

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 17, 2011 AT 9:00 A.M.,**
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **OCTOBER 31, 2011 AND NOVEMBER 7, 2011.**

7
Members Present: Helen E. Harris, Chairman
Robert Witte, Vice Chairman
Greg Baka
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

8
9 Ms. Harris - Welcome to the November 17, 2011 meeting of the
10 Board of Zoning Appeals for Henrico County. Please stand and recite the
11 **Pledge of Allegiance.**

12
13 Good morning, Mr. Blankinship. Would you please give us the rules that govern
14 this meeting and let us know if there are any deferrals.

15
16 Mr. Blankinship - Good morning, Madam Chairman, members of the
17 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as
18 secretary, I will call each case. As I'm speaking, the applicant is welcome to
19 come down to the podium. We will then ask everyone who intends to speak to
20 that case to stand and be sworn in. The applicant will speak. Then anyone else
21 who wishes to speak will have the opportunity. After everyone has had a chance
22 to speak, the applicant and only the applicant will have an opportunity for
23 rebuttal. After the Board has heard all the evidence and has asked any
24 questions, they will take that matter under advisement, and they will proceed to
25 the next matter on the agenda. They will render all of their decisions at the end
26 of the meeting. So if you wish to know their decision on a specific case, you can
27 either stay until the end of the meeting, or you can check the Planning
28 Department website—we usually get it updated within about half an hour of the
29 end of the meeting—or you can call the Planning Department this afternoon.

30
31 This meeting is being recorded, so we'll ask everyone who speaks to speak
32 directly into the microphone on the podium, state your name, and please spell
33 your last name so we get it correctly in the record.

34
35 And finally, out in the foyer there is a binder containing the staff report for each
36 case, including conditions that have been recommended by the staff.

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Madam Chairman, there are no requests for deferral or withdrawal this month.

Ms. Harris - Thank you. Please call the first case.

VAR2011-00004 EMERALD LAND DEVELOPMENT requests a variance from Section 24-95(b)(5) of the County Code to build a one-family dwelling at 21 Evergreen Avenue (Bungalow City) (Parcel 817-727-6100), zoned R-3, One-family Residence District (Varina). The lot width requirement is not met. The applicant has 50 feet lot width where the Code requires 65 feet lot width. The applicant requests a variance of 15 feet lot width.

Ms. Harris - All persons who wish to speak to this case please stand so that you may be sworn in.

Mr. Blankinship - Does anyone else intend to speak to this case? Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Rempe - Yes.

Ms. Harris - Please state your case.

Mr. Rempe - I have some documents here to pass out.

Good morning, Madam Chairman, Board members, County staff. My name is Mark Rempe—R-e-m-p-e. I'm with Emerald Land Development. Let me start by apologizing. I've been up here three times on this case, and I don't want to be perceived as a nuisance, but I do believe in property rights. They're important to me and they're important to this country, and that's why I'm here again. I want to also point out that I respect the opinions of this Board; I respect the opinions of County staff. I enjoy working with County staff. We can certainly at the end of the day agree to disagree regardless of the outcome.

The first page has a couple nice quotes on property rights. I'm not going to read those, but property rights are important to this country and I just wanted to point that out. So let's move on to the case.

On the second page we have some background information. We are asking for a lot width variance of fifteen feet to permit construction of a single-family, one-story dwelling. Zoning standards are 8,000 square feet for the area, 65 lot width. Lot area is met; lot width is not met. The lot is fifty feet wide. Side yard setbacks are met. The front and rear yard setbacks are met. Adjacent homes at 19 and 23 were both built in 1946 and 1937. 21 Evergreen consists of lots that had been landlocked in the same condition since 1946. The lots were sold individually as twenty-five lots in 1946 and were both buildable lots at that time.

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This request is to build a one-story, single-family dwelling. This request is consistent with what would have been permitted by right until 1960. This request is consistent with what was likely anticipated at the time of construction of the two adjacent homes. Given the existence of other homes built on fifty-foot lots in the district, this request is consistent with the original intent of the Bungalow City subdivision.

The BZA is a quasi-court. Your ruling on the case must be based upon laws, as well as supported by evidence. I'd like to move on to the first rule.

The first rule here is whether the effects of the zoning ordinance upon the property under consideration as it stands interferes with all reasonable beneficial uses of the property taken as a whole. If the property is affected by exceptional narrowness, shallowness, size or shape, topographic conditions, or other extraordinary situation of conditions. Now these lots predate 1960 in the current configuration. And taken as a whole there is no reasonable beneficial use of the property absent this variance. While it was purchased by the current owner for \$25,000 in 1980—this is on Exhibit 1—there is no evidence of bad faith here. The lot has existed in the same condition since 1946. The exceptional condition is the property is narrow. There are other fifty-foot lots in the neighborhood. There is no opportunity to acquire additional lots on either side.

Questions on the first rule? If we meet the first rule, there's really no [inaudible] the next two, so. All right?

Second rule. The second rule states the variance will not be of substantial detriment to the adjacent property, and the character of the district will not be changed. It's important to point out that this rule contains the word "substantial." The rule contains the word "and," not "or." And the rule also contains the word "district." It doesn't refer to adjacent properties. Now the drafters of the rule could have certainly used other language. They certainly could have used as opposed to "substantial," just "detriment." They certainly could have used "or" as opposed to "and the character of the district." And they certainly could have used the word "adjacent properties." They certainly could have used the words, "this property does not conform to the character of the adjacent properties," but they didn't. The plain language of the rule uses the words, "substantial detriment to the adjacent property." It uses the word, "and," and it uses the words, "district will not be changed." And that's important. For the applicant to prove his case the applicant has the burden of proof here and the applicant will prove his burden of proof. But also the opposition has to have evidence, has to show that the character of the district will not be changed, as well as substantial detriment. Moving on.

So the question here is if a new house is built will that cause substantial detriment to the adjacent properties. The applicant contends that the proposed

129 home would be an enhancement to the adjacent properties. If you look at Exhibit
130 2, you can see that we're building a brand new house next to some older
131 houses. New construction adds value in older neighborhoods. Some of these
132 houses in this neighborhood have some deferred maintenance; some are
133 vacant. The new house would be worth \$127,000 to \$140,000, as shown on
134 Exhibit 3. Property values per assessment in 2011, the property to north is about
135 \$69,000. The property to the south, which is 19 Evergreen, is about \$90,000.
136 The average assessment in Bungalow City is about \$81 a square foot. The new
137 house will be at \$114 a square foot. And this evidence is backed up in Exhibit 3
138 by a letter from a broker, as well as comparative market analysis.

139
140 So the new house would add value to the adjacent property, and that is
141 supported by our evidence. Exhibit 4 shows that the houses in the area would
142 not be crowded. If you look at Exhibit 4 you can see that house when it's built. It
143 will be forty-five feet from 19 Evergreen, from that house, house to house. It will
144 also be twenty-nine feet from 23 Evergreen, house to house. So this shows that
145 there is no detriment from over-crowdedness when you look at the house. If
146 you're walking by the house, just walking down the sidewalk, it's going to flow
147 right with the other houses that are in that neighborhood. And that's evidence to
148 support that.

149
150 As far as public health and safety, I can't see any evidence that would go against
151 public health and safety, general welfare. There are not traffic issues that are
152 going to be here. No floodplain. No stormwater runoff. No pollution, no smell,
153 things like that. I agree that the lot is different from other adjacent lots; however,
154 that is not the test. The test is if approving the application will cause significant
155 damage to the adjacent properties. So what evidence is there of substantial
156 detriment? How do you get a substantial detriment? Mere detriment is not the
157 test. The lot being different from the other lots is not the test.

158
159 I'd also like to point out that the Board in two other cases—and this is on Exhibit
160 5—approved lots on fifty feet. Our contention is that if the Board approved them
161 in two similar cases then it should approve this. It's kind of an equal protection
162 issue. People in similar situations should be treated in a like kind fashion.

163
164 Moving on to the second part of the second rule. It talks about the character of
165 the district will not be changed. The rule relates to the entire R-3 District in
166 Bungalow City, hence the word "district," where *character* means "makeup or
167 disposition." Again, the people who drafted this rule here that we're looking at,
168 that we have to make our decisions on, they didn't talk about the character of the
169 adjacent property or conforming to the adjacent property; they talked about the
170 word "district."

171
172 House design is compatible; it's going to be a rancher. The front yard setbacks
173 are compatible. The side yard setbacks are compatible; the lot area is
174 compatible; dwelling size will be compatible. The neighborhood and district has

175 had homes on fifty-foot lots on them for a long time. These fifty-foot type lots are
176 imbedded in the makeup and character of the district. The character of the
177 district without question includes fifty-foot lots. And hence the word “district”
178 again. The applicant is not changing what already exists in the district. I’m not
179 requesting a 49-foot lot, or a 30-foot lot; that would be something new in the
180 district. We’re requesting a fifty-foot lot.

181

182 Mr. Nunnally - You keep saying “district.” When you use the word
183 “district,” are you talking about Varina District or are you talking about Bungalow
184 City.

185

186 Mr. Rempe - Bungalow City neighborhood, yes sir.

187

188 Mr. Nunnally - I know it’s in the Varina District, but you’re talking
189 about the neighborhood in Bungalow City. Fifty-foot lots are all over Varina
190 District right there, but I don’t know about these other two cases. Did we approve
191 two of them, Ben?

192

193 Mr. Rempe - Yes, it should be on the—yes sir.

194

195 Mr. Blankinship - In your staff report.

196

197 Mr. Wright - 221 Westover Avenue.

198

199 Mr. Rempe - You can see that 221 Westover Avenue in Bungalow
200 City was approved. It was a fifty-foot lot, so they needed a lot width variance.
201 They also needed an area variance because they didn’t have enough size. That
202 was approved. The cases are there. There’s another one, forty-eight in 2006 was
203 approved, 211 North Virginia Avenue. That was approved. You guys had
204 discussions about the district, whether or not there were fifty-foot lots. And finally
205 you guys concluded the lots met in that case.

