

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, MAY, 22 2008, AT 9:00 A.M., NOTICE HAVING**
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH MAY 1, 2008 AND**
6 **MAY 8, 2008.**

7
Members Present: Richard Kirkland CBZA, Chairman
Helen E. Harris
James W. Nunnally
R. A. Wright

Members Absent: Elizabeth G. Dwyer, Vice-Chairman

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

8
9 Mr. Kirkland - Ladies and gentlemen, welcome to the May 22, 2008,
10 Board of Zoning Appeals meeting. Before we get started, could we please stand
11 for the **Pledge of Allegiance to the Flag of Our Country**. Fellow Board
12 members, we have a guest here this morning, Ms. Pollard from King and Queen
13 County. I met her last week at the conference that we had in Charlottesville.
14 She’s in the program with the classes and she needs to come to a BZA meeting,
15 so she picked Henrico County.

16
17 Mr. Wright - Nice to have you.

18
19 Mr. Kirkland - Mr. Blankinship, would you read the rules.

20
21 Mr. Blankinship - Good morning, Mr. Chairman, members of the Board,
22 ladies and gentlemen. The rules for this meeting are as follows. Acting as
23 secretary, I will call each case. While I’m speaking, the applicant should come
24 down to the podium. We will ask everyone who intends to speak on that case
25 to stand and be sworn in. Then the applicant will give their testimony. Then
26 anyone else who wishes to speak will be given the opportunity. After everyone
27 has spoken, the applicant and only the applicant will have an opportunity for
28 rebuttal. After everyone has given their testimony and the Board has asked
29 questions, they will take the matter under advisement, and they will render all of
30 their decisions at the end of the meeting. So, if you wish to hear their decision on
31 a specific case, you can either stay until the end of the meeting, or you can check
32 the Planning Department website this afternoon—we usually update it within
33 about a half an hour of the end of the meeting—or you can call the Planning
34 Department this afternoon. This meeting is being recorded, so we will ask

35 everyone who speaks to speak directly into the microphone on the podium, state
36 your name, and please spell your last name so we get it correctly in the record.
37 Finally, out in the foyer there are binders that contain the staff report for each
38 case, including the conditions that have been recommended. Particularly for the
39 applicants on use permit cases, it's very important that you be familiar with those
40 conditions.

41

42 Mr. Kirkland - Do we have any requests for deferrals or
43 withdrawals?

44

45 Mr. Blankinship - Not from the applicants. We do have one case where
46 opponents are going to ask you to defer. We'll come to that.

47

48 Mr. Kirkland - Okay. If you would, call the first case.

49

50 **UP-008-08** **KIM S. BARTULEWICZ** requests a conditional use
51 permit pursuant to Section 24-52(a) to operate a private noncommercial kennel
52 at 11444 Dublin Road (McDonalds Small Farms) (Parcel 745-764-7874), zoned
53 A-1, Agricultural District (Three Chopt).

54

55 Mr. Blankinship - Mr. Chairman, let me point out an error in your staff
56 report on this case. I spoke to someone at the applicant's residence and was
57 told there is a total of seven dogs. The applicant then contacted us directly and
58 corrected that. It is ten dogs. So, where you have seven dogs in the staff report
59 and in the condition, it should read ten.

60

61 Mr. Kirkland - All right. If you would, raise your right hand and be
62 sworn in.

63

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

66

67 Ms. Bartulewicz - Yes I do.

68

69 Mr. Kirkland - Is anyone else going to speak in opposition or for this
70 case? All right, ma'am, if you would state your name for the record and tell us
71 what you want.

72

73 Ms. Bartulewicz - I'm Kimberly Singleton Bartulewicz. What I would like
74 is that I have ten dogs. You'll have to excuse me, I'm really nervous. One's a
75 chocolate lab, and I have nine Chihuahuas. I had two Chihuahuas and they had
76 babies, a litter of five, making seven. Then a friend of mine had two rescues that I
77 took, telling her that I would apply for a kennel license so that I could keep those,
78 or we can exchange them when she finds a home for them. I really do like the
79 dogs. They're small, under five pounds—all of them except for the chocolate lab,
80 of course. They live inside with me. I let them out in the morning at 5 a.m. when

81 I'm with them, when I get up. Then they go back into their kennels or they go into
82 the kitchen. My husband works graveyard. He lets them out at noon or 2,
83 between 12 and 2 when he wakes up, to use the bathroom. When I come home
84 at 5, I go out and we play. We play fetch or whatever. Four of them sleep with
85 me and five of them are in kennels in my dining room.

86

87 Mr. Bartulewicz: They're not kennels, they're cages. The cages are
88 36—

89

90 Mr. Wright - Get that mike or—

91

92 Mr. Kirkland - Yes sir. What is your name?

93

94 Mr. Bartulewicz - I'm her husband, Bob Bartulewicz. We're not building
95 a kennel. The dogs are all inside dogs. Most of them sleep with her. For the other
96 ones, we have three 24 by 36 cages that they sleep in.

97

98 Ms. Bartulewicz - To keep them from running around the house. They
99 are young and I'm still trying to housebreak them.

100

101 Mr. Wright - Let me ask you a couple questions here.

102

103 Ms. Bartulewicz - Excuse me?

104

105 Mr. Wright - I would like you to describe these dogs. How many
106 are adult dogs? I understand that some of these are a new litter of dogs.

107

108 Ms. Bartulewicz - Yes.

109

110 Mr. Wright - How many male dogs do you have?

111

112 Ms. Bartulewicz - They're puppies, so I have—

113

114 Mr. Wright - The adult dogs.

115

116 Ms. Bartulewicz - Oh, adult males?

117

118 Mr. Wright - How many adult males do you have?

119

120 Ms. Bartulewicz - One. One adult male.

121

122 Mr. Wright - And that's a Chihuahua?

123

124 Ms. Bartulewicz - Yes.

125

126 Mr. Wright - What is this chocolate lab?

127
128 Ms. Bartulewicz - She's a spayed female.
129
130 Mr. Wright - Okay.
131
132 Mr. Bartulewicz - We've had the chocolate lab ever since she was a
133 puppy and she's now three. That was the original dog that we had.
134
135 Mr. Wright - The chocolate lab is three years old?
136
137 Ms. Bartulewicz - She's four.
138
139 Mr. Wright - Four. How old is the male Chihuahua?
140
141 Ms. Bartulewicz - He'll be two in June.
142
143 Mr. Wright - Two. They're young dogs.
144
145 Ms. Bartulewicz - Yes. All of them are young dogs.
146
147 Mr. Wright - Do you have any female adult dogs?
148
149 Ms. Bartulewicz - Yes.
150
151 Mr. Wright - How many?
152
153 Ms. Bartulewicz - Well, I have the one that had the puppies. She's
154 going to be three in October. Then I have the two that I rescued, and they're
155 probably—They're adults. They've been in heat.
156
157 Mr. Wright - Why do you want to keep the two you rescued? Why
158 don't you take them to the SPCA or somewhere where they can have a good
159 home and so forth.
160
161 Ms. Bartulewicz - Because they have a good home with me.
162
163 Mr. Wright - Yes, but that's a lot of dogs in a house in a
164 neighborhood, ten dogs in one place. Have you seen this letter in our file? Have
165 you shown this letter to them, Ben?
166
167 Mr. Blankinship - Yes, they should have received it in the mail.
168
169 Mr. Wright - The neighbor says that your dogs are causing her a
170 lot of problems with noise, barking. Then she says that your dogs attack her dogs
171 when they're out in the yard.
172

173 Ms. Bartulewicz - Can I say—
174
175 Mr. Bartulewicz - —video proof.
176
177 Mr. Kirkland - One at time.
178
179 Ms. Bartulewicz - That was Heidi, and I can't pronounce her last name;
180 it starts with an "A." I went over when I received the packet on Friday and spoke
181 with Heidi concerning this. She's supposed to get in contact with you to let you
182 know that we have discussed this. They are not my dogs barking in the early
183 hours of the morning that she claimed. They are not my dogs. She has a fear
184 that—Her dog is butted up against my fence, my six-foot privacy fence. One of
185 the things that she mentioned to me was her fear that one of my dogs would get
186 out of the pen, get out of my fence and get into her dog's pen, and her dog has
187 killed Chihuahua's before. She's scared that it will kill again. I'm three feet off
188 my property line, and she's butted right up against my fence. I came off my
189 property line for a reason, so then I could do repairs or whatever and I would not
190 have to deal with neighbors saying something is going on and all that. We
191 discussed it, and she said that she would work with me as long as I'd work with
192 her. Like I said, it's not my dogs that she's saying are barking. It's her dog that's
193 barking—I have it on video—when I'm playing with my dogs. I have it on video
194 when my husband walks to the shed. I cannot enter my backyard without her
195 dog barking. I've spoken to Mrs. King, Christina King, who is back behind us.
196 She supports me 100%, since I am not the one with the dog that is barking. I
197 don't hear the dog barking that my neighbor is referring to, except her dog that's
198 barking. I'm asleep at 9:00. I go to bed very early in the night. I get up very
199 early in the morning; I'm up at 5. I have a child who's in elementary school that
200 catches the bus at 7. My other neighbor I spoke to yesterday, they have no
201 objection. I have their signature on there. They have no objection. They do not
202 hear my dogs barking.
203
204 Heidi opened the statement with me on Monday with—I said, "What seems to be
205 the problem? I didn't realize we had a problem." She told me, "I hate
206 [unintelligible]. I despise your other dogs." She's my neighbor. That's what I told
207 her, you're my neighbor, we really need to work together on this.
208
209 Mr. Wright - You don't have any problems with any other
210 neighbors.
211
212 Ms. Bartulewicz - No sir.
213
214 Mr. Wright - No complaints. We don't have any other complaints.
215 That's the only complaint we received.
216
217 Ms. Bartulewicz - Yes sir.
218

219 Mr. Bartulewicz - Sir, we have pictures, and we've actually videotaped
220 us walking in our yard, and all of a sudden their dog starts barking. We're out
221 there playing with our dogs. Their dog can't see over the six-foot privacy fence,
222 and when it hears something, it barks. I don't know if you have the photo that we
223 have. On the red line, their shed is butted right up against. That's where the dog
224 lives.
225
226 Ms. Bartulewicz - And I'm three feet off my property line; please keep
227 that in mind.
228
229 Mr. Bartulewicz - Up in the left-hand corner. Their shed actually looks
230 like it's on our property. That shed may be a foot off the line. That's where the
231 dog lives. They run it between the shed and our fence, which is actually on our
232 property.
233
234 Mr. Wright - What size lot do you have?
235
236 Mr. Bartulewicz - We have—
237
238 Ms. Bartulewicz - 1.6 acres.
239
240 Mr. Bartulewicz - Yes, 1.6 acres. I have the dimensions, if you need
241 them.
242
243 Mr. Wright - We have that.
244
245 Mr. Bartulewicz - Okay.
246
247 Mr. Wright - I just wanted to get that in the record. You have a 1.6-
248 acre lot. How do you take care of cleaning up after these dogs?
249
250 Mr. Bartulewicz - There's very little cleanup. They're small dogs. We
251 have a mud area that we put some newspaper down. Most of them go on that
252 and we just pick up the newspaper and throw it away. Every once in a while, one
253 of them will have an accident in the kitchen. They stay in the kitchen. The
254 dimensions of the kitchen—
255
256 Mr. Wright - What's the size of your house? How many square feet
257 in your house?
258
259 Mr. Bartulewicz - It's 2381 and livable space is 1980-something.
260
261 Mr. Wright - The dogs have a free run of the house?
262
263 Mr. Bartulewicz - No sir. They stay in the kitchen. The kitchen is 10 by
264 18, and then we have a mudroom where they use the bathroom.

265
266 Ms. Bartulewicz - These dogs are less than five pounds.
267
268 Mr. Wright - A Chihuahua is a small dog, yes.
269
270 Ms. Bartulewicz - They're very small dogs.
271
272 Ms. Harris - I have some questions. How long do you plan to
273 keep all ten dogs?
274
275 Ms. Bartulewicz - I would like to keep them.
276
277 Ms. Harris - Forever.
278
279 Ms. Bartulewicz - Yes. They're my pets. All of them are on Frontline,
280 all of them are on heartworm. They're all updated on their shots, except for the
281 rabies, which I'm going to get. They're well taken care of. Anyone can come and
282 see the dogs. They're named, they come, they listen. They're all my pets.
283
284 Mr. Wright - What are these two dogs you say you took in?
285
286 Ms. Bartulewicz - The rescues?
287
288 Mr. Wright - Are they Chihuahua?
289
290 Ms. Bartulewicz - Yes, they're Chihuahuas, too.
291
292 Mr. Wright - How old are they?
293
294 Ms. Bartulewicz - They've been in heat, so they're over a year old.
295
296 Mr. Wright - Do you intend to get those dogs spayed?
297
298 Ms. Bartulewicz - I can, yes. They're probably about four pounds, and I
299 don't like to put that dog under for fear that something will—they might not come
300 out.
301
302 Mr. Wright - Yes, but the problem is you have ten. If we were to
303 approve ten, you would not be able to have any more.
304
305 Ms. Bartulewicz - That's fine with me.
306
307 Mr. Bartulewicz - Right, we understand that, sir. That's all we want is
308 ten.
309

310 Mr. Wright - I think if you had a litter, you would probably have four
311 months—I understand that—
312
313 Mr. Blankinship - Yes sir, that's correct.
314
315 Mr. Wright - —to get a home for them.
316
317 Ms. Bartulewicz - Yes sir, I understand. I want these ten because these
318 are all my pets. I don't want any more.
319
320 Ms. Harris - I thought the report said that one of the dogs was
321 expecting.
322
323 Ms. Bartulewicz - No.
324
325 Mr. Bartulewicz - I'm sorry. The gentleman had talked to me and
326 they're her dogs. I thought the dog was pregnant. There are no dogs that are
327 pregnant now.
328
329 Mr. Wright - So, that's not true. That's not a correct statement.
330
331 Mr. Bartulewicz - No.
332
333 Ms. Harris - Can you answer this question? If all residents in
334 Henrico were allowed to keep ten dogs in their home, what type of community
335 would we have? If they were allowed to do what you want—
336
337 Ms. Bartulewicz - What I'm asking to do? If they owned an acre and a
338 half, and a six-foot privacy fence, and controlled the noise level, and kept
339 constant control, I'd really say no problem with it. My neighbors aren't aware.
340 They create no hassle. My dogs create no hassle whatsoever.
341
342 Mr. Wright - I think the size of the dog, Ms. Harris, has something
343 to do with that. These are little Chihuahuas. They're little—
344
345 Ms. Bartulewicz - I have a bed, one bed and all of them sleep in it. It's
346 kind of comical. They're just very small dogs.
347
348 Ms. Harris - Somewhere I read that for security reasons,
349 sometimes smaller dogs are better than the larger dogs because the larger dog
350 is waiting to prey or jump at the person who might be an intruder, but the smaller
351 dogs bark. I was just wondering how can you keep a dog from barking when
352 that's the very nature of the animal?
353
354 Ms. Bartulewicz - I have one that will bark and I'm teaching them not to
355 bark. You can teach a dog not to bark. I don't need a watchdog. My chocolate

356 lab will bark, too, to a certain degree. That's why I really haven't filed a complaint
357 against my neighbor and their shepherd, because he is behind my six-foot fence
358 with boarded fences around. I owned a shepherd when I was younger. They're
359 known for barking. This dog barks all the time. My dog doesn't bark all the time.
360 They might bark if you come into my driveway and I have to quiet them down.
361 But as far as barking, no. They are young and I am working with them as far as
362 barking, too. It's like you work with your children. That's kind of like what I am
363 doing.

