bricks out of that to build. All those  
2436 houses on National Street are on 50-foot lots except yours, right?  
2437  
2438 Mr. Ellis - Right.  
2439  
2440 Mr. Nunnally - You could really build two houses on that lot, two 50-  
2441 foot lots.  
2442  
2443 Mr. Ellis - But I don't think you could get the money for the lots  
2444 that you could get selling it as a parcel.  
2445  
2446 Mr. Nunnally - But it's not zoned for a church, though.  
2447  
2448 Mr. Ellis - Sir?  
2449  
2450 Mr. Nunnally - I said it's not zoned for a church. You can't put a  
2451 church in.  
2452  
2453 Mr. Ellis - There is a church diagonally across the street from  
2454 the Masonic Lodge at the present time.  
2455  
2456 Mr. Nunnally - What's the name of the church.  
2457  
2458 Mr. Ellis - I couldn't tell you the name of it. It's a Christian  
2459 church.  
2460  
2461 Mr. Kirkland - Which lot is that on?  
2462  
2463 Mr. Blankinship - It's right where the hand is indicating, 2300 National  
2464 Street.  
2465  
2466 Mr. Kirkland - Okay.  
2467  
2468 Mr. Wright - Mr. Blankinship, if this were to be converted, would  
2469 the building conform to the zoning requirements that we have now, the present  
2470 building as a residence?  
2471  
2472 Mr. Blankinship - Oh, as a residence?  
2473

2474 Mr. Wright - Say that building were converted, just as it stands, to  
2475 a residence, would it satisfy the zoning requirements?  
2476  
2477 Mr. Blankinship - Mr. Gidley, do you know offhand? Mr. Gidley actually  
2478 reviewed this.  
2479  
2480 Mr. Gidley - [Off Mike] Unintelligible.  
2481  
2482 Mr. Wright - You have a 100-foot frontage.  
2483  
2484 Mr. Blankinship - Including the setbacks, the side and rear setbacks?  
2485  
2486 Mr. Gidley - Yes.  
2487  
2488 Mr. Blankinship - Yes sir, it would meet all—  
2489  
2490 Mr. Wright - It would meet the requirements.  
2491  
2492 Mr. Blankinship - Yes sir.  
2493  
2494 Mr. Wright - Without any zoning or without any variance or any  
2495 other requirement.  
2496  
2497 Mr. Blankinship - Yes sir.  
2498  
2499 Ms. Dwyer - I don't think they could actually get two lots out of it,  
2500 certainly not without a variance. Lot 275 is very narrow.  
2501  
2502 Mr. Wright - Both lots would satisfy the requirements and that's  
2503 what they own.  
2504  
2505 Mr. Blankinship - The name of the church across the street is Echoes of  
2506 Faith Church.  
2507  
2508 Ms. Harris - We were told in our packet of information that a  
2509 church is permitted use in that R-4 District. Although we don't have the minimum  
2510 lot requirement, that is a permitted use.  
2511  
2512 Mr. Ellis - Right.  
2513  
2514 Ms. Harris - Have you all had many complaints about cars being  
2515 parked during your Masonic Lodge meetings?  
2516  
2517 Mr. Ellis - I know of none right now. I think the largest crowd I  
2518 can remember being in the Masonic Lodge—and I've been a member since '94—  
2519 was the night I was installed as Worshipful Master. I think it was like 225 people

2520 there and we had no problem with parking. Of course, we asked permission from  
2521 the church across the street for that one event, which was on a Saturday, to use  
2522 their parking lot. To my knowledge, we haven't had any problems with any  
2523 complaints from the neighbors as far as parking. Right now, on a given Lodge  
2524 night, we'll have anywhere from 25 to 50 attendants, which is a small crowd.

2525  
2526 Ms. Dwyer - How many parking places do you have?

2527  
2528 Ms. Harris - Seventeen.

2529  
2530 Mr. Ellis - Ma'am?

2531  
2532 Ms. Dwyer - How many parking places do you have?

2533  
2534 Mr. Ellis - Well, we don't have any designated parking. Some  
2535 nights you can get more cars in there depending on how people park.

2536  
2537 Mr. Blankinship - They're not striped. I think you could get about 17 on  
2538 there, but it would be a struggle.

2539  
2540 Mr. Ellis - It's a gravel parking lot.

2541  
2542 Ms. Dwyer - At the most, 17.

2543  
2544 Mr. Blankinship - I couldn't find more than 17.

2545  
2546 Ms. Harris - We have this in our package.

2547  
2548 Ms. Dwyer - Yes, I saw that, but that's not what they actually have.

2549  
2550 Mr. Blankinship - Right, no. That's just a sketch.

2551  
2552 Ms. Dwyer - Are you aware that we have in our information a  
2553 complaint from a neighbor about parking overflowing into the neighborhood?

2554  
2555 Mr. Blankinship - He couldn't be since it just arrived this morning.

2556  
2557 Mr. Ellis - Could you repeat that again, please?

2558  
2559 Ms. Dwyer - Oh, it arrived this morning. Sorry. We have two  
2560 complaints, Mr. Blankinship?

2561  
2562 Ms. Harris - Just one.

2563  
2564 Ms. Dwyer - I only have one.

2565



2566 Mr. Kirkland - This one here.  
2567  
2568 Mr. Ellis - I wasn't aware of this.  
2569  
2570 Ms. Harris - One is from Nancy Bowden. The other one is from  
2571 Jacqueline Nauman. We have two.  
2572  
2573 Mr. Blankinship - Here's the other one, sir.  
2574  
2575 Mr. Ellis - This is news.  
2576  
2577 Mr. Blankinship - Mr. Chairman, do you want to hear from the other  
2578 speakers?  
2579  
2580 Mr. Kirkland - Yes. Anyone else? Yes ma'am. Are you on the  
2581 opposition or are you for?  
2582  
2583 Ms. Otey: Opposition.  
2584  
2585 Mr. Kirkland - Okay, that's fine. You can read over that if you want  
2586 to, sir. Do you want to read over that real good? I can let her go on and speak  
2587 and you can come back and rebut.  
2588  
2589 Mr. Ellis - Okay.  
2590  
2591 Ms. Otey - Good morning. My name is—  
2592  
2593 Mr. Kirkland - All right. First thing you need to do is pull that little  
2594 thing down in front of your mouth.  
2595  
2596 Ms. Otey - I am short. I'll start over. Is that better?  
2597  
2598 Mr. Kirkland - Yes ma'am.  
2599  
2600 Ms. Otey - Good morning. I'm Margaret Otey. I live at 2209  
2601 National Street. That is the house and residence that is right adjacent to the large  
2602 lot. I've lived there 46 years. I do not have any complaints against the Masonic  
2603 Lodge, except I will have to tell you that in the 46 years, when the Masons were  
2604 flourishing more—and I'm sad to say they're not now in that site—there were  
2605 many instances when they couldn't help it, but because of the amount of people  
2606 who came, the intersections were blocked to the point it was dangerous to cross  
2607 them. Even now, when they do come, when they park outside of the parking lot, it  
2608 can be quite dangerous to cross. With that, I'd like to begin my comments,  
2609 please.  
2610  
2611 The main concerns I have concerning this is that it being marketed as a church.

2612 Churches hopefully grow and therefore the problems the come with that use  
2613 would also. As time goes by, new members' parking would spill over into the  
2614 street. If the parking lot were paved as one of the stipulations if this appeal  
2615 passes, it would cause a drainage problem to my property, the private alley, and  
2616 other properties adjoining. The alley would have more ruts developing than  
2617 normal, and the culvert would need to be replaced more often. As a very high  
2618 point of elevation is just in front of 2303 National Street, cars cannot be seen  
2619 before they are almost at the intersection coming from the east until they are  
2620 almost there. The volume of traffic has increased tremendously since more  
2621 houses have been built on both National Street and Williamsburg Road. Even  
2622 though the speed limit is posted 25 miles per hour, it is often exceeded and is  
2623 already dangerous as it exists.

2624  
2625 Here is a signed list of six property owners who will be affected by this change.  
2626 Please note two of them own more than one parcel. It is our opinion, based on  
2627 our understanding, that we do not think this appeal warrants your making a  
2628 decision to change the zoning for marketing purposes. The property can be  
2629 marketed as it is and fit the zoning requirements. It could be used for residential  
2630 purposes if someone wanted to do so. How can you approve something based  
2631 on speculation?

2632  
2633 I was going to give you the two letters. I did not receive one, Mr. Blankinship, at  
2634 all this morning because Vaughn Bowden was not able to get it to me in time, but  
2635 you all have it.

2636  
2637 Mr. Blankinship - Yes.

2638  
2639 Ms. Otey - There's no need for me to do that.

2640  
2641 Mr. Blankinship - Yes ma'am.

2642  
2643 Ms. Otey - If you decide to allow this appeal to pass, will you  
2644 please put up some signs that indicate no parking from certain points to the  
2645 corners, so the intersections won't be so dangerous to cross? Also, there needs  
2646 to be some plan drawn to alleviate any drainage and erosion problems that might  
2647 occur. I do know in your study you did address some of that, but I just want to  
2648 reiterate that, if you don't mind. And I'd like to give you this signed copy. If  
2649 there's anything anybody wants to ask me, I'll be glad to answer.

2650  
2651 Ms. Harris - Ms. Otey, are there other residents from this  
2652 neighborhood here today?

2653  
2654 Ms. Otey - Yes ma'am, there's one.

2655  
2656 Ms. Harris - Will they stand, please, so we know who they are?  
2657 Thank you.

2658  
2659 Mr. O'Kelly - Ms. Otey?  
2660  
2661 Ms. Otey - Yes sir.  
2662  
2663 Mr. O'Kelly - May I ask you a question?  
2664  
2665 Ms. Otey - Yes sir.  
2666  
2667 Mr. O'Kelly - You live across from an existing church, right?  
2668  
2669 Ms. Otey - Not exactly cattycornered, but the lodge is exactly  
2670 across, cattycornered, and then I'm the next. My vacant lot and then I'm in that  
2671 house. Is that clear?  
2672  
2673 Mr. O'Kelly - Right. But you're across the street from an existing  
2674 church.  
2675  
2676 Ms. Otey - Yes sir, Echoes of Faith.  
2677  
2678 Mr. O'Kelly - What is the name of that church?  
2679  
2680 Ms. Otey - Echoes of Faith.  
2681  
2682 Mr. O'Kelly - Do they cause any spillover of traffic on Sundays?  
2683 Are they affecting the neighborhood as well?  
2684  
2685 Ms. Otey - No sir, not as I'm aware of it. Usually I go to church.  
2686 We go earlier than they do. When I come home, they're parking situation, they go  
2687 on Kemp and they also have a pretty good size lot there. It's not marked off, but  
2688 it's a field. As Mr. Ellis indicated, the night that he was installed—and I think he  
2689 said 1994?  
2690  
2691 Mr. Ellis - 98.  
2692  
2693 Ms. Otey - 98. Excuse me. He said that they did ask them for  
2694 permission to use that lot. But you see, Mr. Ellis, I've been there 46 years and,  
2695 bless you, you've been there since 1994. You know, I don't have a vendetta with  
2696 the Masons; I want you all to understand that. I'm just really concerned, honest  
2697 and truly. Sometimes, like today, when there's nothing there. I am, I think, a  
2698 careful driver. I make a complete stop and I look and I look again to the right  
2699 because that's east. And it's about all I can do sometimes to cross that street  
2700 without somebody hauling it up that hill and blindsiding me. That's all I can say.  
2701 They have a very small membership. If I understand it right, if the lot to the lodge  
2702 as it stands now has capacity for 17 cars inside of the lot and you could say  
2703 maybe three people to a car, that's about 51 people. I'm sorry, there are many

2704 churches that do exist with no more people than that and they do good work. But  
2705 to me, I would think it's so sad if I started out with a 51-member church and I had  
2706 no room to grow. I'm one of God's children and I like to grow. Can't get enough of  
2707 us, you know? Anybody else like to ask me anything?  
2708

2709 Mr. Kirkland - No ma'am. Any other questions by Board members?  
2710 All right. Anyone else wish—Mr. Ellis, do you want to come back up?  
2711

2712 Ms. Dwyer - We have one more opposition.  
2713

2714 Mr. Kirkland - Well, Mr. Ellis, can we hear the one more opposition  
2715 first and then we'll hear your comments. I'm sorry. That way you can comment on  
2716 anything they say.  
2717

2718 Ms. Dwyer - Did Ms. Otey give us a statement of signatures?  
2719

2720 Mr. Blankinship - Well, it's basically just a list. Yes ma'am.  
2721

2722 Mr. Kirkland - Yes sir.  
2723

2724 Mr. Roman - My name is Edward Roman. I live at 2204  
2725 Williamsburg Road, which backs up to the alley that goes to back side of the  
2726 Masonic Hall there. In order to access my property, I have to come down that  
2727 alley because I have no driveway off Williamsburg Road to come to my property.  
2728 Why? How come? I don't know. I've only been here seven years. Of course, I've  
2729 been around on weekends and stuff when that other church cattycorner from  
2730 Williamsburg Road has had parking issues. They line the streets, they park at the  
2731 Masonic Hall. Fortunately, it's only one day a week. If this property, Masonic Hall,  
2732 was marketed and turned into a church, as Ms. Otey says, 50 members is one  
2733 thing. When you start exceeding members of hundreds, and it could eventually  
2734 happen? That cattycorner church, there have been maybe a half a dozen times  
2735 in the past five or six years that they've lined the streets and made passage  
2736 impossible. What happens when you make this Masonic Hall a church? Same  
2737 thing? Then it becomes an issue for me to access my property. I don't think that's  
2738 fair because I pay taxes and I live there.  
2739

2740 So, I don't think it should be marketed as a church. Unfortunately for the  
2741 Masonic's, yeah, they can't sell it, they're going to lose money, it becomes a  
2742 dollar issue. I think the property should remain as a residential piece of property,  
2743 as it has been zoned and used for over the last 50 years, I would assume. It's a  
2744 nice area. But again, you have the traffic issues and the safety issues for the  
2745 people that are going to be in that area. I don't recommend it to be changed to a  
2746 church, to be changed from an R-4, or to R-2 or 1, for that matter. That's all I  
2747 have to say. I am a former co-compliance person for the City of Richmond; I was  
2748 a building inspector and property maintenance inspector and I don't think it will  
2749 work. I have other issues with the property. On the city of Richmond line right

2750 there next to me, there's a six-car unit capacity. The alley's blocked off. I have  
2751 the trash in the yard, I have the noise. Unfortunately, I'm only one person that  
2752 lives there, so I don't make that much noise. I'm against it.

2753

2754 Mr. Kirkland - Thank you, sir.

2755

2756 Mr. Roman - Thank you.

2757

2758 Mr. Kirkland - All right, sir. Mr. Ellis.

2759

2760 Mr. Ellis - Well, as far as the complaints about the noise and the  
2761 parking problems or what have you, this is the first in my time at Thomas N.  
2762 Davis Lodge that I know of. Of course, when things like this come up, I'm sure  
2763 things come out of the woodwork that wouldn't normally. I think if the people in  
2764 the neighborhood had issues with these things in the past, they should have  
2765 addressed them with the Lodge to correct them and what have you. We try to be  
2766 good neighbors as a Lodge and I'm sure that if a church would be able to buy the  
2767 building and use it, a church would be a good neighbor.

2768

2769 As far as the numbers of people that would be members of a potential church in  
2770 that location, I have no idea who was interested in buying it and what the  
2771 congregation size is. I'm a member of Calvary United Methodist Church, one of  
2772 the largest facilities on Fulcrum Hill right at Williamsburg and Government Road,  
2773 and we only have 65 to 70 members show up on a Sunday. If you ride around  
2774 that general neighborhood and went into the churches—And I talk to a lot of  
2775 people in a lot of different churches up there and the congregations are not that  
2776 great until you get over on Creighton Road and St. James or whatever that is  
2777 over there. Like I say, I don't know who the potential person is who's looking at  
2778 this as a church or why the realtor suggested it as the alternative. We'd  
2779 appreciate any help you could give us because we do need to divest ourselves of  
2780 this property and this is one of the avenues.

2781

2782 Mr. Kirkland - Any questions of Mr. Ellis? Thank you, sir.

2783

2784 Mr. Ellis - Okay.

2785

2786 Mr. Kirkland - That concludes the case.

2787

## 2788 **DECISION**

2789

2790 Mr. Nunnally - I move we deny it because it can be used for  
2791 something else.

2792

2793 Mr. Wright - I'll second that motion.

2794

2795 Mr. Kirkland - Any discussion?

2796  
2797 Ms. Dwyer - I agree because it clearly doesn't pass the Cochran  
2798 test. It has reasonable, beneficial use without the variance.

2799  
2800 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Mr. Wright. All  
2801 those in favor say aye. All those opposed say no. The ayes have it; the motion to  
2802 deny the case has been approved.

2803  
2804 After an advertised public hearing and on a motion by Mr Nunnally, seconded by  
2805 Mr. Wright, the Board **denied** application **A-003-08, Masonic Lodge #351**  
2806 request for a variance from Section 24-94 to operate a church at 2213 National  
2807 Street (Montrose Heights) (Parcel 805-714-5217), zoned R-4, One-family  
2808 Residence District (Varina). The total lot area requirement and lot width  
2809 requirement are not met.

2810  
2811 Affirmative: Kirkland, Harris, Dwyer, Nunnally, Wright 5  
2812 Negative: 0  
2813 Absent: 0

2814  
2815

2816 **AT THIS TIME THE BOARD TAKES A FIVE-MINUTE BREAK**

2817  
2818

2819 Mr. Kirkland - Let's reconvene the March meeting. All right, the next  
2820 case, Mr. Blankinship.

2821

2822 Mr. Blankinship - I'm going to call the next two cases together, Mr.  
2823 Chairman.

2824

2825 **UP-004-08 W. C. ENGLISH, INC.** requests a conditional use  
2826 permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the  
2827 earth at 3501 Britton Road (Parcels 826-697-0978, 827-697-3933 and 827-696-  
2828 9825), zoned A-1, Agricultural District (Varina).

2829

2830 **UP-005-08 W. C. ENGLISH, INC.** requests a conditional use  
2831 permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the  
2832 earth at 6919 Monahan Road (Parcel 823-698-3046), zoned A-1, Agricultural  
2833 District (Varina).

2834

2835 Mr. Kirkland - Anyone else wish to speak on this case? If you  
2836 would, raise your right hand. You also, ma'am.

2837

2838 Mr. Blankinship - Do you swear the testimony you're about to give is the  
2839 truth and nothing but the truth so help you God?

2840

2841 Mr. Kirkland - All right, sir.

2842  
2843 Mr. Higginbotham - James Higginbotham with English.  
2844  
2845 Mr. Kirkland - The microphone's going in and out or something. All  
2846 right, try it again.  
2847  
2848 Mr. Higginbotham - My name is James Higginbotham with W. C. English.  
2849  
2850 Mr. Kirkland - Okay.  
2851  
2852 Mr. Higginbotham - Members of the Board, I came before you not the last  
2853 time this was renewed because I was actually in Iraq, but I've been before you  
2854 before. This barrow pit UP-004-08 is at the 895/Britton Road interchange and has  
2855 been used to build 895. It was one of the barrow pits used to build 895. It's also  
2856 the barrow pit used to build Britton Road over 895 that was left off the plans, but  
2857 later added back because of residents' concerns. The reason we're asking for  
2858 this renewal and the reason we asked for it last time was for the airport  
2859 connector, which is now going to be a reality. The airport connector should be  
2860 coming out. Currently, Transamerica—who owns 895, which is a toll road—part  
2861 of their deal in buying it was they had to build the airport connector. They have  
2862 federal funding, it's just a matter of ironing out the actual details of what VDOT  
2863 wants. I understand we're within maybe a month now of that being finalized and it  
2864 coming out to see it. That's the purpose. The only change that the Planning  
2865 Commission has had is they've asked that there be no excavation on the north  
2866 side of this barrow pit. I have no problem with that request. The only other typo  
2867 that I would ask—I call it a typo—is Saturday hours of operations are  
2868 recommended at 8 a.m. to 3. We have previously had approved at 7 a.m. It just  
2869 makes sense for construction workers. They work at 7 in the morning anyway, so  
2870 to wait another hour on Saturday really doesn't any difference. Again, this pit is  
2871 an existing pit. It makes environmental sense to use it because you just go  
2872 deeper. Sometimes you hit bad material so you really don't know the exact  
2873 amount of material. We don't have final plans for the airport connector, so we  
2874 don't know the actual quantity.  
2875  
2876 As a backup, we've asked that UP-005-08, the Spano's property also be  
2877 approved. There have been no changes to that barrow pit. That's really a backup  
2878 if for some reason we can't get sufficient quantity out of this barrow pit. Our  
2879 intent—and I don't mind if you stipulate—is that we use this pit first until it's  
2880 unfeasible and then if we had to, we would then go to the Spano's pit. For this  
2881 airport connector project, our intent is to use this UP-004-08 as the primary  
2882 source of raw material.  
2883  
2884 Does the Board have any questions?  
2885  
2886 Mr. Wright - Mr. Blankinship, on your report you asked deferral  
2887 until revised plans are submitted. I understand you have those now?