206

207 Mr. Blankinship - But there have also been variances denied, so it’s
208 really not a guide to say you’ve approved these other two so this one should be
209 approved. Some have been approved and some should be denied. Each one
210 has to be looked at on its own merit.

211

212 Mr. Rempe - There was one that was denied. It was denied
213 because of a self-imposed hardship. You guys concluded that there was self-
214 imposed hardship on the property. And I put that in there as well. Those are
215 three in Bungalow City that I found.

216

217 Ms. Harris - Normally we have questions at the end, but do you
218 want to entertain all Board questions now, or do we want wait until he completes
219 his presentation?

220

221 Mr. Witte - We can wait.
222
223 Ms. Harris - We can wait. Let's wait.
224
225 Mr. Rempe - To answer your question, I think the staff report talks
226 about there are fifty-foot lots in Bungalow City. I think there are eleven, Mr.
227 Blankinship?
228
229 Mr. Blankinship - It's been a while, but that sounds about right.
230
231 Mr. Rempe - Double digit. The whole point about looking at the rule
232 and looking at the language of that rule that we use to make our decision is that
233 the rule talks about the district. The district being the zoning district, which we're
234 using Bungalow City, not necessarily the adjacent.
235
236 So we've talked about the lot area being compatible, dwelling size being
237 compatible, how the neighborhood has fifty-foot lots in it already. We also talked
238 about how the Board approved two other similar cases as well.
239
240 Moving on to rule three. Condition or situation of the property concerned is not so
241 general or reoccurring in nature so as to make practical formation of a general
242 regulation to be adopted as an amendment to the ordinance. The zoning district
243 has been around for thirty years. No formulation of general regulation has been
244 made. Also, again, the Board has approved two other cases. I feel that we
245 should be treated in a similar fashion.
246
247 Ms. Harris - Are there questions by Board members? Mr. Witte,
248 you had a question.
249
250 Mr. Witte - I do, thank you. Mr. Rempe, Bungalow City is a large
251 area. It's not in same magnitude as Wyndham, but in size it's fairly large. As in
252 Wyndham and other areas there are neighborhoods inside the neighborhood,
253 basically. In my interpretation of this area, it's almost as if each block or each
254 street is its own neighborhood. On this street are there any houses on fifty-foot
255 lots? I couldn't find any, that's why I asked.
256
257 Mr. Rempe - I don't know. Our contention would be that Bungalow
258 City—the rule talks about district; it doesn't talk about surrounding properties. It
259 does not talk about adjacent properties. The main language of the ruling [blank
260 section] district, which to me means a larger area.
261
262 Mr. Witte - Or neighborhood.
263
264 Mr. Rempe - Or neighborhood, yes, yes. The first part of that rule
265 talks about the adjacent properties. That rule talks about substantial detriment to
266 the adjacent properties.

267
268 Mr. Witte - And there are no houses on fifty-foot lots in the
269 adjacent properties.
270
271 Mr. Rempe - There are none, no.
272
273 Ms. Harris - Mr. Rempe, this case has come before us before—
274 this is the third time. What has changed?
275
276 Mr. Rempe - Just the fact that you have a year to come up again. I
277 think from property rights, the owner of the property has to pay taxes on the
278 property. He has the burden of holding that property. With no other use to this
279 property it's definitely a taking. Wants to build a small little house on the property
280 that conforms with the rest of the neighborhood. I would think that would add
281 value to the neighborhood.
282
283 Ms. Harris - And when the owner purchased this property in—did
284 you say 1980?
285
286 Mr. Rempe - Eighty in the tax records, yes ma'am.
287
288 Ms. Harris - And the owner was aware that the zoning had
289 changed in 1960?
290
291 Mr. Rempe - I'm not clear what the owner understood at the time.
292 Case law shows now that self-imposed hardship is [blank section] actually moves
293 the lot, he shifts a lot line to actually create a lot that's not a buildable lot. In this
294 case he slices off [inaudible] and creates a self-imposed hardship. But going into
295 where he knows that it is not buildable doesn't do anything for the lot line
296 adjustment, not self-imposed hardship. There's a case on that if you want to see
297 it.
298
299 Mr. Blankinship - We've discussed that before; the Spence case.
300
301 Mr. Nunnally - They purchased this land subject to getting a variance
302 approved on it?
303
304 Mr. Rempe - I'm purchasing it.
305
306 Mr. Nunnally - You're purchasing it?
307
308 Mr. Rempe - I'm a contract purchaser subject to getting this
309 approved, sir.
310
311 Mr. Nunnally - You don't have to go through with the contract if you
312 don't get the variance?

313
314 Mr. Rempe - That's correct.
315
316 Ms. Harris - So you purchased this land in 1980?
317
318 Mr. Rempe - No. I'm a contract purchaser. I have a purchase
319 contract with the owner who purchased it in 1980, subject to [blank section].
320
321 Ms. Harris - Are there any other questions from Board members?
322
323 Mr. Baka - I have a question, Madam Chair. Good morning.
324 Question for staff. What is a side yard setback requirement for the house?
325
326 Mr. Blankinship - In the exception lots, which are lots that were created
327 prior to 1960, it's ten percent of the lot width, is the least side yard setback. And
328 thirty percent of the lot width is the sum of the side yard setback.
329
330 Mr. Baka - So 6.5?
331
332 Mr. Blankinship - Ten percent with a minimum of seven. So the
333 minimum would be seven, and for a fifty-foot lot the sum of the side yards would
334 have to be fifteen—thirty-percent of the fifty-foot lot. For a sixty-five foot lot it
335 would be 19.5
336
337 Mr. Baka - So seven and thirteen. So in the staff report there
338 was a copy of a sketch plat. It shows the house on one side has about twenty
339 feet five inches.
340
341 Mr. Blankinship - That's to the next house, not to the property line.
342
343 Mr. Baka - From that house to the shared property line.
344
345 Mr. Blankinship - Right.
346
347 Mr. Baka - And then thirty-four feet from that house to their
348 shared property line. When you contacted the previous owners, did they express
349 any interest in selling a portion of their property to aid you in this endeavor?
350
351 Mr. Rempe - Yes. We couldn't make a deal with them. We tried.
352
353 Mr. Baka - What was the impasse?
354
355 Mr. Rempe - They have two houses on both sides. They have
356 [Audio fading in and out] a home on both sides—for them to get a release they
357 wanted a price that—
358

359 Mr. Baka - Price notwithstanding, if they could retain thirty
360 percent of their lot width, it would clearly remove the need for you to obtain such
361 a large variance, wouldn't it?
362

363 Mr. Rempe - That is correct. We tried and we couldn't do that. One
364 of the standards in the rule is as the property stands today. We certainly would
365 rather buy the property and get it as opposed to going for the variance.
366

367 Mr. Baka - When the property was purchased in 1980—and I
368 realize you didn't purchase it—I think the staff report shows it was assessed
369 \$2,000 that year. My question is what were the expectations of the purchaser at
370 the time when the property was assessed at only \$2,000? Here we are trying to
371 build a house on that.
372

373 Mr. Rempe - I don't know what his expectations were. In other
374 jurisdictions when you buy a property that's a little bit older than the zoning rights
375 they have grandfather rights and you can go in without getting a variance. He
376 might have thought he—he obviously made a mistake. There might have been
377 other variance cases at that time that got approved and he might have seen that.
378 People buy properties with low assessments all the time to try to make money off
379 them.
380

381 Mr. Baka - I appreciate your discussion on property rights; I find
382 that important. The property to the east, since it was only assessed for \$2,000,
383 was there ever any discussion on your time spent on this project that perhaps—
384 as you see 1st Street is a paper street on plats, was there any discussion that
385 perhaps a road might be extended one day to the property east of here and
386 maybe that's why the assessment was so low?
387

388 Mr. Rempe - I don't know.
389

390 Mr. Baka - Thank you.
391

392 Ms. Harris - Mr. Rempe, I have a comparison I need you to help
393 me resolve. If you look at the site map in the report that was prepared by
394 Planning—okay, that shows it. And also the map of the new house across the
395 street and northwest of the subject site. Yes, this picture here. You see the detail
396 and the lot size for this new house. And we see on the site map that seemingly
397 you want to jam this house between these two lots, yet you say that the value is
398 enhanced. Well I know property value has accelerated since the property was
399 purchased, but you're saying it's an enhancement in the value, I guess by the
400 value of the home. But how do you consider this an enhancement? This is what I
401 need you to help me resolve.
402

403 Mr. Rempe - Just based upon putting the new house there would
404 bring values up just by looking at the assessed values. That little house being

405 built at [unintelligible] the value being \$114 a square foot. We'll probably have
406 more value per square foot than that larger house. That larger house being built
407 is certainly a beautiful house and I commend the people building it. I would think
408 the smaller house would have a higher value on the square foot. And this will be
409 a nice house; this will be a beautiful house. The question the rule has is the
410 smaller house after being built, will that be a substantial detriment. It's a beautiful
411 house. And I'm seeing the evidence how it will help [unintelligible] this house,
412 public health and safety—I don't see any evidence of that.

413
414 Ms. Harris - Any other questions from Board members? Thank
415 you, Mr. Rempe. Anyone else who wishes to speak to this case? If not, this
416 closes this case.

417
418 **[After the conclusion of the public hearings, the Board discussed the case**
419 **and made its decision. This portion of the transcript is included here for**
420 **convenience of reference.]**

421
422 Ms. Harris - Can we have a motion on this case, please.

423
424 Mr. Nunnally - I make a motion that we deny this variance because I
425 think it would be a substantial detriment to the adjacent property in the
426 neighborhood [blank section] the character of the district, but it would change the
427 character of that neighborhood.