364

365 Mr. Wright - Have you read the conditions the staff proposed if this
366 case were to be approved?

367

368 Ms. Bartulewicz - Yes sir, I have.

369

370 Mr. Wright - Obviously, you would want #2 changed.

371

372 Ms. Bartulewicz - Wait a minute. I thought I'd read them. Oh, yes sir,
373 yes.

374

375 Mr. Wright - I want to ensure that you—

376

377 Ms. Bartulewicz - When I was reading that, that's why I called.

378

379 Mr. Wright - If you comply with these conditions, the neighbors
380 shouldn't have any problems. Number 3 says you must maintain the property so
381 that noise and odors are controlled. Then you have no new or replacement
382 animals may be added. They're fairly young dogs. What is the lifespan of a
383 Chihuahua? I'm not up on that.

384

385 Ms. Bartulewicz - They say 15 to 18 years, but I don't know. I've never
386 had a dog live its life expectancy. I do feed them very well, so I don't know. I
387 hope, but I don't know.

388

389 Mr. Wright - What happens when you go on vacation?

390

391 Ms. Bartulewicz - I don't go on vacation. That's the whole problem. My
392 family goes on vacation and I don't go on vacation.

393

394 Mr. Wright - You stay there month in and month out, year in and
395 year out?

396

397 Ms. Bartulewicz - Yes.

398

399 Mr. Wright - Do you ever take a trip?

400

401 Ms. Bartulewicz - Yes. My son used to travel for travel hockey, but I
402 also have a daughter who is 14, turning 15. She doesn't travel with us because
403 she does not like the sport. So, one adult always has to be home with her.
404

405 Mr. Wright - Does your son know how to take care of these dogs?
406

407 Ms. Bartulewicz - Our son, yes. He's 12, or he'll be 12 in December.
408 He helps me take care of the dogs.
409

410 Mr. Wright - So, someone has to be there at all times with the
411 dogs.
412

413 Ms. Bartulewicz - Yes. Someone is there all the time.
414

415 Mr. Bartulewicz - Only at night. The dogs can stay in the kitchen during
416 the day. Someone needs to be there sometime during the day to feed them and
417 let them out to use the bathroom. I don't know if that's what you're asking or not.
418 There's always one adult at the house.
419

420 Mr. Wright - We had a dog and when we wanted to go away, I had
421 to put the thing in a kennel all the time. I couldn't leave the dog there for several
422 days unattended.
423

424 Mr. Bartulewicz - No. We don't do that, no. Either she'll go out of town
425 with my son, or I'll go out of town. There's always an adult at the house.
426

427 Mr. Wright - You make a real sacrifice for these dogs.
428

429 Ms. Bartulewicz - I like them.
430

431 Ms. Harris - Ms. Bartulewicz, have you ever considered operating
432 a commercial kennel?
433

434 Ms. Bartulewicz - Not really.
435

436 Mr. Bartulewicz - No, because this is enough. I know it's a lot, and trust
437 me, if she didn't like these dogs so much, I would have never, ever let her do
438 what she's done. But she really likes the dogs. I would have gotten rid of the
439 puppies a little while ago, but she's just grown to—She takes very good care of
440 them. That would be too much work, no.
441

442 Mr. Nunnally - You're just like the rest of us men, you have to go with
443 what they say.
444

445 Ms. Harris - I'm sure she's thought of it, though, because she
446 seems to have a real love for dogs.

447
448 Ms. Bartulewicz - Yes. But the quality of the dog that you need to
449 produce to sell a commercial dog is something that I probably don't have. I
450 would hate to sell somebody a pet then all of a sudden, they came down with—
451 Chihuahuas have problems with their knees, and I would just hate to do that.
452 And I don't have the knowledge to know how to prevent that, and I don't have the
453 money to buy that quality of a dog to even breed that.
454
455 Mr. Wright - These dogs are mixed breed, though, aren't they?
456
457 Ms. Bartulewicz - No. Well, the rescues, I'm not sure. They appear to be
458 Chihuahuas. My two are Chihuahuas and my babies are Chihuahuas. A
459 Chihuahua doesn't have a standard. You can look at all of mine and all of mine
460 appear to be different. As long as they're small dogs with big ears, then they're
461 considered a Chihuahua.
462
463 Mr. Nunnally - You all are in agreement with these four conditions
464 that Mr. Wright asked you about, right?
465
466 Ms. Bartulewicz - Wait a minute, I'm sorry.
467
468 Mr. Bartulewicz - As long as it was changed from seven to ten.
469
470 Mr. Wright - You don't have ten Chihuahuas. It would be nine
471 Chihuahuas.
472
473 Mr. Bartulewicz - Right. Nine Chihuahuas, right.
474
475 Ms. Bartulewicz - But I still have a chocolate lab.
476
477 Mr. Bartulewicz - It's a total of ten dogs.
478
479 Ms. Bartulewicz - But she stays in the house also.
480
481 Mr. Bartulewicz - I know the one neighbor is opposed. I'd be glad to
482 show you pictures. I have video. It's not our dog, it's hers. Her dog initiates the
483 barking. The dog hears us. If you want to take a peek at the fence and where the
484 dog lives, I mean, literally, right up against the fence.
485
486 Mr. Wright - In our file, we have that information.
487
488 Mr. Kirkland - All right. Anyone else have any questions? Anyone
489 else wish to speak? If not, that concludes the case.
490
491 Ms. Bartulewicz - Thank you.
492

493 **DECISION**

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Mr. Kirkland - Do I have a motion?

Mr. Wright - I vote we approve it.

Mr. Nunnally - I second it.

Mr. Kirkland - Motion made by Mr. Wright, seconded by Mr. Nunnally. Any discussion?

Ms. Harris - Yes. Do you think we need to reduce the number of dogs? Don't you think ten is excessive?

Mr. Wright - It appears to me it's hard to [unintelligible] on this, but it takes about five of those dogs to make one dog, the way I see it.

Mr. Blankinship - It would take two of them to make a decent sandwich.

Mr. Wright - If they were larger dogs, I would say yes, but based on the testimony, it appears to me that they can be cared for within the home. They're not going to allow any increase in the number. I think this would be in accordance with the ordinance. I don't think it would cause any problems to the neighbors, or it would cause any problem to depreciate the property, or impair the air or whatever, or cause any congestion in the street. So, I think, basically, I feel that it's proper.

Mr. Kirkland - Any other comments?

Mr. Wright - Based on the conditions, too. We have noise in the conditions, curbing the noise, no offensive odors. There is protection there. If they were to violate any of those conditions, I think we'd have them back in, and then we could revoke the permit.

Ms. Harris - The neighbor is saying that there is a noise problem.

Mr. Wright - I heard an explanation, and it sounds like to me the neighbor's dog is causing as much of it as theirs. They were testifying under oath and I'll take their statements at face value.

Mr. Kirkland - The only other change is in condition #2.

Mr. Wright - Yes.

Mr. Kirkland - We need to change that to nine Chihuahuas and one chocolate lab. No more discussion? I have a motion to approve it.

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Mr. Nunnally - I seconded it.

Mr. Kirkland - You've already seconded it? Let's vote. All those in favor say aye. All those opposed say aye.

Ms. Harris - I'd like to say I think about a quotation I was taught: "If all of the world were like me, what kind of world would this world be." If all the residents had ten dogs, what kind of mess in Henrico County would we have? So, I have to oppose ten.

Mr. Wright - Yes, but you couldn't have all the residents in Henrico County because there are very few with 1.6 acres of land. That was involved in my decision, too.

Mr. Kirkland - All right, the motion's approved. You get to keep your ten dogs.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved** application **UP-008-08, Kim S. Bartulewicz's** request for a conditional use permit pursuant to Section 24-52(a) to operate a private noncommercial kennel at 11444 Dublin Road (McDonalds Small Farms) (Parcel 745-764-7874), zoned A-1, Agricultural District (Three Chopt). The Board approved the conditional use permit subject to the following conditions:

1. Only the use described in the application may be conducted pursuant to this approval. This approval does not authorize construction of a kennel structure or keeping dogs outdoors. Any substantial changes or additions to the design or location of the improvements may require a new use permit.
2. [AMENDED] This approval is only for the ten Chihuahua dogs owned by the property owner. The approval is not for the boarding or breeding of dogs at any time.
3. The applicant must maintain the property so that noise and odors are controlled.
4. No new or replacement animals may be added, so that the number of animals will be reduced by natural means to three, as allowed in a residential district.

Affirmative:	Kirkland, Nunnally, Wright	3
Negative:	Harris	1
Absent:	Dwyer	1

585 **A-008-08** **JACK ALLIGOOD** requests a variance from Section
586 24-94 to allow the existing addition to remain at 2417 Vandover Road (Westbriar)
587 (Parcel 754-752-5234), zoned R-3, One-family Residence District (Three Chopt).
588 The rear yard setback is not met. The applicant has 38 feet rear yard setback
589 where the Code requires 40 feet rear yard setback. The applicant requests a
590 variance of 2 feet rear yard setback.

591

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

594

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

597

598 Mr. Alligood - I do.

599

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

601

602 Mr. Alligood - Jack Alligood.

603

604 Mr. Kirkland - All right, Mr. Alligood, what would you like us to do for
605 you?

606

607 Mr. Alligood - I would like you to approve this variance to leave the
608 house the way it is because what it is, I've sold the house—Well, let me back up
609 and give you the history of the house. I bought the house in 1977. In 1992, I
610 added an addition that was built by a general contractor under permit from
611 Henrico County. The inspections did show that the addition was approved, and it
612 passed all inspections at the end when we occupied that addition. That was in
613 1992, so it's been 16 years since that addition has been built. In the past couple
614 months, I sold the house though Daylor Fine Properties. It's a Joyner group. The
615 owner was trying to close on the house, but during the survey, they found out the
616 addition that we had permission to build through a permit, the 40-foot setback
617 was actually built over, rounding it off—by two feet. Not quite that much in reality,
618 but round it off to two feet. The back lot actually backs up Henrico County school
619 property. There's nothing built there, it's just woods and a baseball field and
620 track.

621

622 We have bought another house and we have moved into that house. So, we are
623 trying to close on the one house there on Vandover Road that is sold. To sell
624 that house, we must have this variance approved without having to cut off any
625 part of that addition, which is not practical at this time. So, that's what I'm
626 pleading this time is that you would approve this variance.

627

628 Ms. Harris - Mr. Alligood, how is the addition being used? Is that a
629 bedroom or a family or?

630

631 Mr. Alligood - It's a family room, and a bedroom, and a bathroom.
632
633 Mr. Wright - What's on the rear of the addition? Is the bath on the
634 rear of the addition?
635
636 Mr. Alligood - The bedroom and family room are on the back of the
637 addition.
638
639 Mr. Wright - Do you have any of the papers where this permit was
640 approved in 1992?
641
642 Mr. Alligood - I do. I don't have them with me. I think John Daylor
643 does back there, who is the real estate agent for me.
644
645 Mr. Wright - Mr. Blankinship, you say in our report that the County
646 has lost the file on this?
647
648 Mr. Blankinship - Well, not lost. We retain them for ten years and then
649 destroy them. So, since it's been 16 years, we no longer have it. We have
650 records that a permit was issued, and I believe our records show that the
651 inspections were all done. You don't get a Certificate of Occupancy for an
652 addition because you're already occupying the house. That's usually the trigger
653 for when we go out and measure the setbacks. As far as we know, Mr. Alligood
654 did everything he needed to do, but the builder seems to have missed by two
655 feet.
656
657 Mr. Wright - It was the builder's fault that he built it two feet over
658 the line?
659
660 Mr. Blankinship - As far as we can tell, yes sir.
661
662 Mr. Wright - Okay.
663
664 Ms. Harris - Could we see those papers? You said the final
665 inspection did not indicate that?
666
667 Mr. Alligood - John, do you have those?
668
669 Mr. Kirkland - If you would, sir, come forward and give us your
670 name.
671
672 Mr. Wright - I'm just curious to see what was approved.
673
674 Mr. Daylor - I'm John Daylor and I'm Jack's realtor. We just have
675 the documentation that Jack had, but I don't think there's any approval. I don't
676 think there was any approval after the building was done.