2888  
2889 Mr. Blankinship - Yes. Those revised plans were received the same  
2890 day that the report was distributed to you. You should each have received a  
2891 copy.  
2892  
2893 Mr. Wright - It was a big thing they delivered.  
2894  
2895 Mr. Blankinship - Yes. It's a large set of rolled plans. I've reviewed  
2896 those and they satisfy all my concerns.  
2897  
2898 Mr. Wright - They satisfy your concerns.  
2899  
2900 Mr. Blankinship - Yes sir, with the stipulation that Mr. Higginbotham just  
2901 mentioned of not allowing any mining on the north side of 895.  
2902  
2903 Mr. Higginbotham - We have no problem with that.  
2904  
2905 Mr. Wright - Where would you put that in the condition?  
2906  
2907 Mr. Blankinship - I believe it's in there.  
2908  
2909 Mr. Higginbotham - It's in there.  
2910  
2911 Mr. Wright - Is it in there already? I'm sorry.  
2912  
2913 Mr. Higginbotham - It's on #5.  
2914  
2915 Mr. Wright - I missed it. It's in which one?  
2916  
2917 Ms. Harris - Number 5.  
2918  
2919 Mr. Higginbotham - Number 5, sir. "There shall be no excavation on the  
2920 portion of the property north of I-895."  
2921  
2922 Mr. Blankinship - Which is actually called Area 2, I believe, on the  
2923 plans.  
2924  
2925 Ms. Dwyer - The reclamation plan shows that it's part of the case.  
2926  
2927 Mr. Blankinship - Yes ma'am.  
2928  
2929 Ms. Dwyer - Could you orient me to what is Preston and what is  
2930 Wooten?  
2931  
2932 Mr. Higginbotham - If you look at the map at A-1, you'll see a line right  
2933 beside the A-1 on that map that's shown up on the screen. The reason it's called



2934 Preston/Wooten, we bought the Preston Tract. That line you see is the old  
2935 property line. If you actually look across the Pocahontas Parkway, you can see a  
2936 property line that comes down there. You can see where that came straight on  
2937 through.

2938

2939 Ms. Dwyer - Right.

2940

2941 Mr. Higginbotham - The property to the left is what we call the Preston  
2942 property. That was the initial bar pit. Then we bought the Wooten tract. So, we  
2943 combined them together to call it the Preston/Wooten Pit. It's one pit.

2944

2945 Ms. Dwyer - When it says that 67 acres have been disturbed,  
2946 including 57 acres of mined area, we're talking about both?

2947

2948 Mr. Blankinship - Yes ma'am.

2949

2950 Ms. Dwyer - That relates to both properties.

2951

2952 Mr. Blankinship - Yes ma'am.

2953

2954 Mr. Higginbotham - Back in I want to say maybe in 2004 or 3, maybe  
2955 2003, we combined them into one area.

2956

2957 Mr. Blankinship - The original mines were separate permits. Not mines.  
2958 But they were separate permits originally.

2959

2960 Ms. Dwyer - I was looking at the reclamation plan, the large plan  
2961 that were sent to us.

2962

2963 Mr. Higginbotham - Yes ma'am.

2964

2965 Ms. Dwyer - I wonder if you could explain those to me.

2966

2967 Mr. Higginbotham - Yes ma'am. The concept is basically to put a 3 to 1  
2968 slope. We have to put I think four or five inches of topsoil and get grass to grow  
2969 back. We've talked with the County about possibly doing some wetland in the  
2970 higher areas, but that's something we'll have to address at later date. Basically,  
2971 we'll have 3 to 1 slopes. If fills back up with water and then we have a pond with  
2972 3 to 1 slopes around the perimeter.

2973

2974 Ms. Dwyer - So, that's your reclamation plan.

2975

2976 Mr. Higginbotham - Yes ma'am.

2977

2978 Ms. Dwyer - Do 3 to 1 slopes around the perimeter and water—

2979

2980 Mr. Higginbotham - In the middle, yes ma'am. The only caveat that we  
2981 had discussed earlier was if we had some areas that didn't totally cover with  
2982 water—We've had Koontz and Bryant look at possibly maybe putting extra  
2983 topsoil and make wetlands to—  
2984  
2985 Mr. Blankinship - Mitigation.  
2986  
2987 Mr. Higginbotham - Mitigation area.  
2988  
2989 Mr. Kirkland - Mitigation bank.  
2990  
2991 Mr. Higginbotham - Thank you.  
2992  
2993 Ms. Dwyer - But this is just essentially going to be a pond  
2994  
2995 Mr. Blankinship - Yes ma'am.  
2996  
2997 Ms. Dwyer - A hole in the ground filled up with water.  
2998  
2999 Mr. Higginbotham - I hole that fills back up with water, yes ma'am.  
3000  
3001 Ms. Harris - When you said permanent elevation 141.50, are we  
3002 talking about feet?  
3003  
3004 Mr. Blankinship - That's above mean sea level.  
3005  
3006 Ms. Harris - Above sea level.  
3007  
3008 Mr. Blankinship - Not the depth of that pond.  
3009  
3010 Ms. Harris - Okay.  
3011  
3012 Mr. Blankinship - Just the elevation.  
3013  
3014 Mr. Higginbotham - That's the elevation that—  
3015  
3016 Mr. Kirkland - What would be roughly the depth of the pond?  
3017  
3018 Mr. Higginbotham - On the far end, it could be maybe 25, 30 feet deep.  
3019  
3020 Mr. Kirkland - Okay.  
3021  
3022 Mr. Higginbotham - But as it comes back to the Preston side, right now it's  
3023 on the border of wet. So, we have the potential to put wetlands on the Preston  
3024 end, but as it goes to the other, it turns into kind of a small reservoir.  
3025

3026 Ms. Dwyer - I'm wondering who owns this property now.  
3027  
3028 Mr. Higginbotham - It's owned by Henrico Properties, LLC.  
3029  
3030 Ms. Dwyer - Okay. Once Henrico Properties gets the money out of  
3031 the mining and when it leaves these 3 to 1 slopes with water—  
3032  
3033 Mr. Blankinship - A pond.  
3034  
3035 Ms. Dwyer - A pond. I'm just trying to think ahead. What is the  
3036 purpose? Nothing can be done with this property because it's now filled with  
3037 water, it's a pond.  
3038  
3039 Mr. Higginbotham - What's the highest and best use for it?  
3040  
3041 Ms. Dwyer - Is this company going to pay taxes on something that  
3042 they can't use and no one can use and has no market value?  
3043  
3044 Mr. Higginbotham - I guess we could ask the taxes be reduced. I mean,  
3045 it's a pond. You maybe could turn it into some type of preserve. Maybe you did  
3046 some duck hunting out on it or something. Maybe houses develop around it and  
3047 it's part of that community. Mr. Gallemeyer owns like 78 acres down below us.  
3048 That's a possibility that it develops around it.  
3049  
3050 Ms. Dwyer - I could see, for example, an Innsbrook there's a nice  
3051 pond area with very expensive properties.  
3052  
3053 Mr. Higginbotham - Henrico Properties does not—I mean, we actually  
3054 own a little bit up against the Pocahontas Parkway on the north there that you  
3055 might be able to get a row of houses in there. That's a possibility. But for the  
3056 most part, there is not going to be enough buildable ground. There's a possibility,  
3057 ma'am, up against the north side on the Pocahontas Parkway. There's some  
3058 land up there that might be buildable, that you could put lots in. You would have  
3059 to access it from that access road that runs along 895. I don't know if that's  
3060 feasible or not. That's something we'd have to talk to the County about.  
3061  
3062 Ms. Dwyer - The digging has already been done, the water is  
3063 already there.  
3064  
3065 Mr. Higginbotham - Yes ma'am.  
3066  
3067 Ms. Dwyer - All we're doing, I guess, is digging a little more.  
3068  
3069 Mr. Higginbotham - We're just going a little deeper, yes ma'am.  
3070  
3071 Ms. Dwyer - So, I don't see that this can be changed at this point.

3072 It just concerns me that here we have what looks like very prime land at the  
3073 intersection of 895 and 295. One would think that in the future, this would be very  
3074 valuable property, maybe as an Innsbrook, for example. My concern, I guess, at  
3075 this point is I want to make sure that this is left in such a way that it won't be cost-  
3076 prohibitive for someone in the future to maybe build an office park around it or a  
3077 residential area.  
3078  
3079 Mr. Higginbotham - That would be up to the adjoining property owner.  
3080  
3081 Ms. Dwyer - Right.  
3082  
3083 Mr. Higginbotham - Mr. Gallemeyer owns, like I say, about 70-some acres  
3084 and I want to say he's in his early 70's.  
3085  
3086 Ms. Dwyer - Right.  
3087  
3088 Mr. Higginbotham - Somebody else would do that.  
3089  
3090 Ms. Dwyer - I understand that's not your concern.  
3091  
3092 Mr. Higginbotham - The material had to come from somewhere to build  
3093 the roads. As a matter of fact, the Wooten tract was owned by S. T. Wooten  
3094 Construction Company and that was already a barrow pit used to build 295. So,  
3095 this is just kind of falling onto what was done on the construction of 295.  
3096  
3097 Ms. Dwyer - And I don't have an issue with that. I guess my  
3098 concern is, is there anything we can and should be doing now as far as  
3099 reclaiming this property so that it doesn't deteriorate over time and become  
3100 completely unusable for anything in the future.  
3101  
3102 Mr. Higginbotham - I don't know ma'am. I think the seeding, the 3 to 1  
3103 slopes is about all that you really can do. You basically have a pond. We thought  
3104 about the highest and best use, but I really think that all we can do is stabilize the  
3105 slopes and then as land values go up and Gallemeyer's tract, if that's sold as a  
3106 70-acre tract, then maybe a large development comes in and incorporates into  
3107 their project.  
3108  
3109 Ms. Harris - Will the airport connector use this land?  
3110  
3111 Mr. Higginbotham - The dirt is going to build the airport connector road,  
3112 yes ma'am.  
3113  
3114 Ms. Harris - Right. But we will not be using—  
3115  
3116 Mr. Higginbotham - No ma'am. Just dirt to build the road.  
3117

3118 Ms. Harris - Okay. The other thing, I notice on your reclamation  
3119 plan 5A, "Applicant has not yet determined the final use of the area following  
3120 reclamation." I've been looking at our Land Use Plan for 2010 and 2026. The  
3121 designation is suburban residential. So I was wondering why in your reclamation  
3122 plan you did not indicate that.

3123

3124 Mr. Higginbotham - The only caveat in the reclamation plan would be  
3125 whether we could incorporate some wetlands or mitigation area where the water  
3126 table is close to the final elevation. That's the only caveat. You can't build  
3127 houses on top of the water or the wetland area.

3128

3129 Ms. Harris - Is that why you didn't say the intent would be  
3130 suburban residential?

3131

3132 Mr. Higginbotham - Was residential north of—Commercial is north—

3133

3134 Mr. Blankinship - Office on the north, yes.

3135

3136 Mr. Higginbotham - Okay, Office on the north side. That's one reason  
3137 that the County I think has asked us not to excavate over there and we have no  
3138 problem with that request. Again, the fact is, we're creating in essence a lake or  
3139 a pond that will help the adjoining property, but probably not the property that  
3140 Henrico Properties owns. The only, again, caveat is that we might be able to take  
3141 one end of it and turn it into a wetland area, a wetland mitigation area.

3142

3143 Ms. Dwyer - So, Mr. Blankinship, you're satisfied that the soil is  
3144 stabilized, that the erosion control plan—

3145

3146 Mr. Blankinship - Well, it's not now, but hopefully once they get the  
3147 airport connector underway, they'll be able to close it.

3148

3149 Mr. Higginbotham - This is like the fifth or sixth pit we've had in the  
3150 County. Some of the soils in Henrico County can be very challenging to get  
3151 grass to grow on and we've experienced that and we've worked with Mike  
3152 Hackett. We've had areas where you took a photograph that looked like a football  
3153 field and you come back six months later and it looks like a desert, and there's  
3154 been rain. I don't know if it's the lime in soil, but we address that. We've had  
3155 citizens that have complained about different things and we work with Mr.  
3156 Blankinship. We've had wells that people thought went dry and we hired a  
3157 plumber to go out and found out their well pump had burned out. So, we've  
3158 incurred our expenses in dealing with the public. Anyway, we try to be a good  
3159 corporate citizen. Again, when people have questions, if you can answer their  
3160 concerns. Again, the purpose of this is for the upcoming airport connector.

3161

3162 Ms. Dwyer - Will any fill material be brought in to the site.

3163

3164 Mr. Higginbotham - No ma'am. We're taking fill material out.  
3165  
3166 Ms. Dwyer - But you're not bringing in concrete, asphalt, any kind  
3167 of inert materials?  
3168  
3169 Mr. Higginbotham - No. We had some extra topsoil that we asked Mr.  
3170 Blankinship if we could bring in. I think it came off the Henrico Wastewater  
3171 Treatment Plant. That was a win/win situation. They needed to get rid of it. It  
3172 was our project there so we actually brought that in. We do have some pipes and  
3173 stuff stored there that will be used when we start mining or excavating material  
3174 again. We've had some people dump some tires and we cleaned that up. When  
3175 we find a problem and somebody brings it to our attention, we address it.  
3176  
3177 Mr. Kirkland - Any other questions from Board members? All right,  
3178 Mr. Higginbotham. Ma'am, are you okay? You square?  
3179  
3180 Mr. Higginbotham - This is Mrs. Bowery. We lost her husband, Charlie,  
3181 when I was in Iraq. We lost a good friend there, we really did.  
3182  
3183 Mr. Kirkland - All right. Anyone else wish to speak? If not, that  
3184 concludes the two cases.  
3185  
3186 Ms. Dwyer - Mr. Blankinship, let me ask you one question. They're  
3187 not allowed to bring any other kind of fill in here, is that correct?  
3188  
3189 Mr. Blankinship - Doesn't this have the condition that says they have to  
3190 get permission in advance? That's normally how we handle those that we don't  
3191 anticipate. Yes, it's #23. "Unless the materials and plans have been approved  
3192 by the Planning Department."  
3193  
3194 **DECISION**  
3195  
3196 Mr. Kirkland - I'll do UP-005-08 first. A motion would be in order.  
3197  
3198 Mr. Wright - I move we approve both of these cases.  
3199  
3200 Mr. Nunnally - Second.  
3201  
3202 Ms. Dwyer - Do we have any condition changes on these?  
3203  
3204 Mr. Blankinship - They had requested opening at 7:00 rather than 8:00  
3205 on Saturdays.  
3206  
3207 Ms. Dwyer - We didn't have any neighborhood input on this, did  
3208 we.  
3209

3210 Ms. Harris - No.  
3211  
3212 Mr. Kirkland - He heard we were going to do that, didn't he?  
3213  
3214 Ms. Dwyer - Well, he's requesting it, so.  
3215  
3216 Mr. Kirkland - Okay. All right.  
3217  
3218 Mr. Wright - I don't see where that would affect anything. How  
3219 about it, Mr. Blankinship? Do you think that would affect anybody much, giving  
3220 them another hour on Saturday?  
3221  
3222 Mr. Blankinship - The nice thing about these is that it's a very short haul  
3223 from where they're working to where these sites are. I would hope not.  
3224  
3225 Mr. Wright - I don't have any problem with that. The basis for my  
3226 motion is that the proposed use will not adversely affect the health, safety, and  
3227 welfare of a person residing or working on the premises. They had this use in  
3228 the past and they seemed to have complied with our regulations.  
3229  
3230 Mr. Kirkland - All right. We'll do each one separate. I guess we  
3231 have to do this for the record. UP-005, I have a motion to approve by Mr. Wright.  
3232  
3233 Mr. Wright - I move that we approve 05.  
3234  
3235 Mr. Nunnally - Second.  
3236  
3237 Mr. Kirkland - Motion by Mr. Wright, second by Mr Nunnally. All  
3238 those in favor say aye. All those opposed say no. The ayes have it; the motion  
3239 passes.  
3240  
3241 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
3242 Mr. Nunnally, the Board **approved** application **UP-005-08, W. C. English, Inc.'s**  
3243 request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to  
3244 extract materials from the earth at 6919 Monahan Road (Parcel 823-698-3046),  
3245 zoned A-1, Agricultural District (Varina), subject to the following conditions:  
3246  
3247 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of  
3248 the County Code.  
3249  
3250 2. [AMENDED] Monday through Friday hours of operation shall be from 6:00  
3251 a.m. to 6:00 p.m. when Daylight Savings Time is in effect, and from 7:00 a.m. to  
3252 5:00 p.m. at all other times. Saturday hours of operation shall be 7:00 a.m. to  
3253 3:00 p.m.  
3254  
3255 3. No operations of any kind are to be conducted at the site on Sundays or on

3256 national holidays.  
3257  
3258 4. Open and vertical excavations having a depth of 10 feet or more for a period  
3259 of more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to  
3260 protect the public safety.  
3261  
3262 5. All means of access to the property shall be from the existing entrance on  
3263 Monahan Road.  
3264  
3265 6. A superintendent who shall be personally familiar with all the terms and  
3266 conditions of Section 24-103 of Chapter 24 of the County Code as well as the  
3267 terms and conditions of this permit, shall be present at the beginning and  
3268 conclusion of operations each work day to see that all conditions of the County  
3269 Code and the use permit are carefully observed.  
3270  
3271 7. Topsoil shall not be removed from any part of the property outside of the area  
3272 in which extraction is authorized. Sufficient topsoil shall be stockpiled on the  
3273 property for respreading in a layer with five (5) inches of minimum depth. If the  
3274 site does not yield sufficient topsoil, additional topsoil shall be brought to the site  
3275 to provide the required five-inch layer of cover. All topsoil shall be treated with a  
3276 mixture of seed, fertilizer, and lime as recommended by the County of Henrico  
3277 after the results of soil tests have been submitted to the County of Henrico. All  
3278 topsoil shall be stockpiled within the authorized borrow area and provided with  
3279 adequate erosion control protection.  
3280  
3281 8. The rehabilitation of the property shall take place simultaneously with the  
3282 extraction process. Rehabilitation shall not be considered completed until the  
3283 extraction area is covered completely with permanent vegetation.  
3284  
3285 9. Responsibility for maintaining the property, fences, and roads in a safe and  
3286 secure condition indefinitely, or for converting the property to some other safe  
3287 use, shall rest with the applicant.  
3288  
3289 10. Entrance gates shall be erected and maintained at all entrances to the  
3290 property. These gates shall be locked at all times, except when authorized  
3291 representatives of the applicant are on the property.  
3292  
3293 11. Erosion Control Plans shall be submitted to the Department of Public Works  
3294 for review and approval at time of application for the Use Permit. Throughout the  
3295 life of this extraction operation, the applicant shall continuously satisfy the  
3296 Department of Public Works that erosion control procedures are properly handled  
3297 and furnish plans and bonds that the department deems necessary. The  
3298 applicant shall provide certification from a licensed professional engineer that  
3299 dams, embankments and sediment control structures meet standard and  
3300 approved design criteria as set forth by the State.  
3301



3302 12. The areas approved for extraction under this permit shall be delineated on  
3303 the ground by the erection of five (5) foot high metal posts at least five (5) inches  
3304 in diameter and painted in alternate one (1) foot stripes of red and white. These  
3305 posts shall be so located as to clearly define the area in which the extraction is  
3306 permitted. They shall be located, and the location certified by a certified surveyor,  
3307 within ninety (90) days of the date of approval of this use permit by the Board of  
3308 Zoning Appeals, or this use permit is void.

3309  
3310 13. "No Trespassing" signs shall be posted and maintained on the property to  
3311 warn against use of the property by unauthorized persons. The minimum letter  
3312 height shall be three inches and signs are to be posted every 250 feet along the  
3313 perimeter of the property. The applicant shall furnish the Chief of Police a letter  
3314 authorizing enforcement by the County Police Officers of the "No Trespassing"  
3315 regulations, and agreeing to send a representative to court for purposes of  
3316 testimony whenever required or requested by the Division of Police.

3317  
3318 14. Excavation operations shall be discontinued on said site by April 30, 2010,  
3319 and restoration accomplished not later than April 30, 2011, unless a new permit  
3320 is applied for by not later than 60 days before the expiration of the permit, and is  
3321 subsequently granted by the Board of Zoning Appeals.

3322  
3323 15. A financial guaranty satisfactory to the County Attorney shall be posted with  
3324 the Secretary of the Board of Zoning Appeals for extracting materials from 23.24  
3325 acres, in an amount of \$3,000.00 per acre for each disturbed acre of land  
3326 included, for a total of \$69,720 guaranteeing that the land will be restored to a  
3327 reasonably level and drainable condition with a minimum slope on the restored  
3328 property being five to one or flatter. The guaranty may provide for the termination  
3329 of the obligations after 30 days notice in writing. Such notice shall be served  
3330 upon the principal and upon the obligee as provided by law for the service of  
3331 notices. At the termination of the aforesaid 30 day notice to the principal, all  
3332 authority of the principal under this use permit to extract materials, and work  
3333 incident thereto, shall cease provided the applicant has not furnished another  
3334 guaranty suitable to the County within said 30 days. The principal shall then  
3335 proceed within the next ensuing 30 days following the termination of its authority  
3336 under this use permit, to accomplish the complete restoration of the land as  
3337 provided for under the terms of this permit. A notice of termination by such surety  
3338 shall in no event relieve the surety from its obligation to indemnify the County of  
3339 Henrico for a breach of the conditions of this use permit.

3340  
3341 16. The applicant shall furnish a certification verifying that the guaranty is in  
3342 effect, premiums have been paid, and the bonding company reaffirms its  
3343 responsibility under the use permit conditions. This certification shall be  
3344 submitted on or about April 30, 2009.

3345  
3346 17. This permit does not become valid until the guaranty, required in condition  
3347 No. 15, has been posted with the County, and necessary approval received. This

3348 must be accomplished within 30 days of the Board's action or the action  
3349 becomes invalid.

3350

3351 18. A progress report shall be submitted to the Board on April 30, 2009. This  
3352 progress report must contain information concerning how much property has  
3353 been disturbed to date of the report, the amount of land left to be disturbed, and  
3354 how much rehabilitation has been performed, and when and how the remaining  
3355 amount of land will be rehabilitated, and any and all pertinent information about  
3356 the operation that would be helpful to the Board.

3357

3358 19 If, in the course of its preliminary investigation or operations, applicant  
3359 discovers evidence of the existence of cultural or historical material or the  
3360 presence on the site of significant habitat or an endangered species, it will notify  
3361 appropriate professional or governmental authorities and provide them with an  
3362 opportunity to investigate the site and applicant will report the results of such  
3363 investigation to the Planning Department.

3364

3365 20. The applicant shall comply with the Chesapeake Bay Preservation Act and  
3366 all state and local regulations administered under such act applicable to the  
3367 property and shall furnish to the Planning Department copies of all reports  
3368 required by such act or regulations.

3369

3370 21. In the event that an appeal of the Board's approval action is filed, all  
3371 conditions requiring action on the part of the applicant within 90 days are  
3372 considered satisfied if the required actions take place within 90 days of final  
3373 action on the appeal process by the courts.