428
429 Mr. Witte - I'll second that.

430
431 Ms. Harris - It has been moved by Mr. Nunnally, seconded by Mr.
432 Witte that this case be denied. Are there are any questions on this motion?

433
434 Mr. Wright - Madam Chairman, what concerns me about this case
435 is this lot was sold as a separate lot in 1946. At that date it was zoned R-4 and
436 this house could have been built on that lot at that time. I have real concerns
437 about taking people's property without due process. In my opinion, it was
438 grandfathered unless there would be great damage to the County and
439 neighborhood. This house will comply with all of the side lines, the rear yard and
440 front yard requirements. There would be a substantial distance between this
441 house and the houses on either side—twenty feet on one and thirty-four on the
442 other. So it would not appear to be jammed in there, in my opinion.

443
444 Since there are other lots in the neighborhood—maybe not on this street—which
445 have houses on fifty-foot lots, there may be some detriment, but I don't think it's
446 a substantial detriment. Therefore I would favor the law in grandfathering, which I
447 think this lot is grandfathered and there's a right there that I don't think can be
448 taken away, should not be taken away by this Board.

449
450 Ms. Harris - Other discussion?

451

452 Mr. Witte - Yes. I agree with most of Mr. Wright's statement. The
453 only issue I have is that the neighborhood as a whole does have fifty-foot lots
454 that were built on, but that area of the neighborhood, when I rode down that
455 particular street I couldn't find any houses that appeared to be on fifty-foot lots. I
456 didn't have a plat with me, but it just didn't seem like there were a cluster of
457 homes that close together. So my concern was, is it going to be detrimental to
458 that section of the neighborhood and not the neighborhood overall. Thank you.

459

460 Ms. Harris - Other discussion by Board members? I do drive
461 through that area from time to time. Any new construction is on larger lots
462 because that's the trend of the Bungalow City community, trying to upgrade,
463 expand, make better that particular community. The house could have been built
464 in 1960 when the zoning ordinance was changed in 1960 to allow for that lot, but
465 it was not. So at this time I do feel that it's a detriment to the neighboring
466 community.

467

468 Mr. Witte - My other side of that is I have concerns that there
469 may be no other use for that particular lot if we deny it. It's really a mixed bag of
470 tricks there.

471

472 Mr. Wright - It's just sitting there growing up in weeds.

473

474 Ms. Harris - Unless they sell it to the neighbors, who right now say
475 they don't want it. But who knows what the future holds.

476

477 Mr. Wright - I was in hopes that when it went to the Circuit Court
478 that the legal issue would have been worked on or considered, but obviously we
479 have an opinion from the Circuit Court. They give a lot of weight to this Board. I
480 would expect there are a lot of fifty-foot lots out there that are sitting idle. I would
481 hope that somehow we would get a legal ruling on this to put it to rest. We've
482 approved some.

483

484 Mr. Baka - I don't believe that this case rises to the level of
485 passing the second test. Just to point out, they do have neighbors on not just two
486 sides, but three sides of the property.

487

488 Ms. Harris - Any more discussion? Are we ready to vote? All in
489 favor of denying this motion say aye. All opposed say no. The ayes have it, four
490 to one; the motion passes with this case being denied.

491

492 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
493 Mr. Witte, the Board **denied** application **VAR2011-00004, Emerald Land**
494 **Development's** request for a variance from Section 24-95(b)(5) of the County
495 Code to build a one-family dwelling at 21 Evergreen Avenue (Bungalow City)
496 (Parcel 817-727-6100), zoned R-3, One-family Residence District (Varina).

497			
498	Affirmative:	Baka, Harris, Nunnally, Witte	4
499	Negative:	Wright	1
500	Absent:		0

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502

503 **[At this point, the transcript continues with the public hearing on the next**
504 **case.]**

505

506 **VAR2011-00006** **RAMON SERPA** requests a variance from Sections
507 24-9 and 24-94 of the County Code to build a one-family dwelling at 801 Scott
508 Road (Parcel 787-758-2966), zoned R-2, One-family Residence District
509 (Fairfield). The public street frontage requirement and lot width requirement are
510 not met. The applicant has 12 feet lot width and 12 feet public street frontage,
511 where the Code requires 100 feet lot width and 50 feet public street frontage.
512 The applicant requests a variance of 88 feet lot width and 38 feet public street
513 frontage.

514

515 Ms. Harris - All persons who wish to speak to this case, please
516 stand so that you may be sworn in. Raise your right hand.

517

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

520

521 Ms. Harris - Please state your case. First give us your name.

522

523 Mr. Serpa - My name is Ramon Serpa. I'm a contract purchaser
524 of the property.

525

526 Mr. Blankinship - Could you get a little closer to that microphone,
527 please? Thank you.

528

529 Mr. Serpa - Certainly. I'm a contractor purchaser for the property.
530 Basically the property is kind of set back. You can see in the picture it's kind of
531 set back from the street, from the other lots. It sits like a flag size, flag-type lot.
532 So basically it has a driveway that's about twelve feet wide to get to the property
533 on the back. It doesn't meet the fifty feet of public street frontage. So as it sits
534 right now it's not buildable. The property was divided and everything was done
535 prior to the change in zoning. The change in zoning occurred after the property
536 was already there divided this way.

537

538 Our request is so we can build on this lot. I already applied for the well and the
539 septic and all of that to make sure all of that went through okay. It is buildable; it
540 perks and everything. It's okay with the Health Department. The only issues are
541 basically the width of the street frontage, and also there is a hundred-foot-lot-
542 width minimum. It needs a variance for eighty-eight feet. The lot is a big lot; it's a

543 one-acre lot, but it's just the shape that has some issues with the zoning that was
544 done after the split of the property. So without a variance we wouldn't be able to
545 build on this lot. And there's another lot that sits behind, too. The houses would
546 barely be seen from the street because you have that long driveway and the lot
547 sits on the back. It wouldn't be close to any houses or anything. I don't see how it
548 would be a problem with any other neighbors or anything.

549
550 Ms. Harris - Are you the contract builder for the second lot, too?

551
552 Mr. Serpa - No. I'm purchasing the property on the contingency
553 that the variance would be approved. If it is, I'm buying and building a little house
554 on it.

555
556 Mr. Wright - Is this Parcel A?

557
558 Mr. Serpa - Yes. It's the one on the front, not the one on the back.

559
560 Mr. Witte - Would that deny access to Parcel B?

561
562 Mr. Serpa - I think Parcel B has a—they had an agreement to
563 have an easement. There's an easement for Parcel B to have access. This
564 variance would benefit Parcel B as well.

565
566 Mr. Witte - Where is the easement?

567
568 Mr. Serpa - It was done I think in the fifties or something like that.
569 I talked to the County and when they split it they didn't specify. So when I figure it
570 out with the building permit and everything, I guess we have to get an engineer
571 to set the easement as well as for where there would be an access. But I would
572 think it's probably going to continue the driveway next to the site, the longer side
573 of the property. That would be my guess. They recommended getting an
574 engineer to draw everything to where the easement would be and all that.

575
576 Ms. Harris - Could you tell us where you think the easement is?
577 Point it out to us, please.

578
579 Mr. Serpa - I'm not sure, but I would think it would be along this
580 line here, continue this driveway here. And then you can have a house here and
581 the other one here. Again, this is not definite; I'm not sure. When I talked to the
582 County what they recommended is getting an engineer to help me with that. I
583 guess you have to draw something and take it to the County and get that
584 properly recorded.

585
586 Mr. Wright - Who owns Parcel B?

587

588 Mr. Serpa - I'm not sure. What I heard is it seems like it's a sister
589 to the Parcel A property owner, a brother, something like that.

590
591 Mr. Blankinship - That's actually a point where in our research, Mr.
592 Wright, we were unable to be absolutely certain who owns that land. Mr. Serpa
593 mentioned a couple of times that the lot was divided prior to 1960. The two-acre
594 property was divided from the rest of the site prior to 1960. But the partition
595 between the 2 one-acre lots—Parcel A and Parcel B—happened I think in 1982.
596 And then there is some confusion and come conflict among the deeds. And not
597 being professional title searchers, we put that back on the applicant, that he
598 needs to know for sure who owns the property he's buying, and who owns the
599 property—

600
601 Mr. Serpa - Yes. On Monday—

602
603 Mr. Blankinship - We could not sort through the deeds and come up
604 with absolute clarity on that question.

605
606 Mr. Serpa - On Monday they had an issue with that. On Monday
607 the property owner of Parcel A came to the County and she signed some
608 documents that the County said she needed to sign to clear that deed issue that
609 he was talking about. It seems like the confusion was that there was a grant on
610 Parcel A and it was really clear whether it was the entire parcel or an easement
611 on the parcel. But it actually referred to an easement on Parcel A in order to
612 have access to Parcel B. I believe that was taken care of on Monday. The realtor
613 contacted me and left me a message saying she was going to meet with the
614 County and have that signed.

615
616 Mr. Blankinship - Monday of this week?

617
618 Mr. Serpa - Yes.

619
620 Mr. Blankinship - You don't have a copy of anything.

621
622 Mr. Serpa - No.

623
624 Mr. Wright - I'm sure some of these folks here will shed some light
625 on this before the day is over.

626
627 Ms. Harris - You don't have any knowledge of the Edwards? I'm
628 looking at the plat dated 1983. You don't have any idea or information on the
629 Edwards Estate?

630
631 Mr. Serpa - Who is Edwards?

632
633 Ms. Harris - I see on the plat they have, "Now formerly Edwards."

