

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION**
3 **BUILDING IN THE GOVERNMENT CENTER AT PARHAM AND HUNGARY**
4 **SPRING ROADS, ON THURSDAY, NOVEMBER 18, 2010, AT 9:00 A.M.,**
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **OCTOBER 28, 2010 AND NOVEMBER 4, 2010.**
7

Members Present: Helen E. Harris, Chairman
Robert Witte, Vice Chairman
Lindsay U. Bruce
James W. Nunnally
R. A. Wright

Also Present: David D. O'Kelly, Jr., Assistant Director of Planning
Benjamin Blankinship, Secretary
Paul Gidley, County Planner
R. Miguel Madrigal, County Planner
Angela Roberts, Office Assistant

8
9
10 Ms. Harris - Good morning. Welcome to the November 18, 2010
11 meeting of the Board of Zoning Appeals for Henrico County. Please stand and
12 recite the **Pledge of Allegiance**.

13
14 Mr. Blankinship, would you read the rules that govern this meeting please.

15
16 Mr. Blankinship - Good morning, Madam Chairman, members of the
17 Board, ladies and gentlemen. With regard to the rules for this meeting, I'm going
18 to give the abbreviated version. We are recording the meeting, so we'll ask
19 everyone who speaks to speak directly into the microphone on the podium and
20 state your name for the record. And please spell your last name so we have it
21 correct in the record.

22
23 Madam Chairman, there are only two cases on the agenda and I believe they are
24 both going to be deferred this morning. That's why I decided on abbreviating it.
25 Let me call the first case.

26
27 **A-002-10 LIBERTY HOMES** requests a variance from Sections
28 24-95(c)(4), 24-95(t) and 24-95(u)(1)b to build a one-family dwelling at 11510
29 Greenwood Road (Lakeview) (Parcel 772-774-9333), zoned A-1, Agricultural
30 District (Brookland). The total lot area requirement, front yard setback, and rear
31 yard setback are not met. The applicant proposes 8,085 square feet lot area
32 outside the floodplain, 25 feet front yard setback, and 10 feet rear yard setback
33 from the floodplain, where the Code requires 30,000 square feet lot area, 35 feet
34 front yard setback and 20 feet rear yard setback. The applicant requests a

35 variance of 21,915 square feet lot area, 10 feet front yard setback, and 10 feet
36 rear yard setback.

37

38 Ms. Harris - All persons who wish to speak to this case please
39 stand and raise your right hand.

40

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

43

44 Ms. Harris - Please come forward and give us your name and
45 spell your last name.

46

47 Ms. Fenner - My name is Jane Henderson Fenner.

48

49 Mr. Blankinship - Can you pull the microphone a little closer?

50

51 Ms. Fenner - Jane Henderson Fenner. J-a-n-e, H-e-n-d-e-r-s-o-n,
52 F-e-n-n-e-r.

53

54 Ms. Harris - Please state your case, Ms. Fenner.

55

56 Ms. Fenner - I am speaking in opposition to the variance. My
57 brother and I own the land next to the property in question. We're concerned
58 that when he sells, the new owners, if they should build a house, would have to
59 move into the backyard of the new proposed building.

60

61 Also, I'm concerned about the fact that during the building process, if the contour
62 of the land is affected, some of that water may come over onto our property.
63 Now, we are in the flood zone already, but there's not a lot of our area in the
64 flood zone. Not only that, the new owners for the proposed house, they could
65 possibly in the future do things that would cause water to run over onto our
66 property and I'm concerned about it.