3374

3375 22. If the Virginia Department of Mines, Minerals and Energy determines that the  
3376 use of this property constitutes a mine, the applicant shall obtain a mine license  
3377 from the Division of Mineral Mining, Virginia Department of Mines, Minerals and  
3378 Energy, within 90 days of such determination, or the use permit is void.

3379

3380 23. No offsite-generated materials shall be deposited on the site unless the  
3381 materials and the plans for their placement have been approved by the Planning  
3382 Department.

3383

3384 24. If the Virginia Department of Mines, Minerals and Energy determines that the  
3385 use of this property constitutes a mine, a sign shall be posted at the entrance to  
3386 the mining site stating the name of the operator, the Henrico use permit number,  
3387 the Division of Mineral Mining mine license number, and the phone number of the  
3388 operator. The sign shall be 12 square feet in area and shall be properly  
3389 maintained.

3390

3391 25. If the Virginia Department of Mines, Minerals and Energy determines that the  
3392 use of this property constitutes a mine, all drainage and erosion and sediment  
3393 control measures shall conform to the standards and specifications of the Mineral

3394 Mining Manual Drainage Handbook.

3395

3396 26. If water wells located on surrounding properties are adversely affected, and  
3397 the extraction operations on this site are suspected as the cause, the effected  
3398 property owners may present to the Board evidence that the extraction operation  
3399 is a contributing factor. After a hearing by the Board, this use permit may be  
3400 revoked or suspended, and the operator may be required to correct the problem.  
3401 The applicant shall maintain a financial guarantee in the amount of \$25,000,  
3402 satisfactory to the County Attorney, guaranteeing compliance with this condition.

3403

3404 27. Failure to comply with any of the foregoing conditions shall automatically  
3405 void this permit.

3406

3407 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

3408 Negative: 0

3409 Absent: 0

3410

3411

3412 Mr. Kirkland - Okay. UP-004-08.

3413

3414 Ms. Dwyer - What did we do about the time?

3415

3416 Mr. Kirkland - The time is at 7.

3417

3418 Ms. Dwyer - Seven.

3419

3420 Mr. Kirkland - 7:00

3421

3422 Mr. Wright - 7:00

3423

3424 Mr. Kirkland - UP-004-08.

3425

3426 Mr. Wright - That same motion.

3427

3428 Mr. Kirkland - Same motion by Mr. Wright.

3429

3430 Mr. Nunnally - Second.

3431

3432 Ms. Dwyer - Same time change?

3433

3434 Mr. Kirkland - Same time change. Same reason, Mr. Wright?

3435

3436 Mr. Wright - Yes, same basis for it.

3437

3438 Mr. Kirkland - Motion by Mr. Wright, seconded by Mr. Nunnally. All  
3439 those in favor say aye. All those opposed say no. The ayes have it; the motion

3440 passes.

3441

3442 After an advertised public hearing and on a motion by Mr. Wright, seconded by  
3443 Mr. Nunnally, the Board **approved** application **UP-004-08, W. C. English, Inc.'s**  
3444 request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to  
3445 extract materials from the earth at 3501 Britton Road (Parcels 826-697-0978,  
3446 827-697-3933 and 827-696-9825), zoned A-1, Agricultural District (Varina)  
3447 subject to the following conditions:

3448

3449 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of  
3450 the County Code.

3451

3452 2. [AMENDED] Monday through Friday hours of operation shall be from 6:00  
3453 a.m. to 6:00 p.m. when Daylight Savings Time is in effect, and from 7:00 a.m. to  
3454 5:00 p.m. at all other times. Saturday hours of operation shall be 7:00 a.m. to  
3455 3:00 p.m.

3456

3457 3. No operations of any kind are to be conducted at the site on Sundays or on  
3458 national holidays.

3459

3460 4. Open and vertical excavations having a depth of 10 feet or more for a period  
3461 of more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to  
3462 protect the public safety.

3463

3464 5. All means of access to the property shall be from the existing entrance on  
3465 Britton Road. There shall be no excavation on the portion of the property north of  
3466 I-895.

3467

3468 6. A superintendent who shall be personally familiar with all the terms and  
3469 conditions of Section 24-103 of Chapter 24 of the County Code as well as the  
3470 terms and conditions of this permit, shall be present at the beginning and  
3471 conclusion of operations each work day to see that all conditions of the County  
3472 Code and the use permit are carefully observed.

3473

3474 7. Topsoil shall not be removed from any part of the property outside of the area  
3475 in which extraction is authorized. Sufficient topsoil shall be stockpiled on the  
3476 property for respreading in a layer with five (5) inches of minimum depth. If the  
3477 site does not yield sufficient topsoil, additional topsoil shall be brought to the site  
3478 to provide the required five-inch layer of cover. All topsoil shall be treated with a  
3479 mixture of seed, fertilizer, and lime as recommended by the County of Henrico  
3480 after the results of soil tests have been submitted to the County of Henrico. All  
3481 topsoil shall be stockpiled within the authorized borrow area and provided with  
3482 adequate erosion control protection.

3483

3484 8. The rehabilitation of the property shall take place simultaneously with the  
3485 extraction process. Rehabilitation shall not be considered completed until the

3486 extraction area is covered completely with permanent vegetation.

3487

3488 9. Responsibility for maintaining the property, fences, and roads in a safe and  
3489 secure condition indefinitely, or for converting the property to some other safe  
3490 use, shall rest with the applicant.

3491

3492 10. Entrance gates shall be erected and maintained at all entrances to the  
3493 property. These gates shall be locked at all times, except when authorized  
3494 representatives of the applicant are on the property.

3495

3496 11. Erosion Control Plans shall be submitted to the Department of Public Works  
3497 for review and approval at time of application for the Use Permit. Throughout the  
3498 life of this extraction operation, the applicant shall continuously satisfy the  
3499 Department of Public Works that erosion control procedures are properly handled  
3500 and furnish plans and bonds that the department deems necessary. The  
3501 applicant shall provide certification from a licensed professional engineer that  
3502 dams, embankments and sediment control structures meet standard and  
3503 approved design criteria as set forth by the State.

3504

3505 12. The areas approved for extraction under this permit shall be delineated on  
3506 the ground by the erection of five (5) foot high metal posts at least five (5) inches  
3507 in diameter and painted in alternate one (1) foot stripes of red and white. These  
3508 posts shall be so located as to clearly define the area in which the extraction is  
3509 permitted. They shall be located, and the location certified by a certified surveyor,  
3510 within ninety (90) days of the date of approval of this use permit by the Board of  
3511 Zoning Appeals, or this use permit is void.

3512

3513 13. "No Trespassing" signs shall be posted and maintained on the property to  
3514 warn against use of the property by unauthorized persons. The minimum letter  
3515 height shall be three inches and signs are to be posted every 250 feet along the  
3516 perimeter of the property. The applicant shall furnish the Chief of Police a letter  
3517 authorizing enforcement by the County Police Officers of the "No Trespassing"  
3518 regulations, and agreeing to send a representative to court for purposes of  
3519 testimony whenever required or requested by the Division of Police.

3520

3521 14. Excavation operations shall be discontinued on said site by April 30, 2010,  
3522 and restoration accomplished not later than April 30, 2011, unless a new permit  
3523 is applied for by not later than 60 days before the expiration of the permit, and is  
3524 subsequently granted by the Board of Zoning Appeals.

3525

3526 15. A financial guaranty satisfactory to the County Attorney shall be posted with  
3527 the Secretary of the Board of Zoning Appeals for extracting materials from 57  
3528 acres, in an amount of \$3,000.00 per acre for each disturbed acre of land  
3529 included, for a total of \$171,000 guaranteeing that the land will be restored to a  
3530 reasonably level and drainable condition with a minimum slope on the restored  
3531 property being five to one or flatter. The guaranty may provide for the termination

3532 of the obligations after 30 days notice in writing. Such notice shall be served  
3533 upon the principal and upon the obligee as provided by law for the service of  
3534 notices. At the termination of the aforesaid 30 day notice to the principal, all  
3535 authority of the principal under this use permit to extract materials, and work  
3536 incident thereto, shall cease provided the applicant has not furnished another  
3537 guaranty suitable to the County within said 30 days. The principal shall then  
3538 proceed within the next ensuing 30 days following the termination of its authority  
3539 under this use permit, to accomplish the complete restoration of the land as  
3540 provided for under the terms of this permit. A notice of termination by such surety  
3541 shall in no event relieve the surety from its obligation to indemnify the County of  
3542 Henrico for a breach of the conditions of this use permit.

3543  
3544 16. The applicant shall furnish a certification verifying that the guaranty is in  
3545 effect, premiums have been paid, and the bonding company reaffirms its  
3546 responsibility under the use permit conditions. This certification shall be  
3547 submitted to the Board on or about April 30, 2009.

3548  
3549 17. This permit does not become valid until the guaranty, required in condition  
3550 No. 15, has been posted with the County, and necessary approval received. This  
3551 must be accomplished within 30 days of the Board's action or the action  
3552 becomes invalid.

3553  
3554 18. A progress report shall be submitted to the Board on April 30, 2009. This  
3555 progress report must contain information concerning how much property has  
3556 been disturbed to date of the report, the amount of land left to be disturbed, and  
3557 how much rehabilitation has been performed, and when and how the remaining  
3558 amount of land will be rehabilitated, and any and all pertinent information about  
3559 the operation that would be helpful to the Board.

3560  
3561 19 If, in the course of its preliminary investigation or operations, applicant  
3562 discovers evidence of the existence of cultural or historical material or the  
3563 presence on the site of significant habitat or an endangered species, it will notify  
3564 appropriate professional or governmental authorities and provide them with an  
3565 opportunity to investigate the site and applicant will report the results of such  
3566 investigation to the Planning Department.

3567  
3568 20. The applicant shall comply with the Chesapeake Bay Preservation Act and  
3569 all state and local regulations administered under such act applicable to the  
3570 property and shall furnish to the Planning Department copies of all reports  
3571 required by such act or regulations.

3572  
3573 21. In the event that an appeal of the Board's approval action is filed, all  
3574 conditions requiring action on the part of the applicant within 90 days are  
3575 considered satisfied if the required actions take place within 90 days of final  
3576 action on the appeal process by the courts.

3577

3578 22. If the Virginia Department of Mines, Minerals and Energy determines that the  
3579 use of this property constitutes a mine, the applicant shall obtain a mine license  
3580 from the Division of Mineral Mining, Virginia Department of Mines, Minerals and  
3581 Energy, within 90 days of such determination, or the use permit is void.

3582  
3583 23. No offsite-generated materials shall be deposited on the site unless the  
3584 materials and the plans for their placement have been approved by the Planning  
3585 Department.

3586  
3587 24. If the Virginia Department of Mines, Minerals and Energy determines that the  
3588 use of this property constitutes a mine, a sign shall be posted at the entrance to  
3589 the mining site stating the name of the operator, the Henrico use permit number,  
3590 the Division of Mineral Mining mine license number, and the phone number of the  
3591 operator. The sign shall be 12 square feet in area and shall be properly  
3592 maintained.

3593  
3594 25. If the Virginia Department of Mines, Minerals and Energy determines that the  
3595 use of this property constitutes a mine, all drainage and erosion and sediment  
3596 control measures shall conform to the standards and specifications of the Mineral  
3597 Mining Manual Drainage Handbook.

3598  
3599 26. If water wells located on surrounding properties are adversely affected, and  
3600 the extraction operations on this site are suspected as the cause, the effected  
3601 property owners may present to the Board evidence that the extraction operation  
3602 is a contributing factor. After a hearing by the Board, this use permit may be  
3603 revoked or suspended, and the operator may be required to correct the problem.  
3604 The applicant shall maintain a financial guarantee in the amount of \$25,000,  
3605 satisfactory to the County Attorney, guaranteeing compliance with this condition.

3606  
3607 27. Failure to comply with any of the foregoing conditions shall automatically  
3608 void this permit.

3609  
3610 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3611 Negative: 0  
3612 Absent: 0

3613  
3614  
3615 **UP-006-08 GILLIES CREEK INDUSTRIAL RECYCLING, LLC**  
3616 requests a conditional use permit pursuant to Sections 24-103 and 24-52(d) to  
3617 extract materials from the earth at 6650 Hines Road (Parcels 855-695-8710 and  
3618 5768), zoned A-1, Agricultural District (Varina).

3619  
3620 Mr. Kirkland - Anyone else here wish to speak? Okay, please stand  
3621 up, raise your right hand and get sworn in.

3622  
3623 Mr. Blankinship - Do you swear the testimony you're about to give is the

3624 truth and nothing but the truth so help you God?  
3625  
3626 Mr. Bryant - I do.  
3627  
3628 Mr. Kirkland - All right, sir.  
3629  
3630 Mr. Bryant - Good morning. My name's Lou Bryant. I'm with  
3631 Gillies Creek Industrial Recycling. This application is for a permanent renewal on  
3632 the property at 6650 Hines Road. This will be our third application for this permit.  
3633 We have just in the last six weeks begun to utilize this site. We are now actively  
3634 filling and reclaiming. This permit renewal will allow us to extract the very  
3635 valuable, very good material that's present at the site. I've read over the  
3636 conditions. I have no problems. I do have one request. In the past, we were given  
3637 some Saturday operating hours. The last permit, which I think was UP-004-06,  
3638 removed that and we work 7 to 5:30 Monday through Friday. On this application,  
3639 I did request a reinstatement of Saturday hours. Other than that, Gillies Creek  
3640 has no problem with the conditions set forth by the staff.  
3641  
3642 Mr. Kirkland - What was your Saturday request?  
3643  
3644 Mr. Bryant - It was 7 to 2:30, but I would be more than satisfied  
3645 with 7 to noon on Saturdays for this renewal.  
3646  
3647 Mr. Kirkland - Okay. Any questions from our Board members?  
3648  
3649 Ms. Harris - Yes. Will there be any more land left in Varina? I  
3650 wanted to ask you to explain the reclamation plan on C3.  
3651  
3652 Mr. Bryant - Okay. What's going to happen is in the southwest  
3653 corner of the property, which is the portion closest to Hines Road and the  
3654 residences, the elevation is about 130 feet mean sea level. Right here is about  
3655 the high point. There should be a 130-foot contour here. There it is right there.  
3656 It's going to slope down from 130 feet to 90 and will tie into the existing ground  
3657 here at the north end, which is adjacent to the swamp. The plan does not allow  
3658 us to increase the elevation from existing grade, which here is the high point at  
3659 130. It's going to tabletop here and then slope down at about a 4 to 1, I think it is,  
3660 from the north end to the terminus here.  
3661  
3662 Ms. Harris - One hundred thirty feet above sea level?  
3663  
3664 Mr. Blankinship - Which is the current elevation. They're tying in to the  
3665 current elevation.  
3666  
3667 Ms. Harris - How many more sites do you have, does Gillies  
3668 Creek have in Varina?  
3669



3670 Mr. Bryant - We only have one more facility at Bottoms Bridge that  
3671 we just had approved I think. Two months ago, we met.  
3672  
3673 Ms. Harris - But that's not Henrico County, right?  
3674  
3675 Mr. Bryant - It is Henrico County, yes ma'am.  
3676  
3677 Mr. Blankinship - We're trying to talk him into taking one over.  
3678  
3679 Ms. Harris - On Masonic Lane?  
3680  
3681 Mr. Bryant - Yes ma'am. That's not actually a barrow pit, that's our  
3682 recycling facility to recycle concrete and asphalt, green waste, things like that.  
3683  
3684 Ms. Harris - How many recycling facilities do you have?  
3685  
3686 Mr. Bryant - Just one.  
3687  
3688 Ms. Harris - Just one. Do you have any landfills?  
3689  
3690 Mr. Bryant - No ma'am.  
3691  
3692 Ms. Harris - Those are my questions.  
3693  
3694 Mr. Wright - I have one question.  
3695  
3696 Mr. Bryant - Yes sir.  
3697  
3698 Mr. Wright - How much longer would you expect this site to be  
3699 used?  
3700  
3701 Mr. Bryant - We just closed our Meadow Road facility and are  
3702 spreading topsoil there. Based on the volumes of material coming out of that  
3703 facility over the last five years, if the economy stays strong and volumes like that  
3704 continue, I think it could be done in 2 to 2-1/2 years. If building stops or slows as  
3705 it is and growth stops, it could take longer. At traditional speeds, 2 to 2-1/2 years  
3706 would be my estimate.  
3707  
3708 Mr. Wright - You'll be finished.  
3709  
3710 Mr. Bryant - It should be filled to grade and be left to spread  
3711 topsoil. That's an estimate, but I think it's grounded in some fact.  
3712  
3713 Ms. Dwyer - Mr. Blankinship, I noticed in the last case, UP-005-08,  
3714 we had a guarantee that the condition relating to wells on surrounding properties,  
3715 we required the applicant to submit a financial guarantee that that provision

3716 would be complied with. Why do we not have that on this case?  
3717  
3718 Mr. Blankinship - Those W. C. English barrow pits for the 895  
3719 construction were the only cases on which we had that condition. There were  
3720 specific concerns on some of their specific sites that they were going to be  
3721 digging below the water table in areas very close to residences. Once we put it  
3722 on one or two of their sites, we decided to go ahead and be consistent and put it  
3723 on all of theirs. But theirs are the only sites that we've ever put that condition on.  
3724  
3725 Ms. Dwyer - So, there's no concern that digging here will affect  
3726 wells in the area?  
3727  
3728 Mr. Blankinship - None that have been expressed. There is a general  
3729 condition that if they damage wells, they're expected to repair them.  
3730  
3731 Ms. Dwyer - Right.  
3732  
3733 Mr. Blankinship - But not the financial guarantee. I guess the concern  
3734 there was that W. C. English was perceived at the time as having come in from  
3735 outside, and the concern was they would work in Henrico County for a short time,  
3736 then disappear, and it would be hard to get hold of them later.  
3737  
3738 Ms. Dwyer - You don't think you could take the long view? These  
3739 properties can change hands frequently and you never—it seems to me we  
3740 should have a condition that relates to the concern about the land rather than  
3741 necessarily the landowner.  
3742  
3743 Mr. Blankinship - Right, yes. It was an unusual step.  
3744  
3745 Ms. Dwyer - So, that's not something that you would recommend  
3746 on this.  
3747  
3748 Mr. Blankinship - No ma'am. As Mr. Higginbotham mentioned, that was  
3749 only brought into play once and that was because the pump motor in the well had  
3750 burned out. English found it more expedient to just go ahead and put a new  
3751 pump in the well rather than argue with the homeowner over whether they had  
3752 caused it to fail.  
3753  
3754 Ms. Dwyer - In the conditions it states that the rehabilitation of the  
3755 property will take place simultaneously with the mining process. Can you  
3756 describe what that means in this case?  
3757  
3758 Mr. Bryant - It's my understanding that means that we will be filling  
3759 and excavating actively at the same time. Right now, we're just filling, there is no  
3760 excavation going on. But my understanding of that condition is filling and  
3761 excavating simultaneously.

3762  
3763 Ms. Dwyer - I don't have any more questions.  
3764  
3765 Mr. Kirkland - Any other questions? All right. I think we have some  
3766 opposition.  
3767  
3768 Mr. Bryant - Thank you.  
3769  
3770 Mr. Kirkland - Okay, ma'am, would you come forward.  
3771  
3772 Ms. Sharpe - Good afternoon. I'm Ann Sharpe.  
3773  
3774 Mr. Kirkland - We're still in the morning.  
3775  
3776 Ms. Sharpe - We're still in the morning now?  
3777  
3778 Ms. Dwyer - It feels like afternoon.  
3779  
3780 Ms. Sharpe - As I started before, I live at 6443 Hines Road, but my  
3781 family does own land on the opposite side of the road adjacent to this pit. It is  
3782 forest land and my mother did give land to my nephew to build. So, on that map  
3783 that was up there, my nephew's home would be south of the plot. My mother's  
3784 forest land is west of the pit.  
3785  
3786 I think I've addressed the Board every time the pit has been renewed and I've  
3787 been pleased with the efforts of the Board to address concerns and the staff in  
3788 enforcing the guidelines established by the Board. I am a little bit confused  
3789 because I thought two years ago when I was here that the pit was going to be in  
3790 reclamation process, but now we're back to extracting again, I'm a little confused  
3791 on that. If we're going to be back to extraction, my concern is that the buffer  
3792 zone around the pit be monitored and enforced because I understand where they  
3793 extracted adjacent to the property that my family owns, there are red and white  
3794 striped posts, but they should be clearly visible to the people operating the  
3795 equipment because once they pass the buffer zone, it's all over. I don't care  
3796 what you say, once you dig it out, that's it. As the pit is filled in, the elevation is a  
3797 concern. I have talked to a representative this morning and he has explained to  
3798 me a little bit more about what that 130 feet meant, because I envisioned a  
3799 Mount Trashmore going up and water going this way. So, I would ask that runoff  
3800 remain on the confines of his property in the way that it looks on that map. That's  
3801 the way they've designed it. Of course, it eventually will end up in White Oak  
3802 Swamp because the pit joins the swamp, as does our property.  
3803  
3804 In January of 2006, the County required that access to the property be from Elko  
3805 Road to Hines Road and that the trucks were not to travel west on Hines Road.  
3806 This is still a safety issue because as you're traveling down Hines Road or  
3807 traveling west on Hines Road, you come over a hill. Those of us that live there

3808 are well aware that we need to be aware of trucks entering the highway because  
3809 the road is narrow and when they come out, they have to swing way over. They  
3810 take up the majority of the road.

3811  
3812 Also, I'm not sure because where my houses sets I can't see what company  
3813 owns the trucks, but I have seen trucks on my end passing my home. I do not  
3814 know if they come from that operation. The only way I could tell would be to set  
3815 out on the road to check. I just ask that the reclamation process be monitored,  
3816 especially the elevation and the grading, and that we continue to monitor where  
3817 the extraction takes place.

3818  
3819 Mr. Blankinship - We have two different inspectors on the site every  
3820 month. One looks just at erosion control and environmental issues, and the other  
3821 looks at all the zoning issues.

3822  
3823 Ms. Sharpe - Okay, thank you.