634
635 Mr. Serpa - No, I don't. Right now it's an empty lot and it seems
636 like it was part of the lots that were split.
637
638 Ms. Harris - Any other questions? We will ask you to come back
639 after we hear the other side. Thank you. Anyone else who would like to this case
640 in favor? All right, now opposition. Come forward and state your case, since
641 you've already been sworn in.
642
643 Ms. Lipscomb - Good morning, I'm Shirley West Lipscomb. We live at
644 807 Scott Road. We're on the southwest side.
645
646 Ms. Harris - Okay. Spell your last name, please.
647
648 Ms. Lipscomb - Lipscomb—L-i-p-s-c-o-m-b. My maiden name is West
649 and that's what you're going to see on the contract. My husband will be speaking
650 on our behalf; he's Raymond Lipscomb.
651
652 Ms. Harris - Can you point out your property on the site map?
653
654 Mr. Lipscomb - Good morning. On the map our property will be just to
655 the southwest side of the property line for the property in question at this time. It
656 is a 1.245-acre lot running parallel to the side of this property line here that we're
657 talking about. What we have is two lots that are in question in the back. And if
658 the gentleman were to get the variance to purchase Lot A, there would not be
659 any easement access to Lot B period. If you put a picture up I'll show you. On
660 the access road going into it's going to—okay, that's good right there. If you look
661 at this, everyone has had the contingency that this was a road. Actually it's not a
662 road, it's basically a path that has been used over the years to get access
663 through Lot A to Lot B. My wife and I, our property line splits right smack down
664 through the center of that, and you can see the little pink flag right in the middle.
665 So that is really not a—right there, that's correct. That is not an easement of any
666 sort whatsoever to our knowledge. To get easement to the back of that lot, I
667 don't know how he could acquire any property at all on either side because the
668 other lot in question was Edwards, and it belongs to the Whitlock's. And they are
669 here this morning.
670
671 Mr. Wright - Which lot belongs to the Whitlock's?
672
673 Mr. Lipscomb - The one that's on the east side.
674
675 Mr. Wright - I'm talking about A or B. Which one?
676
677 Mr. Lipscomb - No, no, no. Neither one of those belong to the
678 Whitlock's. The bigger lot off to the east side of Lots A and B belongs to the
679 Whitlock's. The one that said "Edwards" belongs to the Whitlock's.

680
681 Mr. Lipscomb - Well north of the property.
682
683 Mr. Wright - You've brought up something here that is not before
684 this Board and we don't get into that. If in fact that's been used as an access to
685 that property for a number of years you get the access there legally by use.
686 That's not before us; we don't determine that sort of thing.
687
688 Mr. Lipscomb - Right, right.
689
690 Ms. Harris - On this map here, the plat dated June 3, 1983, can
691 you point out your land on this map?
692
693 Mr. Lipscomb - It would be on the southwest side of it.
694
695 Mr. Blankinship - Labeled now or formerly Branch.
696
697 Mr. Lipscomb - Yes sir.
698
699 Mr. Blankinship - How far is your house from that property line,
700 approximately?
701
702 Mr. Lipscomb - Approximately fifty feet. The actual house itself. But
703 we have other property extending along that boundary line that would be spot-on
704 on the property line if he was to purchase it.
705
706 Mr. Blankinship - Right. Your property adjoins his.
707
708 Mr. Lipscomb - Yes, yes it does. The question that we have is how
709 would you be able to get access to Lot B if the gentleman builds the proposed
710 house.
711
712 Mr. Blankinship - If he buys the lot it will be subject to an easement,
713 which is that he has to provide some access across his property.
714
715 Mr. Lipscomb - The question now is that we have a layout that is
716 small in nature and size as far as that, and he would have to place that house
717 strategically.
718
719 Mr. Blankinship - Yes.
720
721 Mr. Lipscomb - And that's going to be difficult at best if you were
722 physically out there to see that. We've been living there for twenty years almost
723 and this looks like it has been there forever. So we basically know the layout; we
724 understand what it is. And for all practical purposes it used to be a [unintelligible].
725

726 Ms. Harris - It used to be a what?
727
728 Mr. Lipscomb - A hog lot.
729
730 Mr. Blankinship - It can be done. It will have to be done carefully.
731
732 Mr. Lipscomb - It would have to be done big-time carefully, yes it
733 would.
734
735 Mr. Blankinship - And he will have to do it; he has no choice. If he buys
736 the land subject to that easement, he has to provide access to Parcel B.
737
738 Mr. Lipscomb - The paperwork that I got the other day shows that
739 there's an undefined easement road that's running through Property A to get to
740 Property B.
741
742 Mr. Blankinship - Right. So he could give it to them on the north side or
743 on the south side, but he has to give it to them.
744
745 Mr. Lipscomb - He can't give it to them on the southwest side which
746 is our side.
747
748 Mr. Blankinship - Across Parcel A. It has to run from Scott Road across
749 Parcel A to Parcel B.
750
751 Mr. Lipscomb - That would basically be right through his front yard.
752
753 Mr. Blankinship - Or his backyard.
754
755 Mr. Lipscomb - The whole question here is that is the lot a lot that's
756 capable of sustaining property, such as a dwelling, and be able to provide
757 access to the lots behind him in a legal fashion without creating detriment to the
758 property owners on either side.
759
760 Mr. Blankinship - That's exactly the question.
761
762 Mr. Lipscomb - And that is the question without question.
763
764 Ms. Harris - Mr. Lipscomb, would you be amenable to negotiating
765 with maybe a prospective builder/buyer to sell some of your land for easement
766 purposes?
767
768 Mr. Lipscomb - No ma'am. I have to be honest with you that I
769 wouldn't at this point in time.
770

771 Mr. Baka - Can I follow up on that question? Has Mr. Serpa
772 contacted you prior to today about purchasing a portion of the property?
773

774 Mr. Lipscomb - In all honesty, sir, Mr. Serpa, I met him—
775

776 Mr. Baka - Yes or no.
777

778 Mr. Lipscomb - No.
779

780 Mr. Baka - Okay. And then the second question, would you be
781 adverse if there were a twelve-foot easement on that first portion of the flag stem
782 and then coming back a twelve-foot easement on Parcel A, just to the south of
783 shared property line with Edwards—I'm sorry; what's the last name of the other
784 family?
785

786 Mr. Blankinship - Whitlock.
787

788 Mr. Baka - Whitlock. If there were a twelve-foot easement on
789 Parcel A, and just south of the Whitlock tract coming back on that, would you be
790 in opposition if there were an easement?
791

792 Mr. Lipscomb - It is basically an entrance road. Could you put that
793 map up, I might could show you better what I'm talking about here. I've studied
794 this thing really good. There is another one, too. There's another picture at Scott
795 Road itself, which would be the entrance. Okay. See that right there? See the
796 little flag right there? It's a little flag that's right there in the middle. Right at the
797 very bottom there is a little flag. I've already removed my fence post. I want them
798 to see this because I've been trying to explain this to everybody. This right here
799 is the flag representing a point basically for where Mrs. Whitlock's property will
800 start and move in this direction. From that same flag over this way is where our
801 property line is, but it's not showing in the picture. But there's a large pine tree in
802 that area.
803

804 Okay. Now I've already removed that fence in anticipation of anything going on.
805 So what would happen is Mr. Serpa would have to come off of Scott Road, skirt
806 our yard at the pine tree, come around here, and there's another flag. And then
807 he would have to come here in order to have access back through there. On this
808 side, he can only go here because this is the property line for Mrs. Whitlock.
809 None of this over here is accessible for him to drive into that road at all, unless
810 they were to give him that permission to do that. All he has is from this point
811 here, twelve feet over to right there, driving around and through this area here,
812 then past this tree. And right here—you can't see it—is a flag, and a flag there
813 showing twelve feet. And as it goes completely up to the center here you will find
814 another pin that turns that road into our property again, and then it extends all
815 the way up into the back. So it's a very tricky situation.
816

817 Mr. Witte - Is the pine tree in the twelve feet?
818
819 Mr. Lipscomb - No, it's not in the twelve feet, but in order for him to
820 drive off of the road, come between the flag, which is Mrs. Whitlock's pin and my
821 pin, he would have to skirt that tree in order to stay off of her property, entering
822 and exiting at any given time.
823
824 The other question was, is the road itself part of the property that's trying to be
825 sold.
826
827 Mr. Wright - That's what I wondered, who owns the road?
828
829 Mr. Lipscomb - That's the thing; I don't know.
830
831 Mr. Blankinship - That little twelve-foot pipe? That's Parcel A. It's wide
832 enough to drive on. How you build a driveway within the twelve-foot strip is going
833 to be tricky.
834
835 Mr. Lipscomb - That's tricky. If he gets this variance and the situation
836 comes to where construction will take place, he has to remove all of the timber
837 back there in order to clear the lot to place the dwelling. Well I don't know of any
838 timber-moving equipment that can come in that one little twelve-foot spot and go
839 back and forth up there and pull trees out.
840
841 Mr. Serpa: [Off microphone; inaudible].
842
843 Mr. Lipscomb - No, you won't remove all the timber, but you have to
844 move sufficient timber in order to place the house.
845
846 Mr. Blankinship - Are there other questions for the Lipscomb's?
847
848 Ms. Harris - We'll give you a chance to rebut in just a minute.
849 Anything else?
850
851 Ms. Lipscomb - No ma'am.
852
853 Mr. Lipscomb - We do appreciate it.
854
855 Ms. Harris - Thank you so much. Anyone else who wishes to
856 speak against this case, please come forward. Were you sworn in, sir? Please
857 state your name and spell your last name.
858
859 Mr. Whitlock - Yes. My name is Charles Whitlock—W-h-i-t-l-o-c-k.
860 My mother is in the occupancy of the lot that was Edwards; it's Whitlock. The
861 variance has to be on our property and we oppose it.
862