67

68 Mr. Wright - Ma'am, where do you live?

69

70 Ms. Fenner - I live in Hanover. We own property on Greenwood
71 Road, 11520, next to the property in question.

72

73 Mr. Wright - Okay. You're speaking about the property at 11520.

74

75 Ms. Fenner - Yes.

76

77 Mr. Wright - Is there a house on that property?

78

79 Ms. Fenner - No there is not. It's just woods.

80

81 Ms. Harris - Are there any questions from the Board? Did you
82 receive a letter regarding this property?
83
84 Mr. Blankinship - We did. We left a copy on the table in front of you, of
85 a message that we received yesterday at 1:00 in the afternoon, requesting
86 deferral of this case for one month. So the applicant is not here this morning and
87 nobody is here to present the case. The Board normally will not take action in a
88 circumstance like that. Since you all did come down this morning, this testimony
89 is part of the public hearing and this will go into the record. We'll refer to it next
90 month.
91
92 Ms. Fenner - I will not have to return?
93
94 Mr. Blankinship - You don't have to, no ma'am. Though you're welcome
95 to do so.
96
97 Mr. Wright - This is all recorded and it will be part of the record.
98 We'll take your remarks into consideration when we decide the case.
99
100 Ms. Fenner - Thank you.
101
102 Mr. Wright - We appreciate your coming.
103
104 Mr. Blankinship - Do you mind if I ask her a couple questions?
105
106 Ms. Harris - Please.
107
108 Mr. Blankinship - Has anybody associated with this request
109 approached you or anyone in your family about buying your property?
110
111 Ms. Fenner - Someone has approached us, but no firm offer was
112 made. There has been some haggling back and forth concerning the amount
113 that they would offer. They gave the impression that they were not willing to pay
114 the assessed value.
115
116 Mr. Blankinship - The County's assessed value?
117
118 Ms. Fenner - The County's assessed value.
119
120 Mr. Blankinship - Sometimes with property that's been in a family for
121 many years, there's a reluctance to sell at any price. Is that the case here or do
122 you think your family members would be willing to sell?
123
124 Ms. Fenner - I think at this point in our lives we would be willing to
125 sell.
126

127 Mr. Witte - What is the assessed value?
128
129 Ms. Fenner - Thirty-eight thousand.
130
131 Mr. Blankinship - For a lot of approximately one acre?
132
133 Ms. Fenner - Approximately one acre.
134
135 Mr. Blankinship - Part of that is also in the flood plain.
136
137 Mr. Wright - Is it a buildable lot?
138
139 Mr. Blankinship - Well part of it is also in the flood plain.
140
141 Mr. Wright - Is it as drastic as the other one?
142
143 Mr. Blankinship - Not nearly as drastic. I think if they combined the two
144 lots, it would be very close. Probably would still need a variance from the total lot
145 area outside the flood plain.
146
147 Mr. Wright - You could build a house on 11520 and probably
148 observe the building line requirements, rear yard and —
149
150 Mr. Blankinship - Yes sir.
151
152 Mr. Wright - The only problem they might have is maybe a little
153 variance on the flood plain.
154
155 Mr. Blankinship - Right.
156
157 Ms. Harris - In the past few years, have you had flooding
158 problems on this property?
159
160 Ms. Fenner - We have not really paid too much attention to the
161 property. It was property that we inherited.
162
163 Mr. Wright - If the owner of the property in question approached
164 your family, would you be interested in discussing its sale at a fair price?
165
166 Ms. Fenner - At a fair price, yes.
167
168 Mr. Wright - You don't want to give it away.
169
170 Ms. Harris - Are there many heirs to this property?
171
172 Ms. Fenner - Only my brother and myself.

173
174 Mr. Blankinship - Often that's the biggest hurdle.
175
176 Ms. Fenner - No, that's not us.
177
178 Mr. Blankinship - You don't have sixteen heirs and nine of them are in
179 California.
180
181 Ms. Fenner - That's not the problem here.
182
183 Ms. Harris - Thank you, Ms. Fenner, for your presentation. Are
184 there any other people here to speak to this case? If not, that closes discussion
185 on this case.
186
187 Mr. Wright - We haven't voted to defer it yet.
188
189 Ms. Harris - Yes. A motion is in order now to defer this case.
190
191 Mr. Witte - I'll make the motion to defer.
192
193 Mr. Bruce - I'll second.
194
195 Ms. Harris - The motion was made by Mr. Witte and seconded by
196 Mr. Bruce that we defer this case. Are there any questions on this motion? All in
197 favor of this deferral say aye. All opposed say no. The ayes have it; the motion
198 passes.
199
200 Did we indicate for one month?
201
202 Mr. Blankinship - That is what they requested.
203
204 After an advertised public hearing and on a motion by Mr. Witte, seconded by
205 Mr. Bruce, **A-002-10, Liberty Homes**, has been **deferred** until December 16,
206 2010.
207
208
209 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
210 Negative: 0
211 Absent: 0
212
213
214 **UP-022-10 THIRD PRESBYTERIAN CHURCH** requests a
215 temporary conditional use permit pursuant to Section 24-116(c)(1) to allow a tent
216 for church services at 2340 Pump Road (Parcel 740-752-1906), zoned A-1,
217 Agricultural District (Tuckahoe).
218