3824  
3825 Mr. Kirkland - Thank you, ma'am.

3826  
3827 Ms. Frazier - Good morning. My name is Joan Frazier. I live at  
3828 7350 Elko Road. My property adjoins this gravel pit as well as the road that leads  
3829 up to it. We built our house in 1979 and unbeknownst to us, that property was  
3830 sold for a gravel pit and a conditional use permit was then issued. We had no  
3831 idea this was going on until the trucks started rolling. Now, the attorney for the  
3832 person said that it would only be five years. Well, it's been five years and another  
3833 five years and another five years. We're going onto 29 years that we have  
3834 listened to this racket. We have not had peaceful possession of our property as  
3835 the law allows for all of these 29 years that we have had to live there. The noise  
3836 and the dust is wearing out patience very thin and we feel we have been very  
3837 patient. Enough is enough. As to the Saturday hours, I state a vehement no.  
3838 There's enough noise and dust and racket during the week. Thank you, sirs.

3839  
3840 Ms. Harris - Ms. Frazier, does anyone clean the highway, water it  
3841 down or spray some type of chemicals to clean?

3842  
3843 Ms. Frazier - Not that I have seen.

3844  
3845 Ms. Dwyer - Could you show us exactly where you live, please?

3846  
3847 Ms. Frazier - Let's see. Do you see where the pond is on this? We  
3848 own half the pond. I can't tell north and south.

3849  
3850 Ms. Dwyer - North is top.

3851  
3852 Ms. Frazier - Oh, I can use this. Good. Okay. We have half the  
3853 pond here. Our property exits on Elko Road and comes through here.

3854  
3855 Mr. Wright - Where is your house there?  
3856  
3857 Ms. Frazier - Our house is approximately right there.  
3858  
3859 Mr. Wright - Oh, it's not on the map.  
3860  
3861 Ms. Frazier - The noise is from the trucks, the equipment that's  
3862 down there. If any of you have ever lived next to an army base and heard troops  
3863 on maneuvers, it sounds like howitzers and tanks.  
3864  
3865 Ms. Dwyer - Is it the processing or the digging?  
3866  
3867 Ms. Frazier - I have no idea; I don't go down there. It's not my  
3868 property.  
3869  
3870 Mr. Blankinship - I don't believe they do any processing on this site.  
3871  
3872 Ms. Harris - But you can hear the trucks.  
3873  
3874 Ms. Frazier - Can we ever.  
3875  
3876 Ms. Harris - What about your neighbors? Do you have neighbors  
3877 who complain, too, or have you spoken with any of them?  
3878  
3879 Ms. Frazier - I have spoken with them. They are also disturbed by  
3880 the racket. In fact, we even had one neighbor move because of it. If anyone  
3881 comes to look at our property for sale should we put it on the market, that's going  
3882 to be a detriment. Would you want dump trucks running through your backyard?  
3883 We've put up with it for 29 years and I'm tired of it.  
3884  
3885 Ms. Dwyer - In those 29 years, I assume that a lot of these houses  
3886 have been added to the neighborhood.  
3887  
3888 Ms. Frazier - That is correct.  
3889  
3890 Ms. Dwyer - There's more intense residential development in the  
3891 area than—  
3892  
3893 Ms. Frazier - Very much so. We were the only house out there for  
3894 seven years, but it has grown like gangbusters in the interim.  
3895  
3896 Ms. Harris - Despite the noise, people are still buying homes in  
3897 and around that area.  
3898  
3899 Ms. Frazier - So far as I know, yes. But they are not as close to it

3900 as we are.  
3901  
3902 Mr. Kirkland - Mr. Blankinship, could you point out her home on the  
3903 plan? Is that the one right there where the dogleg breaks there?  
3904  
3905 Ms. Frazier - That's my driveway right there.  
3906  
3907 Mr. Kirkland - Okay.  
3908  
3909 Mr. Blankinship - And the home is right there.  
3910  
3911 Mr. Kirkland - Okay. Is that a house there right on the little road?  
3912  
3913 Mr. Blankinship - Yes.  
3914  
3915 Mr. Kirkland - Okay.  
3916  
3917 Mr. Nunnally - You say you've been putting up with this noise for 29  
3918 years?  
3919  
3920 Ms. Frazier - Twenty-nine years. My patience is thin.  
3921  
3922 Mr. Nunnally - Is that how long you've been living there?  
3923  
3924 Ms. Frazier - Yes sir. We built the house. If we had known that this  
3925 piece of property was going to sold as a gravel pit, we would not have bought it.  
3926  
3927 Ms. Harris - Have you placed the property on the market for sale?  
3928  
3929 Ms. Frazier - No, I would like not to have to.  
3930  
3931 Ms. Dwyer - So, you're asking us to deny this application?  
3932  
3933 Ms. Frazier - Yes ma'am, I am.  
3934  
3935 Ms. Dwyer - Are there any other conditions you can think of that  
3936 would make it more palatable?  
3937  
3938 Ms. Frazier - If you can get the dust down and put mufflers on  
3939 those trucks so nobody can hear them, as well as the equipment that's down in  
3940 the pit. I don't think that's going to be possible. I might invite somebody out one  
3941 day during the operation to listen.  
3942  
3943 Mr. Kirkland - Any other questions from Board members? Thank  
3944 you, ma'am.  
3945

3946 Mr. Dowdy - Good morning. Bailey Dowdy. I live at 6660 Hines  
3947 Road. My house—I'll point it out now—is this house right here. I have 500 and  
3948 some feet of space between us, but am adjacent to the Gillies Creek entrance. I  
3949 have several concerns. I did come the other day to the County to look at the  
3950 paperwork involved in this project. I talked with Mr. Blankinship about some of  
3951 my concerns. Subsequently, I did speak with Mr. Liesfield and he assured me of  
3952 a few things and that has relieved some of my concerns. They have recently, as  
3953 of day before yesterday, I believe it was, tarred and graveled the entrance road,  
3954 which has helped substantially. Talking to Lou here, the representative of Gillies  
3955 Creek. He told me this morning that will not last the duration of the project, but it  
3956 can be redone. That has helped. Speed of the trucks on the road is a concern  
3957 of mine. We do have some school children that use that road to go to and from  
3958 their bus stop.

3959  
3960 Mr. Kirkland - Are you talking about the access road?

3961  
3962 Mr. Dowdy - I am talking about the access road, correct. That  
3963 access road is shared with a resident.

3964  
3965 Mr. Kirkland - Okay.

3966  
3967 Mr. Dowdy - I don't know what the answer is, how to control that,  
3968 but that is a concern of mine. I had talked to Mr. Liesfield in regards to the hill  
3969 that is—If you were exiting the entrance onto Hines Road, the hill that is to the  
3970 right. They have had to maneuver some large equipment there at the entrance.  
3971 That is a narrow road. To be a little more exact, white line to white line is 17 feet.  
3972 I have asked, and Mr. Liesfield agreed, that if they were going to move some  
3973 heavy equipment, they would put a flagman at the top of that hill to direct traffic  
3974 so we have someone that may not be following the speed limit laws come over  
3975 that hill and have an accident.

3976  
3977 The amount of traffic that is on the road is horrendous. Again, talking with Gillies  
3978 Creek, I got a timeframe and they suggested two years, that they thought that in  
3979 two years the project would be finished. My comments were that if they could  
3980 assure me the project was finished, then I would tolerate this heavy traffic;  
3981 however, if it could go on for an extended length of time, I would probably—  
3982 Because the trucks, if you were to space the trucks out, I would say we have a  
3983 truck at least every five minutes, if not a shorter duration than that. It is a  
3984 tremendous amount of traffic.

3985  
3986 Mr. Nunnally - Sir, the information we have on our paper here says  
3987 the condition of the site has improved since Gillies Creek took it over. Do you  
3988 agree with that statement?

3989  
3990 Mr. Dowdy - Since Gillies Creek took it over. I've owned the  
3991 property since 1990, so I was there when Mr. Plaster owned the property as well.

3992  
3993 Mr. Nunnally - Right.  
3994  
3995 Mr. Dowdy - I can't say other than the tar and gravel that was put  
3996 down day before yesterday that I am aware of any substantial improvements  
3997 other than that to the property.  
3998  
3999 Mr. Nunnally - You haven't?  
4000  
4001 Mr. Dowdy - No, I can't say that I know of any other improvements.  
4002 Well, they put a rock at the corner of our property because the trucks cut across  
4003 the front corner of my property. They've now placed a rock there as a deterrent  
4004 to help direct the trucks. But to say that it's better than when Mr. Plaster owned  
4005 the property or improvements other than the tar and graveling of the road, I really  
4006 can't say I know of any improvements beyond that.  
4007  
4008 Mr. Blankinship - Do you go on the Gillies Creek property from time to  
4009 time?  
4010  
4011 Mr. Dowdy - No, I do not. My property is adjacent to Gillies Creek.  
4012 As far as talking with Mr. Liesfield the other day, he asked me if I had been back  
4013 there to look at it, and no, I have not been back to the pit because that is their  
4014 property and I don't trespass.  
4015  
4016 Mr. Blankinship - That's where we were referring to when we said the  
4017 situation has improved.  
4018  
4019 Mr. Dowdy - Conditions at the pit may be. I cannot speak about  
4020 the pit itself. As far what is viewable from my perspective being the entrance and  
4021 all, there have not been any improvements there.  
4022  
4023 Mr. Nunnally - Thank you.  
4024  
4025 Ms. Dwyer - Did they tar and gravel the entire length of the access  
4026 road or just the entrance?  
4027  
4028 Mr. Dowdy - I believe they did the entire 1300 feet.  
4029  
4030 Ms. Dwyer - And that road is shared by houses?  
4031  
4032 Mr. Dowdy - The gentleman that lives in this house here shares  
4033 that.  
4034  
4035 Ms. Dwyer - That's only a 17-foot wide access road.  
4036  
4037 Mr. Dowdy - Yes.



4038  
4039 Mr. Wright - Well, the conditions required them to pave that  
4040 entrance road. Had it not been paved before?  
4041  
4042 Mr. Dowdy - It was paved. I'm guessing maybe close to 20 years  
4043 ago, Mr. Plaster paved it. I did notice last week when looking at the paperwork  
4044 that yes, the first 300 feet was supposed to be paved to a width of 24 feet. As I  
4045 said, day before yesterday, they did tar and gravel that road.  
4046  
4047 Mr. Wright - Is it 24 feet wide?  
4048  
4049 Mr. Dowdy - I would say it's close to 24 feet width at the entrance  
4050 and probably for the first, oh, 350 or 400 feet. After that, it does narrow some.  
4051  
4052 Mr. Wright - We have a condition in this thing that operations shall  
4053 be scheduled that trucks will travel at regular intervals and not in groups of three  
4054 or more. Are they violating that?  
4055  
4056 Mr. Dowdy - I have seen that occur. It is occasionally, not  
4057 repetitiously. Groups of two are quit frequent.  
4058  
4059 Mr. Wright - They could do two—  
4060  
4061 Mr. Dowdy - Right, yes.  
4062  
4063 Mr. Wright - —if we leave this condition the way it is.  
4064  
4065 Mr. Dowdy - Three and four have happened at times, but I'm going  
4066 to be honest with you, it's not happening continuously.  
4067  
4068 Mr. Wright - Would it be better if they had intervals that didn't  
4069 include two at one time?  
4070  
4071 Mr. Dowdy - To be honest with you, I'm looking for this project to  
4072 be over with. [Unintelligible] a long time.  
4073  
4074 Mr. Wright - I think you're entitled to it.  
4075  
4076 Mr. Dowdy - Yes. I'm looking for the day that I can say we're done,  
4077 we're over. If the company would stipulate a timeframe as to when they'll be  
4078 finished, then I'll endure, to a certain degree anyway. As far as operating times, I  
4079 would not like to see any weekend times. Their operating hours right now are 7 to  
4080 5:30. They do pretty much utilize that time. On one occasion anyway, they  
4081 exceeded that time. I would not like to see that expanded any.  
4082  
4083 Mr. Wright - This permit is only to be in force for two years. Isn't

4084 that right, Mr. Blankinship?  
4085  
4086 Mr. Blankinship - Yes sir. They'll be back in 2010.  
4087  
4088 Mr. Wright - This is only good for two years.  
4089  
4090 Mr. Dowdy - Correct. I know. But like I said, in order to endure  
4091 during this two years is to know that there is an end in sight. Not just to the  
4092 permit, but to the operations.  
4093  
4094 Mr. Wright - I think there's an end in sight, but the question is  
4095 when is it.  
4096  
4097 Mr. Dowdy - That's right, that's right. I think the word that's used  
4098 is, "a few years." I don't rightly know how long "a few years" is.  
4099  
4100 Mr. Blankinship - All I can tell you is the Meadow Road pit has been  
4101 open about as long as this one is and Gillies Creek took that over four years ago.  
4102 They closed it in just the last couple of weeks. That's the business they're in.  
4103 Mr. Plaster wasn't necessarily in that business. That is the business that Gillies  
4104 Creek is in.  
4105  
4106 Mr. Dowdy - Granted.  
4107  
4108 Ms. Harris - Have you noticed the increase in truck traffic over the  
4109 years?  
4110  
4111 Mr. Dowdy - In the last six weeks I would say probably 4 or 5,000  
4112 fold. The trucks during the day right now are pretty much nonstop.  
4113  
4114 Mr. Kirkland - Sir, you need to address the board.  
4115  
4116 Mr. Dowdy - I'm sorry. I don't know the number of trucks, but I do  
4117 know it's a substantial number of trucks.  
4118  
4119 Mr. Kirkland - You can ask him when he stands up.  
4120  
4121 Mr. Dowdy - I'm sorry; my mistake.  
4122  
4123 Mr. Kirkland - Oh, that's okay.  
4124  
4125 Mr. Blankinship - That's the trade-off. The more trucks you get per day,  
4126 the fewer days.  
4127  
4128 Mr. Dowdy - There again, we're saying that if we have an end in  
4129 sight. I talked to some of the other neighbors that are not here today and some

4130 of them have some of the same concerns I do, that they will also somewhat  
4131 endure to a point if we know there's an end in sight.

4132  
4133 Mr. Wright - The way this condition reads, it does give you some  
4134 comfort. Number 28, "Excavation shall be discontinued by March 31, 2010 and  
4135 restoration accomplished by March 31, 2011," unless they're issued a new  
4136 permit.

4137  
4138 Mr. Dowdy - Unless.

4139  
4140 Mr. Wright - Yes. "Unless" is a big word, I understand.

4141  
4142 Mr. Dowdy - Yes, okay. That's all I have. Thank you.

4143  
4144 Mr. Kirkland - Thank you, sir. Anyone else wish to speak? Would  
4145 you like to rebut, sir?

4146  
4147 Mr. Bryant - Thank you. I want to make it clear that Gillies Creek is  
4148 just as concerned about getting out of the pit as fast as the neighbors are. The  
4149 faster we fill it, the more profitable it is for us, and the sooner we can move on to  
4150 the next project. That being said, we're not willing to sacrifice safety. We do  
4151 understand that we do share access with this house here. I've met this family.  
4152 I've talked to them several times. About two years ago, at our expense we  
4153 installed a picket fence along their property line so their children and animals  
4154 wouldn't escape into the haul road and be injured. All of our employees and all  
4155 of the contract employees that work for us understand the gravity of the situation  
4156 on the haul road. I know that some of them speed; I don't doubt it. All that we  
4157 ask is that a little cooperation I think would go a long way to help us deal with the  
4158 problem. If the neighbors see what's happening, all they need to do is call my  
4159 office. They should all have my card. Before we opened the pit, it went to all the  
4160 neighbors here and I also went to Ms. Frazier's house. I believe I met her  
4161 husband. They should have my business card in order to get in touch with me.  
4162 All that's required is a phone call to me and I think we can try and sort the  
4163 problem out.

4164  
4165 As Mr. Dowdy said, we did tar and gravel the road for the entire length from the  
4166 gate to the entrance here. I've seen it. It has, I think diminished the dust problem  
4167 quite a bit. Prior to that, we were using water and calcium chloride to wet it, which  
4168 wasn't effective, which is why we chose to tar and gravel the whole length. We  
4169 do wash Hines Road when necessary. Mrs. Frazier is correct that we do not  
4170 normally wash Elko Road with pressurized water, but we will wash the entrance  
4171 road here when it's necessary.

4172  
4173 As Mr. Blankinship said, we are as interested in getting this pit filled as the  
4174 neighbors and the County are and I think that we can do it in 2 to 2-1/2 years with  
4175 a strong economy, as long as we're allowed to continue to operate.

4176  
4177 Ms. Harris - Mr. Bryant, do you know how many trucks enter that  
4178 site?  
4179  
4180 Mr. Bryant - It depends. On an average, I would say probably 50  
4181 to 60 loads a day on an average.  
4182  
4183 Ms. Dwyer - Are you extracting sand and gravel?  
4184  
4185 Mr. Bryant - Not at this time, no.  
4186  
4187 Ms. Dwyer - This time?  
4188  
4189 Mr. Bryant - At this time, we're just filling. No extraction is going  
4190 on.  
4191  
4192 Mr. Wright - What control, if any, do you have over the speed of  
4193 these trucks? What do you try to do to encourage them not to speed?  
4194  
4195 Mr. Bryant - Well, what we've done is unlike the Meadow Road  
4196 facility, since we do share it with the residents, all of our customers received a  
4197 letter from my office prior to opening, explaining the importance of the situation.  
4198 I've already had to call and have one of our customer's truck drivers banned from  
4199 the site because of his speeding. Speed bumps, we've tried those, we tried  
4200 those at Meadow Road. They have limited effectiveness. You can still hit a  
4201 speed bump at 20 miles and hour. It's just going to shake your fillings loose and  
4202 damage the equipment. I think mostly what it takes is some diligence on the part  
4203 of the company, as well as the neighbors in being forthcoming with the  
4204 information so that I can prosecute the offenders.  
4205  
4206 Mr. Wright - I think it would help if you keep that speed down.  
4207  
4208 Mr. Bryant - We do have it posted at 15 miles per hour up and down  
4209 the road on both sides.  
4210  
4211 Mr. Wright - I doubt you could go much slower than that with  
4212 those trucks without making a lot of noise.  
4213  
4214 Ms. Dwyer - Will you be extracting anything in the future at all?  
4215  
4216 Mr. Bryant - We do intend to. There are projects upcoming in the  
4217 East End of the County that I think would be very suitable for that material, a  
4218 utility expansion and some further development that I think we could find a home  
4219 for that material. It's very high quality sand and gravel fill material. So I think it  
4220 will be very marketable and we do intend to sell it in the future.  
4221

4222 Mr. Wright - There was one complaint made about the spillage.  
4223 How do you monitor that?

4224  
4225 Mr. Bryant - Well, generally, the County helps us with that.  
4226 Whenever we have a problem—I assume you mean on the highway, on the  
4227 road?

4228  
4229 Mr. Wright - I guess that's where it was, the statement was about.

4230  
4231 Mr. Bryant - Well, whenever we have problems with Hines Road,  
4232 the County is fairly diligent in inspecting that and we come and wash it with high-  
4233 pressure water. Like I said, normally, if anything spills, it spills either on our  
4234 access road or turning onto Hines Road, which we do wash on a regular basis.  
4235 Elko Road. I haven't gotten any complaints about anything on Elko Road, but if  
4236 that's a problem, it can easily be taken of with a water truck.

4237  
4238 Ms. Dwyer - Assuming I'm on the Planning Commission in two  
4239 years, I mean the Board of Zoning Appeals, I think I would look at this case very  
4240 closely in two years. I would encourage you to be very responsive to the  
4241 neighbors in the meantime.

4242  
4243 Mr. Bryant - I understand.

4244  
4245 Ms. Dwyer - Not that you haven't been, but you might want to go  
4246 the extra mile in the next two years to accommodate their concerns.

4247  
4248 Mr. Bryant - I understand.

4249  
4250 Mr. Kirkland - Any other questions? That concludes the case.  
4251 Thank you.

4252  
4253 **DECISION**

4254  
4255 Mr. Bryant - Thank you very much.

4256  
4257 Mr. Kirkland - Do I have a motion?

4258  
4259 Mr. Nunnally - I move we approve it, but no Saturday hours.

4260  
4261 Ms. Dwyer - Second.

4262  
4263 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Ms. Dwyer.  
4264 Any discussion?

4265  
4266 Ms. Dwyer - I'm very concerned about all of the neighbors and the  
4267 burden on them.

4268  
4269 Mr. Wright - Heavy burden on them.  
4270  
4271 Ms. Dwyer - I was trying to think of what other conditions could we  
4272 add that would minimize the burden that they face with the noise. But I think  
4273 probably anything that we do to limit the use of the site is just going to prolong  
4274 the amount of time that it takes to mine it and reclaim it. So, I think that we should  
4275 keep this in mind and when they come back in two years, consider denying the  
4276 case.  
4277  
4278 Mr. Kirkland - Let's just hope it doesn't take a downturn in building,  
4279 though.  
4280  
4281 Ms. Dwyer - That could slow things down. The lady said that that  
4282 they'd been told for 30 years that is just going to be five more years.  
4283  
4284 Mr. Kirkland - But Gillies Creek has only been operating it—  
4285  
4286 Mr. Blankinship - For four years.  
4287  
4288 Mr. Kirkland - Yes. The other gentleman we had a lot of problems  
4289 with.  
4290  
4291 Ms. Dwyer - That doesn't help the neighbors.  
4292  
4293 Mr. Kirkland - I understand.  
4294  
4295 Ms. Harris - I just wanted to make a comment. The health, safety,  
4296 and welfare of neighbors, I think, is an issue here. It's a small neighborhood and  
4297 the people did express to us their displeasure with this request being granted. I'm  
4298 hoping, too, that at the end of the time we can just close and reclaim this site that  
4299 has not been reclaimed before at the duration of the use permit.  
4300  
4301 Mr. Kirkland - All right. Motion by Mr. Nunnally, seconded by Ms.  
4302 Dwyer. All in favor say aye. All opposed say no.  
4303  
4304 Mr. Kirkland - You voted no?  
4305  
4306 Ms. Harris - Yes, I vote no.  
4307  
4308 Mr. Kirkland - Okay. The ayes have it; the motion passes.  
4309  
4310 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
4311 Mr. Wright, the Board **approved** application **UP-006-08, Gillies Creek Industrial**  
4312 **Recycling, Inc.'s** request for a conditional use permit pursuant to Sections 24-  
4313 103 and 24-52(d) to extract materials from the earth at 6650 Hines Road (Parcels

4314 855-695-8710 and 5768), zoned A-1, Agricultural District (Varina) subject to the  
4315 following conditions:

4316  
4317 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24  
4318 of the County Code.