863 Mr. Blankinship - Why?
864
865 Mr. Whitlock - Because of the fact that it's a tight area. We have
866 plenty of property, but we don't want to do that.
867
868 Ms. Harris - Would you be amenable to selling the land? You
869 don't want to sell it? Money doesn't interest you.
870
871 Mr. Wright - Mr. Whitlock it's apparent that there is a twelve-foot
872 right-of-way owned by Parcel A. Now how you get it and where you do it, that's
873 going to be fun. So they can do that without your approval. It doesn't impact your
874 property except how the house would impact your property, and that's another
875 thing.
876
877 Mr. Whitlock - That is correct.
878
879 Mr. Wright - I take it that you are opposed to their building a house
880 there.
881
882 Mr. Whitlock - That is correct.
883
884 Mr. Wright - Why would you be opposed?
885
886 Mr. Whitlock - We just look at the building aspect of it, the
887 equipment and all that. We're just opposed to that part of it.
888
889 Mr. Wright - Staff has made a report that they could put screening
890 such that it would pretty well shield this house from other properties. Is that
891 correct, Mr. Blankinship?
892
893 Mr. Blankinship - It's a suggestion we've made for the Board to
894 consider, whether to require that.
895
896 Mr. Wright - You're saying that they could screen it so it wouldn't
897 be visible?
898
899 Mr. Blankinship - It could be done, yes sir, if the Board wanted to.
900
901 Ms. Harris - Are there other questions for Mr. Whitlock?
902
903 Mr. Witte - How long has your family owner that property, sir?
904
905 Mr. Whitlock - My mom has been there most of her life.
906
907 Mr. Witte - Okay, thank you.
908

909 Ms. Harris - Do you know how many acres of land you all have
910 there?
911
912 Mr. Whitlock - I believe it's estimated at 6.2. It's somewhere around
913 6.5, somewhere around that.
914
915 Ms. Harris - We can't hear you when you are not at the
916 microphone, so if you can hold your concerns as we address Mr. Whitlock.
917
918 Mr. Whitlock - The total property is probably around 6.2 to 6.5,
919 somewhere around in that area.
920
921 Ms. Harris - Is there a house on your property?
922
923 Mr. Whitlock - Yes.
924
925 Mr. Witte - Where is the house?
926
927 Mr. Blankinship - To the north.
928
929 Mr. Whitlock - It's to the north. Like Mr. Lipscomb was saying, we're
930 off to the north of the property concerned.
931
932 Mr. Witte - So that's a pretty good distance from this.
933
934 Mr. Whitlock - Correct.
935
936 Mr. Baka - One other question. Since that house is a pretty good
937 distance—like Mr. Wright said—up to the north, what are your future plans to
938 subdivide a portion of those 6.2 acres? Do you intend to put a couple more lots
939 in there?
940
941 Mr. Whitlock - If we would sell it would be the whole property.
942
943 Mr. Baka - Any plans for a family subdivision?
944
945 Mr. Whitlock - Not at this point, no.
946
947 Ms. Harris - Are there other questions of Mr. Whitlock? Thank you
948 so much. Any other persons who wish to speak in opposition to this case please
949 come forward. I know you've been sworn in, sir. Please state your name and
950 spell your last name.
951
952 Mr. Morris - My name is Alfonso Morris—M-o-r-r-i-s. Yes, I live
953 across the street from his driveway. His lights would be shining directly into my

954 house when they come out of the driveway. That's the only problem I really have
955 with this whole thing.

956
957 Ms. Harris - And your address?
958

959 Mr. Morris - 800 Scott Road.
960

961 Ms. Harris - Any questions for Mr. Morris? Thank you so much.
962

963 Mr. Wright - Let me ask one question. Has there been any traffic
964 over that road?
965

966 Mr. Morris - No.
967

968 Mr. Wright - Nothing is happening right now.
969

970 Mr. Morris - No. Like you said, it used to be a hog pen and that
971 was years ago. That's the only thing it's ever been used for.
972

973 Mr. Wright - Thank you.
974

975 Mr. Morris - Thank you.
976

977 Ms. Harris - Anyone else who wishes to speak in opposition to this
978 case?
979

980 Mr. Lipscomb - [Off microphone; inaudible].
981

982 Mr. Blankinship - Only if you're asked a question.
983

984 Ms. Harris - What is it that you want to say. Come forward please.
985

986 Mr. Blankinship - We like to maintain order, but we hate to deny people
987 their opportunity.
988

989 Mr. Lipscomb - I understand. Yes. I'm into this, okay, I really am.
990 Would you bring up the entrance to the property again, please? Okay.
991

992 Ms. Harris - We just ask that you not repeat anything that's
993 already been said.
994

995 Mr. Lipscomb - No, I won't. We're going to be talking about the
996 screening issue that the gentleman brought up.
997

998 Mr. Blankinship - That's important.
999

1000 Mr. Lipscomb - Okay. The screening issue would be—this property is
1001 my wife and I. Anything from this point this way belongs to my wife and I, all the
1002 way back to the pole there. So the screening issue was going to be related to our
1003 property and not the property of the Whitlock's. That's the only part I wanted to
1004 bring across.
1005
1006 Mr. Wright - Now wait a minute. That little flag there in the middle
1007 of that road, I thought that road was owned by Parcel A?
1008
1009 Mr. Lipscomb - No sir. My property line starts right here and goes that
1010 way.
1011
1012 Mr. Wright - Where does the twelve feet go?
1013
1014 Mr. Lipscomb - None of that has ever been twelve feet. It starts on
1015 the road and then comes up. You didn't get a camera shot of it. I tell you what,
1016 bring the entrance from Scott Road back up a minute. I'll get everybody straight
1017 here right now.
1018
1019 Mr. Wright - There it is.
1020
1021 Mr. Lipscomb - Okay, here we go. Coming in off of Scott Road here,
1022 the gentleman would be driving along here. He would come up to here. And right
1023 here and right here is a flag—that's his twelve feet. But as he follows this road,
1024 right where my arrow is now, there is a pin installed there, and he has to go to
1025 the left of that pin in order to gain access to his property. It would sort of be as if
1026 you went to the property and looked right now it would be shaped like Times
1027 Square. This road here is to one side, that's to the side. In order for him to enter
1028 his property he would have to remove an abundance of trees because we have a
1029 pin that's right about that area right there. So the other picture that you were
1030 showing a moment ago, our property continues right smack up the middle of that
1031 thing.
1032
1033 Mr. Wright - Looks like to me there would have to be a survey
1034 done in order to establish that line.
1035
1036 Mr. Lipscomb - The survey would have to be done. It was just done
1037 recently; that's why those flags are there.
1038
1039 Mr. Wright - Where is Mrs. Whitlock's line?
1040
1041 Mr. Lipscomb - Oh, Ms. Whitlock's line is on the—as you would say,
1042 the north side.
1043
1044 Mr. Wright - I know. But from that point to the left, looking at that, it
1045 would be right in the middle of those trees.

1046
1047 Mr. Lipscomb - Okay, come back to the other one coming off of Scott
1048 Road a minute, please. Okay. Now here is the flag establishing Mrs. Whitlock's
1049 beginning pin. Her line goes just like this—around, around just like this, comes
1050 around, and it starts right there. And in this corner across from my pin is the
1051 other pin for Mrs. Whitlock. And the trees are blocking it now, but what I'll do, I'll
1052 follow this around just like if you were in there. And it goes around in a circle and
1053 it comes out just like that in the back of the woods.
1054
1055 Mr. Wright - It's not a straight line.
1056
1057 Mr. Lipscomb - No sir. Actually, nature has no straight lines.
1058
1059 Mr. Blankinship - But survey plats do.
1060
1061 Mr. Lipscomb - Survey plats do, but in nature there are no straight
1062 lines.
1063
1064 Mr. Blankinship - The property line is a straight line, but the track on the
1065 ground—
1066
1067 Mr. Lipscomb - Yes. It's basically shaped like a kidney bean, for all
1068 practical purposes if you wanted a definition. Granting the variance will not
1069 change the existing problem that's there as far as an entrance, exit, or
1070 establishing the true property line running through the middle of that road there.
1071 That's an issue. That's why screening would be put in that spot, if necessary. But
1072 it is a tight configuration period. Everything would have to be taken into
1073 consideration as far as placement of the well, placement of the septic tank, the
1074 setback from the fifty-foot line of Part B coming back this way. And then the
1075 house would have to sit smack dead in the middle of that. And then you have to
1076 look at having an easement provided after that's done. So it could get difficult at
1077 best. Not saying it's improbable, but is it worth the effort to purchase the land?
1078 You can't say it's a hardship because he's trying to purchase it knowing the
1079 circumstances related to it as we speak.
1080
1081 Ms. Harris - Thank you.
1082
1083 Mr. Lipscomb - All right.
1084
1085 Ms. Harris - Okay, Mr. Serpa. You can address anything that you
1086 wish in answering some of the questions, some of the concerns that were
1087 brought up.
1088
1089 Mr. Serpa - As far as the trees and equipment and all of that,
1090 there is really nothing that I need to take down. The only tree that I guess would
1091 be close to his property line that I would have to mess with is this front one right

1092 on the entrance on this picture that's here now. Right now it's on my property.
1093 He's got his fence and everything where the twelve-foot tract is.

1094
1095 Mr. Wright - He said he's already removed that fence.

1096
1097 Mr. Lipscomb - [Off microphone.] Yes, that's already [inaudible].

1098
1099 Mr. Serpa - I already have all the drawings from the well and
1100 everything with the Health Department. They have already made a projected
1101 area where the house would be in, the easement, all of that. It seems like more
1102 of a problem for me to deal with than a reason for him not to have the property
1103 here. It seems like I haven't heard any real reason other than a headlight in
1104 somebody's window or something. I can promise not to use high beams. I don't
1105 know what else, you know.

1106
1107 I found this property online and I drove here to see the property. Initially I had a
1108 hard time finding it because there was no sign here. I stopped to see the
1109 property and I went there about four times. In all the four times I went there, Mr.
1110 Lipscomb would come running. It seems like he was interested in the property.
1111 He was just trying to get it at a very, very, very low price; that's what he told me.
1112 It seems like he was advertising all the issues and all the problems to make sure
1113 nobody would buy the property. As he told me, the interest that he has on the
1114 property is that right now he uses the property for a four-wheel tract. He uses a
1115 four-wheeler back there, ATV and stuff like that. That's all the reason he really
1116 has to have that property in there.