677
678 Mr. Wright - Well, there should have been a permit, an application
679 for a permit. There should have been a diagram or a sketch or something
680 showing where the building would be constructed. The permit would not have
681 been approved if it were over the line.
682
683 Mr. Kirkland - You don't have an as-built drawing or anything?
684
685 Mr. Alligood - I don't think there was.
686
687 Mr. Blankinship - There was probably no as-built, but they should have
688 the—
689
690 Mr. Daylor - He should have original building drawing.
691
692 Mr. Alligood - The owners wanted, or their mortgage company
693 wanted a copy of that. I did request that from the County.
694
695 Mr. Daylor - We couldn't get it.
696
697 Mr. Alligood - No, we got that. We got that permit which showed all
698 inspections were passed. They had a little difficulty with electrical and some
699 things, but finally it was passed, and we do have a copy of that. I forwarded that
700 on to John Daylor's group to pass on to the new potential owners. We just have
701 to find that. I do have a copy of that. I do have it in my records at home; I just
702 failed to bring that this morning.
703
704 Mr. Kirkland - You just don't have a copy of the original drawing that
705 was submitted with the building permit?
706
707 Mr. Alligood - It's the drawing I don't have. The permit and the
708 inspection, I do have.
709
710 Mr. Blankinship - Spell your last name for me, please.
711
712 Mr. Daylor - D-a-y-l-o-r.
713
714 Mr. Blankinship - Thank you.
715
716 Mr. Wright - If you submitted a sketch with the application for the
717 permit that showed it within the proper line, if after that when it's built—the
718 County, in this case, did not go back out and check it after it was constructed.
719 That's where the error could have occurred.
720
721 Mr. Blankinship - That is exactly where the error was.
722

723 Mr. Alligood - I think the contractor constructed it a foot and a
724 quarter over the way it was submitted.
725
726 Mr. Kirkland - Any other questions by Board members.
727
728 Mr. Wright - One observation. The only way to correct this if this
729 request were denied is you would have to cut two feet off the back of the house.
730 How would that work?
731
732 Mr. Alligood - That would not work because of the windows on the
733 back of the house.
734
735 Mr. Blankinship - The property is sold and pending closing, right?
736
737 Mr. Alligood - That is correct.
738
739 Mr. Wright - Obviously, you can't move it.
740
741 Mr. Alligood - I cannot move it.
742
743 Mr. Wright - I mean if it's attached to the house. You'd have to
744 move the whole house.
745
746 Mr. Blankinship - You can't move the house forward because of the
747 front setback.
748
749 Mr. Wright - So that would cause a problem.
750
751 Mr. Alligood - That is correct.
752
753 Mr. Kirkland - All right. No other questions? Anyone else wish to
754 speak? Anything you'd like to add? That concludes the case.
755
756 **DECISION**
757
758 Mr. Wright - I move we approve it.
759
760 Ms. Harris - Second the motion.
761
762 Mr. Kirkland - Motion by Mr. Wright, seconded by Mrs. Harris. All
763 those in favor say aye. All those opposed say no. The ayes have it; the motion
764 passes.
765
766 Mr. Blankinship - Can we have a statement on the record?
767

768 Mr. Wright - The basis of my motion is that due to the uncertainty
769 of what happened in this case, the dwelling and with the addition that's been
770 there for many years, and it backs up to open land. It could not cause any
771 congestion, or any concern or difficulty with neighbors to the rear. I think it's
772 something we need to approve so that the owner can enjoy a reasonable use of
773 the property.

774
775 Mr. Kirkland - Is that okay with you, Mr. Blankinship?

776
777 Mr. Blankinship - Yes sir, thank you.

778
779 After an advertised public hearing and on a motion by Mr. Wright, seconded by
780 Ms. Harris, the Board **approved** application **A-008-08, Jack Alligood's** request
781 for a variance from Section 24-94 to allow the existing addition to remain at 2417
782 Vandover Road (Westbriar) (Parcel 754-752-5234), zoned R-3, One-family
783 Residence District (Three Chopt). The Board approved this variance subject to
784 the following condition:

785
786 1. This variance applies only to the rear yard setback requirement for the
787 existing dwelling only. All other applicable regulations of the County Code shall
788 remain in force. Any future construction shall comply with the requirements of
789 the zoning ordinance.

790
791
792 Affirmative: Harris, Kirkland, Nunnally, Wright 4
793 Negative: 0
794 Absent: Dwyer 1

795
796
797 **A-009-08 DOROTHY BOWLES** requests a variance from
798 Section 24-9 to build a one-family dwelling at 2060 Valentine Road (Parcel 778-
799 756-4794 (part)), zoned R-2, One-family Residence District (Fairfield). The public
800 street frontage requirement is not met. The applicant has 0 feet public street
801 frontage where the Code requires 50 feet public street frontage. The applicant
802 requests a variance of 50 feet public street frontage.

803
804 Mr. Kirkland - Yes sir. If you would, raise your right hand and be
805 sworn in. Anyone else wish to speak on this case?

806
807 Mr. Blankinship - Do you swear the testimony you're about to give is
808 the truth and nothing but the truth so help you God?

809
810 Mr. Craft - I do.

811
812 Mr. Kirkland - State your name for the record.

813

814 Mr. Craft - My name is David Craft.
815
816 Mr. Kirkland - All right, sir, what would you like us to do for you?
817
818 Mr. Craft - We're seeking a variance from Section 24-9 for the
819 public street frontage that's required of 50 feet. My wife's grandmother is giving
820 us an acre of land to build a home. The acre she's given us is tacked onto the
821 back of her six acres and there is no road frontage through there. The access
822 would be gained through the driveway of 2015 Valentine Road, which is owned
823 by my in-laws, for access to the property.
824
825 Ms. Harris - How do you plan to gain access to the property? I did
826 drive by there. It kind of slopes downhill a little bit.
827
828 Mr. Craft - Yes ma'am, it does.
829
830 Ms. Harris - Are you going to have to do an access road?
831
832 Mr. Craft - If you go down to the dead end of Valentine Road, the
833 driveway that is right at the dead end of Valentine Road is my in-laws. Their
834 driveway actually goes across the creek down at the bottom. We have to repair
835 that bridge over that creek, and then for access, we would build a drive in or a
836 road up to the property through the Virginia Power easement.
837
838 Ms. Harris - All of that property is on the 25 acres? All that
839 property is owned by—
840
841 Mr. Craft - Yes ma'am. All that property is owned by Ms. Bowles.
842 She's here as well.
843
844 Mr. Blankinship - That photograph there shows the—We're standing at
845 the end of the public part of the road. The pavement you're looking at there is
846 private.
847
848 Mr. Craft - That's correct. That's looking sort of in a northeasterly
849 direction from the dead end of Valentine Road.
850
851 Mr. Blankinship - They did extend it as far as the culvert across that
852 little stream—
853
854 Mr. Craft - Correct.
855
856 Mr. Blankinship - —and the first few feet coming—
857
858 Mr. Craft - Correct.
859

860 Mr. Blankinship - They've already done the tricky part, which is crossing
861 the stream.
862
863 Mr. Craft - The property that we're looking at building is actually
864 past that, up and to the right, as you're looking at that photograph.
865
866 Mr. Kirkland - What size home do you propose putting on the
867 property?
868
869 Mr. Craft - The size home that we're looking at right now is 2,730
870 square feet. It's a two-story plantation style house, is what I call it. My wife calls
871 it a neoclassical.
872
873 Ms. Harris - Do you have the building plans?
874
875 Mr. Craft - No ma'am, I do not have the building plans with me.
876
877 Mr. Wright - Why couldn't this house be built either on Lydell Road
878 or Parham Road?
879
880 Mr. Craft - The property that Ms. Bowles owns, right now is being
881 farmed out. All of the fields border Parham and Lydell Drive. The piece of
882 property that would be the southwest of her property on Lydell Drive, we had
883 looked at that piece of property. Part of that is being farmed as well, and there's
884 also a creek right in the middle of it. To more of the southeast side, there's a
885 VEPCO easement going through there with a transmission line. Looking at an
886 aerial view of the property through the GIS at the County, the piece of property
887 that tacks on that we're looking at building at is the only piece of property that, I
888 guess, would minimally impact the use of that land. Ms. Bowles uses that. She
889 charges a farmer to use that land, and she uses the money that she gets from
890 that to pay part of the taxes on the land.
891
892 Mr. Wright - Don't you farm part of that property? It looks like the
893 farm goes up into it.
894
895 Mr. Craft - Which part are we looking at?
896
897 Mr. Wright - The block where you want to put—
898
899 Mr. Craft - Right, yes sir. That is taking just a portion of that jut.
900 If I had to guestimate, it was probably less than an eighth of an acre of that field.
901 We asked grandma before, obviously, before picking this piece if that was okay
902 with her.
903

904 Mr. Blankinship - I'll also point out that after we made our maps, he
905 submitted a revised plat. The shape is not quite as shown on these maps. The
906 revised plat shows more of an angle following that treeline.
907

908 Mr. Craft - I have two copies of that full plat, if you want to look at
909 it.
910

911 Mr. Wright - Is that one we have in our file?
912

913 Mr. Blankinship - Yes.
914

915 Ms. Harris - Does Ms. Bowles currently live on the property, on the
916 25 acres?
917

918 Mr. Craft - Yes ma'am, she does. She lives at 1905 Lydell Drive.
919

920 Ms. Harris - Do you know of any proposed plans to use the
921 property fronting Lydell and Parham Road for commercial use or mixed use? I
922 know that J. Sargeant Reynolds is adjacent to that site.
923

924 Mr. Craft - They are, and there's an office building that's adjacent
925 to that site as well. I'm not aware of any plans to do that, no ma'am.
926

927 Ms. Harris - If in fact part of that acreage was sold to a subdivision
928 developer or for commercial use, that would be away from the proposed
929 residential site that you hope to build, would it not?
930

931 Mr. Wright - Have you seen the suggested conditions on this
932 case?
933

934 Mr. Craft - Yes sir I have looked at those. My only question on
935 the conditions for the proposal is that we are looking at public sewer instead of a
936 septic system. We've already gone through the County to perk the land, and it
937 would only perk for a non-conventional septic system. In looking at the cost-
938 effectiveness of it, I think it would cheaper for me to actually hook up the County
939 public sewer.
940

941 Ms. Harris - How far is that line from your property, do you know?
942

943 Mr. Craft - That line from the actual property line is
944 approximately about 100 feet of so, 150 feet. I know that going up to the actual
945 building site is probably about 230 feet. It's \$75 a foot plus a connection fee, so
946 it's going to cost me around \$17,000 to hook up to the County sewer, unless you
947 all can waive that.
948

949 Mr. Kirkland - We don't do that. Any other questions? Anyone else
950 wish to speak on this case? If not, that concludes the case. Thank you, sir.

951

952 **DECISION**

953

954 Ms. Harris - I move that we approve this. We are aware of the
955 threshold question regarding having use of the premises without the variance,
956 but we still have these cases recurring. Here we have a family division, and we
957 have other questions to consider. In noticing and observing the property, I feel
958 that the house of the magnitude that was described in the sworn testimony would
959 enhance the neighborhood. When we look the other way on Lydell Drive, we see
960 something at the end of that street that is very outstanding. I think we would want
961 no less for this community. Some of the access road has already been improved.
962 So, my motion is that we approve this case.

963

964 Mr. Nunnally - Second.

965

966 Mr. Kirkland - Motion made by Ms. Harris, seconded by Mr.
967 Nunnally. All those in favor—

968

969 Mr. Wright - I'd just like a little discussion.

970

971 Mr. Kirkland - Okay.

972

973 Mr. Wright - My concern with this one is that the applicant has a
974 way to take care of this without a variance. Just because they would desire to
975 use a little more farmland here or there—It looks like to me that since this
976 applicant could put this dwelling over on Parham Road—there's plenty of room
977 there, I think—without damaging too much there with the farming, I just don't
978 think it's proper to do it.

979

980 Ms. Harris - I think if we look at the Land Use Plan—and I'm sorry
981 we didn't have a copy of that—you can look on both sides of Parham and see
982 what is going on. You drive by the residence that's being used by the Bowles,
983 and the farm. I've see a difference in the 30-odd years that I've been living out
984 here. That land is going to be used for commercial, multi-use, or some upscale
985 purpose. Placing a home on Valentine Road on that side, 200 feet from the other
986 residence, will conform, I feel, to the residential atmosphere in that community.
987 Right now, the road is blocked off, but with the continuation to the right, I think it
988 will be in keeping with the neighborhood. The other parcel of land will go for
989 whatever the County's land use purposes are.

990

991 Mr. Blankinship - The property on the south side of Parham is shown as
992 Suburban Residential 1, low-density, single-family dwellings.

993

994 Mr. Wright - Wouldn't that qualify?

995
996 Mr. Blankinship - On both 2010 and the 2026 Land Use Plans
997
998 Mr. Wright - Wouldn't that qualify—
999
1000 Ms. Harris - Yes.
1001
1002 Mr. Wright - —for construction of a house?
1003
1004 Ms. Harris - Or a subdivision even. But on Parham, we don't have
1005 subdivision—
1006
1007 Mr. Wright - In the first instance, you can't even get by Cochran on
1008 this. The property, taken as a whole, is used for agricultural purposes
1009
1010 Ms. Harris - As we know, this keeps surfacing. We do need a
1011 ruling. We've been promised a study of the situation where we have landlocked
1012 lots, and family divisions that have been so common in the County. Fairfield
1013 District only has a handful of these compared to what's going on in Varina, but
1014 we do need some type of ruling for Henrico County, I feel, on this.
1015
1016 Mr. Kirkland - Mr. Blankinship, can I ask you a question?
1017
1018 Mr. Blankinship - Yes sir.
1019
1020 Mr. Kirkland - There's a little field there that's right adjacent to 2001.
1021 Is that part of the Bowles' property, too?
1022
1023 Mr. Blankinship - I don't have the map in front of me.
1024
1025 Mr. Kirkland - This aerial view here?
1026
1027 Mr. Blankinship - I don't suppose we could get that on the screen, could
1028 we, Paul.
1029
1030 Mr. Kirkland - See where it says "2001," that's across? It's a little
1031 stub road coming off Lydell Drive. Go on up a little bit, Paul. All right. Go to your
1032 left a little bit. Straight up. See that field right there? Is that part of the Bowles'
1033 property right there?
1034
1035 Mr. Blankinship - Yes it is.
1036
1037 Mr. Wright - Yes, it sure is.
1038
1039 Mr. Kirkland - And that's wide enough for the road frontage, right?
1040

1041 Mr. Blankinship - Yes sir. It meets the lot width and the road frontage.
1042 It is crossed by at least a swale. The applicant called it a stream. I didn't notice
1043 whether it was a perennial stream or an intermittent stream.
1044
1045 Mr. Wright - How deep is that piece of property back?
1046
1047 Mr. Blankinship - I can tell you that I measured out a one-acre lot there.
1048 You see the stub road, I think you called it, coming off Lydell to the southeast.
1049
1050 Mr. Kirkland - That's correct.
1051
1052 Mr. Blankinship - It goes that distance and about half again that
1053 distance, then striking across to the northeast. You'd have about a one-acre
1054 parcel.
1055
1056 Ms. Harris - What about the VEPCO easement? You have that on
1057 the site map.
1058
1059 Mr. Blankinship - Right. That would be traversed by the power
1060 company.
1061
1062 Ms. Harris - Yes. You need to look at the site map for that.
1063
1064 Mr. Kirkland - Lines don't come through on the aerials.
1065
1066 Mr. Wright - There's plenty of room right there.
1067
1068 Mr. Kirkland - All right. We've had a motion, and we've had a
1069 second. Motion is to approve. All those in favor say aye. All those opposed. Two
1070 to two, Mr. Blankinship.
1071
1072 Mr. Blankinship - Motion fails. The question is still on the table.
1073
1074 Mr. Kirkland - All right. Any further discussion here?
1075
1076 Ms. Harris - To clear up just what happened, Mr. Blankinship, you
1077 voted, right?
1078
1079 Mr. Kirkland - No. Mr. Blankinship doesn't vote.
1080
1081 Ms. Harris - That's what I'm saying. He said the motion failed
1082 because—
1083
1084 Mr. Kirkland - It was two and two.
1085
1086 Mr. Blankinship - Right.