4319  
4320 2. Before beginning any work, the applicant shall provide a financial guaranty in  
4321 an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of  
4322 \$31,200, guaranteeing that the land will be restored to a reasonably level and  
4323 drainable condition. This permit does not become valid until the financial  
4324 guaranty has been approved by the County Attorney. The financial guaranty may  
4325 provide for termination after 90 days notice in writing to the County. In the event  
4326 of termination, this permit shall be void, and work incident thereto shall cease.  
4327 Within the next 90 days the applicant shall restore the land as provided for under  
4328 the conditions of this use permit. Termination of such financial guaranty shall not  
4329 relieve the applicant from its obligation to indemnify the County of Henrico for any  
4330 breach of the conditions of this use permit. If this condition is not satisfied within  
4331 90 days of approval, the use permit shall be void.

4332  
4333 3. Before beginning any work, the applicant shall submit erosion control plans to  
4334 the Department of Public Works (DPW) for review and approval. Throughout the  
4335 life of the operation, the applicant shall continuously satisfy DPW that erosion  
4336 control procedures are properly maintained, and shall furnish plans and bonds  
4337 that DPW deems necessary. The applicant shall provide certification from a  
4338 licensed professional engineer that dams, embankments and sediment control  
4339 structures meet the approved design criteria as set forth by the State. If this  
4340 condition is not satisfied within 90 days of approval, the use permit shall be void.

4341  
4342 4. Before beginning any work, the applicant shall obtain a mine license from the  
4343 Virginia Department of Mines, Minerals and Energy. If this condition is not  
4344 satisfied within 90 days of approval, the use permit shall be void.

4345  
4346 5. Before beginning any work, the areas approved for mining under this permit  
4347 shall be delineated on the ground by five-foot-high metal posts at least five  
4348 inches in diameter and painted in alternate one foot stripes of red and white.  
4349 These posts shall be so located as to clearly define the area in which the mining  
4350 is permitted. They shall be located, and their location certified, by a certified land  
4351 surveyor. If this condition is not satisfied within 90 days of approval, the use  
4352 permit shall be void.

4353  
4354 6. In the event that the approval of this use permit is appealed, all conditions  
4355 requiring action within 90 days will be deemed satisfied if the required actions are  
4356 taken within 90 days of final action on the appeal.

4357  
4358 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
4359 state and local regulations administered under such act applicable to the

4360 property, and shall furnish to the Planning Department copies of all reports  
4361 required by such act or regulations.

4362  
4363 8. Hours of operation shall be from 7:00 a.m. to 5:30 p.m. Monday through  
4364 Friday.

4365  
4366 9. No operations of any kind are to be conducted at the site on Saturdays,  
4367 Sundays, or national holidays.

4368  
4369 10. All means of access to the property shall be from the established entrance  
4370 onto Hines Road and Elko Road. Traffic related to the mining operation shall not  
4371 travel on Hines Road west of the entrance to the property.

4372  
4373 11. The applicant shall erect and maintain gates at all entrances to the property.  
4374 These gates shall be locked at all times, except when authorized representatives  
4375 of the applicant are on the property.

4376  
4377 12. The applicant shall post and maintain a sign at the entrance to the mining  
4378 site stating the name of the operator, the use permit number, the mine license  
4379 number, and the telephone number of the operator. The sign shall be 12 square  
4380 feet in area and the letters shall be three inches high.

4381  
4382 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
4383 along the perimeter of the property. The letters shall be three inches high. The  
4384 applicant shall furnish the Chief of Police a letter authorizing the Division of  
4385 Police to enforce the "No Trespassing" regulations, and agreeing to send a  
4386 representative to testify in court as required or requested by the Division of  
4387 Police.

4388  
4389 14. Standard "Truck Entering Highway" signs shall be erected on Hines Road on  
4390 each side of the entrances to the property. These signs will be placed by the  
4391 County, at the applicant's expense.

4392  
4393 15. The applicant shall post and maintain a standard stop sign at the entrance to  
4394 Hines Road.

4395  
4396 16. The applicant shall provide a flagman to control traffic from the site onto the  
4397 public road, with the flagman yielding the right of way to the public road traffic at  
4398 all times. This flagman will be required whenever the Division of Police deems  
4399 necessary.

4400  
4401 17. The entrance road shall be paved from its intersection with Hines Road for a  
4402 distance of 300 feet and a width of 24 feet. All roads used in connection with this  
4403 use permit shall be effectively treated with calcium chloride or other wetting  
4404 agents to eliminate any dust nuisance.

4405



- 4406 18. The operation shall be so scheduled that trucks will travel at regular intervals  
4407 and not in groups of three or more.  
4408
- 4409 19. Trucks shall be loaded in a way to prevent overloading or spilling of  
4410 materials of any kind on any public road.  
4411
- 4412 20. The applicant shall maintain the property, fences, and roads in a safe and  
4413 secure condition indefinitely, or convert the property to some other safe use.  
4414
- 4415 21. If, in the course of its preliminary investigation or operations, the applicant  
4416 discovers evidence of cultural or historical resources, or an endangered species,  
4417 or a significant habitat, it shall notify appropriate authorities and provide them  
4418 with an opportunity to investigate the site. The applicant shall report the results of  
4419 any such investigation to the Planning Department.  
4420
- 4421 22. If water wells located on surrounding properties are adversely affected, and  
4422 the extraction operations on this site are suspected as the cause, the effected  
4423 property owners may present to the Board evidence that the extraction operation  
4424 is a contributing factor. After a hearing by the Board, this use permit may be  
4425 revoked or suspended, and the operator may be required to correct the problem.  
4426
- 4427 23. Open and vertical excavations having a depth of 10 feet or more, for a period  
4428 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to  
4429 protect the public safety.  
4430
- 4431 24. Topsoil shall not be removed from any part of the property outside of the  
4432 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the  
4433 property for respreading in a layer with five inches of minimum depth. All topsoil  
4434 shall be stockpiled within the authorized mining area and provided with adequate  
4435 erosion control protection. If the site does not yield sufficient topsoil, additional  
4436 topsoil shall be brought to the site to provide the required five-inch layer of cover.  
4437 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as  
4438 recommended by the County after soil tests have been provided to the County.  
4439
- 4440 25. The operator shall submit a quarterly report stating the origin, nature and  
4441 quantity of any off-site generated material deposited on the site, certifying that no  
4442 contaminated or hazardous material was included. The material to be deposited  
4443 on the site shall be limited to imperishable materials such as stone, bricks, tile,  
4444 sand, gravel, soil, concrete and like materials, and shall not include any  
4445 hazardous materials as defined by the Virginia Hazardous Waste Management  
4446 Regulations.  
4447
- 4448 26. A superintendent, who shall be personally familiar with all the terms and  
4449 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
4450 terms and conditions of this use permit, shall be present at the beginning and  
4451 conclusion of operations each work day to see that all the conditions of the Code

4452 and this use permit are observed.

4453

4454 27. A progress report shall be submitted to the Board on March 31, 2009. This  
4455 progress report must contain information concerning how much property has  
4456 been mined to date of the report, the amount of land left to be mined, how much  
4457 rehabilitation has been performed, when and how the remaining amount of land  
4458 will be rehabilitated, and any other pertinent information about the operation that  
4459 would be helpful to the Board.

4460

4461 28. Excavation shall be discontinued by March 31, 2010, and restoration  
4462 accomplished by not later than March 31, 2011, unless a new permit is granted  
4463 by the Board of Zoning Appeals.

4464

4465 29. The rehabilitation of the property shall take place simultaneously with the  
4466 mining process. Rehabilitation shall not be considered completed until the mined  
4467 area is covered completely with permanent vegetation.

4468

4469 30. All drainage and erosion and sediment control measures shall conform to the  
4470 standards and specifications of the Mineral Mining Manual Drainage Handbook.  
4471 Any drainage structures in place prior to October 14, 1992 and which do not  
4472 conform to the Mineral Mining Manual Drainage Handbook may remain in place  
4473 until such time as any reconstruction is required at which time said structures  
4474 shall be brought into conformance with the Mineral Mining Manual Drainage  
4475 Handbook.

4476

4477 31. Failure to comply with any of the foregoing conditions shall automatically  
4478 void this permit.

4479

4480 Affirmative:	Dwyer, Kirkland, Nunnally, Wright	4
4481 Negative:	Harris	1
4482 Absent:		0

4483

4484

4485 **A-004-08** **COLMIGNOLI, LLC** requests a variance from Section  
4486 24- 9 to allow a one-family dwelling to remain at 9084 Hoke Brady Road (Parcel  
4487 807-676-9122), zoned R-2A, One-family Residence District (Varina). The public  
4488 street frontage requirement is not met. The applicant has 0 feet public street  
4489 frontage where the Code requires 50 feet public street frontage. The applicant is  
4490 requesting a variance of 50 feet public street frontage.

4491

4492 Mr. Kirkland - Anyone else wish to speak on this case? If you  
4493 would, sir, raise your right hand and be sworn in.

4494

4495 Mr. Blankinship - Do you swear the testimony you're about to give is the  
4496 truth and nothing but the truth so help you God?

4497

4498 Mr. Ransone - I do.  
4499  
4500 Mr. Kirkland - Sir, state your name, please.  
4501  
4502 Mr. Ransone - My name is Jim Ransone and I am the managing  
4503 partner of the Colmignoli, LLC.  
4504  
4505 Mr. Kirkland - What would you like for this Board to do for you?  
4506  
4507 Mr. Ransone - I am in full agreement with staff on their  
4508 recommendations as set forth in the conditions.  
4509  
4510 Mr. Blankinship - We need a little more in the record of what you're  
4511 requesting and why.  
4512  
4513 Mr. Kirkland - What exactly do you want?  
4514  
4515 Mr. Ransone - What I'm requesting is that we purchased this  
4516 property and are in the process of subdividing it into 20 single-family lots. We  
4517 already have preliminary approval to do so, but we have met a little bit of  
4518 resistance on our outfalls, which we're trying to correct now, and it's taken a  
4519 longer time. On the property is the original Tredinnock Farm building, which was  
4520 built probably about 1919, 1920. We would like permission to go ahead and sell  
4521 that property now instead of waiting until we get all final approval, in which case  
4522 we will then do away with this variance and put it on the Tredinnock Lane that will  
4523 be coming to the property. I have an access to the property now. I have a  
4524 deeded access on Hoke Brady Road and I also have access on Lucy Long Lane.  
4525  
4526 Mr. Kirkland - How long do you think it will be before you all start  
4527 with the subdivision and tie all this in?  
4528  
4529 Mr. Ransone - Hopefully not more than six more months.  
4530  
4531 Mr. Kirkland - Okay.  
4532  
4533 Ms. Dwyer - Do you have a buyer? Is that why you're in a hurry to  
4534 sell it?  
4535  
4536 Mr. Ransone - That and income is important in these projects as we  
4537 go along. We do have a couple who have expressed interest in the old  
4538 farmhouse. It is a very, very unique building.  
4539  
4540 Ms. Dwyer - In condition #6, Mr. Blankinship, it says that if the  
4541 property is conveyed prior to recordation of the final subdivision plat, the new  
4542 owner will agree to sign the final subdivision plat. It seems to me that we are  
4543 requiring something of a person who is not party to these proceedings. How do

4544 we enforce that and ensure that that will happen?  
4545  
4546 Mr. Blankinship - Mr. O'Kelly, do you have a response to that?  
4547  
4548 Ms. Dwyer - Condition 6.  
4549  
4550 Mr. Blankinship - We had addressed that on a previous case that was  
4551 somewhat similar to this one. The concern, of course, is that if they don't, then  
4552 that can create problems for the subdivision.  
4553  
4554 Mr. Ransone - We could probably put it in the deed as a requirement  
4555 of sale. I'll be glad to do that.  
4556  
4557 Mr. O'Kelly - That might be a good approach.  
4558  
4559 Mr. Ransone - I'd want that anyway so anybody who would purchase  
4560 would have to conform to it. The reason is because we had originally just thought  
4561 about selling the house as it is. Our worry was that whoever bought it, though,  
4562 would not repair it or fix it like we need for what we plan for the subdivision. This  
4563 was at one time one of the largest chicken farms in the country. It's a unique,  
4564 historic piece of real estate, which I didn't realize until after I purchased it. It was  
4565 called Tredinnock Farm, which is Celtic for "house on the hill." It is almost 3,000  
4566 feet on one floor with a full basement where they used to have the ovens for  
4567 chickens. There is only one chicken house left and that was probably  
4568 abandoned in 1946. The properties that we plan on building are going to be fairly  
4569 expensive and that's why we decided to undertake to redo this house in a way  
4570 that we really have to. We will probably put about 250,000 or more into this  
4571 house to bring it back. It has 11-foot ceilings. It's just a really special property.  
4572 It's the cornerstone of our subdivision.  
4573  
4574 Ms. Dwyer - So, it would be, as you say, a drawing card for the  
4575 subdivision as a whole to have this restored.  
4576  
4577 Mr. Ransone - That's why we decided to do it ourselves instead of  
4578 someone else doing it. It helps us. It's been over two years since we purchased  
4579 it. We paid a million dollars for the property, not counting the engineering fees.  
4580 We would just like to—  
4581  
4582 Mr. Kirkland - Start getting a little bit back.  
4583  
4584 Mr. Ransone - No horse farms, no manure. No trucks.  
4585  
4586 Ms. Dwyer - How many acres do you have?  
4587  
4588 Mr. Ransone - We have a total of about 41, 44 acres.  
4589

4590 Ms. Harris - This particular house sits on how many acres?  
4591  
4592 Mr. Ransone - When the subdivision's approved, it will sit on 2.2  
4593 acres. The smallest lot we have is 1.1 and the largest lot we'll have is 3.1.  
4594  
4595 Mr. Wright - So, it's contingent to be on 2 point—  
4596  
4597 Mr. Ransone - Yes sir.  
4598  
4599 Mr. Wright - —2.1 acres.  
4600  
4601 Mr. Ransone - Yes sir.  
4602  
4603 Ms. Harris - They wrote something about a flood zone. Are you  
4604 dealing with any wetlands here?  
4605  
4606 Mr. Ransone - No ma'am. They have no wetlands on the property.  
4607 We have one little small outflow creek, which is called Waters of US, but nothing  
4608 on the property is wetlands.  
4609  
4610 Mr. Kirkland - Any other questions?  
4611  
4612 Ms. Dwyer - Can we issue a temporary variance? It sounds like  
4613 that's what we're doing.  
4614  
4615 Mr. Wright - We can have any conditions we want on it. That's  
4616 what the statute says.  
4617  
4618 Mr. Blankinship - The variance will no longer be necessary once public  
4619 street frontage is provided.  
4620  
4621 Mr. Nunnally - Once the subdivision's in there.  
4622  
4623 Mr. Blankinship - Right.  
4624  
4625 Mr. Kirkland - Of course they'll build the roads first to get there.  
4626  
4627 Ms. Dwyer - And we've eliminated any future access to Hoke  
4628 Brady or Lucy Long.  
4629  
4630 Mr. Ransone - Which I've done with the federal government. When I  
4631 bought the property, that's the first person I went to was the National Park  
4632 Service. That was their one request, that I abandon that road, which I've already  
4633 done, and agreed to, and signed off on.  
4634  
4635 Ms. Harris - How many homes are you going to build in the

4636 subdivision?  
4637  
4638 Mr. Ransone - Approximately 20.  
4639  
4640 Ms. Harris - Okay. You don't have any plans with you? I saw the  
4641 subdivision map.  
4642  
4643 Mr. Ransone - There should be a subdivision layout.  
4644  
4645 Ms. Harris - A layout. But I'm talking about a visual image of—  
4646  
4647 Mr. Ransone - The homes that we planned on—  
4648  
4649 Ms. Harris - —of the homes that you're planning to construct.  
4650  
4651 Mr. Ransone - These homes will probably be in the half-million-plus  
4652 price range. With the neighborhood we're trying to work, we're going to try to  
4653 make them sort of similar to that farmhouse look. That's our goal.  
4654  
4655 Ms. Harris - Even with the declining real estate market.  
4656  
4657 Mr. Ransone - Cross your fingers. I've been in this 32 years and I've  
4658 been in the ups and I've been in the downs. Listen, we're so much better off.  
4659 We're going to be fine. This is a great part of the County. I never knew what a  
4660 great part of the County this is, but it's pretty special.  
4661  
4662 Mr. Kirkland - Any other questions? Anyone opposed to this case?  
4663 That concludes the case. Thank you, sir.  
4664  
4665 Mr. Ransone - Thank you very much.  
4666  
4667 **DECISION**  
4668  
4669 Mr. Nunnally - I move we approve it.  
4670  
4671 Mr. Kirkland - Motion is made to approve it. I'll second it.  
4672  
4673 Ms. Dwyer - I can second it, if you want me to.  
4674  
4675 Mr. Wright - I'll second it.  
4676  
4677 Mr. Kirkland - All right, everybody second it. Okay. Ms. Dwyer  
4678 seconded it.  
4679  
4680 Mr. Wright - Oh, I'm sorry, didn't hear it.  
4681

4682 Mr. Kirkland - Motion made and seconded.

4683

4684 Ms. Dwyer - I think this is a very unusual case and it doesn't really  
4685 fall into—Because it's not for in perpetuity going to need to rely on an access  
4686 road and would be without road frontage. This is a very temporary measure that  
4687 allows the developer to continue in a smooth transition in the development of the  
4688 property. Because of its temporary nature, I think it's okay.

4689

4690 Mr. Kirkland - All right. Motion made by Mr. Nunnally, seconded by  
4691 Ms. Dwyer. All in favor say aye. All opposed say no. The ayes have it; the motion  
4692 is approved.

4693

4694 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
4695 Ms. Dwyer, the Board **approved** application **A-004-08, Colmignoli, LLC's**  
4696 request for a variance from Section 24-9 to allow a one-family dwelling to remain  
4697 at 9084 Hoke Brady Road (Parcel 807-676-9122), zoned R-2A, One-family  
4698 Residence District (Varina). The public street frontage requirement is not met.  
4699 The variance was approved subject to the following conditions:

4700

4701 1. This variance applies only to the public street frontage requirement for the  
4702 existing dwelling only. All other applicable regulations of the County Code shall  
4703 remain in force.

4704

4705 2. The owners of the property, and their heirs or assigns, shall accept  
4706 responsibility for maintaining access to the property until such a time as public  
4707 street frontage is obtained for the lot and the street is accepted into the County  
4708 road system.

4709

4710 3. The applicant shall access the property via the Tredinnock Farm subdivision  
4711 once its road system is built and accepted into the County road system.

4712

4713 4. After public roads are constructed within the Tredinnock Farm subdivision and  
4714 accepted into the County road system, there shall be no access from the  
4715 proposed subdivision to Hoke Brady Road or Lucy Long Lane.

4716

4717 5. Any dwelling on the property shall be served by public water and sewer once  
4718 available through the adjacent subdivision.

4719

4720 6. If the property is conveyed prior to the recordation of the final subdivision plat  
4721 for the proposed subdivision, the new owner shall agree to sign the final  
4722 subdivision plat.

4723

4724 7. At the time of recordation of the subdivision plat containing the existing home,  
4725 this variance shall expire.

4726

4727 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

4728 Negative: 0  
4729 Absent: 0

4730

4731

4732 **A-005-08** **WAVERLY M. HALL, III** requests a variance from  
4733 Section 24-9 to build a one-family dwelling at 8359 New Market Heights Lane  
4734 (Parcel 827-684-0932), zoned A-1, Agricultural District (Varina). The public street  
4735 frontage requirement is not met. The applicant has 0 feet public street frontage  
4736 where the Code requires 50 feet public street frontage. The applicant requests a  
4737 variance of 50 feet public street frontage.

4738

4739 Mr. Kirkland - Anyone else with to speak on this case? All right.  
4740 Raise your right hand and be sworn in.

4741

4742 Mr. Blankinship - Do you swear the testimony you're about to give is the  
4743 truth and nothing but the truth so help you God?

4744

4745 Mr. Kirkland - Would you state your name for the record?

4746

4747 Mr. Hall - Waverly Hall.

4748

4749 Ms. Hall - Shirley Hall.

4750

4751 Mr. Kirkland - Okay. What do you request of the Board?

4752

4753 Mr. Hall - We request a variance to build a home without the  
4754 proper street frontage. Based on the evaluation, everything seems okay except  
4755 for the threshold question, which has the land been developed for reasonable  
4756 and beneficial use. If it takes the 10 acres as a whole, the 10 acres was  
4757 purchased about 30 years ago. Two acres were sold off approximately 20 years  
4758 ago and another four about ten years ago. So, I think it's a little more reasonable  
4759 to look at the three lots that we have for the family divide that we were attempting  
4760 to build on, which two-thirds have been developed leaving the one lot behind it  
4761 undeveloped. With no variance, it's pretty much a useless piece of land. A  
4762 variance has been received on this land before, but because of financial issues,  
4763 we were unable to build a house at the time, that variance has expired. So, just  
4764 attempting to get another one built.

4765

4766 Ms. Harris - Have you investigated how costly it would be to  
4767 extend that public road? You're not that far from the public road. Have you  
4768 investigated how costly it would be to extend?

4769

4770 Mr. Hall - No. We have an easement that leads up to our land.  
4771 But now, I have not investigated from that public road up. No, have not.