1117
1118 And the only issue with the Whitlock's is that I don't know if there are any other
1119 divisions that were done on that property, but it's showing that that property is
1120 twelve acres, twelve-point-some acres.

1121
1122 Mr. Blankinship - There must have been other land cut off then,
1123 because it's 6.4 now, according to the tax records.

1124
1125 Mr. Serpa - Okay. It must have been divided again. The reason
1126 that I like the property the way that it's set back there with a bunch of trees
1127 around is the privacy of it. I wouldn't want to take the trees down because they
1128 keep the house hidden back there. I enjoy the privacy and the trees around so I
1129 don't want to go in there and take the trees down—only where I really have to
1130 take them down to get either the driveway in or the house itself sitting in. All the
1131 trees around will help my house be private. And it sits far away from both of the
1132 other two houses. I think that's a plus. I think also it's something that shouldn't
1133 bother the neighbors there much.

1134
1135 That's pretty much all.

1136

1137 Ms. Harris - Mr. Serpa, do you have any concerns about Parcel B
1138 for the future?

1139
1140 Mr. Serpa - I haven't been able to get in touch yet with the Parcel
1141 B owner. I don't know what his intentions are or anything. I would try to in the
1142 future either buy their property or get in an agreement for an easement. It seems
1143 like maybe there's a possibility I could buy it. Instead of getting two houses back
1144 there, just get a bigger backyard. It would be an option if he would be willing to
1145 sell. I just wanted to get through one thing at a time.

1146
1147 Ms. Harris - I was just wondering, too, did you have any concerns
1148 about blocking access to Parcel B?

1149
1150 Mr. Serpa - No. I've seen lots like this before. I live in Goochland
1151 and there are a lot of these. Sometimes they have two or three families living on
1152 the back. Commonly they do the house instead of facing Scott Road in a way, it
1153 kind of fits like sideways and a little street runs on the front. So you have a
1154 driveway to your Property A and Property B. That's how normally I've seen it
1155 done out in Goochland and that sort of thing. I don't see how that would be a
1156 problem.

1157
1158 Ms. Harris - Any other questions by Board members? Thank you
1159 very much. That concludes this case. We have a period of allowing the
1160 opposition to speak, and then we close it for the rebuttal, and then we cut the
1161 case off and move to the next one. We will vote today at the end of this meeting
1162 if you want to hang around and see just how we vote. That's out of order at this
1163 point. We have a procedure. We try to treat everybody the same way. Okay. We
1164 have the proponents, and the opponents, and then the rebuttal after the
1165 applicant states the case. We close the case and move on. Then at the end of
1166 our agenda we do vote. Thank you.

1167
1168 **[After the conclusion of the public hearings, the Board discussed the case**
1169 **and made its decision. This portion of the transcript is included here for**
1170 **convenience of reference.]**

1171
1172 Ms. Harris - What is the pleasure of this Board? Can I make the
1173 motion?

1174
1175 Mr. Blankinship - Yes, it's appropriate for you to make a motion if no
1176 one else does. It's a courtesy that the Chair generally does not.

1177
1178 Mr. Baka - Can I ask a question about the conditions?

1179
1180 Ms. Harris - Sure.

1181

1182 Mr. Baka - If there were to be a motion, would an easement back
1183 to Parcel B through Parcel A extending to Scott Road, be at least twelve feet in
1184 width? Is that type of condition relevant for this case?
1185

1186 Mr. Blankinship - You could add that as a condition if you wanted to.
1187 It's already in the deed.
1188

1189 Mr. Wright - I don't think it's appropriate.
1190

1191 Mr. Blankinship - They're already required to provide that.
1192

1193 Mr. Wright - The law would protect that lot. Legally you cannot cut
1194 off access.
1195

1196 Mr. Baka - Thank you.
1197

1198 Ms. Harris - I move that this case be denied. My reason for it is I
1199 feel that it would cause substantial detrimental impact on the other property.
1200 Look at Parcel B. Something has to be done with Parcel B if we approve the
1201 case so that it would not harm the owner of that property. When we ask the
1202 question does the lot have any reasonable beneficial use without a variance, it
1203 can be used for farming or forestry. Those are my two basic concerns with this
1204 legal issue.
1205

1206 Is there a second to the motion?
1207

1208 Mr. Witte - I'll second the motion.
1209

1210 Ms. Harris - It's been moved by Helen Harris and seconded by Mr.
1211 Witte that this case be denied. Let's have questions and discussion now. Any
1212 questions on the motion?
1213

1214 We probably already had our discussion period. Then we are prepared to vote?
1215

1216 Mr. Wright - I think the lot could be used without being detrimental
1217 to the adjacent properties, that's what the staff says with proper screening and
1218 so forth. [Blank section.] What really concerns me is access. Twelve feet [blank
1219 section] emergency vehicles. [Blank section.] If we approve it and say yes they
1220 have [blank section] condition, I guess you do, about access. He has to have
1221 proper access to it. That would just throw the burden on him. I think he's looking
1222 at [blank section]. Did we have enough conditions to do what I said? We don't
1223 have a condition on access, do we?
1224

1225 Mr. Blankinship - No sir, not specifically.
1226

1227 Mr. Wright - If we were to approve this, I think we should have a
1228 condition. Now we do on other cases where we approved [Blank section] without
1229 a fifty-foot right-of-way. We have something specific we put in on the access.
1230

1231 Mr. Blankinship - We have a standard condition we use if the lot does
1232 not abut at all on a public street, that they have to acquire some way to get to the
1233 public street. In this case the lot does abut Scott Road, just not fifty feet, so the
1234 standard condition wouldn't fit. But of course we'll draft any condition you need.
1235

1236 Mr. Wright - Normally we put the type of road it would be, gravel or
1237 whatever. This is just a path.
1238

1239 Mr. Witte - One of my concerns also with that was that drainage
1240 could be an issue. And if you took that twelve-foot road and had to put a
1241 minimum of two feet on each side for drainage issues, now you only have an
1242 eight-foot driveway.
1243

1244 Mr. Wright - You can't do it because that would encroach on
1245 somebody else's property.
1246

1247 Mr. Witte - That's what I mean. If he had to put a ditch in that
1248 drained all the way down to Scott Road, it would only be an eight-foot driveway
1249 with a ditch on each side. Ingress and egress would be difficult at best,
1250 especially for any large equipment or emergency vehicles. Once again, that was
1251 one of my thoughts.
1252

1253 Ms. Harris - Any more discussion on this motion? All in favor of
1254 denying the motion say aye. All opposed say no. The ayes have it; the motion
1255 passes.
1256

1257 After an advertised public hearing and on a motion by Ms. Harris seconded by
1258 Mr. Witte, the Board **denied** application **VAR2011-00006, Ramon Serpa's**
1259 request for a variance from Sections 24-9 and 24-94 of the County Code to build
1260 a one-family dwelling at 801 Scott Road (Parcel 787-758-2966), zoned R-2, One-
1261 family Residence District (Fairfield).
1262

1263 Affirmative:	Baka, Harris, Nunnally, Witte, Wright	5
1264 Negative:		0
1265 Absent:		0

1267 **[At this point, the transcript continues with the public hearing on the next**
1268 **case.]**
1269

1270 **CUP2011-00024 HENRICO COUNTY DEPARTMENT OF PUBLIC**
1271 **UTILITIES** requests a temporary conditional use permit pursuant to Section 24-

1272 116(c)(1) of the County Code to allow a temporary recycling center at 2340
1273 Pump Road (Parcel 740-752-1906), zoned A-1, Agricultural District (Tuckahoe).

1274

1275 Ms. Harris - All persons who wish to speak to this case please
1276 stand to be sworn in.

1277

1278 Mr. Blankinship - Do you swear the testimony you're about to give is
1279 the truth and nothing but the truth so help you God?

1280

1281 Ms. Harris - Please come forward and state your case. Give us
1282 your name, spelling your last name.

1283

1284 Mr. Yob - Good morning Madam Chairman, gentlemen. My
1285 name is Steve Yob. That's spelled—

1286

1287 Ms. Harris - Just one moment please. Okay, give us your name,
1288 please, again.

1289

1290 Mr. Yob - Yes ma'am. Madam Chairman, my name is Steve
1291 Yob. That's spelled Y-o-b. I am the Assistant Director of the Department of
1292 Public Works for the County of Henrico. My previous position was as Division
1293 Director of the Division of Solid Waste and Recycling for the Department of
1294 Public Utilities. I've been active with this project for a while now.

1295

1296 Ma'am and gentlemen, what we have here is a temporary use to replace two
1297 recycling facilities that we have at fire stations in the Tuckahoe District of the
1298 County of Henrico. Our recycling facilities at those stations, if you're unfamiliar
1299 with them, simply consist of dumpsters. They're forty-yard. They look like large
1300 steel doghouses with portholes for placing used paper, cardboard, bottles and
1301 cans for those who do not have curbside recycling available to them. We have
1302 these at fire stations throughout the County of Henrico. They are picked up
1303 regularly, and employees of the Department of Public Utilities clean them up.

1304

1305 In the Tuckahoe District we have two such facilities, and maybe I'll throw the
1306 map up, if you'd like. This map shows the existing Tuckahoe facilities that we
1307 have. Fire Station 13 to the west is located at Church and Lauderdale. Fire
1308 Station 13 is a very heavily-used facility, accounting for sixteen percent of the
1309 customer visits that we have at these facilities. We have about twelve of these.
1310 The number has fluctuated a little bit as the firehouses are remodeled.