1087
1088 Ms. Harris - What happens now?
1089
1090 Mr. Kirkland - We now discuss on one of us changing our mind.
1091
1092 Mr. Blankinship - The rules of the BZA, and I believe it's a matter of
1093 law, for a variance, there has to be an affirmative vote of three members.
1094
1095 Mr. Wright - Could you defer until next meeting when we have the
1096 full Board to have some possibility of another vote?
1097
1098 Mr. Kirkland - We wouldn't have to hear—
1099
1100 Mr. Wright - To be fair to applicant. That was all I'm saying.
1101
1102 Mr. Kirkland - Right.
1103
1104 Ms. Harris - If so, I could move that we defer it until the next
1105 meeting when we have a full Board.
1106
1107 Mr. Kirkland - Okay. Motion made by Ms. Harris to defer. Do I have
1108 a second?
1109
1110 Mr. Wright - I'll second that.
1111
1112 Mr. Kirkland - Seconded by Mr. Wright. All those in favor say aye.
1113 All those opposed say no. The ayes have it; the motion passes to defer.
1114
1115
1116 Mr. Kirkland - Mr. Blankinship, we won't have to hear the whole
1117 case, we would just hear a summary of the case, and I assume it'll have to be
1118 advertised again, or will it not.
1119
1120 Mr. Blankinship - To be on the safe side, we'll advertise and notify.
1121
1122 Mr. Wright - I just think to be fair to the applicant, we should have
1123 a full Board, since it is a split vote.
1124
1125 Mr. Kirkland - Okay. Ms. Dwyer will back next month. That one's
1126 been deferred for 30 days.
1127
1128 After an advertised public hearing, the Board deferred **A-009-08, Dorothy**
1129 **Bowles**, until the June 25, 2008 meeting.
1130
1131
1132

1133	Affirmative:	Harris, Kirkland, Nunnally, Wright	4
1134	Negative:		0
1135	Absent:	Dwyer	1

1136
1137

1138 **UP-009-08** **SIMONS HAULING COMPANY, INC.** requests a
 1139 conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract
 1140 materials from the earth at 2655 Lacywood Lane (Parcel 840-722-1635), zoned
 1141 A-1, Agricultural District and C-1, Conservation District (Varina).

1142

1143 Mr. Kirkland - All right, will the applicants come forward? Does
 1144 anyone else wish to speak on this case? If you would, raise your right hand and
 1145 be sworn in.

1146

1147 Mr. Blankinship - Do you swear the testimony you're about to give is
 1148 the truth and the nothing but the truth so help you God?

1149

1150 Mr. Cochran - I do.

1151

1152 Mr. Kirkland - Would you state your name for the record, sir?

1153

1154 Mr. Cochran - My name is John Cochran.

1155

1156 Mr. Greenwood - I'm Wayne Greenwood with Simons.

1157

1158 Mr. Kirkland - All right, sir, what would you like us to do for you
 1159 today?

1160

1161 Mr. Cochran - We are requesting permission to re-permit this mining
 1162 extraction operation. It is an as-needed operation exclusively for Simons Hauling
 1163 Company. When the material is needed, they bring equipment onto the site, load
 1164 it in the trucks, and take it to where it's needed. We've had this pit permitted for
 1165 a number of years and we are asking for the continuation of the permit. Mr.
 1166 Greenwood is going to explain why the material is necessary, why we need to
 1167 keep this permitted.

1168

1169 Mr. Greenwood - There is an upcoming project this summer, the 64/895
 1170 connector that will tie the Richmond airport into Pocahontas Parkway. It's a very
 1171 good likelihood that we'll be participating in the subcontracting and supplying dirt
 1172 to this project.

1173

1174 Mr. Nunnally - Would Simons do all the hauling?

1175

1176 Mr. Greenwood - Yes sir. We would do all the loading and all the
 1177 hauling.

1178

1179 Mr. Nunnally - And it will be in the future?
1180
1181 Mr. Greenwood - Yes sir. Plans call for that to take place by mid to late
1182 summer.
1183
1184 Mr. Cochran - We have reviewed the conditions and are in
1185 agreement with all the conditions.
1186
1187 Mr. Wright - Mr. Blankinship, I may not understand this, but are
1188 they in compliance with paving the haul road? Conditions require pavement from
1189 a certain point on Lacywood Lane or whatever that road is.
1190
1191 Mr. Blankinship - Lacywood Lane.
1192
1193 Mr. Wright - I can't determine whether or not—
1194
1195 Mr. Cochran - Yes sir. That was done very early in the permitting
1196 process.
1197
1198 Mr. Wright - I couldn't determine that from reading this.
1199
1200 Mr. Blankinship - I can't remember what it looks like off the top of my
1201 head.
1202
1203 Mr. Cochran - It's an extension of Lacywood Lane, where it currently
1204 ends to the area of the mining operation. That was paved many years ago, so we
1205 are in compliance.
1206
1207 Mr. Blankinship - Put up the photo of the entrance road, Paul.
1208
1209 Mr. Wright - Look at condition #17.
1210
1211 Mr. Blankinship - Yes.
1212
1213 Mr. Wright - The intersection with Lacywood Lane for a distance of
1214 300 feet and a width of 24. In their materials, they say—
1215
1216 Mr. Cochran - It's actually shown on the plans.
1217
1218 Mr. Wright - Number 4 under the narrative says it has been
1219 resurfaced with gravel and mostly surface treated to the mine site. That gravel is
1220 not paved, is it.
1221
1222 Mr. Blankinship - No. Where we're looking now is quite a bit farther
1223 than 300 feet from Lacywood. So, this area is okay to be gravel. Mr. Cochran
1224 says that the first 300 feet is paved and that's shown on the plan.

1225
1226 Mr. Wright - I just wasn't clear. I just wanted to make sure.
1227
1228 Mr. Blankinship - I'm afraid I don't have a specific memory of checking
1229 that, but if it's not, it will be.
1230
1231 Mr. Cochran - Yes.
1232
1233 Ms. Harris - I have a—
1234
1235 Mr. Nunnally - Excuse me, Ms. Harris.
1236
1237 Ms. Harris - Go ahead, Mr. Nunnally.
1238
1239 Mr. Nunnally - I've been down there and it looks like it's a clean
1240 operation. I don't think they're doing much down there now, but it's nice and
1241 clean. I just wonder, Mr. Blankinship, have we had any complaints from the
1242 neighborhoods?
1243
1244 Mr. Blankinship - No sir. When is the last time a truck was on that site,
1245 do you have any idea?
1246
1247 Mr. Greenwood - It's been three or four years since we've used the site.
1248 The types of projects we've been doing are producing their own [unintelligible]
1249 that we didn't need to use it, but we do have a need now for that material.
1250
1251 Mr. Blankinship - Yes. I was pleased to see when we went that it had
1252 been recently seeded, the grades look like they've been rolled back.
1253
1254 Mr. Greenwood - We re-graded, reseeded the site last fall, and then
1255 with the drought, we only got about 50% coverage. So, this spring we went in
1256 and reseeded again.
1257
1258 Mr. Blankinship - So, it is being well maintained.
1259
1260 Mr. Wright - Where do the trucks go? Tell me how the material is
1261 taken from the site to where you want to use it.
1262
1263 Mr. Greenwood - We're restricted to using Grapevine Road, the section
1264 that takes you out to Route 60. We don't travel the heavily populated residential
1265 area going back toward Airport Drive.
1266
1267 Mr. Wright - So, you go east on Grapevine Road? Is that correct?
1268
1269 Mr. Cochran - We would come out to Grapevine Road and take a
1270 left.

1271
1272 Mr. Wright - Take a left. That would be going east.
1273
1274 Mr. Greenwood - That's correct. Toward Route 60.
1275
1276 Mr. Wright - If you went right, you'd go right through that heavily
1277 populated area there.
1278
1279 Mr. Greenwood - Yes sir. We're restricted from using that area, and we
1280 don't use it at all.
1281
1282 Mr. Wright - Okay. Another question I have is how much longer do
1283 you propose that you would need a permit for the mining here?
1284
1285 Mr. Greenwood - It's our best guess when we come back for renewal
1286 two years from now, we'll probably be involved in reclamation.
1287
1288 Mr. Wright - I guess it would depend on how much material you
1289 have to take out.
1290
1291 Mr. Greenwood - That's correct, but right now, there's going to be a
1292 huge need for that material, so we anticipate that's going—
1293
1294 Mr. Wright - You really have a need for it now.
1295
1296 Mr. Greenwood - That's correct.
1297
1298 Ms. Harris - I have some questions. Mr. Wright, are you finished?
1299
1300 Mr. Wright - Yes.
1301
1302 Ms. Harris - For the moment. Okay. I have several questions. Is
1303 there anything in the conditions that will deal with the proposed increase in truck
1304 traffic? I know this has been a concern with some residential communities. Did
1305 you know, Mr. Greenwood or Mr. Cochran, the extent that truck traffic will
1306 increase?
1307
1308 Mr. Greenwood - There's a condition in our current permit that restricts
1309 us from having any more than three trucks traveling together on the roadway at
1310 any one time.
1311
1312 Ms. Harris - I know that, but per day is what I'm concerned about.
1313 I know we cannot have more than three traveling together, but how many in a
1314 day.
1315

1316 Mr. Greenwood - You would be looking at 10 to 12 trucks, and those 10
1317 to 12 trucks would probably be making upwards of about 12 to 15 loads per day.
1318 That's my best estimate.
1319

1320 Ms. Harris - Is that property fenced or enclosed? I know you have
1321 a gate at the entrance.
1322

1323 Mr. Greenwood - We have a gate at the entrance and there is no other
1324 access. The back part of the property is all wooded.
1325

1326 Ms. Harris - I was noticing the elevation and you have quite a
1327 steep elevation, so I was concerned about the communities that are not too far
1328 away and the safety factor there.
1329

1330 Mr. Greenwood - About five or six years ago when Stephanie Trace
1331 was being developed, we went back in and decreased the amount of slope in
1332 that area on that side of the property.
1333

1334 Mr. Cochran - One of the conditions of the permit, obviously, is "No
1335 Trespassing" signs all around the project. If someone did get over in that area,
1336 they would be violating the law.
1337

1338 Mr. Wright - There's no processing on this property, from my
1339 understanding.
1340

1341 Mr. Greenwood - That is correct. Only loading and hauling.
1342

1343 Mr. Wright - How much noise is involved in extracting the
1344 materials?
1345

1346 Mr. Greenwood - A minimum amount. There is probably about a 500- to
1347 600-buffer zone, and about half of that is timbered between our operation and the
1348 nearest neighbors.
1349

1350 Ms. Harris - In the areas looking north on the aerial photo—you
1351 had it on the screen a few minutes ago—there seems to be a single-family home.
1352 I'm questioning that. It says the road looking north, in our packet. This house, is
1353 that an individual?
1354

1355 Mr. Greenwood - This house is owned by the owner of the site.
1356

1357 Ms. Harris - Okay. Do you have other pits or landfills in that area?
1358

1359 Mr. Greenwood - No others at this time.
1360

1361 Ms. Harris - How often do we treat the roads? I know in the
1362 conditions it's stated that you would treat them with the solution, but how often
1363 are they treated?
1364

1365 Mr. Greenwood - We keep a water truck on site at any time that the site
1366 is in use.
1367

1368 Ms. Harris - And in that water truck are the chemicals that we list
1369 in the conditions.
1370

1371 Mr. Greenwood - We treat it with water to take care of any dust
1372 problems, and we have a grading machine there to keep the road surface
1373 graded.
1374

1375 Ms. Harris - But that's not my question. I asked you how often they
1376 are treated with the chemicals that are in the condition. I know you have a water
1377 truck to water to keep the dust down, but how often do you—I have referenced in
1378 my mind some of the sites in the Varina District where water is used, but
1379 evidently they need something else other than the water.
1380

1381 Mr. Greenwood - Occasionally, salt is used to control dust on certain
1382 projects. If it was required here, we would use it, but a water truck seems to be
1383 the best method here. The site is asphalt paved where it connects to Grapevine
1384 Road.
1385

1386 Mr. Blankinship - Condition 17 requires calcium chloride or other
1387 wetting agents.
1388

1389 Ms. Harris - So, the calcium chloride treatment, how often is that
1390 done?
1391

1392 Mr. Greenwood - We've never had a need to use it; we've always used
1393 water without any complaints.
1394

1395 Ms. Harris - This property is zoned partially C-1 and A-1, but for
1396 the Conservation District, it is zoned C-1. Do you know what's being conserved
1397 there? Are there historical places?
1398

1399 Mr. Cochran - The conservation area is a resource protection area
1400 and wetlands and floodplain. We're not aware of any historical resources in this
1401 area.
1402

1403 Ms. Harris - I believe those are all my questions.
1404

1405 Mr. Kirkland - Any other questions by Board members? Anyone else
1406 wish to speak? If not, that concludes the case. Thank you, sir.

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DECISION

Ms. Harris - I move that we approve this case.

Mr. Kirkland - Motion made by Ms. Harris.

Mr. Nunnally - Second.

Mr. Kirkland - Seconded by Mr. Nunnally. Do we have a reason for doing this?

Ms. Harris - The conditional use permit discusses the health, safety, and well-being issues. I feel that this will not adversely impact on the neighborhood, nor the health, safety, and well-being of those involved. It seems as though the conditions have been acceptable to the applicant. I think those conditions have been refined many times because this type of case is not strange to us. I do support the approval of this conditional use permit.

Mr. Kirkland - All right. I'd also like to comment that during the inactive period of time, the applicant has worked on keeping cover on there as best he could, and kept maintenance on the sites. That's a good track record for us to look forward to.

All right. Motion made by Ms. Harris, 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. Harris, seconded by Mr. Nunnally, the Board **approved** application **UP-009-08**, Simons Hauling company Inc.'s request for a conditional use permit pursuant to Sections 24-52(d) and 24-103 to extract materials from the earth at 2655 Lacywood Lane (Parcel 840-722-1635), zoned A-1, Agricultural District and C-1, Conservation District (Varina). The Board approved this conditional use permit 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. The operation shall be conducted in accordance with the plans and narrative submitted with the application, except as noted below.
2. Before beginning any work, the applicant shall provide a financial guaranty in an amount of \$3,000 per acre for each acre of land to be disturbed, for a total of \$111,000, guaranteeing that the land will be restored to a reasonably level and drainable condition, consistent with the elevation before 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

1453 termination, this permit shall be void, and work incident thereto shall cease.
1454 Within the next 90 days the applicant shall restore the land as provided for under
1455 the conditions of this use permit. Termination of such financial guaranty shall not
1456 relieve the applicant from its obligation to indemnify the County of Henrico for any
1457 breach of the conditions of this use permit. If this condition is not satisfied within
1458 90 days of approval, the use permit shall be void.