219 Ms. Harris - Will all persons who wish to speak to this case please
220 stand and raise your right hand.
221
222 Mr. Blankinship - Do you swear the testimony you're about to give is
223 the truth and nothing but the truth so help you God?
224
225 Mr. Brown - I do.
226
227 Ms. Harris - Please state your name and spell it.
228
229 Mr. Brown - Douglas Brown—B-r-o-w-n.
230
231 Ms. Harris - Thank you. Present your case please.
232
233 Mr. Brown - First of all, we do ask for a deferral until February.
234
235 Ms. Harris - Sir, why are you requesting the deferral?
236
237 Mr. Brown - We have not been able to organize sufficiently all the
238 different aspects of the congregation to move forward in a proper manner at this
239 time.
240
241 Ms. Harris - What are the dates you wish the tent to be placed on
242 the property?
243
244 Mr. Blankinship - I might be able to shed a little light on it, as I was
245 speaking to one of the pastors yesterday, in the late afternoon. They were
246 hoping to have this tent up in November and use it in November and December.
247 There was some confusion about the requirement for the conditional use permit.
248 We had notified them that it was required and then the tent contractor
249 contradicted that and they believed the tent contractor. Because they were not
250 able to get it up by the beginning of November, they found another space where
251 they are meeting temporarily. That's going to carry them through November and
252 December. Apparently they are continuing to look for temporary solutions.
253 They're also looking for the permanent solution, of course, by building a new
254 campus on this property.
255
256 Mr. Brown - That's correct.
257
258 Mr. Wright - February would be February 24th. That's the fourth
259 Thursday.
260
261 Mr. Blankinship - Yes sir.
262
263 Mr. Bruce - Will you be meeting for your services on this property
264 until the temporary permit is issued?

265
266 Mr. Brown - No sir. We have contracted space in a hotel in the
267 Innsbrook area for the next several Sundays. We're not sure exactly how long
268 that will continue, but that's our going, forward plan.
269
270 Mr. Bruce - Thank you.
271
272 Ms. Harris - Is there also a possibility that you may not need the
273 tent at all?
274
275 Mr. Brown - That possibility does exist.
276
277 Ms. Harris - If you do, will you then amend the date on the permit.
278
279 Mr. Brown - Yes ma'am.
280
281 Mr. Blankinship - I suppose if they don't need it at all they would simply
282 withdraw the case. The pastor asked me yesterday if I would recommend that
283 and I said no. The reason being because if they withdraw, then they can't
284 resubmit for a year. So I suggested that they defer. I thought we were talking two
285 months, but apparently they've chosen three, which is fine. If they want to
286 withdraw tomorrow, there's no additional burden there. But if they withdraw and
287 then change their minds, then there's difficulty.
288
289 Mr. Brown - Regarding the deferral, we are very much open to
290 suggestions. We didn't want to do it too soon and have the same thing happen
291 again. If you would recommend January over February, we—
292
293 Mr. Blankinship - If you called me the first week of January and said
294 can we put that case on the January agenda—
295
296 Mr. Brown - Sometime in the first week?
297
298 Mr. Blankinship - As long as we could get it advertised in time.
299
300 Ms. Harris - Are there any questions on this case from Board
301 members? Mr. Brown, do you have anything else to add?
302
303 Mr. Brown - Just that we're very motivated to make a final
304 determination. We have a capital campaign going on at present for the
305 permanent structure there, whenever that may be. We're very interested in how
306 we may bridge the gap between where we currently are. There's a relatively
307 complicated scenario with the Knights of Columbus building that we are meeting
308 in, the one I suppose is already down by now, and the new facility. We're very
309 much interested in the County's guidance as to how we might do things properly
310 with the least amount of disruption to our congregation as possible.