4772

4773 Mr. Wright - That wouldn't help them any.



4774  
4775 Ms. Harris - I thought it would because—  
4776  
4777 Mr. Wright - They're not on the road.  
4778  
4779 Mr. Hall - The road is paved and we thought it was public. They  
4780 say private. It has speed limits and it's a green sign, so. And it paves and runs  
4781 up past us, does a U-turn, and comes back.  
4782  
4783 Ms. Harris - It has the same name, too, as the public road, right?  
4784  
4785 Mr. Hall - New Market Heights Lane, I believe. It seems to be  
4786 an issue as to where it goes from public to private. I'm not sure where they  
4787 marked that off. I would assume the whole paved area would be the public road,  
4788 but apparently not.  
4789  
4790 Mr. Wright - How long have you owned this property?  
4791  
4792 Ms. Hall - My husband and I bought the property back in 1960.  
4793  
4794 Mr. Wright - Which property are we talking about now, all of it?  
4795  
4796 Ms. Hall - Pardon?  
4797  
4798 Mr. Wright - All of the lots or just this one?  
4799  
4800 Ms. Hall - We bought 10 acres in 1978. I'm sorry. After we  
4801 bought and built on it, a few years later my husband, who is now deceased, he  
4802 sold two acres to my brother-in-law, which left me with 8 acres.  
4803  
4804 Mr. Wright - Is this a family subdivision?  
4805  
4806 Ms. Hall - More or less, yes. After he passed away, the house  
4807 that I was living in at the time I sold with four acres and kept 3 point something  
4808 for myself.  
4809  
4810 Mr. Wright - Where do you live on this?  
4811  
4812 Ms. Hall - Right now, I'm living with my youngest son, which is  
4813 on that middle parcel.  
4814  
4815 Mr. Wright - So, you live on the middle parcel.  
4816  
4817 Ms. Hall - Yes.  
4818  
4819 Mr. Wright - Who lives on the first parcel?

4820  
4821 Ms. Hall - My daughter.  
4822  
4823 Mr. Wright - Your daughter.  
4824  
4825 Ms. Hall - Yes. The 3 point some acres I later divided. I gave  
4826 my daughter an acre, my son an acre, and I kept an acre for myself, which I  
4827 intended to build on. But financially I wasn't able at the time. What I really want  
4828 to do right now is to take that parcel of land, turn it over to this son, and I will  
4829 reside with him.  
4830  
4831 Mr. Wright - What is the size of that?  
4832  
4833 Ms. Hall - Pardon?  
4834  
4835 Mr. Wright - How big is that, 1.3 acres?  
4836  
4837 Mr. Kirkland - Any questions from Board members?  
4838  
4839 Mr. Nunnally - You have read the conditions haven't you, Ms. Hall.  
4840  
4841 Ms. Hall - Pardon?  
4842  
4843 Mr. Nunnally - You have the conditions on this?  
4844  
4845 Ms. Hall - Yes.  
4846  
4847 Mr. Wright - Where do you now live?  
4848  
4849 Ms. Hall - Where do I live?  
4850  
4851 Mr. Wright - No, your son.  
4852  
4853 Mr. Hall - In Richmond, Avondale Avenue, North Side, Ginter  
4854 Park.  
4855  
4856 Mr. Wright - Are you married or would you be there by yourself?  
4857  
4858 Mr. Hall - I'm married with two sons.  
4859  
4860 Mr. O'Kelly - The property across from your daughter's house, isn't  
4861 that County-owned, part of the proposed—  
4862  
4863 Ms. Hall - Yes, it's County-owned. I think eventually it's  
4864 supposed to be part of a park, Dorey Park.  
4865

4866 Ms. Dwyer - Where exactly is that, Mr. O'Kelly?  
4867  
4868 Mr. O'Kelly - Her daughter's house is in this location.  
4869  
4870 Ms. Dwyer - Okay.  
4871  
4872 Mr. O'Kelly - All of this property. It's in Four Mile Creek Park.  
4873  
4874 Ms. Harris - Is that in this complex, Mr. O'Kelly?  
4875  
4876 Ms. Dwyer - The other side of New Market Heights.  
4877  
4878 Mr. Kirkland - Is that at the bottom of the page?  
4879  
4880 Ms. Dwyer - It's very wooded.  
4881  
4882 Mr. O'Kelly - The County property also has frontage on Route 5.  
4883 New Market Heights Lane is currently not a public road.  
4884  
4885 Mr. Wright - Does the County plan to make that a public road?  
4886  
4887 Mr. O'Kelly - That I don't know, Mr. Wright.  
4888  
4889 Ms. Hall - I thought it was a public road.  
4890  
4891 Mr. Wright - It is up to a point.  
4892  
4893 Mr. O'Kelly - A portion of it may be, but not all of it.  
4894  
4895 Ms. Hall - All right. Well, now, the portion that we want to build  
4896 on and have an easement from is a County road.  
4897  
4898 Mr. Blankinship - It's confusing because the County owns the property  
4899 where the road is, but it doesn't own is as road right-of-way.  
4900  
4901 Ms. Hall - It's paved.  
4902  
4903 Mr. Blankinship - Right.  
4904  
4905 Ms. Hall - We have the mail carrier. We have school buses. We  
4906 have a green sign.  
4907  
4908 Mr. O'Kelly - The sign at Route 5 is a black on white background,  
4909 right?  
4910  
4911 Ms. Hall - No, no, it's green. It's green.

4912  
4913 Mr. Blankinship - It is public road right-of-way up to 8321 New Market  
4914 Heights Lane, more or less.  
4915  
4916 Ms. Hall - I wonder if that's not a problem there because at the  
4917 time, they paved that road—I had sold 8321 and the person that had purchased  
4918 that did not want to sell that road frontage to the County.  
4919  
4920 Mr. Blankinship - Right.  
4921  
4922 Ms. Hall - So, the County stopped the pavement at their land.  
4923 Later on, they decided to sell. They made an agreement, I think, with the County  
4924 to do some pavement, paving the driveway or something in their yard. From that  
4925 point on, the County did come back and pave the road, complete road. It goes  
4926 into a cul-de-sac. And like I said, we have school buses that pick up children,  
4927 drop children off. We have the mail carrier.  
4928  
4929 Mr. Kirkland - I see 8321 contains a variance also, Mr. Blankinship?  
4930  
4931 Mr. Blankinship - I suppose it does; it was built in 1981.  
4932  
4933 Ms. Hall - That was my original house.  
4934  
4935 Mr. Wright - How wide is the access road back to this property? It  
4936 says 30 feet, right? Is that correct?  
4937  
4938 Mr. Hall - The easement, yes.  
4939  
4940 Mr. Wright - Easement area out to the other, the semi-public road.  
4941  
4942 Mr. Hall - Yes, 30 feet, ingress and egress.  
4943  
4944 Mr. Wright - Mr. Blankinship, if they made that 50 feet wide, it still  
4945 wouldn't satisfy the requirement because, technically, that's not a public road.  
4946  
4947 Mr. Blankinship - Right.  
4948  
4949 Mr. Wright - Even though it is a paved road.  
4950  
4951 Ms. Dwyer - We're talking about Parcel C, which is—  
4952  
4953 Mr. Wright - I know.  
4954  
4955 Ms. Dwyer - —a second private road. So there are two private  
4956 roads that have—  
4957

4958 Mr. Wright - What I'm saying is if they have a 50-foot—I guess  
4959 they could convey it, a 50-foot access road. They would have 50 feet on a road.  
4960  
4961 Ms. Dwyer - It's only 30 feet now.  
4962  
4963 Mr. Wright - Do you see what I'm saying?  
4964  
4965 Ms. Hall - I was issued a variance on that when I divided it.  
4966  
4967 Mr. Wright - I understand. Yes.  
4968  
4969 Ms. Hall - Like I said, at the time I wasn't financially able to build  
4970 on it.  
4971  
4972 Ms. Dwyer - There have been some Supreme Court cases in the  
4973 meantime that have changed some of the rules that we operate under.  
4974  
4975 Mr. Kirkland - There have been two pretty big ones. Any other  
4976 questions?  
4977  
4978 Ms. Hall - Couldn't I be grandfathered?  
4979  
4980 Mr. Kirkland - No ma'am. Any other comments? Mr. Wright? Ms.  
4981 Harris?  
4982  
4983 Ms. Harris - No.  
4984  
4985 Mr. Kirkland - Anyone else wish to speak on the case? That  
4986 concludes the case.  
4987  
4988 **DECISION**  
4989  
4990 Mr. Nunnally - I move we approve.  
4991  
4992 Mr. Kirkland - Motion made by Mr. Nunnally to approve. Do I have a  
4993 second?  
4994  
4995 Ms. Harris - Second.  
4996  
4997 Mr. Kirkland - Second by Ms. Harris. Do I have any discussion?  
4998  
4999 Mr. Nunnally - I move we approve it because when they get through  
5000 there, he will have a right-of-way to his property. Is that the right one?  
5001  
5002 Mr. Kirkland - No, you're one ahead of us.  
5003

5004 Mr. Nunnally - Oh, I'm sorry.  
5005  
5006 Mr. Kirkland - This is the one where there are three lots stacked up  
5007 against each other. This one right here.  
5008  
5009 Mr. Nunnally - I still move we approve it because it's a family  
5010 subdivision and she wants to move in with her son and the two grandchildren.  
5011  
5012 Mr. Kirkland - Anyone else wish to speak on this?  
5013  
5014 Ms. Dwyer - I have a concern about this, as I have with all these  
5015 cases because it seems that there was reasonable beneficial use of the property  
5016 before the subdivision, as evidenced by the houses that are already there. The  
5017 sub-division was made after the ordinance requiring road frontage, and this is a  
5018 recurring problem.  
5019  
5020 Mr. Kirkland - All right. Motion made by Mr. Nunnally, seconded by  
5021 Ms. Harris. All in favor say aye. All opposed say no. The ayes have it; the motion  
5022 passes.  
5023 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
5024 Ms. Harris, the Board **approved** application **A-005-08, Waverly M. Hall, III's**  
5025 request to requests a variance from Section 24-9 to build a one-family dwelling at  
5026 8359 New Market Heights Lane (Parcel 827-684-0932), zoned A-1, Agricultural  
5027 District (Varina). The public street frontage requirement is not met. The variance  
5028 was approved subject to the following conditions:  
5029  
5030 1. This variance applies only to the public street frontage requirement for one  
5031 dwelling only. All other applicable regulations of the County Code shall remain in  
5032 force.  
5033  
5034 2. Approval of this request does not imply that a building permit will be issued.  
5035 Building permit approval is contingent on Health Department requirements,  
5036 including, but not limited to, soil evaluation for a septic drainfield and reserve  
5037 area, and approval of a well location.  
5038  
5039 3. At the time of building permit application, the applicant shall submit the  
5040 necessary information to the Department of Public Works to ensure compliance  
5041 with the requirements of the Chesapeake Bay Preservation Act and the code  
5042 requirements for water quality standards.  
5043  
5044 4. At the time of building permit application the owner shall demonstrate that the  
5045 parcel created by this division has been conveyed to members of the immediate  
5046 family, and the subdivision ordinance has not been circumvented. Ownership of  
5047 the parcel shall remain in the immediate family for a minimum of five years  
5048 following approval of this variance.  
5049

5050 5. The applicant shall present proof with the building permit application that a  
5051 legal access to the property has been obtained.

5052  
5053 6. The owners of the property, and their heirs or assigns, shall accept  
5054 responsibility for maintaining access to the property until such a time as the  
5055 access is improved to County standards and accepted into the County road  
5056 system for maintenance.

5057  
5058 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
5059 Negative: Dwyer 1  
5060 Absent: 0

5061  
5062

5063 Mr. Kirkland - Mr. Blankinship, do you think we're going to get the  
5064 Board of Supervisor to look at this?

5065

5066 Mr. Blankinship - I am hoping that we can do a work session on that  
5067 next month. I haven't mentioned this to Mr. O'Kelly. We're going to have a fairly  
5068 light agenda next month and I was thinking if we can get some movement from  
5069 upstairs, it would be a good time do a work session.

5070

5071 **UP-007-08 CANTERBURY RECREATION ASSOCIATION**  
5072 requests a conditional use permit pursuant to Section 24-12(b) to expand the  
5073 existing recreation facility at 1300 Pump Road (Parcels 741-743-1510 and 6117),  
5074 zoned R-1, One-family Residence District (Tuckahoe).

5075

5076 Mr. Kirkland - Anyone else wish to speak on this case? If you  
5077 would, sir, raise your right hand and be sworn in.

5078

5079 Mr. Blankinship - Do you swear the testimony you're about to give is the  
5080 truth and nothing but the truth so help you God?

5081

5082 Mr. Fowler - Yes sir.

5083

5084 Mr. Kirkland - State your name for the record.

5085

5086 Mr. Fowler - Mike Fowler.

5087

5088 Mr. Kirkland - What do you request of the Board?

5089

5090 Mr. Fowler - We are—

5091

5092 Mr. Kirkland - Pull the mike up a little. There you go.

5093

5094 Mr. Fowler - Okay. I'm with Canterbury Recreation Association.  
5095 We're a pool and tennis facility and we're looking to do two things, two projects.

5096 One of them is to expand the recreation center by adding a volleyball court and a  
5097 small play area, which basically is just going to be a swing set. We're also  
5098 asking to provide low-volume background music for the members and guests  
5099 during daytime hours. We'd like to ask that these two items be permissible.

5100

5101 Ms. Dwyer - Have you read the conditions for the case?

5102

5103 Mr. Fowler - Yes.

5104

5105 Ms. Dwyer - You are in agreement with those?

5106

5107 Mr. Blankinship - He did bring it to our attention that condition 13 was  
5108 not addressed to allow the music.

5109

5110 Ms. Dwyer - Right.

5111

5112 Mr. Blankinship - Mr. Gidley has drafted the following sentence to add  
5113 at the end of that after it says, "5:00 to 8:30 p.m." "The above restrictions shall  
5114 not preclude the playing of music between 9:00 a.m. and 5:00 p.m. Monday  
5115 through Saturday, and 12:00 noon through 6:00 p.m. on Sunday, so long as the  
5116 music does not exceed a volume of 65 decibels at the property line."

5117

5118 Ms. Dwyer - What were the hours again?

5119

5120 Mr. Blankinship - Nine to five Monday through Saturday and noon to six  
5121 on Sunday.

5122

5123 Ms. Dwyer - That was one of my questions. My other question is  
5124 how in the world are you going to get back there, get your equipment back there  
5125 to fell the trees and build the court?

5126

5127 Mr. Fowler - That's a good question, but we figured that out. I've  
5128 met with contractors. There's an access area to the left of the center where the  
5129 equipment can get around there.

5130

5131 Ms. Dwyer - On the swamp side?

5132

5133 Mr. Fowler - Yes. Between the swamp and the deck.

5134

5135 Ms. Dwyer - Okay. Have you spoken to the neighbor who lives  
5136 directly adjacent to the facility?

5137

5138 Mr. Fowler - No, I haven't spoken with him myself. We have a  
5139 basketball court that's right beside his property and he hasn't complained about  
5140 that. This is actually going to be further away from that.

5141



5142 Ms. Dwyer - It might be a little more visible, though, from his back  
5143 deck. I think there's a big shed that kind of blocks your basketball court. I'm just  
5144 curious if you've made any contact with that person.  
5145

5146 Mr. Fowler - No, I have not.  
5147

5148 Mr. Kirkland - Have we had any complaints on this, Mr. Blankinship?  
5149

5150 Mr. Blankinship - No, and it appears to be an owner-occupied unit, so  
5151 they should have received a notice.  
5152

5153 Ms. Dwyer - What's the distance between the basketball court and  
5154 the property line? Is that about five feet?  
5155

5156 Mr. Fowler - It's roughly five to six feet, yes.  
5157

5158 Ms. Dwyer - Will this new volleyball area be fenced in?  
5159

5160 Mr. Fowler - Yes, it will with a six-foot high fence.  
5161

5162 Ms. Dwyer - I don't have any more questions.  
5163

5164 Ms. Harris - The two photos that we have of the view across the  
5165 parking lot looking north, is that black image there a fence above the shrubbery?  
5166 The photo at the top. No, that's not the picture.  
5167

5168 Mr. Blankinship - Click the little plus sign there, Paul.  
5169

5170 Ms. Dwyer - I think that's the fabric on the tennis court.  
5171

5172 Mr. Blankinship - There we are.  
5173

5174 Ms. Dwyer - Is that what you're talking about?  
5175

5176 Mr. Blankinship - That would be the fabric on the tennis court.  
5177

5178 Ms. Harris - Okay.  
5179

5180 Mr. Fowler - Yes. Those are windscreens on the tennis courts.  
5181

5182 Ms. Harris - Okay. Is your pool covered? Is it outdoor or indoor, I  
5183 should say?  
5184

5185 Mr. Fowler - Outdoor.  
5186

5187 Ms. Harris - It's outdoor. Okay.

5188  
5189 Mr. Fowler - Yes.  
5190  
5191 Ms. Harris - Did you say your neighbor has not complained about  
5192 basketball playing?  
5193  
5194 Mr. Fowler - No, he has not.  
5195  
5196 Ms. Harris - Okay. Aren't 65 decibels kind of loud?. I'm thinking  
5197 about the Universoul Circus. That was their max and neighbors complained  
5198 about that. Isn't that sort of loud?  
5199  
5200 Mr. Fowler - Are you talking about the music?  
5201  
5202 Ms. Harris - Yes.  
5203  
5204 Mr. Fowler - Actually, we're not even going to put any of that  
5205 around this new volleyball court. This is just in the existing pool area. We already  
5206 have the amplified sound equipment, but the letter I have from way back in 1998  
5207 says that we're not allowed to play any music except the four times a year that  
5208 we're allowed to do that. We're just looking for some really low-volume  
5209 background music that can only be heard inside the pool area.  
5210  
5211 Mr. Kirkland - So there won't be any amplification or speakers out at  
5212 the volleyball court?  
5213  
5214 Mr. Fowler - No. We're not going to put any out there.  
5215  
5216 Ms. Dwyer - It's just going to be around the pool area. Maybe we  
5217 should specify that in the conditions.  
5218  
5219 Mr. Kirkland - Yes, I think we should.  
5220  
5221 Mr. Blankinship - I'm sorry, specify what?  
5222  
5223 Ms. Dwyer - That the music will just be around the pool area and  
5224 not elsewhere.  
5225  
5226 Mr. Fowler - That's right.  
5227  
5228 Ms. Dwyer - The source of the music will be limited to the pool  
5229 area. There might be a better way to say that because the whole thing is  
5230 arguably a pool area. But around the pool itself and the concrete deck.  
5231  
5232 Mr. Fowler - Yes, the concrete deck would be a good boundary to  
5233 specify.

5234  
5235 Ms. Dwyer - I'm not clear on the 65 decibels and just how loud that  
5236 is, Mr. Blankinship.  
5237  
5238 Mr. Blankinship - I'm looking at a table here that I just found online, just  
5239 the top link on Google. It has living room music at 76 decibels. Now, I don't know  
5240 whose living room that is. Radio or TV, a vacuum cleaner at 70 decibels. A cash  
5241 register at 10 feet is 65 to 70 decibels. Electric typewriter at 10 feet, 64 decibels.  
5242 Conversation that have at 60 decibels. Again, that can be—  
5243  
5244 Ms. Dwyer - All right, that sounds reasonable.  
5245  
5246 Ms. Harris - Inside and outside noises. Sometimes when it's  
5247 outside it's magnified.  
5248  
5249 Ms. Dwyer - I'm sure the children's voices are louder than that.  
5250  
5251 Mr. Blankinship - Right.  
5252  
5253 Mr. Fowler - Yes. As a matter of fact, a lot of times during busy  
5254 days, you can't even hear any music over the noise of the kids and the activities  
5255 going on over there. That's going to be a whole lot louder than any music will be.  
5256  
5257 Mr. Kirkland - All right. Any other questions? Anyone else wish to  
5258 speak? That concludes the case.  
5259  
5260 Ms. Dwyer - Sorry you had to wait.  
5261  
5262 Mr. Fowler - That's okay.  
5263  
5264 Ms. Dwyer - Let's see if I can get all the Tuckahoe cases upfront  
5265 from now on!  
5266  
5267 **DECISION**  
5268  
5269 Ms. Dwyer - I move we approve the case.  
5270  
5271 Mr. Kirkland - Motion made by Ms. Dwyer to approve.  
5272  
5273 Mr. Wright - Second.  
5274  
5275 Mr. Kirkland - Second by Mr. Wright. Any discussion?  
5276  
5277 Ms. Dwyer - I think the additional uses of the volleyball court and  
5278 the swing set and the soft music is a reasonable addition to the use that's already  
5279 at this property. There have been no complaints and I don't see that it will

5280 negatively affect the health, safety, and welfare of the neighborhood.

5281

5282 Mr. Blankinship - Does the motion include the condition as amended  
5283 here in the record?

5284

5285 Ms. Dwyer - Yes. That amendment is to condition 13 that says the  
5286 above restriction will not prohibit music during the hours of 9 to 5 Monday  
5287 through Saturday and 12 to 6 on Sunday in the pool and concrete deck area, and  
5288 that the noise level of the music will not exceed 65 decibels at the property line.

5289

5290 Mr. Kirkland - Motion made by Ms. Dwyer, seconded by Mr. Wright.  
5291 All those in favor say aye. All those opposed say no. The ayes have it; the  
5292 motion's been approved.

5293

5294 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by  
5295 Mr. Wright, the Board **approved** application **UP-007-08, Canterbury Recreation**  
5296 **Association's** request for a conditional use permit pursuant to Section 24-12(b)  
5297 to expand the existing recreation facility at 1300 Pump Road (Parcels 741-743-  
5298 1510 and 6117), zoned R-1, One-family Residence District (Tuckahoe), subject  
5299 to the following conditions:

5300

5301 1. This conditional use permit applies only to the installation of one volleyball  
5302 court and a children's playground. All other applicable regulations of the County  
5303 Code shall remain in force.

5304

5305 2. At the time of building permit application, the applicant shall submit the  
5306 necessary information to the Department of Public Works to ensure compliance  
5307 with the requirements of the Chesapeake Bay Preservation Act and the code  
5308 requirements for water quality standards.

5309

5310 3. On-site parking must be provided. The parking lot, driveways, and loading  
5311 areas shall be subject to the requirements of Section 24-98 of Chapter 24 of the  
5312 County Code.