1459
1460 3. Before beginning any work, the applicant shall apply for and obtain approval
1461 of erosion and sedimentation control plans from the Department of Public Works
1462 (DPW). The erosion control bond necessary for approval of the plan shall remain
1463 active throughout the life of the project until release by DPW. Throughout the life
1464 of the operation, the applicant shall continuously satisfy DPW that erosion and
1465 sedimentation control is performed and maintained in accordance with the
1466 approved plan. The applicant shall provide certification from a licensed
1467 professional engineer that dams, embankments and sediment control structures
1468 meet the approved design criteria as set forth by the State. If this condition is not
1469 satisfied within 90 days of approval, the use permit shall be void.

1470
1471 4. Before beginning any work, the applicant shall obtain a mine license from the
1472 Virginia Department of Mines, Minerals and Energy. If this condition is not
1473 satisfied within 90 days of approval, the use permit shall be void.

1474
1475 5. Before beginning any work, the areas approved for mining under this permit
1476 shall be delineated on the ground by five-foot-high metal posts at least five
1477 inches in diameter and painted in alternate one foot stripes of red and white.
1478 These posts shall be so located as to clearly define the area in which the mining
1479 is permitted. They shall be located, and their location certified, by a certified land
1480 surveyor. If this condition is not satisfied within 90 days of approval, the use
1481 permit shall be void.

1482
1483 6. In the event that the approval of this use permit is appealed, all conditions
1484 requiring action within 90 days will be deemed satisfied if the required actions are
1485 taken within 90 days of final action on the appeal.

1486
1487 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
1488 state and local regulations administered under such act applicable to the
1489 property, and shall furnish to the Planning Department copies of all reports
1490 required by such act or regulations.

1491
1492 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight
1493 Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

1494
1495 9. No operations of any kind are to be conducted at the site on Saturdays,
1496 Sundays, or national holidays.

1497

- 1498 10. All means of access to the property shall be from the established entrance
1499 onto Grapevine Road.
1500
- 1501 11. The applicant shall erect and maintain gates at all entrances to the property.
1502 These gates shall be locked at all times, except when authorized representatives
1503 of the applicant are on the property.
1504
- 1505 12. The applicant shall post and maintain a sign at the entrance to the mining
1506 site stating the name of the operator, the use permit number, the mine license
1507 number, and the telephone number of the operator. The sign shall be 12 square
1508 feet in area and the letters shall be three inches high.
1509
- 1510 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet
1511 along the perimeter of the property. The letters shall be three inches high. The
1512 applicant shall furnish the Chief of Police a letter authorizing the Division of
1513 Police to enforce the "No Trespassing" regulations, and agreeing to send a
1514 representative to testify in court as required or requested by the Division of
1515 Police.
1516
- 1517 14. Standard "Truck Entering Highway" signs shall be maintained on Grapevine
1518 Road on each side of the entrances to the property. These signs will be placed
1519 by the County, at the applicant's expense.
1520
- 1521 15. The applicant shall post and maintain a standard stop sign at the entrance to
1522 Lacywood Lane.
1523
- 1524 16. The applicant shall provide a flagman to control traffic from the site onto the
1525 public road, with the flagman yielding the right of way to the public road traffic at
1526 all times. This flagman will be required whenever the Division of Police deems
1527 necessary.
1528
- 1529 17. The entrance road shall be paved from its intersection with Lacywood Lane
1530 for a distance of 300 feet and a width of 24 feet. All roads used in connection with
1531 this use permit shall be effectively treated with calcium chloride or other wetting
1532 agents to eliminate any dust nuisance.
1533
- 1534 18. The operation shall be so scheduled that trucks will travel at regular intervals
1535 and not in groups of three or more.
1536
- 1537 19. Trucks shall be loaded in a way to prevent overloading or spilling of
1538 materials of any kind on any public road.
1539
- 1540 20. The applicant shall maintain the property, fences, and roads in a safe and
1541 secure condition indefinitely, or convert the property to some other safe use.
1542

- 1543 21. If, in the course of its preliminary investigation or operations, the applicant
1544 discovers evidence of cultural or historical resources, or an endangered species,
1545 or a significant habitat, it shall notify appropriate authorities and provide them
1546 with an opportunity to investigate the site. The applicant shall report the results of
1547 any such investigation to the Planning Department.
1548
- 1549 22. If water wells located on surrounding properties are adversely affected, and
1550 the extraction operations on this site are suspected as the cause, the effected
1551 property owners may present to the Board evidence that the extraction operation
1552 is a contributing factor. After a hearing by the Board, this use permit may be
1553 revoked or suspended, and the operator may be required to correct the problem.
1554
- 1555 23. Open and vertical excavations having a depth of 10 feet or more, for a period
1556 of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to
1557 protect the public safety.
1558
- 1559 24. Topsoil shall not be removed from any part of the property outside of the
1560 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the
1561 property for respreading in a layer with five inches of minimum depth. All topsoil
1562 shall be stockpiled within the authorized mining area and provided with adequate
1563 erosion control protection. If the site does not yield sufficient topsoil, additional
1564 topsoil shall be brought to the site to provide the required five-inch layer of cover.
1565 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as
1566 recommended by the County after soil tests have been provided to the County.
1567
- 1568 25. No offsite-generated materials shall be deposited on the mining site without
1569 prior written approval of the Director of Planning. To obtain such approval, the
1570 operator shall submit a request stating the origin, nature and quantity of material
1571 to be deposited, and certifying that no contaminated or hazardous material will be
1572 included. The material to be deposited on the site shall be limited to imperishable
1573 materials such as stone, bricks, tile, sand, gravel, soil, asphalt, concrete and like
1574 materials, and shall not include any hazardous materials as defined by the
1575 Virginia Hazardous Waste Management Regulations.
1576
- 1577 26. A superintendent, who shall be personally familiar with all the terms and
1578 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the
1579 terms and conditions of this use permit, shall be present at the beginning and
1580 conclusion of operations each work day to see that all the conditions of the Code
1581 and this use permit are observed.
1582
- 1583 27. A progress report shall be submitted to the Board on June 30, 2009. This
1584 progress report must contain information concerning how much property has
1585 been mined to date of the report, the amount of land left to be mined, how much
1586 rehabilitation has been performed, when and how the remaining amount of land
1587 will be rehabilitated, and any other pertinent information about the operation that
1588 would be helpful to the Board.

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28. Excavation shall be discontinued by June 30, 2010, and restoration accomplished by not later than June 30, 2011, unless a new permit is granted by the Board of Zoning Appeals.

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

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

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

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

UP-010-08 THE ACTIVE HAND MINISTRY requests a conditional use permit pursuant to Section 24-116(c)(1) to host fundraising events at 3302 Williamsburg Road (Parcel 811-714-5996), zoned B-2 and B-3, Business District (Varina).

Mr. Kirkland - Does anyone else wish to speak on this case? Sir, ma'am, raise your right hand and be sworn in.

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

Mr. Gash - I affirm.

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

Mr. Gash - My name Junius Ezel Gash.

Mr. Kirkland - All right, Mr. Gash, what are you requiring from the BZA here this morning?

1636 Mr. Gash - Well, good morning, Commissioners. Thank you for
1637 the opportunity to present our case. THE ACTIVE HAND Ministry is a charitable
1638 501-C3 organization registered to solicit funds in Virginia. THE ACTIVE HAND
1639 Ministry's primary purpose is to train new disciples in community-organizing, who
1640 would develop grassroots efforts that shall relieve the impoverished spiritual,
1641 social, and economic conditions, and would connect poor people with
1642 empowering opportunities. THE ACTIVE HAND Ministry offers spiritual and
1643 community organizing programs to increase skills that will change the attitudes of
1644 the poor, and modify their behaviors. THE ACTIVE HAND Ministry acts on the
1645 premise that people can and do improve their impoverished conditions, and alter
1646 their economic, social, and spiritual status. We network with other not-for-profits,
1647 such as the 4-H Club, and Empowerment USA to provide community awareness
1648 and self-leadership.

1649
1650 By allowing THE ACTIVE HAND Ministry an opportunity to promote their mission
1651 and goals through fund-raising events at the Great Big Flea Market, the County
1652 of Henrico, East District, will fill a void felt by the absence of such activities for
1653 their citizens, especially the youth in the area. One of THE ACTIVE HAND
1654 Ministry's goals is to provide leadership skills to our future young leaders so they
1655 will have the skills to give back to their communities when they become
1656 responsible adults.

1657
1658 We, THE ACTIVE HAND Ministry, believe if the Board will grant us the
1659 conditional use permit and allow us to raise funds for this purpose, the Board will
1660 create a win/win situation for all involved, especially the County of Henrico, the
1661 East District. As a matter of fact, we have invited Supervisor Frank J. Thornton
1662 to be our keynote speaker at our Go Green Farmers Market coming out event.
1663 With your approval, it will be held on June 21, 2008. We also extend a warm
1664 welcome to each one of you to come out and enjoy this fun day. As you see, we
1665 do have supporters here.

1666
1667 So, it is with great expectation that we ask the Board to grant our request. Thank
1668 you.

1669

1670 Mr. Nunnally - You have three events here?

1671

1672 Mr. Gash - We have three that we submitted.

1673

1674 Mr. Blankinship - Is there a fourth?

1675

1676 Mr. Gash - Yes, there was a fourth. You all must have kind of
1677 gotten it mixed up or something.

1678

1679 Mr. Blankinship - We can add that now, since that doesn't go in the
1680 advertisement. Can you describe that fourth one on August 23rd?

1681

1682 Mr. Gash - Yes. That's the gospel event.
1683
1684 Mr. Blankinship - Yes.
1685
1686 Mr. Gash - What we were trying to do, Mr. Blankinship, when I
1687 first contacted your office, we wanted to have a music appreciation day for the
1688 community. We were going to have jazz bands, gospel, and things like that. But
1689 we had to get a conditional use permit.
1690
1691 Mr. Blankinship - Right.
1692
1693 Mr. Gash - So now what we have done is come here to get a
1694 conditional use permit, but we're going to do a Gospelfest similar to a community
1695 musical day on that date. So, it will all be the same type of thing, we just had to
1696 push the date up some.
1697
1698 Ms. Harris - Also on July 19th, I noticed that we have in our
1699 packets a crabfest.
1700
1701 Mr. Blankinship - That's the one you changed.
1702
1703 Mr. Gash - Yes. We want to change that to August the 2nd.
1704
1705 Mr. Blankinship - That's listed correctly in the conditions.
1706
1707 Mr. Nunnally - We don't need August the 24th, then?
1708
1709 Mr. Blankinship - We do want to add that one.
1710
1711 Mr. Gash - We do want to add August the 23rd, the Gospelfest.
1712
1713 Ms. Harris - This did not mention the other date that you said
1714 Supervisor Thornton would be—
1715
1716 Mr. Gash - Yes. That's supposed to be our first coming out
1717 evening. It's going to be a Go Green Farmer's Market event on June 21st.
1718
1719 Mr. Kirkland - Have you read the report from the Police
1720 Department?
1721
1722 Mr. Gash - Yes, we have. This is Heidi Duval. She's the owner of
1723 The Great Big Flea Market and is extending this opportunity to us. She already
1724 had a lot of these things in place at The Great Big Flea Market. She has assured
1725 me that if there's anything that you want us to do or want her to do, she will have
1726 it done before that first event.
1727

1728 Mr. Kirkland - We would just like you to work closely with the Police
1729 Department, always keep in touch with them and work out a plan for these
1730 events.
1731
1732 Mr. Gash - Yes sir.
1733
1734 Mr. Kirkland - They pretty well spelled out some of their
1735 recommendations in here.
1736
1737 Mr. Gash - Yes sir.
1738
1739 Ms. Harris - I have several questions. What type of organization is
1740 James River Association? I notice that you say in partnership more or less with
1741 the James River Association.
1742
1743 Mr. Gash - I will let Ms. Duval.
1744
1745 Mr. Kirkland - Ma'am, would you state your name.
1746
1747 Ms. Duval - Yes. My name is Heidi Duval and I'm the owner of
1748 The Great Big Flea Market; it belongs to my husband. The James River
1749 Association is actually the James River Green Building Council Association. My
1750 husband and I have signed up The Great Big Flea Market to go green. It's an
1751 organization that encourages not only builders and contractors, but I guess also
1752 people in the community to lower their intake, whether it's changing over your
1753 home to using solar panels, or whether it's switching to corn oil, or using
1754 electrical cars. We'd like to use these events to build awareness so that people
1755 can minimize their intake. I think it goes hand-in-hand with THE ACTIVE HAND
1756 Ministry as well, too. There is an aspect of saving money once you minimize your
1757 intake, so we can teach some of these people in the impoverished communities
1758 how to save some more money by going green.
1759
1760 Ms. Harris - What percentage arrangement do you have? Will you
1761 all be 50/50, or 60/40, or 70/30, or what?
1762
1763 Ms. Duval - Actually, we are splitting it up, because we are doing
1764 THE ACTIVE HAND Ministry, and we are doing the James River Green Building
1765 Council, as well as the 4-H. So, we're giving them 10% of each. It's not really a
1766 moneymaking event that we're having. We'd like to utilize the large parking lot
1767 that we have, and have more community events so that our customers can enjoy
1768 it, the community can enjoy it. We're really just giving all of the proceeds to
1769 these causes that we enjoy so much.
1770
1771 Ms. Harris - You stated in the application that neighboring
1772 properties host very similar events. What events are you referencing?
1773

1774 Mr. Gash - We were talking about the Coachman Club.
1775
1776 Ms. Duval - It's actually the Sportsman's Bar. Annually I know
1777 they do—it's an actual motorcycle bar, so annually they do—what do they call it?
1778 They do runs. They often do concerts on the inside, and on the outside, they
1779 have music, and vending, and things of that nature. We're on Williamsburg Road,
1780 too, and the races are there. Right down Laburnum, all down Williamsburg, they
1781 do a lot of events that have outdoor vending. I think it was a church that did it on
1782 Williamsburg Road right next to a Napa Auto Parts store. They actually have a
1783 fundraiser for a church that actually sells used merchandise out there. There are
1784 always a lot of things on Williamsburg Road going on.
1785
1786 Mr. Gash - The difference that we see here is that we're doing
1787 ours free for the community awareness and empowerment, while they're doing
1788 theirs to make money. If you all would allow us to give back to the community,
1789 we would appreciate it.
1790
1791 Ms. Harris - But you said you're holding a fundraising event.
1792
1793 Mr. Gash - It's fund-raising, but we're not-for-profit.
1794
1795 Ms. Harris - Okay. So, they do theirs for profit.
1796
1797 Mr. Gash - They do theirs for a profit.
1798
1799 Ms. Harris - Okay. Mr. Blankinship, do you know if the
1800 Sportsman's Bar or Napa gets a conditional use permit for their events?
1801
1802 Mr. Blankinship - No ma'am, not to my knowledge.
1803
1804 Ms. Harris - Okay. Reverend Gash, will alcohol be on the
1805 premises?
1806
1807 Mr. Gash - We are not a church. We do not condone
1808 consumption of alcohol, but we do not forbid it. At our events, we will not sell or
1809 promote the sale of alcohol.
1810
1811 Ms. Harris - Will trailers be on the site? Will you use trailers?
1812
1813 Mr. Gash - We were going to use popup tents and stuff like that.
1814 No trailers.
1815
1816 Ms. Harris - No port-o-johns?
1817
1818 Mr. Gash - Well, we might have to supply some port-o-johns, but
1819 we do have the sewer facility inside the flea market. In fact, we have like four.