1311

1312 The other one we have in the Tuckahoe District is Fire Station 9, located on
1313 Quioccasin Road west of Pemberton. That facility accounts for thirty percent of
1314 our customer volume in the Tuckahoe District.

1315

1316 These two fire stations account for forty-six percent of the total customer usage
1317 in the entire County of Henrico. Unfortunately, both of those sites are undergoing

1318 renovation and will be unavailable to us. Fire Station 13 is already being
1319 renovated and we had to remove our recycling containers just recently. Fire
1320 Station 9 will be undergoing renovation in January and those facilities will be
1321 unavailable to our customers starting in January. In fact, Fire Station 9 will be
1322 unavailable permanently. The footprint of the property for Fire Station 9 will not
1323 accommodate recycling when the fire station is rebuilt. Fire Station 13 will be
1324 returned to recycling availability in January 2013.

1325

1326 As you can see, the subject property, the proposed recycling site at Third
1327 Presbyterian Church, we would be leasing land from them. It the closest parcel
1328 we could find. It's about four minutes from Fire Station 13 by drive and about
1329 seven minutes from Quioccasin; just a few miles either way. It's more or less in
1330 the middle. So that is the location. Any questions on that and I'll minimize that
1331 and scroll through the other exhibits. Okay.

1332

1333 As I said, this would be a temporary facility for about a 12- to 24-month lease
1334 with the Third Presbyterian Church, which owns the property. Minimum of twelve,
1335 maximum of twenty-four months. The facility would include a wood screening
1336 fence all the way around the dumpsters. There would be room for up to five
1337 dumpsters. Normally, though we only have three to four. We have an empty slot
1338 so that when the truck drops off an empty dumpster, he can pick up the full one.

1339

1340 The facility would be accessed by an existing asphalt drive off Pump Road. We
1341 would also construct a gate at the Columbian Center to prevent recycling patrons
1342 from driving through their parking lot. And we would further put some screening
1343 evergreens up on this area right along in here. Those screening evergreens
1344 would be because the church maintains a picnic area in the back and they want
1345 this to be as minimally visible as possible to their patrons. The facility would be
1346 policed daily by Public Utility employees, and cleaned up as required. And of
1347 course the containers would be dumped as needed.

1348

1349 That is what we're asking for today, Madam Chairman and gentlemen. I will
1350 certainly respond to any questions you may have.

1351

1352 Ms. Harris - Are there questions from Board members?

1353

1354 Mr. Witte - I do. You say Fire Station 9 will never be accepting
1355 recycling?

1356

1357 Mr. Yob - Yes sir.

1358 Mr. Witte - Do you have any intentions of putting another
1359 recycling facility in the area over there?

1360

1361 Mr. Yob - Yes sir. We have been looking at property in the
1362 Tuckahoe District over the past several years. And we have made offers to
1363 purchase parcels in the Tuckahoe District. Let me back up.

1364

1365 About two years ago we recognized this problem was coming and with
1366 Planning's assistance we did a survey of all the parcels in the Tuckahoe District
1367 that we could build such a facility on. And as you can image, there aren't very
1368 many. That was brought down to about six or seven parcels and they were
1369 ranked in priority of which might be the best. And we are going through that list
1370 trying to buy a parcel. So yes, we are actively pursuing one.

1371

1372 Mr. Witte - In essence there is virtually no possibility you're going
1373 to come back and want to extend this?

1374

1375 Mr. Yob - I hope not. The lease with the church presently says
1376 twelve months to twenty-four months. The church does want to build their new
1377 facility there for their congregation. So this is vacant land that they own that they
1378 can get some revenue from. But they do want to build their church there, so we
1379 don't have a long-term place at this location.

1380

1381 Mr. Witte - My point was you're actively pursuing another location.

1382

1383 Mr. Yob - Oh absolutely. And at a minimum, Fire Station 13 will
1384 be back in operation before our use here is at an end. So we will at least have a
1385 fire station in the Tuckahoe District before this lease is up.

1386

1387 Mr. Witte - Thank you.

1388

1389 Mr. Wright - I have a question. Is this a 24-hour-a-day operation?

1390

1391 Mr. Yob - Yes sir. I wish they weren't, but fire stations
1392 accommodate customers all the time. Most of the use is either before work or
1393 after work or on weekends. We get the occasional person who comes in the
1394 evening.

1395

1396 Mr. Wright - I didn't now whether that would create any noise for
1397 the adjoining property owners. Can you address that?

1398

1399 Mr. Yob - Yes sir. I can't say there will never be any noise
1400 because certainly if people get out of their vehicle, slam car doors and so forth,
1401 or talk, you know, that does create noise. We do plan, as I stated, to put the
1402 wood fence all the way around three sides of the dumpsters so that the only
1403 open side is not facing residential. There are houses, of course, along here. The
1404 fence would be on these three sides here, so the open side would be pointing
1405 this way.

1406

1407 Ms. Harris - You have reviewed the conditions, right, Mr. Yob.
1408 They state that the applicant shall post signs stating the hours of operation

1409 between seven a.m. and nine p.m. We say it's going to be accessible for twenty-
1410 four hours.

1411

1412 Mr. Yob - And we can post signs. Unfortunately the church does
1413 not want us to gate that driveway. We can ask for people's cooperation. The site
1414 is open and we certainly prefer people not go there at night. We post signs at
1415 these sites all the time about the way people should be using them. We don't
1416 have an attendant there to enforce that, so it's kind of an honor system.

1417

1418 Mr. Blankinship - That's why he said he wished they were not twenty-
1419 four hours.

1420

1421 Mr. Yob - Yes. I wish they weren't accessible twenty-four hours
1422 because the firemen at their sites would rather people use them during specific
1423 daylight hours. But if somebody comes in late at night there is no policeman or
1424 an employee of the County there to say you can't come in. And the church
1425 doesn't want their driveway gated.

1426

1427 Mr. Witte - I don't think that would be cost-effective to pay
1428 personnel to sit there and watch an empty recycling bin.

1429

1430 Mr. Yob - No sir.

1431

1432 Mr. Wright - Very minimal use.

1433

1434 Mr. Witte - Oh, I would think so.

1435

1436 Ms. Harris - I would imagine if you received complaints, someone
1437 would address those.

1438

1439 Mr. Yob - Absolutely. We do have an employee whose full time
1440 job is to take care of these facilities; he drives around every day. And we have an
1441 employee on weekends that does the same thing.

1442

1443 Ms. Harris - Have you noticed the conditions; there are nine of
1444 them. Have you reviewed those, Mr. Yob?

1445

1446 Mr. Yob - Yes ma'am.

1447

1448 Ms. Harris - Do you know how often those recycling bins are
1449 empties now, just the average?

1450

1451 Mr. Yob - In the case of the ones in Tuckahoe it's almost every
1452 day. Some of the other ones that are more lightly used it may only be once every
1453 few weeks. We do have a few in the more rural portions of the County and those
1454 are not very heavily used; we don't have a lot of people living there. It might be

1455 once a week or every other week that those are dumped. The ones in Tuckahoe
1456 are on a schedule basis, so it's almost every day.

1457
1458 Ms. Harris - Just for my clarification, where do you take these
1459 items once the bins are emptied? What's the next step for that?

1460
1461 Mr. Yob - There is a contractor, Madam Chairman, that picks
1462 them up and they are hauled to Chester to the recycling facility, Tidewater Fiber,
1463 where all the materials are sorted into their components—glass, plastic, paper,
1464 cardboard—and then the materials are sold.

1465
1466 Mr. Wright - That's where you determine if there's something in
1467 there you don't particular want. And I'm sure things are put in there that are not
1468 desirable.

1469
1470 Mr. Yob - Yes.

1471
1472 Mr. Wright - You sort them out and dispose of those at that site.

1473
1474 Mr. Yob - Yes sir, Mr. Wright. We hope that our patrons don't
1475 put trash in there, but—

1476
1477 Mr. Wright - I'm talking about maybe throwing a car battery in
1478 there.

1479
1480 Mr. Yob - There are various things that people hope are
1481 recyclable and they put them in there. But if it's not, they do sort that out.

1482
1483 Mr. Wright - Do you have a sign at the bin itemizing those things
1484 that are recyclable?

1485
1486 Mr. Yob - Yes sir, they are very clearly marked.

1487
1488 Mr. Wright - Telling them what they should be putting in or what
1489 they shouldn't be.

1490
1491 Mr. Yob - Yes sir. We are hoping that our patrons do the right
1492 thing.

1493
1494 Mr. Blankinship - As long as we're asking random questions, are we
1495 making money or losing money?

1496
1497 Mr. Yob - We do not make money on this program; it is a pure
1498 cost to the County. There is a State mandate that we provide twenty-five percent
1499 recycling of the trash that we produce in the County. It's one of those things, we
1500 have to comply with the law and we have to do that twenty-five percent.