5313

5314 4. Only the improvements shown on the plot plan filed with the application may  
5315 be constructed pursuant to this approval. Any additional improvements shall  
5316 comply with the applicable regulations of the County Code. Any substantial  
5317 changes or additions to the design or location of the improvements may require a  
5318 new use permit.

5319

5320 5. The property shall be maintained in a park-like condition and operated in a  
5321 quiet manner without creating a nuisance to the surrounding neighborhood.

5322

5323 6. All facilities shall be operated on a non-profit basis and only be open for use  
5324 by members and their guests.

5325

- 5326 7.. If additional lighting is planned for the volleyball court and children's  
5327 playground, a detailed lighting plan shall be submitted to the Planning  
5328 Department with the building permit for review and approval.  
5329
- 5330 8.. All exterior lighting shall be shielded to direct light away from adjacent  
5331 property and streets.  
5332
- 5333 9. All proposed improvements must comply with all applicable Public Works plan  
5334 of development requirements.  
5335
- 5336 10. The site is located within a 50/10 detention and must comply with applicable  
5337 regulations.  
5338
- 5339 11. The applicant shall request the Department of Public Works locate any  
5340 wetlands that would be impacted by the proposed project. The applicant shall  
5341 also obtain any permits required by the Corps of Engineers and the Department  
5342 of Environmental Quality.  
5343
- 5344 12. The hours of operation shall be limited to 8:00 a.m. to 10:00 p.m. Monday  
5345 through Saturday and 12:00 noon to 10:00 p.m. Sunday. The hours of operation  
5346 may be extended to 11:00 p.m. four times each season, only on weekends or  
5347 holidays, for parties open only to members and their guests. In addition, the  
5348 hours of operation may be extended four times each season for dual swim  
5349 meets. Meets shall end by 11:45 p.m., and the property shall be closed by 12:00  
5350 midnight.  
5351
- 5352 13. [AMENDED] Up to four times each year, public address systems, starter  
5353 guns and similar equipment may be used at swimming meets, but at no other  
5354 time except for emergency purposes. During swim meets the applicant shall  
5355 provide traffic safety measures satisfactory to the Department of Public Works  
5356 and the Division of Police. This shall include, at a minimum, traffic control on  
5357 Pump Road from 5:00 p.m. to 8:30 p.m. The above restrictions shall not preclude  
5358 the playing of music in the area of the pool and concrete deck between 9:00 a.m.  
5359 and 5:00 p.m., Monday through Saturday, and between 12:00 noon and 6:00  
5360 p.m. on Sunday. The volume of music shall not exceed 65 dB at the property  
5361 line.  
5362
- 5363 14. The site's existing landscaping, including that shown on the previously  
5364 approved landscape plan shall be maintained.  
5365
- 5366 15. A chain link fence at least six feet in height shall be maintained completely  
5367 around the perimeter of the tennis courts.  
5368
- 5369 16. Sufficient illumination for safety and security purposes shall be provided on  
5370 the pool area after daylight hours whenever there is water in the pool.  
5371

5372 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 5373 Negative: 0  
 5374 Absent: 0

5375  
 5376

5377 **A-006-08 WILLIAM A. WILLIAMS, JR.** requests a variance  
 5378 from Section 24-94 to allow the existing dwelling to remain at 7 Carter Avenue  
 5379 (Sandston) (Parcel 825-716-4677), zoned R-3, One-family Residence District  
 5380 (Varina). The least side yard setback and total side yard setback are not met.  
 5381 The applicant has 2 feet least side yard setback and 21 feet total side yard  
 5382 setback, where the Code requires 12 feet least side yard setback and 30 feet  
 5383 total side yard setback. The applicant requests a variance of 10 feet least side  
 5384 yard setback and 9 feet total side yard setback. (Varina)

5385  
 5386 Mr. Kirkland - All right. Anyone else wish to speak? If you would,  
 5387 please, raise your right hand, everyone, and be sworn in.

5388  
 5389 Mr. Blankinship - Mr. Chisholm, if you'd raise your right hand.

5390  
 5391 Mr. Kirkland - You, too.

5392  
 5393 Mr. Blankinship - Do you swear the testimony you're about to give is the  
 5394 truth and nothing but the truth so help you God?

5395  
 5396 Mr. Chisholm - I do.

5397  
 5398 Mr. Kirkland - All right. State your name for the record.

5399  
 5400 Mr. Chisholm - James A. Chisholm.

5401  
 5402 Mr. Kirkland - What would you like us to do for you?

5403  
 5404 Mr. Chisholm - First of all, I'm having a slight discrepancy on the  
 5405 measurements. I'm sure it's due to the fact that the new plat was faxed and it  
 5406 appears as though—On the southern side it's actually 2.6 feet and it probably  
 5407 looked like 2.0 feet.

5408  
 5409 Mr. Blankinship - We just round to the lowest foot.

5410  
 5411 Mr. Chisholm - All right. Do you want a copy of it?

5412  
 5413 Mr. Blankinship - We have it. We just round it off to the nearest foot.

5414  
 5415 Mr. Chisholm - I live within a mile of this property and I went up there  
 5416 at least a half a dozen times. One neighbor had five cars out front but they never  
 5417 would come to the door. I even tried in the daytime. That was the neighbor on

5418 one side to the north. The neighbor to the south, I discussed the issue with him  
5419 and he's the individual whom it affects the most, Mr. and Mrs. French. He said he  
5420 may come today; he may not. He indicated he didn't have a problem. I have  
5421 three letters here from the three people right across the street.

5422  
5423 Mr. Williams I believe is around 85 years of age. He retired a long time ago, but  
5424 put this house on the market and moved to Arizona. That's the reason he's not  
5425 here today. His good friend, Mr. Deal, is here today. Mr. Williams' wife worked  
5426 for Mr. Deal many years. I don't know if Mr. Deal will need to say anything or not,  
5427 but if there's anything I don't know, I'm sure he knows the answer.

5428  
5429 I'll just very briefly summarize the facts. The house was built in 1949. In 1951,  
5430 Mr. and Mrs. Stanley got a variance to add a garage. The variance stated that  
5431 the garage that was built was to be five feet from the southern property line. It  
5432 was built in 1971 and they sold it to Mr. and Mrs. Williams. They got a plat, but  
5433 unfortunately didn't—I suppose they were looking for encroachment and didn't  
5434 realize that there was a setback violation. They moved in in 1971 and are now  
5435 selling the property. Of course, this problem will hold up or prevent the sale. It  
5436 could cause some problems. It was about 57 years between the time that the  
5437 setback was violated and the current time.

5438  
5439 I took a close look at the standard for review of variation applications as set forth  
5440 in the instructions. I have also read the Cochran case ever so carefully. Forgive  
5441 me if I'm stating something that you each are very much aware of, but that case  
5442 does state therein that in certain circumstances threshold circumstances do not  
5443 apply. If you look at the Code, there are different alternatives or different  
5444 sections that are pertinent. It'll say one will apply or another and sometimes  
5445 "and." In 15.2-2309, there is an exception to this threshold requirement, which  
5446 the Cochran case actually addresses. One of the individuals requesting a  
5447 variance in that case really requested two variances. One was to relocate a  
5448 structure and the other had to do with an existing garage. The maximum size of  
5449 that accessory building was supposed to be 500 square feet and it was 528  
5450 square feet. I have highlighted the pertinent sections of the Cochran case. The  
5451 Code basically stated in that case that even though it was approved by the Board  
5452 of Zoning or the Zoning Officer, they approved that and said that this was a  
5453 variance which was intended to bring the existing garage into conformity with the  
5454 Zoning Ordinance. They weren't asking for any special favors

5455  
5456 If one were to look very carefully at the Code, there are two different standards of  
5457 hardship that are set forth therein. One talks about—Let's see if I can find it here  
5458 right quick. One talks about undue hardship and the other talks about—let's  
5459 see—hardship approaching confiscation. The circumstances that we have right  
5460 here—As I see it and I hope you will agree, we have a situation. I'm going to  
5461 read the pertinent sections of the Code and leave out those that are not  
5462 pertinent. "When a property owner can show that his property was acquired in  
5463 good faith and by reason of..." Well, first it says topographical conditions or

5464 other extraordinary situations, which I believe applies here. The strict application  
5465 of the terms of the ordinances would affectively prohibit or unreasonably restrict  
5466 the utilization of the property. That leaves out the section of that paragraph that  
5467 talks about hardship approaching confiscation. Then we go down to the next  
5468 three requirements imposed upon the Board in their finding. It talks about undue  
5469 hardship, not hardship approaching confiscation. What is undue hardship?  
5470 Well, it's unexpected and maybe unreasonable, not approaching confiscation by  
5471 any means. It has to not be shared by other people in the area, other property  
5472 owners and it will not be of substantial detriment to adjacent property owners.  
5473 None of these people even knew about it. They were kind of surprised and no  
5474 one had the least concern about it. In the Cochran case, if you do read it  
5475 carefully, it says that the Court recognized this other alternative.  
5476

5477 The garage containing 528 square feet was built in 1972. It exceeded the 500  
5478 square feet. The Zoning Administrator had no objections to a variance to the  
5479 extent of 28 square feet needed to bring the existing garage into conformity with  
5480 the zoning ordinances. The BZA granted the variance to bring the garage into  
5481 conformity, but denied the remainder of the Pennington's request on the ground  
5482 that no hardship existed. Basically, we had two types of hardship, one a lot  
5483 greater than the other.  
5484

5485 We're not asking, of course, that the Board accommodate a convenience or a  
5486 special favor to allow the client to do something. We feel like it's a real hardship  
5487 to do something that has not been done yet. We are simply asking that it be  
5488 allowed to continue to exist as it has been for about 57 years. A lot of these  
5489 cases have to do with creating a problem that didn't exist before, not some  
5490 extraordinary circumstances where something has been in existence for many,  
5491 many years.  
5492

5493 Mr. Kirkland - Mr. Chisholm, can I ask you a question?

5494  
5495 Mr. Chisholm - Yes sir.  
5496

5497 Mr. Kirkland - This garage that was approved, was it attached at the  
5498 time it was approved? It looks to me that there's an addition between the  
5499 existing main dwelling tying to this garage.  
5500

5501 Mr. Chisholm - I believe it was a breezeway in between.  
5502

5503 Mr. Kirkland - That was put in when?  
5504

5505 Mr. Chisholm - I have no idea.  
5506

5507 Mr. Kirkland - I can see how the County would have approved the  
5508 garage way back then not being attached.  
5509



5510 Mr. Chisholm - I have a copy of the Williams' plat when they  
5511 purchased the property and at that time, it was one complete structure.  
5512

5513 Mr. Blankinship - The drawing that's included with your package, the  
5514 hand drawing, is from the 1951 variance case. It shows the breezeway and the  
5515 garage.  
5516

5517 Mr. Kirkland - That says a breezeway.  
5518

5519 Mr. Blankinship - Right. Since the breezeway is wider than 10 feet, it  
5520 was considered to be an attached garage and that's why they needed the  
5521 variance to be 5 feet from the property line.  
5522

5523 Ms. Dwyer - Otherwise, they wouldn't have needed the variance.  
5524

5525 Mr. Blankinship - Right.  
5526

5527 Ms. Dwyer - A detached garage could have been put there.  
5528

5529 Mr. Wright - Could they change the breezeway to 10 feet?  
5530

5531 Mr. Chisholm - I have a copy of the plat, which the Williams' had  
5532 prepared, a survey they had done when they bought the property in '71. It shows  
5533 a breezeway being enclosed and it being just one complete structure.  
5534

5535 Mr. Wright - What is the situation now? Is that being used as part  
5536 of the garage? How wide is that breezeway area?  
5537

5538 Mr. Blankinship - Can we go on the photos, Paul? That's the front. The  
5539 rear photo also shows a rear fence.  
5540

5541 Mr. Kirkland - The breezeway looks a lot wider than 12 feet.  
5542

5543 Mr. Blankinship - It's really part of the dwelling now. It's been  
5544 incorporated into the dwelling.  
5545

5546 Mr. Chisholm - I think it even has a fireplace now.  
5547

5548 Mr. Wright - When was that changed, do we know?  
5549

5550 Mr. Chisholm - I have no idea. All I know is it was there in '71  
5551 because the plat showed it as being there in '71.  
5552

5553 Mr. Wright - So you know that it was changed prior to '71.  
5554

5555 Mr. Chisholm - Yes sir. My clients wouldn't have had anything to do

5556 with it.  
5557  
5558 Mr. Wright - Did they obtain a building permit to do that? We don't  
5559 know, do we?  
5560  
5561 Mr. Chisholm - That would be something Mr. Penley would have  
5562 done.  
5563  
5564 Mr. Wright - Do we have anything in the record on that, Mr.  
5565 Blankinship?  
5566  
5567 Mr. Blankinship - I don't remember seeing anything, but that's not to  
5568 say there wasn't anything.  
5569  
5570 Mr. Wright - They should have obtained a building permit,  
5571 shouldn't they?  
5572  
5573 Mr. Blankinship - They should have, yes.  
5574  
5575 Mr. Wright - Then that would have brought the issue up.  
5576  
5577 Mr. Blankinship - Not necessarily since that work isn't in the setback.  
5578 Just improving the breezeway itself might not have brought up this other issue.  
5579  
5580 Mr. Wright - Yes, but enclosing the breezeway would change the  
5581 requirement as to the distant from the rear yard line, wouldn't it, for the garage?  
5582  
5583 Mr. Blankinship - No. Because the breezeway was 12 feet wide, it's  
5584 always been considered as an attached accessory structure.  
5585  
5586 Mr. Wright - So, that wouldn't change anything.  
5587  
5588 Mr. Blankinship - Correct.  
5589  
5590 Mr. Kirkland - I'm sorry to interrupt you.  
5591  
5592 Mr. Chisholm - Well, failure to grant the variance would produce quite  
5593 a hardship on Mr. Williams. He is retired. I guess it would have to be torn down. It  
5594 is part of the actual house itself now. It would involve, I suppose, not only tearing  
5595 it down but doing so in such a fashion as to make the remainder of the house  
5596 aesthetically appealing and not destroy it. You might have to take the breezeway  
5597 with it; I'm not really sure. Tearing it down would be incredibly expensive. In  
5598 turn, it would decrease the property value substantially. I don't know if it would  
5599 \$40,000, \$50,000, I just don't know. The current contract is for \$190,000. This  
5600 hardship is not shared by any surrounding properties that I'm aware of. I don't  
5601 know any reason why the variance would be of any substantial detriment to any

5602 of the adjoining property owners. We certainly have undue hardship.  
5603  
5604 Mr. Nunnally - Mr. Chisholm, was this breezeway put on by Mr.  
5605 Penley or was it put on by Mr. Williams?  
5606  
5607 Mr. Chisholm - As I indicated, sir, I have the 1971 plat here that the  
5608 Williams had. It was actually attached and recorded with their deed. It was  
5609 existing at that time. The Penley's built it. I understand he was a builder.  
5610 Somebody said he was on the Board of Zoning Appeals, too. He would have  
5611 had to get a permit. Would you like to see this? My clients had nothing to do  
5612 with it. Whether something was issued—  
5613  
5614 Mr. Nunnally - Mr. Williams, when he sold this property, they picked  
5615 it up on a mortgage survey?  
5616  
5617 Mr. Chisholm - It hasn't been sold; the contract is pending. When I  
5618 got a copy of the deed and looked at it, I immediately questioned it. Then, with  
5619 the help of Mr. Blankinship and his staff, I went back to see if we could find a  
5620 variance. We did find a 1951 variance, but the problem is, the variance was for  
5621 five feet and I guess the 2.6 feet setback on the side lot line.  
5622  
5623 Mr. Kirkland - So, the builder kind of messed up.  
5624  
5625 Mr. Chisholm - Yes.  
5626  
5627 Mr. Wright - Mr. Blankinship, did the County have any  
5628 responsibility or does it after we approve something like this to go back and  
5629 check it after it's completed to see that it complies with what was granted?  
5630  
5631 Mr. Blankinship - We do that today, at least for anything that requires a  
5632 Certificate of Occupancy. If it's anywhere near the line, we require an as-built  
5633 survey before we'll sign off on the CO so that we're sure that it meets setbacks.  
5634 In 1951, that may not have been done.  
5635  
5636 Mr. Wright - If they had gone back and checked it, they would  
5637 have determined at the time that there was a violation.  
5638  
5639 Mr. Blankinship - I would think so, yes sir.  
5640  
5641 Mr. Wright - If they would have addressed the problem then, we  
5642 wouldn't have to fool with it now.  
5643  
5644 Mr. Blankinship - Exactly. Although, I think you were on the Board  
5645 then, weren't you?  
5646  
5647 Mr. Wright - Oh, no!

5648  
5649 Mr. Blankinship - Mr. Nunnally was, but you weren't.  
5650  
5651 Mr. Wright - I came on the Board in 1972.  
5652  
5653 Mr. Blankinship - My mistake.  
5654  
5655 Mr. Kirkland - Any other questions for Mr. Chisholm? Anyone else  
5656 wish to speak?  
5657  
5658 Mr. Chisholm - Mrs. Holley, she's a broker or realtor who sold the  
5659 house and is very much aware of property values.  
5660  
5661 Ms. Holley - I'm Charlotte Holley. Obviously, Mr. Williams has  
5662 really had a difficult time. He has a piece of property that we have a contract on  
5663 that's actually not marketable at this time because of the side line setback. We  
5664 have a buyer and they have a loan, but we cannot close. When Mr. Williams  
5665 bought the property, this was not told to him at the time, it was not picked up. He  
5666 had a title search done and the title company didn't pick it up. He recently lost  
5667 his wife and that's why he's in Arizona with his family. He had his house  
5668 refinanced to pay off some debts and it was also re-done at that time, and the  
5669 title company did not pick up any information in regard to the side line not being  
5670 correct either.  
5671  
5672 I personally went down to the County with the help of, is it Paul?  
5673  
5674 Mr. Blankinship - Yes.  
5675  
5676 Ms. Holley - And looked through a hand register to find the  
5677 variance myself. When I found it, I thought we had found what we needed, but  
5678 obviously it didn't conform to what we're actually supposed to have. We saw the  
5679 five foot. Now, I don't know if Mr. Penley overbuilt the garage or if he  
5680 underestimated the size of his frontage; I have no clue. It must not have been  
5681 checked after it was done because it would have been picked up at that time if it  
5682 had been a problem. The other thing is that in this neighborhood, this is a whole  
5683 new turnover neighborhood. Everybody that lives in this neighborhood now are  
5684 not residents that were there when Mr. Penley built the house or when Mr.  
5685 Williams actually bought the house. We've never had a complaint. I have not and  
5686 Mr. Chisholm did not. We spoke to the neighbors. None of them knew that it  
5687 wasn't in compliance and conformity with the zoning. So, it's not as if we were  
5688 telling them something that they were already aware of. They did not know this  
5689 and there were no complaints about it. There has not been anybody here today  
5690 to say that they were against this variance. What we're actually asking for is a  
5691 new variance to comply with what the other variance really should have complied  
5692 with. We're just trying to get that done.  
5693

5694 Mr. Kirkland - Thank you, ma'am. Any questions for Ms. Holley? All  
5695 right. Thank you.  
5696  
5697 Ms. Holley - Thank you.  
5698  
5699 Mr. Kirkland - Anyone else wish to speak? Come on up to the front,  
5700 sir.  
5701  
5702 Mr. French - Good afternoon. My name is Gary French. I live at 5  
5703 Carter Avenue. Next door. I don't have a problem with this building being too  
5704 close to my property or not having enough space between them, but I do have a  
5705 concern. My concern is that there is natural gas running to this house. Their  
5706 meter is now 10 to 12 feet closer to my master bedroom than what it should have  
5707 been if the variance had been complied with in the beginning. There are gas  
5708 appliances inside the garage. The chimney that you see on the breezeway is not  
5709 a fireplace that you would have in a house; that is an outside grill which was, at  
5710 one time, charcoal. Now it has a gas line running to it. My concern would be to  
5711 just ask the Board here if you would go ahead and allow them to have the house  
5712 as it sits, don't tear it down, but maybe move that gas meter or at least have a  
5713 licensed gas plumber to come by and check out the house for permitting and the  
5714 old plumbing situation that has to do with that gas. That's about all I have to say  
5715 on that.  
5716  
5717 Mr. Wright - Where is this gas meter located?  
5718  
5719 Mr. French - If you look at the picture right now, the little hand  
5720 that's sitting right on—  
5721  
5722 Mr. Wright - Right on the side of the garage. I see it.  
5723  
5724 Mr. French - Yes sir.  
5725  
5726 Mr. Blankinship - Do you know when that was added?  
5727  
5728 Mr. French - No sir. Like the young lady said, there has been a lot  
5729 of turnover here. I met Mr. Williams and he was a World War II vet. I do  
5730 appreciate that. He had given me a story that the person who owned the house  
5731 that I purchased in August was a developer. The person, Mr. Penley, was a  
5732 contractor. Mr. Penley and Mr. Wildersmith from 5 Carter Avenue and 7 Carter  
5733 Avenue actually helped develop Sandston community. It looks to me that the  
5734 breezeway has been like that ever since the day they applied for the permit or  
5735 the variance.  
5736  
5737 I just noticed something that's kind of curious here. The variance was requested  
5738 on February 27<sup>th</sup> of 1951. It must have been hand-delivered because it was  
5739 received on March 1, 1951. There was no such thing as Internet; it was all mail.

5740 The variance was granted for five feet on March 15, 1951. That's pretty fast.  
5741 That's really fast. Today, a piece of paper can go across the state probably in  
5742 about three days. I received my notice to be here a month ago. I talked to this  
5743 gentleman right here Monday night when I received all this paperwork explaining  
5744 everything. So, that was kind of curious to me and it brought me to the point of  
5745 saying that Mr. Penley was the contractor and Mr. Wildersmith was the  
5746 developer. That's probably how this all came about. The house that I'm presently  
5747 in was built in 1955, not 49, so that's probably where the encroachment came  
5748 about.

5749  
5750 Mr. Nunnally - What is that, natural gas?