1820
1821 Ms. Harris - So, you do have a layout of how you're going to—
1822
1823 Mr. Gash - We have a layout, yes ma'am.
1824
1825 Ms. Harris - We saw that you're going to have two security
1826 personnel on site. Will you have security lighting or is it already pretty well lit?
1827
1828 Mr. Gash - Already. By the time we're finished, the large light will
1829 just be getting ready to go on.
1830
1831 Ms. Harris - Those are my questions.
1832
1833 Mr. Gash - Thank you, ma'am.
1834
1835 Mr. Wright - I have one question. I notice you're going to have live
1836 music. Is that inside or would that be outside?
1837
1838 Mr. Gash - That would outside also. That was another concern. I
1839 talked to Lawyer Kazzie. Lawyer Kazzie said that as long as we weren't charging
1840 any kind of fees or anything, he didn't see any problem with it.
1841
1842 Mr. Wright - I'm not worried about the fees, but the noise. I
1843 wonder how that would impact on—I think there is an apartment building nearby.
1844
1845 Mr. Gash - Yes sir. There are houses in the community; however,
1846 what we're looking at is the time element from 11:00 a.m. to the time we close at
1847 5:30 p.m., shut down at 6:00 p.m. The noise will be basically what's around
1848 there in the area anyway, so.
1849
1850 Mr. Wright - No night activity here.
1851
1852 Mr. Gash - No night activity, no sir. No. They close at 7:00 p.m.
1853 at The Great Big Flea Market, so we would have to be out of there before that
1854 time.
1855
1856 Mr. Blankinship - If it's jazz or gospel, it's for their own good anyway.
1857
1858 Mr. Gash - We hope so.
1859
1860 Ms. Harris - Doesn't the Police Department have a requirement of
1861 like so many decibels?
1862
1863 Mr. Blankinship - Not during the day. Only after 11 p.m.
1864
1865 Ms. Harris - Okay.

1866
1867 Ms. Duval - We're not going to blare.
1868
1869 Ms. Harris - You're not going to blast them out.
1870
1871 Mr. Gash - Not like some of the cars that travel along there.
1872
1873 Ms. Duval - We make it a point to actually send invitations to
1874 everyone within the community. We actually sent invitations to them as well to let
1875 them know about the hearing. And we also call each of the rental properties and
1876 owners of the buildings around. We do it for them, so we want to make sure that
1877 they come and can appreciate what we do.
1878
1879 Mr. Gash - Yes.
1880
1881 Mr. Kirkland - Any other questions? Anyone else wish to speak? If
1882 not, that concludes the case. Thank you, sir and ma'am.
1883
1884 Mr. Gash - Thank you.
1885
1886 Ms. Duval - Thank you.
1887
1888 **DECISION**
1889
1890 Mr. Nunnally - I move we approve it.
1891
1892 Mr. Wright - Second.
1893
1894 Mr. Kirkland - Motion by Mr. Nunnally, seconded by Mr. Wright.
1895
1896 Mr. Nunnally - My reason is because I don't think it would be any
1897 hardship to the community, and I think it's a real good thing they're doing for the
1898 needy. That's the reason I'm approving it.
1899
1900 Mr. Kirkland - Any other discussion? If not, all those in favor say
1901 aye. All those opposed say no. The ayes have it; the motion passes.
1902
1903 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1904 Mr. Wright, the Board **approved** application **UP-010-08, THE ACTIVE HAND**
1905 **Ministry's** request for a conditional use permit pursuant to Section 24-116(c)(1)
1906 to host fundraising events at 3302 Williamsburg Road (Parcel 811-714-5996),
1907 zoned B-2 and B-3, Business District (Varina). The Board approved this
1908 conditional use permit subject to the following conditions:
1909
1910 1. [AMENDED] The following events are approved pursuant to this permit:
1911 a. June 21, 2008, 10:00 am to 6:00 pm: Community Go Green Day

- 1912 b. August 2, 2008, 10:00 am to 6:00 pm: Crab Festival
 1913 c. August 23, 2008, 11:00 am to 6:00 pm: Music Festival
 1914 c. October 18, 2008, 10:00 am to 6:00 pm: Chili Festival
 1915 Any other use of the property shall comply with the applicable regulations of the
 1916 County Code. Any substantial changes or additions to the design or location of
 1917 the improvements may require a new use permit.

1918
 1919 2. The operator shall coordinate with the Division of Police regarding traffic
 1920 control and public safety. This includes, but is not limited to, satisfying the
 1921 Community Policing Unit's recommendations for Crime Prevention Through
 1922 Environmental Design, set forth in a memorandum dated May 11, 2008.

1923
 1924 3. The operator shall apply for and receive building permits as required by the
 1925 Department of Building Construction and Inspections.

1926
 1927 4. The operator shall apply for and receive all necessary approvals from the
 1928 Department of Health, including temporary restaurant permits and approval of
 1929 sanitary facilities.

1930
 1931

1932 Affirmative:	Harris, Kirkland, Nunnally, Wright	4
1933 Negative:		0
1934 Absent:	Dwyer	1

1935
 1936
 1937 **A-010-08** **KEN BROADWATER HOMES, LLC** requests a
 1938 variance from Section 24-9 to build a one-family dwelling at 11936 Old
 1939 Washington Highway (Parcel 773-778-8430), zoned A-1, Agricultural District
 1940 (Brookland). The public street frontage requirement is not met. The applicant has
 1941 0 feet public street frontage where the Code requires 50 feet public street
 1942 frontage. The applicant requests a variance of 50 feet public street frontage.

1943
 1944 Mr. Kirkland - If you would, sir, raise your right hand, and all those
 1945 who wish to speak, raise their right hand and be sworn in.

1946
 1947 Mr. Blankinship - Raise your right hand, please. Do you swear the
 1948 testimony you're about to give is the truth and nothing but the truth so help you
 1949 God?

1950
 1951 Mr. Broadwater - I do.

1952
 1953 Mr. Kirkland - All right, sir, would you state your name for the record.

1954
 1955 Mr. Broadwater - Ken Broadwater.

1956
 1957 Mr. Kirkland - What do you request from the Board of Zoning
 1958 Appeals this morning?

1959

1960 Mr. Broadwater - We request a variance because a piece of property
 1961 we bought to build a home on does not meet the 50-foot road frontage. There
 1962 was a house already on the property at one time. We do have a 24-foot-wide
 1963 easement to access the property as it is anyway. There was already a variance
 1964 granted to an adjoining piece of property. We bought the property at a fair market
 1965 value for the sole purpose of building a single-family home on that property.
 1966

1967 Mr. Kirkland - Did you know when you purchased it that you could
 1968 not build a single-family home there?
 1969

1970 Mr. Broadwater - No, I was not aware that we could not build a single-
 1971 family home.
 1972

1973 Mr. Kirkland - Without a variance.
 1974

1975 Mr. Broadwater - Correct.
 1976

1977 Mr. Kirkland - No one explained that to you.
 1978

1979 Mr. Broadwater - Correct.
 1980

1981 Mr. Kirkland - Okay.
 1982

1983 Ms. Harris - We received a letter from one of Mr. Broadwater's
 1984 neighbors about deferring this case, so we decided to go ahead and hear it or?
 1985

1986 Mr. Kirkland - Deferring the case is up to the applicant and not up to
 1987 the opposition. That's normally been the general rule with this Board.
 1988

1989 Mr. Blankinship - We'll hold the hearing, but whether you make a
 1990 decision today is, of course, up to you. You could choose today to defer.
 1991

1992 Mr. Kirkland - We could choose to defer after we hear the
 1993 information.
 1994

1995 Mr. Broadwater - We received that letter as well yesterday. It was some
 1996 30 days ago that—we purchased the property back I think it was in January or
 1997 so. It was 30 days ago almost to the day that I received a phone call from Mr.
 1998 Taggart, one of the owners, who had stated that they were probably going to
 1999 oppose this unless we had a road maintenance agreement in place. We
 2000 discussed the fact of having a road maintenance agreement in place for this
 2001 other house on this easement. At that time, I had told Mr. Taggart that I was not
 2002 opposed to having a road maintenance agreement, and his instruction was that
 2003 he was to contact his attorney, they were going to adopt a basic road
 2004 maintenance agreement, and let's start the negotiation to see what we could

2005 come up with. We have heard nothing more from anybody out there until
2006 yesterday, which I think you guys have also received, a copy of the letter from
2007 the attorney stating that they want a 60-day extension.
2008

2009 We've had this property now for, like I said, about six months. We have paid a
2010 premium price on it. We are at a point of hardship almost to be able to do
2011 something. We didn't buy it at substandard price in hopes that we could make
2012 this thing come together. We paid a premium building price for this. Sixty days to
2013 come up with an agreement to me is just unheard of. If I had known that they
2014 were not interested in pursuing that at that point in time, I would have had an
2015 attorney put together a road maintenance agreement. We just basically waited on
2016 them to come up with whatever it was that they expected us to do, or what they
2017 would like for us to do. As everybody is aware, like I said, we don't need the
2018 variance to even access the property. We could drive back and forth over that
2019 easement from now on. The road maintenance I think is a good thing because if
2020 there are three or four people using the roads, then I think that's something we
2021 could come up with. If they want to defer this case until we come up with it, my
2022 thoughts are that they've had the time to get the ball rolling on this.
2023

2024 To me, the hardship now is because we've been such a long time just waiting.
2025 We've had to go through this process, which was somewhat of a surprise to me
2026 because of the price we paid. I thought most of this paperwork was done, but
2027 that's beside the point. We are at the point of, like I said, a hardship because the
2028 market being where it's at, we build homes—Basically, we have a contract to
2029 build a home for a customer on this property. It's a sold home.
2030

2031 Mr. Kirkland - Sir, I find it hard to believe that you bought this
2032 property and you did not know that you could not build a home on it. You had a
2033 lawyer, I assume, help you in the purchase?
2034

2035 Mr. Broadwater - Correct.
2036

2037 Mr. Kirkland - And he didn't know this?
2038

2039 Mr. Broadwater - We had the ingress/egress. We have a way to the
2040 property.
2041

2042 Mr. Kirkland - But you didn't have 50 foot road frontage.
2043

2044 Mr. Broadwater - Right. Well see, I guess that was something that I
2045 was not aware of because of the existing that was on the property was torn
2046 down. Somebody had just torn the home down. Whoever was living in that home
2047 was using this road. It was never a question. I guess it wasn't something that
2048 came up. The property was subdivided, so I assumed that if the County has
2049 approved the subdivision of this lot for purposes other than agricultural use—
2050

2051 Mr. Kirkland - Did you read the standard about the Cochran case
2052 that you signed?
2053
2054 Mr. Broadwater - If I signed, then I'm certain I have.
2055
2056 Mr. Kirkland - About considering the threshold question for this
2057 variance? Did you understand that? It looks like this.
2058
2059 Mr. Broadwater - Exactly. I think with me, this does interfere with the
2060 reasonable and beneficial use of this property.
2061
2062 Mr. Kirkland - Okay. Just wanted to make sure you read it.
2063
2064 Mr. Broadwater - Oh yes, exactly. We cannot build a home. Actually,
2065 we can build the home if we were granted the variance. Our opposition is not
2066 against the building of the home, it's about a road maintenance agreement to get
2067 to the home.
2068
2069 Mr. Kirkland - I'm not even looking into the road maintenance
2070 agreement. I'm looking at the 50-foot road frontage item. That's what our goal is
2071 right now. All right.
2072
2073 Mr. Wright - The variance that was granted initially was before
2074 Cochran. 2003. Cochran was decided in 2004. So, at that point when the
2075 variance was granted to divide the property, that left this 2.2 acres sitting there as
2076 a non-conforming use because it had a dwelling on it at the time.
2077
2078 Mr. Kirkland - That's correct. Then you removed the dwelling.
2079
2080 Mr. Wright - The property was non-conforming period, but you
2081 couldn't use it for anything without a variance.
2082
2083 Ms. Harris - When was the first time you saw the conditions
2084 related to this property, just today?
2085
2086 Mr. Broadwater - The conditions?
2087
2088 Ms. Harris - The road maintenance agreement is mentioned in the
2089 conditions.
2090
2091 Mr. Broadwater - I saw these conditions. Yes, I have. That's what I
2092 said, we had talked about the road maintenance agreement before we received
2093 the conditions, the suggested conditions of this. We're still not opposed to that,
2094 except that we don't want to wait 60 days. I'm open to negotiating a road
2095 maintenance agreement. I would like to be able to, though, get our variance and
2096 start building as soon as possible. Before we sell this home, I have no problem

2097 complying with this suggestion #4. Again, I'm not building a home for myself, so
2098 it's not as though I'm planning to live there. We do have a contract to build this
2099 home. It's a substantial house.

2100

2101 Mr. Kirkland - Any other questions by Board members? I guess we
2102 have some opposition. You'll have time to rebut after we hear from them.