311
312 Ms. Harris - Thank you sir.
313
314 Mr. Brown - Thank you.
315
316 Ms. Harris - Can I have a motion on the deferral.
317
318 Mr. Bruce - I make a motion to defer until February.
319
320 Mr. Wright - Second.
321
322 Ms. Harris - Moved by Mr. Bruce, seconded by Attorney Wright
323 that we defer this case until February 24, 2011. Are there any questions on the
324 motion? All in favor say aye. All opposed say no. The ayes have it; the motion
325 passes.
326
327 After an advertised public hearing and on a motion by Mr. Bruce, seconded by
328 Mr. Wright, **UP-022-10, Third Presbyterian Church**, has been **deferred** until
329 the February 24, 2011 meeting.
330
331
332 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5
333 Negative: 0
334 Absent: 0
335
336
337 Ms. Harris - Let's look at the minutes of the last meeting.
338
339 Mr. Wright - These are almost seconds.
340
341 Mr. Wright - I move we approve the minutes as presented.
342
343 Ms. Harris - I do see one correction on line 104, which is on page
344 3. The second *would* should be deleted.
345
346 Mr. Wright - That's a hiccup isn't it?
347
348 Ms. Harris - Any more corrections? Moved by Attorney Wright
349 that we approve the minutes. Can I have a second?
350
351 Mr. Nunnally - Second.
352
353 Ms. Harris - Seconded by Mr. Nunnally that we approve the
354 minutes for the last meeting. Are there any questions on the motion? All in favor
355 say aye. All opposed say no. The ayes have it; the motion passes.
356

357 On a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **approved as**
358 **corrected the Minutes of the October 21, 2010**, Henrico County Board of
359 Zoning Appeals meeting.

360

361

362 Affirmative: Bruce, Harris, Nunnally, Witte, Wright 5

363 Negative: 0

364 Absent: 0

365

366

367 Ms. Harris - Do we have anything for the good of the cause? For
368 example, we had information regarding the final order, Circuit Court of Henrico
369 County.

370

371 Mr. Blankinship - Yes ma'am. There have been three cases, three of
372 your decisions that have been appealed recently. One of them was heard on one
373 day and two of them were combined and heard a week later. The first one we
374 have the final order and you have it there in front of you. You remember Mr.
375 Saleh, who was keeping pigeons in his yard was served a Notice of Violation and
376 applied for a conditional use permit to allow him to have a pigeon loft. Based on
377 the testimony of the neighbors primarily, you denied that use permit. He
378 appealed that denial to the Circuit Court. The County Attorney's office put on
379 very little evidence, just presented the record, how you had arrived at your
380 decision, what evidence was taken at the hearing and the necessary procedural
381 evidence; namely that it was advertised and notified correctly. The Court upheld
382 your decision. It did not even get into the issue of whether the Court felt the
383 decision was right or wrong, but merely because the Board had clearly followed
384 all of the necessary procedures and had taken into account all of the necessary
385 facts, the Court deferred to your judgment and upheld your decision.

386

387 Essentially the same thing happened in the other two cases. If you remember
388 Mark Baker, in December 2009, presented two different variance requests. One
389 of them was in Bungalow City on Evergreen and the other was on North Concord
390 Avenue over by Parham and Brook. I can't think of the name of the subdivision
391 right now. Both were similar cases with 50-foot-wide lots, where even the
392 exception standards require a 65-foot lot. The interesting thing with both of those
393 is that the Board split two to two on both votes, but the outcome was denial of
394 both applications. In this case, Emerald put on quite a bit of evidence trying to
395 convince the Court that the right decision in their view would have been approval.
396 The Court listened carefully to all that evidence, but really made its decision, I
397 think, based on the principle that it's the Board's decision not the Court's
398 decision. The Court's role is not to substitute their judgment for your judgment.
399 The Court's role is to make sure that your judgment was exercised within the
400 boundaries of the law. So they did make that finding and did uphold both of
401 those decisions as well. I'll forward the final order on those.

402

403 Ms. Harris - Any more business before the Board this morning? If
404 not, the meeting is adjourned.

405
406 There being no further business, the Board adjourned until the December 16,
407 2010 meeting at 9 a.m.

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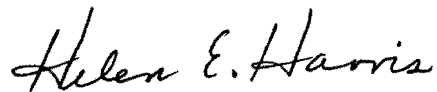
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Helen E. Harris
Chairman



Benjamin Blankinship, AICP
Secretary