5751  
5752 Mr. French - That is natural gas. When I spoke to the gentleman  
5753 right here—I can't remember his name; I'm terrible with that—I told him that from  
5754 my knowledge of natural gas, it comes the City of Richmond. Of course, the bill  
5755 goes to the City of Richmond. My knowledge of this a while back is that Henrico  
5756 County doesn't sell natural gas.

5757  
5758 Mr. Kirkland - We don't.

5759  
5760 Mr. French - And I don't think they ever will. They may but may not.  
5761 So, the City had to come and put that meter in. The City had to notify the County  
5762 that the meter was there. The setback problem I don't have a problem with, but if  
5763 a fire truck had to come between those two house to put out a fire in the  
5764 backyard behind me or something like that and they didn't know that gas meter  
5765 was there, we have another problem. If the fire department doesn't even know  
5766 that there's natural gas in that place, we have another problem. That's why I'm  
5767 requesting that the gas meter either gets moved or we get an inspection of that  
5768 gas system in there. I do know that there are gas appliances inside that garage.

5769  
5770 Ms. Dwyer - Do we know where the gas line is? Does it come  
5771 from the street?

5772  
5773 Mr. French - Yes ma'am. If you would go back to the front of the  
5774 property.

5775  
5776 Ms. Dwyer - Looks like the yellow flags are—

5777  
5778 Mr. French - Those yellow flags. See the little flag that's right there  
5779 to the left of that? Down toward the bottom. The yellow flags are the gas line.  
5780 The little pink flag that you see there on the left of the picture that looks like a  
5781 piece of paper, that is the actual post that's in the ground saying that's the  
5782 property line.

5783  
5784 Ms. Dwyer - So, this gas line is within his own.

5785

5786 Mr. French - The gas line is on his property, yes. But then again,  
5787 like I said, this puts his gas meter x-number of feet closer to my master bedroom  
5788 than where it should be.  
5789

5790 Ms. Dwyer - It's really 2 feet 6 inches closer than it would have  
5791 been if it was built properly.  
5792

5793 Mr. French - Yes, if they had stayed with the variance.  
5794

5795 Ms. Dwyer - Right.  
5796

5797 Mr. French - Absolutely. Like I said, I don't have a complaint with  
5798 the setback or anything. It's just that in my line of work, I mess with methane gas,  
5799 natural gas, diesel fuels and stuff like that. It's a highly volatile substance.  
5800

5801 Ms. Dwyer - So, if we were to have it inspected, what are you  
5802 specifically asking for?  
5803

5804 Mr. French - That we get a certificate or something like that there  
5805 that the County is aware that there is natural gas there on the site. Apparently,  
5806 the County wasn't aware that they were three feet over their variance. They  
5807 weren't aware of a few other things. I don't even know if the gas appliances that  
5808 have been applied to this residence have a certificate from a gas plumber saying  
5809 that they were installed properly. I'm a pipe fitter and I weld and such for a  
5810 company. I can install this stuff, I can do it, I know how to do it, but I'm not  
5811 certified to do it. I would have to pay somebody to come do something that I  
5812 could do. That's what I'm asking, because if there's a leak over there and  
5813 somebody's in the garage working on a car or smoking a cigarette or something  
5814 like that, we have an explosion that can take out that house, kill somebody, and  
5815 damage mine or hurt me and my family.  
5816

5817 Ms. Harris - Where do you want it moved?  
5818

5819 Mr. French - I had made a suggestion that if you go back to the  
5820 back of the house just to the other side of the door, there's an access door right  
5821 there on the back of the garage. If you moved it to just the other side of that  
5822 door, it would be out of sight, out of mind, and it looks like a very good place to  
5823 put it, or on the right-hand or left-hand side of the door. You're not talking about  
5824 moving it hundreds of feet of anything. You're talking about maybe 30 foot of  
5825 piping and maybe a day's worth of work. What I understood speaking with the  
5826 lawyers and everyone that called me on Wednesday morning, was that the  
5827 County wants \$2,000 to move it. They don't even want to do anything to it. But  
5828 we have to get a contractor in there to do it, to move it. That might cost another  
5829 thousand dollars or so. He said we could talk about and he'd call me back later  
5830 on Wednesday evening. He said it cost too much, we're not going to move it. I  
5831 said okay, all I can do is come to the Board meeting and voice my opinion about

5832 it and see what happens. That's what I'm here doing. I'm not jumping up and  
5833 down, screaming and hollering or anything else like that. It's just that, like I said, I  
5834 don't have a problem, I have a concern.

5835

5836 Mr. Kirkland - Thank you, sir.

5837

5838 Mr. French - Thank you.

5839

5840 Mr. Nunnally - She's the applicant.

5841

5842 Mr. Kirkland - I thought the lawyer would have to rebut, Mr.  
5843 Chisholm. Okay, if you'd like to rebut, that would be fine, ma'am. Go on.

5844

5845 Mr. Chisholm - Mr. French, I'm sorry I didn't recognize you.

5846

5847 Mr. French - [Off mike.] That's okay, that's all right. I took a  
5848 shower.

5849

5850 Mr. Chisholm - When I first talked to—

5851

5852 Mr. Kirkland - If you would, the microphone.

5853

5854 Mr. Chisholm - I'm sorry. When I first talked to him, this wasn't  
5855 mentioned. The second time, it was mentioned. I told him we would certainly go  
5856 look into it and if it wasn't an exorbitant amount of money involved or if it was  
5857 reasonable, we would do it. It wasn't Henrico County that said they would charge  
5858 us money. Mr. Deal on behalf of Mr. Williams spent a day or more calling around  
5859 and checking into it. I understand the City of Richmond charges normally a  
5860 \$2,000 charge if you want to relocate it. The reason I'm told they do it is to  
5861 discourage people from moving the lines. If we moved it, we just move the  
5862 meter, we'd move it around the back where the door is, we run the lines and then  
5863 we'd have to run the line back to where the lines where so it would go into the  
5864 house. I'll let Mr. Deal, if he will, tell you some of the other costs he was told  
5865 about. I can understand the potential problem with it not being properly installed.  
5866 I don't know what was required then. When I had one installed in my house, I had  
5867 to get a permit and we would be delighted to do that. Certainly, if a condition of  
5868 granting the variance would be that it be moved, that's certainly better than  
5869 tearing the garage or any other alternative you might suggest. They don't place  
5870 them right up close to the house. I measured it and it was 16 inches away from  
5871 the house. I suppose they consider it to be a danger. Anyway.

5872

5873 Ms. Holley - I think when this gentleman bought his house back in  
5874 July or August, he had no idea that it was not in compliance. He said he had a  
5875 question about the fire truck if somebody should come in. He has his own  
5876 driveway to the right of this house. This has a double driveway to this house. To  
5877 have to move those, there is a fireplace inside that has gas logs and there is also



5878 a barbeque pit there. This fence line that you see here comes out so if a truck  
5879 were to come in, it would hit the fence line rather than hitting the gas thing there.  
5880 I think that one of the problems we'd have in doing that would be the cost to Mr.  
5881 Williams. The City puts the gas out there and they have to have a right-of-way for  
5882 them. Those little green things you see around there are not the lines for the gas.  
5883 Those green little things you see all around the whole perimeter of the house are  
5884 for those two underground tanks in there. The DEQ has taken care of those and  
5885 doing what they have to do in regard to that.

5886  
5887 When Mr. Williams bought the house, he didn't know about the DEQ and he  
5888 didn't know he had two tanks in the ground. So, not only was he hit by losing his  
5889 wife and having to take care of the mortgage, he was hit with the DEQ for two  
5890 tanks in the ground. Now he's being hit that he bought the house and he found  
5891 out he doesn't comply to the variance that should have been granted. At the time  
5892 that the variance was granted to him to Mr. Penley, we were only looking at a  
5893 little over two feet at that time. I know it's different now, but at the time, it's what  
5894 Mr. Williams should not have had to deal with. So, I'm not sure you can move  
5895 the lines if you have the tanks underneath. You have one in the front and one in  
5896 the back. The City puts them in and they have to have a right-of-way to do that  
5897 across your property and they maintain them. If you have any problem with that,  
5898 somebody will come out and look at it. I don't think Mr. Williams should be  
5899 burdened with having to pay an additional \$3,000 to \$4,000 to come out to do  
5900 something he actually had no idea that he was buying a house that had those  
5901 kinds of problems. That's a very difficult hardship on him.

5902  
5903 Mr. Wright - Let me ask you another question. I see on this  
5904 picture something sticking out of that window, protruding from the window. Is that  
5905 an air conditioner?

5906  
5907 Ms. Holley - That's an air conditioner that's outside of the garage.

5908  
5909 Mr. Wright - Why would you air-condition a garage?

5910  
5911 Ms. Holley - Mr. Williams did framing. Mr. Williams had a frame  
5912 shop. He had heat out there and he had an air conditioner in the window.

5913  
5914 Mr. Wright - He was using it for doing framing or some sort of thing  
5915 like that.

5916  
5917 Ms. Holley - Yes. They made frames for friends, woodworking  
5918 shop. That sort of thing.

5919  
5920 Mr. Wright - Okay. Just curious.

5921  
5922 Mr. Nunnally - Did anybody check with the City of Richmond about  
5923 that gas line?

5924  
5925 Ms. Holley - I did.  
5926  
5927 Mr. Nunnally - They won't do it for free? I know we put in natural gas  
5928 logs and they ran the lines in there.  
5929  
5930 Ms. Holley - They'll do that and they'll come out and check it for  
5931 you if you have a problem because it's actually theirs.  
5932  
5933 Mr. Nunnally - I said they put lines in. They'd run the lines in for us  
5934 and didn't charge us anything, so you might check with them.  
5935  
5936 Mr. Kirkland - Any other questions by Board members?  
5937  
5938 Mr. Deal - I'm John Deal, an attorney and friend of Bill Williams  
5939 and Margaret. Margaret was my secretary for years. Yesterday—  
5940  
5941 Ms. Dwyer - Mr. Deal?  
5942  
5943 Mr. Kirkland - Mr. Deal?  
5944  
5945 Mr. Deal - I can't hear well.  
5946  
5947 Mr. Kirkland - Did you get sworn in?  
5948  
5949 Mr. Deal - No. Here we go.  
5950  
5951 Mr. Blankinship - Do you swear the testimony you're about to give is the  
5952 truth and nothing but the truth so help you God?  
5953  
5954 Mr. Deal - Yes sir, I do. I met with a contractor from Hanover. I  
5955 think his name was DeFazio. I called my plumber that does my office buildings  
5956 and my home, and he recommended me to him. He does a lot of gas work in the  
5957 city, for the City, and other places. We met at the property yesterday and look at  
5958 it. He says, "What's your problem"? He said, "The meter belongs to the City.  
5959 The line to the meter belongs to the City. Everything is working fine. I don't see  
5960 any problem." I said, "Well, the neighbor has voiced concern about the meter."  
5961 And he says, "Well, the City owns it and the City takes care of those. When the  
5962 inspector comes around, he looks at that, etcetera." I mean the meter readers.  
5963 And he said, "What you would have to do if somebody wanted to move that  
5964 around to the back of the garage, you could stand by for the City to tell you that  
5965 they want \$2,000 to come out and move the meter." He said, "Now, they may do  
5966 it for less, but then they may do it for \$2,000." He says, "The City is very willy-  
5967 nilly about this. Then, if you move the meter around back, then my fees to come  
5968 in where the City has reset the meter and run a line back into the house,  
5969 etcetera, would be \$750." So, that's \$2,750 and the time that it takes to get that

5970 done. He said, "I really don't see what your problem is because if you go in the  
5971 City of Richmond, you see these meters between houses that have maybe 30  
5972 feet between them. They're all over the city in very close proximity to adjacent  
5973 properties, etcetera." As I told you earlier, the City may say it's less than that. All  
5974 I know is Mr. and Mrs. Williams are super people. She's died and he's remarried,  
5975 living in Arizona and wants to get on with his life. When the gentleman looked at  
5976 it yesterday, he said, "I don't think anything needs to be done, but I'm not the one  
5977 to determine that, you are." So, that's what I have to say about it. If you folks  
5978 should vote that it's okay for this variance, he has an unmarketable home.  
5979 Bottom line. Any questions that I could answer for you, please.

5980  
5981 Ms. Dwyer - Would this plumber be able to inspect the meter and  
5982 all the piping, all the plumbing that goes into the house to all the appliances?

5983  
5984 Mr. Deal - Ma'am, I can't answer that and the reason I can't is I  
5985 know a lot of times—having to practice law for 42 years—when there's a City  
5986 piece of property, whether it's a gas line or a meter or whatever, that's their  
5987 jurisdiction and whether that plumber would want to even take the responsibility  
5988 of checking those out and telling me, I don't know. I may call him and he'll say  
5989 yeah, I'll be glad to do that.

5990  
5991 Ms. Dwyer - He could certainly inspect the plumbing in the house.

5992  
5993 Mr. Deal - He can inspect the plumbing in the house.

5994  
5995 Ms. Dwyer - To the point where it attaches to the meter.

5996  
5997 Mr. Deal - Yes ma'am, that's not a problem. I'll call him this  
5998 afternoon and go ask him to do that. That is not a problem.

5999  
6000 Ms. Dwyer - The either he or the City could inspect the meter.

6001  
6002 Mr. Deal - And I will call the City and ask them to inspect it and  
6003 give me a letter.

6004  
6005 Ms. Dwyer - Okay.

6006  
6007 Mr. Deal - Yes ma'am. I have no problem with that. Okay.

6008  
6009 Mr. Kirkland - All right.

6010  
6011 Mr. Wright - Let me ask Mr. Blankinship a question, Mr. Chairman.  
6012 If this is denied, what is the next step? Would the County have to proceed to get  
6013 in to tear the garage off, take it down?

6014  
6015 Mr. Blankinship - Well, they came to us; we didn't go to them. We don't

6016 have an enforcement action that's out there pending, but in order to bring the  
6017 property into compliance, yes, either they would have to remove part of the  
6018 garage or they'd have to move that property line.  
6019  
6020 Mr. Kirkland - Does that answer your question?  
6021  
6022 Mr. Nunnally - That thing's been like that for 51 years.  
6023  
6024 Mr. Wright - I'm just trying to get a handle on this and see how this  
6025 thing would work.  
6026  
6027 Mr. Kirkland - Is that okay for you, Mr. Wright?  
6028  
6029 Mr. Kirkland - Sir?  
6030  
6031 Mr. Kirkland - Is that a good answer for you? Like all the other  
6032 ones, right?  
6033  
6034 Mr. Wright - I think the answer is the County would take no action  
6035 to see that something were done, we'd just deny the permit.  
6036  
6037 Ms. Dwyer - And they couldn't sell the house.  
6038  
6039 Mr. Wright - And they can't sell the house.  
6040  
6041 Ms. Dwyer - But that would be—  
6042  
6043 Mr. Wright - The house cannot be sold because it's not saleable in  
6044 its present condition.  
6045  
6046 Mr. Kirkland - All right.  
6047  
6048 Mr. Nunnally - It was sold before like that.  
6049  
6050 Mr. Wright - Yes, but that was before they had somebody  
6051 determine they had a problem.  
6052  
6053 Mr. Nunnally - Yes, but nobody checked it out.  
6054  
6055 Mr. Kirkland - Do you want to discuss all this when we get ready to  
6056 vote?  
6057  
6058 Mr. Chisholm - Can I say one more thing? I have a copy of the  
6059 Cochran case and I highlighted the pertinent portions of it that deal with a case  
6060 where the—  
6061

6062 Mr. Kirkland - Oh, we're familiar with the Cochran case.  
6063  
6064 Mr. Chisholm - All right. And I wrote out the pertinent section of 15.2-  
6065 2309, which I would really appreciate you looking at because I believe it truly  
6066 applies and gives the Board the discretion in cases like that where you have what  
6067 they call—what is the word. Let's see. The property owner has to show that his  
6068 property was acquired in good faith and by reason of an extraordinary situation,  
6069 the strict application of the terms of the ordinance would effectively prohibit or  
6070 unreasonably restrict the utilization of the property. The standard of a hardship,  
6071 undue hardship. That is all that is required. Can I give that to you, Mr.  
6072 Blankinship?  
6073  
6074 Mr. Blankinship - Sure.  
6075  
6076 Mr. Kirkland - Thank you, sir. All right. Anybody else? That's  
6077 concludes the case.  
6078  
6079 Mr. Chisholm - Thank you.  
6080  
6081 Mr. Kirkland - Since everybody is still here from the end, why don't  
6082 we start at the end. Is that all right with you all?  
6083  
6084 Mr. Nunnally - It's all right with me. I move we approve it.  
6085  
6086 Mr. Kirkland - Motion made by Mr. Nunnally to approve A-006-08.  
6087 Do I have a second?  
6088  
6089 Ms. Harris - Second.  
6090  
6091 Mr. Kirkland - Second by Ms. Harris. Any discussion?  
6092  
6093 Mr. Nunnally - The reason I said I approve it is it has been like that  
6094 since 1951. Somebody didn't check it out at that time. When it was sold this  
6095 time, they ran a survey on it and it came up. So, I don't think he should be  
6096 penalized.  
6097  
6098 Mr. Kirkland - Anyone else wish to speak?  
6099  
6100 Ms. Dwyer - I think if it's going to be approved, there should be a  
6101 condition that requires the owner to submit a certificate from a plumber as to the  
6102 serviceability of the gas plumbing in the house and the meter. If the plumber can't  
6103 do the meter, then there needs to be something from the City. I think the  
6104 neighbor has a reasonable concern about the proximity of that gas meter and it  
6105 should be checked. It might be something that would be done in the course of  
6106 selling a house anyway, but I think that we should ask for something in writing.  
6107

6108 Mr. Kirkland - All right. Make that a condition, Mr. Blankinship?  
6109  
6110 Mr. Blankinship - Certainly will.  
6111  
6112 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Ms. Harris. All  
6113 in favor say aye. All opposed say no. The ayes have it; the motion carries. It's  
6114 been approved.  
6115  
6116 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
6117 Mr. Wright, the Board **approved** application **A-006-08, William A. Williams,**  
6118 **Jr.'s** request for a variance from Section 24-94 to allow the existing dwelling to  
6119 remain at 7 Carter Avenue (Sandston) (Parcel 825-716-4677), zoned R-3, One-  
6120 family Residence District (Varina). The least side yard setback and total side yard  
6121 setback are not met. The variance was approved subject to the following  
6122 conditions:  
6123  
6124 1. This variance applies only to the minimum and total side yard setback  
6125 requirements for the existing addition only. All other applicable regulations of the  
6126 County Code shall remain in force.  
6127  
6128 2. [ADDED] Within 30 days the owner shall submit evidence that the gas meter  
6129 and the gas appliances in the garage have been inspected and approved.  
6130  
6131 Affirmative: Kirkland, Harris, Dwyer, Nunnally, Wright 5  
6132 Negative: 0  
6133 Absent: 0  
6134  
6135  
6136 Mr. Kirkland - All right now, let's look at the wonderful minutes.  
6137  
6138 Mr. Nunnally - I have one. I know you're going to like this. On page  
6139 12, line 521. I don't now how he got in here.  
6140  
6141 Mr. Kirkland - Mr. Jernigan snuck in.  
6142  
6143 Mr. Blankinship - Mr. Jernigan?  
6144  
6145 Mr. Kirkland - Mr. Jernigan was at our meeting.  
6146  
6147 Mr. Blankinship - That was creative.  
6148  
6149 Mr. Nunnally - Page 12, 521.  
6150  
6151 Mr. Kirkland - Some of the Planning Commission bled over.  
6152

6153 Ms. Harris - Also on page 12, line 497. Get complaints. There  
6154 should be a "t" in complaints. That's all I have.  
6155

6156 Mr. Kirkland - Anyone else?  
6157

6158 Mr. Wright - I think there's a problem with page 2. Has anybody  
6159 talked about page 2?  
6160

6161 Mr. Kirkland - No, we haven't said anything about page 2.  
6162

6163 Mr. Wright - It starts out and then there's nothing.  
6164

6165 Ms. Harris - What line?  
6166

6167 Mr. Wright - It says, "Do I have a motion to that." To what? I'm  
6168 looking at line 54, 55. I mean, you introduced the case and then it says do I hear  
6169 a motion to that. The in between is left out, isn't it?  
6170

6171 Mr. Gidley - It's right up above it.  
6172

6173 Ms. Harris - Yes. To withdraw without prejudice.  
6174

6175 Mr. Kirkland - Yes. This is a withdrawal without prejudice case.  
6176

6177 Mr. Wright - Okay.  
6178

6179 Mr. Kirkland - And I didn't say that one. My mistake.  
6180

6181 Mr. Wright - I say, the applicant requests. All right, that's it.  
6182

6183 Mr. Kirkland - All right. Any other? If not, do I have a motion to  
6184 approve the minutes as changed?  
6185

6186 Ms. Harris - I so move that we approve the corrected the minutes  
6187 as indicated.  
6188

6189 Mr. Wright - Second.  
6190

6191 Mr. Kirkland - All those in favor say aye. All opposed say no. The  
6192 ayes have it; the minutes are approved.  
6193

6194 On a motion by Ms Harris, seconded by Mr. Wright, the Board **approved as**  
6195 **corrected the Minutes of the February 28, 2008** Henrico County Board of  
6196 Zoning Appeals meeting.  
6197

6198 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

6199	Negative:		0
6200	Absent:		0
6201			
6202			
6203	Mr. Kirkland -	Mr. Blankinship, you said you were going to try to set	
6204		up something next month?	
6205			
6206	Mr. Blankinship -	I'm going to try. We only had one case come in.	
6207			
6208	Mr. Kirkland -	That would be real good.	
6209			
6210	Mr. Blankinship -	And one deferred. We're still hoping that it will be	
6211		withdrawn. Otherwise, we'll meet from 9 to 9:05 next month.	
6212			
6213	Mr. Kirkland -	Motion to adjourn. All right. Second? All those in	
6214		favor say aye. All those opposed say no. The ayes have it; the meeting's	
6215		adjourned.	
6216			
6217			
6218			
6219			
6220		Richard Kirkland, CBZA	
6221		Chairman	
6222			
6223			
6224			
6225			
6226			
6227		Benjamin Blankinship, AICP	
6228		Secretary	