2103

2104 Mr. Broadwater - Thank you.

2105

2106 Mr. Kirkland - You've been sworn in, so if you'll state your name for
2107 the record.

2108

2109 Mr. Mizell - My name is John G. Mizell, Jr. I'm an attorney with
2110 the law firm of Spinella Ownings & Shaia. I appear today representing Mr. and
2111 Mrs. Taggart, and Mr. and Mrs. Warner who are neighbors and owners of the
2112 road in question that provides access to the subject site.

2113

2114 Mr. Wright - Where do they live in comparison to where this
2115 property is? Can you point that out for us?

2116

2117 Mr. Mizell - Mr. Taggart is right here, and then Mr. Warner is over
2118 to the right. Right there.

2119

2120 Mr. Wright - This road would go right by his house.

2121

2122 Mr. Mizell - Yes. One's on the left, and one's on the right. Let me
2123 add that Mr. James Warner is here and is available to give some historical
2124 background. He's lived there for many, many years. The other client of mine, Mr.
2125 Taggart, is in upper state New York trying to take care of some emergency for his
2126 mother that needs to be in a nursing home. I have talked with Mr. Taggart once
2127 yesterday since things have transpired over the last weekend. I guess that's part
2128 of the disadvantage. I think Mr. Taggart has been kind of the lead person. Mr
2129 Warner is here; they work together. I'll answer more questions that you would
2130 have later.

2131

2132 My argument is kind of two-fold. One is that we would oppose the granting of the
2133 variance for the various reasons as outlined in the staff report. I'll come back to
2134 that and mark through that in more detail. Alternatively, if the Board does see fit
2135 to grant the variance, then we would certainly ask that you put a condition on it,
2136 as suggested by the staff in item #4. That condition is acceptable to my clients,
2137 Mr. Taggart and Mr. Warner.

2138

2139 As for the overview of the property and the legal analysis, as you can see from
2140 the staff report, the property was originally owned by the Keeton's, a 3.8-acre
2141 parcel as it existed in the early 2000's. The previous variance was granted, I
2142 believe there was a letter dated March 31, 2003. One of the conditions, #3, read,

2143 “At the time of building permit application, the owner shall demonstrate that the
2144 parcel created by this division has been conveyed to members of the immediate
2145 family, and the subdivision ordinance has not been circumvented.” I think all of
2146 the indication is that the variance request at that time in 2003 was a family
2147 hardship. All the history was that mother and father I think lived on the, let’s see,
2148 northern part, the subject parcel for this case now. They wanted a son to be able
2149 to build a house just to the south on a 1.7-acre parcel, and basically come back
2150 home and take care of the parents. Then somewhere along the way, they did
2151 divide it. That house was built to the south, and then later something changed
2152 drastically and the Keeton’s conveyed 2.2 acres—the subject parcel that’s in
2153 question for this case—first to Haley Builders, I think around 2004. Soon
2154 thereafter, the original dwelling on this site was taken down.

2155
2156 Mr. Wright - Mr. Mizell, let me ask you something.

2157
2158 Mr. Mizell - Yes sir.

2159
2160 Mr. Wright - Is it your position, then, that if members of family had
2161 build on this 2.2 acres, that would be satisfactory?

2162
2163 Mr. Mizell - Well, it would at least be consistent with what was the
2164 whole basis for the request back in 2003.

2165
2166 Mr. Wright - That may have been the intent then. Mr. Blankinship,
2167 isn’t there a condition that on a family subdivision, you can sell it after five years?

2168
2169 Mr. Blankinship - That’s what we do now, yes sir. In 2003, we had not
2170 started using that as a standard condition yet, but we do now. We did give that
2171 some thought. Even if we had put that condition on, they would have complied
2172 with it as of March 31st of this year.

2173
2174 Mr. Wright - They would have complied. It’s valid then.

2175
2176 Mr. Blankinship - I believe the family issue has been put to rest, yes sir.
2177 From staff’s point of view.

2178
2179 Mr. Mizell - They actually conveyed it in 2004, I think.

2180
2181 Mr. Blankinship - Right. The property for which the 2003 variance was
2182 granted was conveyed to a member of the family. The residue of that property,
2183 which is the subject of today’s hearing, was then sold to a builder. They
2184 complied with the letter of the condition. It’s questionable whether they really
2185 complied with the spirit. I think after five years, our position would be that even if
2186 both parcels had been kept in the family for five years, we would allow them to
2187 sell it outside today.

2188

2189 Mr. Wright - That's what your rule is.
2190
2191 Mr. Blankinship - It's not the ideal circumstance, but I believe the issue
2192 is moot.
2193
2194 Mr. Mizell - I believe in 2004 it was conveyed to Haley Builders
2195 and they kept it. For whatever reason, nothing transpired. A lot of things were
2196 talked about, and then only in—
2197
2198 Mr. Blankinship - Haley Builders tore down the house in 2005.
2199
2200 Mr. Mizell - Okay. Just in January of this year, it was sold by
2201 Haley Builders to Mr. Broadwater.
2202
2203 It would be our contention that using the analysis of the Cochran case, you really
2204 go back to the whole property, the 3.8 acres about, "all reasonable, beneficial
2205 uses of the property taken as a whole," would be interfered with. In fact, part of it
2206 has been used already. If you got past that analysis and still had to meet the
2207 three tests, especially exception #1, there are not exceptional conditions of size,
2208 shape, or topography that would justify a variance. There is just nothing unusual
2209 about this property at all.
2210
2211 In general, I can't imagine how Mr. Broadwater would have purchased the
2212 property without somehow knowing or being advised that you can't meet the
2213 County code requirement for the 50-foot public frontage. To do that, he did that
2214 at his own risk. There has been some monitoring of this, and I think certainly Mr.
2215 Warner indicates that he's been the point person between the Taggart's and the
2216 Warner's and the County. I think for several months, he's been in regular touch
2217 with Mr. Blankinship, and understood that there was a building permit application,
2218 but was waiting to see if and when the variance application would actually be
2219 filed. When these two gentlemen came to our office in the latter part of December
2220 or in December of 2007, they suspected that something was going to happen,
2221 but they didn't know by whom or when. In fact, when they came to us, we were
2222 hearing Haley Builders as the owner. I didn't know until about a month ago that it
2223 had been conveyed by Haley Builders to Mr. Broadwater.
2224
2225 I think over the past month, certainly, contact has been made with our office
2226 about a general concept of a road maintenance agreement. When we met with
2227 the clients originally in December, we talked about what that would probably be.
2228 You don't know what will happen, about whether the variance might be granted if
2229 it was sought, but your interest could be protected if we try to work on a road
2230 maintenance agreement. The feeling was let's just see how things run their
2231 course. Apparently, they moved rather slowly, and then all of a sudden about a
2232 month ago, they find out the variance application has finally been filed. I know
2233 Mr. Broadwater would say, well, why didn't we get it done in a month. Well, you
2234 can say there's a concept of a road maintenance agreement, but until you have

2235 people to sit down and tell you what the components of that are, you can't very
2236 well draft it. I think that's the problem that we've had. I think we're certainly
2237 willing to come to the bargaining table and try to make a good-faith effort to get
2238 that complied with. Hence, my request to give us—I ask for 60 days; certainly 30
2239 is probably acceptable.

2240

2241 I have talked at some length with Mr. Broadwater today about the suggested
2242 condition #4. Again, if you saw fit to grant the variance and wanted to add these
2243 conditions. Mr. Broadwater has expressed concern about this being dragged
2244 out. I've tried to indicate to him that I felt this was a pretty evenhanded condition
2245 that the staff has proposed, that it talks about wanting to have the road
2246 maintenance agreement recorded in conjunction with the building permit
2247 application. But it doesn't stop there. It goes further to guard against an arbitrary
2248 refusal of the neighbors of coming to the bargaining table and negotiating in good
2249 faith. To me, it's a very well-balanced one, and it's one that we could live with.
2250 On the other hand, Mr. Broadwater has indicated to me that he will not accept the
2251 language as it's proposed by the staff. I even went one step further and if he
2252 wanted to amend that language in the last sentence to the effect that the
2253 condition may be modified by the Director of Planning if after 30 days the
2254 applicant made a good-faith effort to establish a road maintenance agreement
2255 and owners of the adjoining property refuse. So, you could tie it down even
2256 tighter than that to show good faith will be done.

2257

2258 In summary, that is the position of the Taggart's and Warner's. They would say
2259 because of this position we're not getting an agreement, to either go along with
2260 that condition, or give us another 30 days in general just to defer the decision,
2261 certainly you have the right, I guess, to do that. But not hearing that, then we'd
2262 ask that you oppose the granting of the variance. Alternatively, if you will, please
2263 at least put that condition in to give us a chance to protect the interest of the
2264 clients.

2265

2266 Mr. Wright - Mr. Mizell, it looks to me that condition takes care of
2267 it. It provides that legal access has to be obtained and a road maintenance
2268 agreement recorded. Then it goes a little further to give the applicant some
2269 leeway if, in the judgment of the Planning Director, the neighboring property
2270 owners are not following through in the manner they should, or they're being
2271 obstinate, then you could do something else. I think basically, if the maintenance
2272 agreement is not entered into, they would not be able to go forward and get a
2273 permit. I don't see how the delay would help any in that regard. They either get
2274 the maintenance agreement or they don't, one way or the other. Seems like to
2275 me it's provided for, but I don't know.

2276

2277 Mr. Mizell - Let's assume Mr. and Mrs. Taggart, and Mr. and Mrs.
2278 Warner are satisfied with that condition, and we think that would be a fair way to
2279 address it. Any other questions, or do you have any questions of Mr. Warner
2280 about any of the historical aspects?

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Mr. Kirkland - Mr. Warner, you're welcome to speak.

Mr. Wright - He can speak.

Mr. Kirkland - If you would, state your name for the record.

Mr. Warner James H. Warner. John and I, and even the gentleman in the back, he knows how much I bird-dogged this thing. I met with him back when it was—It's been a big fiasco out there. They've torn our road up. They've run over our signs. We had to put speed bumps in. Then we heard that Haley sold the place. So, we started bird-dogging it again to see what had happened, and we found out that the property was sold, found it was to a builder. So, we kind of agreed that, well, after we spoke with John and I think Tom Eubank, that if we could get a good road maintenance agreement to help take care of the road, which we paved, that maybe if we could get a good road maintenance agreement, we wouldn't oppose this variance. I can't believe a builder would pay \$100,000 for a piece of property and knows he has to get a variance to build on, but that's not my problem. We started and we've been going. They told me that we couldn't do anything until it reached the Planning Commission for the variance. And, of course, that was the last place. I even went to the Building Permit. Had to fill out a form for some kind of privacy act to get me to see if a building permit had been filled. No, it hadn't. I came back again, and it had been filed. So, I go around and I talk to the gentleman in the back—I can't remember his name. He said they hadn't received anything yet. He said, "I'll tell you what I'll do." I said, "Keep coming back." And he said, "I'll call you." He finally called. It's been a fiasco for us just to keep up with, to see what's going on.

Mr. Blankinship, remember back when they subdivided this property, we were against it, but nobody told us. I own the road. I own one section, and John owns half. The County made us take ownership of this road; we didn't ask for it. The Planning Commission. I have the letter right here, when they built Thomas Mill, they turned the road over to us. I own part of it. Taggart.

I can't believe the County would let somebody subdivide a piece of property and not notify us. The only way I found out about Haley ending up with the property was through a friend who told me that Haley was going to build two more houses. I said, "Haley doesn't own any property." "Oh, yes he did."

The Keeton's ran into a problem with getting money. The boy couldn't qualify for a loan. We never contested the Keeton's building a home, because if anybody needed a home, the Keeton's needed a home. So finally, old slick Haley, he got the property for 22,500, and turns around and sells it for 100,000. I would have given him 22,500 for it, but nobody ever came to us and said they were going to sell the property. Here we own the road. I don't understand.

2327

2328 I'm just a regular old taxpayer. If you'd see the problems we've had. Community
2329 Services helped them clean the place up. They come in there and tore up our
2330 asphalt driveway. Henrico County had to replace 50 feet of it, come up there and
2331 dig it up, pay somebody. Then we have little kids playing out there, so we had to
2332 put speed bumps in to slow them down. Now, they're torn up some of the speed
2333 bumps where the cars have gone down and dug into them. We had to pay for all
2334 of this. Now, I have to pay to come over here and try to keep—I mean, if we can't
2335 get a road maintenance agreement, a decent one for us to maintain our nice
2336 road, John and I will firmly oppose any house building back there. That's the
2337 County rule. If you don't have 50 foot, you're not supposed to build. That's what
2338 I've been told.

2339

2340 Remember, Ben, you told me, "Well, they can sell the property and you can't,
2341 basically, do anything about it." Then they explained to me about the 50-foot road
2342 frontage. So, we couldn't actually do anything until he got a thing to his
2343 department. I know I've been over here. I was dealing with Jim Lehmann, who
2344 retired, and then the gentleman in the back. Then Mr. Taggart's mother, who is
2345 real sick in upstate, he had to go up there and try to get her in a nursing home.
2346 Basically, if we can't get an acceptable road maintenance agreement, we
2347 strongly oppose this.

2348

2349 Mr. Wright - Mr. Warner, how many people use that road for
2350 access?

2351

2352 Mr. Warner - The first part of it up, me and the Taggart's.

2353

2354 Mr. Wright - You live on the right going up that road?

2355

2356 Mr. Warner - Yes. Going up there, the first house on the right, yes
2357 sir.

2358

2359 Mr. Wright - That's not a very long way for you. That's your part,
2360 isn't it.

2361

2362 Mr. Warner - Right. But we've paved it on back to about where you
2363 see that garage. We fixed it. The road was all to pieces when we bought it, and
2364 we went in there and paid a lot of money and had it worked up. Another bad
2365 thing about it, when you go in, it's a hill. If you come in the road and somebody's
2366 coming out, it isn't wide enough to pass. You can't see anybody.

2367

2368 Mr. Wright - I thought it was supposed to be 24 feet.

2369

2370 Mr. Warner - It is, but we only paved whatever—Mr. Keeton, he
2371 didn't have any money, so we didn't ask Keeton to pay for any of the upkeep. Of

2372 course, he's passed. They're kind of on the poor side. We never involved them
2373 in any of the money.
2374
2375 Mr. Wright - Does Mr. Taggart use the road?
2376
2377 Mr. Warner - Yes, oh, yes. He goes up in there and then cuts in
2378 behind his house.
2379
2380 Mr. Wright - I see. He has access to the main highway, doesn't
2381 he?
2382
2383 Mr. Warner - Both of us have.
2384
2385 Mr. Wright - You're on the main highway.
2386
2387 Mr. Warner - Yes. Both of us are on the main highway, but the road
2388 went up between us. Then when they sold the property, I have the letter in here
2389 where they made us take ownership of the road. The Taggart's own to the
2390 middle; I own to the middle. Then back where it's just on my property, I own the
2391 whole road. Back where the Keeton's live, they own the road.
2392
2393 Mr. Wright - Right now, you and Mr. Taggart, and whoever lives
2394 behind you—
2395
2396 Mr. Warner - The Keeton's, yes. Ms. Keeton and her two sons.
2397
2398 Mr. Kirkland - Any other questions? All right, thank you, sir.
2399
2400 Mr. Warner - Thank you.
2401
2402 Mr. Kirkland - All right. Mr. Broadwater, are you still here? Do you
2403 have anything to rebut?
2404
2405 Mr. Broadwater - Yes. I guess in referring back to suggestion #4, as far
2406 as opposing this as it was written is because I should present proof with the
2407 building permit application that the legal access to the property has been
2408 obtained with the road maintenance agreement. We've already applied for the
2409 building permit. We couldn't comply with that because our application is already
2410 in. In fact, this is the last stop. Until we were notified from your office about this
2411 needing a variance, that's the first we've heard.
2412
2413 Mr. Kirkland - Are you saying you've received your building permit
2414 application back and it didn't require you to have legal access?
2415
2416 Mr. Broadwater - No, I didn't get the application back. We filed for the
2417 building permit.

2418
2419 Mr. Kirkland - Oh, you've only filed.
2420
2421 Mr. Broadwater - Correct. The application for the building permit is
2422 already underway. It's gone through the building department.
2423
2424 Mr. Kirkland - So #4, if we were to grant this case, they would hold it
2425 up until #4 was met.
2426
2427 Mr. Broadwater - Exactly. So, then it falls back onto until we make a
2428 good-faith effort to establish a road maintenance agreement. What timeframe is
2429 that? Like I said, I'm not opposed to a road maintenance agreement, so where
2430 does the good faith—I mean, I'm in good faith now.
2431
2432 Mr. Blankinship - That would be at the discretion of the Director of
2433 Planning. You'd have to convince him that you had tried everything reasonable,
2434 and Mr. Taggart and Mr. Warner refused to work with you.
2435
2436 Mr. Broadwater - Then the timeframe could literally just be endless with
2437 this, correct?
2438
2439 Mr. Blankinship - It could be, but it wouldn't be. If you're able to
2440 convince the Director of Planning that you had made a reasonable effort, he
2441 would contact Mr. Warner and Mr. Taggart, or he'd ask Mr. O'Kelly or me to do it,
2442 and we'd asked them why it still hadn't been accomplished. I can't give you a
2443 number of days, but if we were convinced that they were not bargaining with you,
2444 they could not hold you hostage. That's the purpose of the second sentence.
2445
2446 Mr. Broadwater - Then I guess it falls back again on the use of the
2447 property until we can do this. It falls back to the point of a hardship that we have
2448 of continually carrying this property for an indefinite amount of time until this was
2449 satisfied.
2450
2451 Mr. Blankinship - The condition is written with the assumption that both
2452 sides are acting in good faith, but there's a way out for the County if either party
2453 fails to negotiate in good faith. If they fail to negotiate in good faith, the Director
2454 of Planning can modify the condition and issue a building permit. If the Director
2455 feels that you're the one holding it up, then you're stuck until he feels like you're
2456 moving forward. As long as everyone's acting in good faith, everybody will be
2457 happy. If not the County can work the issue out in either direction.
2458
2459 Mr. Broadwater - Right.
2460
2461 Mr. Wright - I'm sure Mr. Warner is not concerned about having it
2462 paved beyond the point where they want to have it paved. You don't want it
2463 paved from there on in.

2464
2465 Mr. Warner - [Off mike.] We had the road [unintelligible].
2466
2467 Mr. Blankinship - You're not at the mike.
2468
2469 Mr. Warner - I'm sorry.
2470
2471 Mr. Wright - It's only fair that they've had it paved and if people
2472 back there tore it up, it should be restored.
2473
2474 Mr. Broadwater - Well, depending on if they have it paved to the point
2475 of a state standard, then chances are we wouldn't tear it up. If they have it paved
2476 like a driveway—
2477
2478 Mr. Wright - I'm sure it's a driveway.
2479
2480 Mr. Broadwater - —chances are this road will be torn up with us
2481 building a home back there.
2482
2483 Mr. Blankinship - We're going to let you all negotiate that. As long as
2484 you all are negotiating in good faith, the County's going to let you work it out. If
2485 we become convinced that one party or the other is not acting in good faith, then
2486 we'll have to resolve the issue.
2487
2488 Mr. Broadwater - Okay.
2489
2490 Mr. Kirkland - Anyone else wish to speak? All right, that concludes
2491 the case. I believe that was the last one, wasn't it, Mr. Blankinship?
2492
2493 Mr. Blankinship - Yes sir.
2494
2495 **DECISION**
2496
2497 Mr. Kirkland - Do you want to start at the beginning or the end?
2498 Anybody have a priority? Let's go from the first.
2499
2500 Do I have a motion? I make a motion we deny it. Do I have a second?
2501
2502 Ms. Harris - Second.
2503
2504 Mr. Kirkland - Motion made by Mr. Kirkland, seconded by Ms.
2505 Harris.
2506
2507 Mr. Wright - I'd like to have some discussion. We're in a bind in
2508 these cases. This was a family subdivision that was approved prior to Cochran. I
2509 think that there is a real question of what taken as a whole means. We're in a

2510 box. If we permit a family subdivision—and I've already checked with Mr.
2511 Blankinship—after five years, it's a valid transaction. Then why would not "taken
2512 as a whole" apply to the 2.2 acres, rather than the 3.8 acres? Since we
2513 approved it, it was a legal transaction. When you get to that, then we're faced
2514 with going through the other.

2515

2516 One thing you have to realize is the way this is characterized in our notes, it
2517 looks like you have to approve all three of those tests, and that's wrong. I have
2518 the statute here. It's when a property owner can show this property was acquired
2519 in good faith. Now, that's a question. If we approve the subdivision, it would
2520 indicate to me it was a transaction that was valid, that we should give people the
2521 opportunity to use their property. It would be confiscation if we didn't. Each one of
2522 these has an "or" rather than an "and." In other words, each one of these tests.
2523 The one I look at is, "Or whether the Board is satisfied upon the evidence heard
2524 by it, that the granting of such variance will alleviate a clearly demonstrable
2525 hardship approaching confiscation." We get into how much was paid for it and all
2526 that business, but the property, if it can't be used for a house, there's been no
2527 evidence that it's farmland. What's a reasonable use for the property?

2528

2529 Mr. Kirkland - My argument was that on the 2.2 acres, there was a
2530 house, and they tore it down.

2531

2532 Mr. Wright - Yes. Was the house habitable?

2533

2534 Mr. Kirkland - Mr. Blankinship? Did they get a demolition permit to
2535 knock it down?

2536

2537 Mr. Blankinship - They did get a demolition permit, yes.

2538

2539 Mr. Kirkland - Anybody see if it was habitable?

2540

2541 Mr. Blankinship - I don't know that anybody—You have permission to
2542 tear down a house whether it's habitable or not, so. It was not condemned. It
2543 was a decision of the property owner.

2544

2545 Mr. Kirkland - We don't know how long it's been there.

2546

2547 Mr. Blankinship - Right. It was built in 1937, I believe, so, it was
2548 definitely old.

2549

2550 Mr. Wright - I don't know. These are just thoughts. This is an
2551 exceptional situation.

2552

2553 Mr. Blankinship - It comes down to how you interpret Cherrystone, Mr.
2554 Wright. You and I have discussed this at some length. I think everyone pretty
2555 much agrees on the interpretation of Cochran. But the Cherrystone case—

2556
2557 Mr. Wright - Well see, I disagree with the staff's interpretation of
2558 Cherrystone.
2559
2560 Mr. Blankinship - Yes. Cherrystone is a more difficult case to apply.
2561
2562 Mr. Wright - Cherrystone was limited to one thing, the exceptional
2563 narrowness at the time of the ordinance.
2564
2565 Mr. Blankinship - Yes. It's a very fact-specific case.
2566
2567 Mr. Wright - It doesn't say at the time of the adoption of the 50-foot
2568 road. That's my point.
2569
2570 Mr. Blankinship - There is certainly room for differences of opinion on it.
2571
2572 Mr. Wright - I hope some day it goes before the Supreme Court.
2573
2574 Mr. Blankinship - For clarification.
2575
2576 Mr. Wright - They put us in a box, let them clear it up.
2577
2578 Mr. Kirkland - Ms. Harris, do you have something to say?
2579
2580 Ms. Harris - Yes. The variance that was granted in 2003 to me
2581 was specific for that family member building, and that's what they did. To me, the
2582 family issue is not one that we're considering now, because—
2583
2584 Mr. Wright - It was an approved subdivision by the County under
2585 the ordinance of the lots. Mr. Blankinship says they have complied with the
2586 requirement within five years. After five years, you can convey it.
2587
2588 Ms. Harris - I know that part is legal, but I thought this was a self-
2589 imposed hardship because we know that—Probably an option to buy the land
2590 would have been better than just outright buying the land for a non-buildable lot.
2591
2592 Mr. Wright - If you can't sell it, you're putting a hardship on the
2593 person that owns it because they can't use it for anything.
2594
2595 Ms. Harris - Exactly.
2596
2597 Mr. Kirkland - Well, a motion's on the floor to deny it, and I had a
2598 second.
2599
2600 Mr. Wright - Was the motion to approve it or deny?
2601

2602 Mr. Blankinship - The motion is to deny.
2603
2604 Mr. Kirkland - And I had a second by Ms. Harris, right?
2605
2606 Ms. Harris - Yes.
2607
2608 Mr. Kirkland - Okay. All those in favor of voting to deny the case,
2609 say aye. All those opposed say no. All right, guys.
2610
2611 Mr. Blankinship - You came on a good month, Ms. Pollard. We never
2612 have split votes like this.
2613
2614 Mr. Wright - What do we have, a two/two vote again?
2615
2616 Mr. Blankinship - Yes. No action has been taken. There was a motion
2617 and the motion did not carry.
2618
2619 Mr. Wright - Can't we do the same thing on this one?
2620
2621 Mr. Blankinship - Certainly can.
2622
2623 Mr. Nunnally - We'll have to.
2624
2625 Mr. Kirkland - I'll make a motion that we defer this for 30 days so
2626 that—
2627
2628 Mr. Wright - To the June meeting?
2629
2630 Mr. Kirkland - Excuse me?
2631
2632 Mr. Wright - To the June meeting?
2633
2634 Mr. Kirkland - Yes, the June meeting, so that all five members can
2635 vote on this action. You will make sure that Ms. Dwyer—
2636
2637 Mr. Blankinship - She'll feel so important.
2638
2639 Ms. Harris - I second the motion.
2640
2641 Mr. Kirkland - Motion made by Mr. Kirkland, seconded by Ms.
2642 Harris. All in favor say aye. All opposed say no. The motion passes. The case is
2643 deferred for 30 days.
2644
2645 Mr. Wright - I think we have to be fair to the applicant for
2646 something not to go down on a 2/2 vote. In the meantime, it gives the property
2647 owners the opportunity to get together on this road agreement.

2648
2649 Mr. Kirkland - That's true.
2650
2651 Mr. Blankinship - They could come back next month hopefully with that
2652 issue settled.
2653
2654 Mr. Wright - So, that may clear up some stuff there.
2655
2656 After an advertised public hearing, the Board **deferred A-010-08, Ken**
2657 **Broadwater Homes, LLC**, until the June 25, 2008 meeting.
2658
2659 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2660 Negative: 0
2661 Absent: Dwyer 1
2662
2663
2664 Mr. Kirkland - Okay. No more cases. Let's move to the minutes.
2665
2666 Ms. Harris - I move that the minutes of the April 28, 2008 meeting
2667 be approved as submitted.
2668
2669 Mr. Wright - I second.
2670
2671 Mr. Kirkland - Motion by Ms. Harris, seconded by Mr. Wright. All
2672 those in favor say aye. All opposed say no. The ayes have it; the motion passes.
2673
2674 The Board **approved the minutes** of the April 24, 2008 meeting of the Board of
2675 Zoning Appeals.
2676
2677 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2678 Negative: 0
2679 Absent: Dwyer 1
2680
2681
2682 Mr. Wright - Basically, the Board minutes were on just one case.
2683
2684 Mr. Kirkland - I know. Does anyone else have any business before
2685 this Board?
2686
2687 Mr. Wright - Any word on how the County's coming along on that?
2688
2689 Mr. Blankinship - The research is proceeding. I think we have all the
2690 responses back that we need now. We're going to have an internal meeting
2691 probably in the next week or two, and hopefully have something in draft form by
2692 next meeting.
2693

2694 Mr. Wright - Ben, is there anything taking place to give some relief
2695 to property owners on this issue of variances?
2696
2697 Mr. Blankinship - Not that I have heard. The General Assembly really
2698 didn't even take that up.
2699
2700 Mr. Wright - That's a shame.
2701
2702 Mr. Blankinship - I was surprised.
2703
2704 Mr. Wright - Let's take this case we had today where you have two
2705 feet, and the property backs up to an open area. It couldn't have any detrimental
2706 effect on anybody. Why should that be a constitutional issue? The Cochran case
2707 specifically stated that the statute could be changed so it could give us some
2708 discretion in non-constitutional types of issues. I don't understand why
2709 somebody hasn't gotten to the—I think it should go through the legislature,
2710 frankly.
2711
2712 Mr. Blankinship - I do, too.
2713
2714 Mr. Wright - That's what Cochran said. The way the statute's
2715 worded makes it a constitutional issue. That's why we don't have the authority. It
2716 looks like to me it's not fair to property owners who just want to do a little
2717 something that doesn't cause any difficulty with the neighbors or the neighboring
2718 property. I don't know. I guess short of the legislature, the County could do
2719 something on its own with this ordinance, couldn't it?
2720
2721 Mr. Blankinship - Yes sir, as we did with accessory structures.
2722
2723 Mr. Wright - We did it with the pools and such.
2724
2725 Mr. Kirkland - If there is no further business or discussion, I make a
2726 motion we adjourn.
2727
2728 Mr. Wright - Second.
2729
2730 Mr. Kirkland - Motion by Mr. Kirkland, seconded by Mr. Wright. All
2731 in favor say aye. All opposed say no. The ayes have it; the motion passes.
2732
2733
2734
2735
2736
2737
2738 Richard Kirkland, CBZA
2739 Chairman

2740
2741
2742
2743
2744
2745
2746

Benjamin Blankinship, AICP
Secretary