1501
1502 Mr. Wright - It's good for the country.
1503
1504 Mr. Blankinship - Yes. And saving it from the landfill, too.
1505
1506 Mr. Yob - Sure. It creates jobs. It does return materials that
1507 would otherwise be land-filled back to production. It's a good thing, and that's
1508 why the State has mandated twenty-five percent. We are actually well into the
1509 forties, percentage-wise, from our recycling. So we are well above what the State
1510 requires.
1511
1512 Mr. Blankinship - I remember when they instituted that twenty-five
1513 percent, everybody said that's impossible, we'll never reach that. It was like ten,
1514 and then fifteen, and then twenty-five. And everybody thought ten or fifteen was
1515 the maximum we'd ever get, that we'd never break twenty.
1516
1517 Ms. Harris - What is the final resting place? Since we have Mr.
1518 Yob here, the expert here, I'd like to know. After they sort it out, what's the final
1519 resting place? Does any end up in the Henrico Landfill?
1520
1521 Mr. Yob - No ma'am.
1522
1523 Ms. Harris - Okay.
1524
1525 Mr. Yob - Well, there is a very small amount, as Mr. Wright
1526 asked. If people put something in there that is not recyclable, like batteries,
1527 those, unfortunately, do have to be land-filled. But the aluminum, they had a
1528 contract and it's now up for rebid, but they were selling the aluminum cans back
1529 to Anheuser-Busch and Coke to make new containers. The plastic bottles go into
1530 various uses including carpeting, polar fleece, and recycled fabrics. Steel goes
1531 back into anything made of steel. And paper, of course, becomes new paper and
1532 new cardboard.
1533
1534 Ms. Harris - Interesting. Are there other questions from Board
1535 members? Thank you, Mr. Yob, for your presentation.
1536
1537 Mr. Yob - Thank you, Madam Chairman, gentlemen.
1538
1539 Ms. Harris - Is there anyone who wishes to speak in opposition to
1540 this application? If not, that concludes the presentation of our cases for today.
1541
1542 **We will take a break for ten minutes.**
1543
1544 Ms. Harris - What is the pleasure of the Board on this case?
1545
1546 Mr. Witte - I make a motion we approve it.

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Mr. Wright - Second.

Mr. Witte - I think it's in the best of interest of the County, not to mention State law that provides we supply these facilities. Being a temporary situation and the church in agreement with it, I think any impact on the citizens will be minimized.

Ms. Harris - Any more discussion? Did we get as second? Okay. Are there any questions on the motion or discussion?

All in favor say aye. All opposed say no. The ayes have it; the motion passes.

After an advertised public hearing and on a motion by Mr. Witte, seconded by Mr. Wright, the Board **approved** application **CUP2011-00024, Henrico County Department of Public Utilities'** request for a temporary conditional use permit pursuant to Section 24-116(c)(1) of the County Code to allow a temporary recycling center at 2340 Pump Road (Parcel 740-752-1906), zoned A-1, Agricultural District (Tuckahoe). The Board approved the temporary conditional use permit subject to the following conditions:

1. This use permit is only for the construction and operation of a temporary recycling center. All other applicable regulations of the County Code shall remain in force.
2. Only the improvements shown on the plans filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions to the design or location of the improvements will require a new use permit.
3. The applicant shall post signs at the entrance to the recycling facility stating the hours of operation are between 7:00 AM and 9:00 PM.
4. The applicant shall maintain the property so that noise and odors are controlled.
5. The improvements authorized by this use permit shall be removed from the property on or before January 1, 2014, at which time this permit shall expire. This permit shall not be renewed.
6. On or before December 31, 2012, the applicant shall submit a report to the Planning Department describing their plans for permanent recycling facility.
7. A detailed landscaping and lighting plan shall be submitted to the Planning Department for review and approval.

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8. All landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.

9. All recyclables shall be placed in the recycling boxes which shall be emptied with regular pickups. The area shall be kept clean, and the recycling containers shall be fenced.

Affirmative:	Harris, Witte, Baka, Nunnally, Wright	5
Negative:		0
Absent:		0

[The public hearing is complete and the Board discussed the cases in order and made its decisions. The transcript continues here with the rest of the meeting.]

Ms. Harris - Let's look now at the minutes from October 20th. Are there any corrections by Board members?

Mr. Baka - I have two brief changes. On page 39, line 1749. At the very end it says, "So they base it on the Board's judgment." I believe it should be, ""Shall be based on the Board's judgment." So strike four words, "So they base it," and replace it with the three words of, "Shall be based." And then one other minor change. On the previous page, page 38, line 1719, in the middle it says, "no long incidental." I said, "No longer incidental." Just those two minor changes. Thanks.

Ms. Harris - Any more changes? A motion is in order to approve the minutes.

Mr. Baka - I'll make a motion to approve the minutes with the two changes.

Ms. Harris - Is there a second?

Mr. Nunnally - Second.

Ms. Harris - Moved by Mr. Baka, seconded by Mr. Nunnally that the minutes be approved as corrected. Any questions or discussions on the minutes?

All in favor say aye. All opposed say no. The ayes have it and the minutes have been approved.

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On a motion by Mr. Baka, second by Mr. Nunnally, the Board **approved as corrected** the **Minutes of the October 20, 2011** Henrico County Board of Zoning Appeals meeting.

Affirmative:	Baka, Harris, Nunnally, Witte, Wright	5
Negative:		0
Absent:		0

Ms. Harris - Today we welcome Mr. Madrigal who had a presentation for us last month. We probably could not have given him our full attention, but you have it now, sir.

Mr. Madrigal - Thank you very much. Madam Chair, members of the Board, if I could direct your attention the screens. This will be a brief presentation on the newly-adopted family subdivision ordinance to familiarize the Board with the new Code.

The purpose of the presentation is to provide a brief historical overview; explain the intent of the new code; highlight some of the new code requirements; explain the general workflow for future requests; to let you know that the Department of Planning is creating new applications, forms, and review procedures for these requests; and to attempt to answer any questions that arise from this presentation. If you would be so kind to please reserve your questions until the end of the presentation I would appreciate it.

As you all know, prior to the amendment, family subdivisions were exempt from the subdivision ordinance, primarily the review process. Although exempt from the subdivision ordinance, proposed lots still had to comply with basic zoning requirements, and these included the fifty-foot street frontage requirement we're familiar with, as well as lot size, lot width, and setbacks.

The Planning Department never formally reviewed any family divisions. These projects essentially showed up at the Permit Center requesting a building permit for a new home. All development issues were handled at the building permit stage. Projects that didn't meet minimum street frontage and/or zoning requirements were denied a building permit. Applicants subsequently sought a variance through the Board of Zoning Appeals. Over the years, the Board approved several of these requests, but was never truly comfortable with the oversight or process. They (Board of Supervisors) preferred that these issues be handled by the Planning Commission due to their expertise, experience, and familiarity with the subdivision process.

1684 The Board, along with staff, recognized certain public policy concerns
1685 surrounding this issue. First and foremost was the lack of review via a defined
1686 process. Also there was a lack of codified minimum standards relative to
1687 establishing a maximum number of lots to be created via the family subdivision
1688 process; orderly development and orientation of the lots to preserve privacy, curb
1689 appeal, and prevent a disjointed division of land, especially landlocked parcels
1690 and a variety of flag lots; and providing access to public safety vehicles such as
1691 police, fire, and EMS, and service vehicles such as postal, school bus, and
1692 delivery. Poor design and/or no code limits created potential life safety issues
1693 relative to a home's distance from fire hydrants, unsafe vehicular maneuverability
1694 on private roads, and poor identification of property. There was poor placement
1695 of basic utilities, drainage, and basic infrastructure. And there typically was no
1696 formal and/or binding maintenance agreements for private roads and/or drives.

1697
1698 There are many examples of poor layouts throughout the County that emphasize
1699 these concerns. Here are but a few. This slide shows Kain Road west of
1700 Pouncey Tract. You can see here there are some examples of flag lots. Here is
1701 an exception along a private drive. This is a combination private drive/private
1702 road providing access for several of these lots. This is landlocked, this is
1703 landlocked, and this is landlocked. So you can see here a slew of issues.

1704
1705 On this next slide there are multiple parcels created on Hoehn's Road
1706 surrounding Hoehn's Lake. The access to this private road is actually to the north
1707 here; it's off of Hungary Road. You have to go through multiple parcels to even
1708 get down here. As you can see, there are a lot of issues with this. Again, they are
1709 landlocked parcels. There are no formal maintenance agreements for the road.
1710 There are safety issues for access, as well as no identification of the properties
1711 at the street.

1712
1713 This is Strath Road on the east end of the County. There are a variety of flag lots
1714 with long drives. This is a typical example of the disjointed division of land
1715 creating various landlocked parcels. And again, a slew of privacy issues.

1716
1717 And finally Hughes Road. There was a case here that came to us about four
1718 years ago roughly. The public right-of-way ends here and then the private road
1719 condenses and goes all along here. You can see there have been family
1720 divisions here, potential for more lots here, which kind of brings up the issue of
1721 how many more lots do we build without requiring a standard street.

1722
1723 Cumulatively all of these issues have led to the creation of the new code.

1724
1725 After working on this issue for several years, on June 28, 2011, the Board of
1726 Supervisors adopted standards to address family subdivisions in the County. The
1727 intent of the code is not to simplify or make family divisions an easy process, but
1728 more so to establish minimum standards for the content, review, processing, and
1729 determination of these requests. It requires that all family subdivision plats be

1730 prepared by a state-licensed engineer or registered surveyor. It also requires that
1731 all family subdivision requests be submitted to and formally reviewed by the
1732 Planning Department. And it creates two distinct processing paths based on the
1733 street frontage requirement.

1734

1735 Before you is a draft flowchart of how the Department will be processing these
1736 requests. Once we receive and review a request, we will determine one of two
1737 processing paths based on whether the proposal meets the street frontage
1738 requirement for the proposed lots. The center path on the screen on the
1739 flowchart is for projects not meeting the street frontage requirement. The path on
1740 the left is for projects that do provide the street frontage for the proposed lots.

1741

1742 If the new lots meet the minimum street frontage requirement along with lot size,
1743 width, and setbacks as required by the zoning ordinance, the plat can be
1744 exempted from Planning Commission review; the subdivision plat must contain
1745 specific notations relative to Chesapeake Bay requirements; that the division is
1746 not for the circumvention of the subdivision ordinance; and that the property can
1747 only be transferred to immediate family and must be held for five years, just to
1748 name a few. Once all of the information is verified and the plat is satisfactory, it
1749 will be administratively approved and can be recorded by the applicant. Any and
1750 all development issues associated with the construction of a new home will be
1751 handled by the Permit Center, as has been customarily done in the past. This is
1752 the fastest review and approval process of the new code.

1753

1754 When street frontage is not provided, the Planning Commission will review the
1755 required plat as per code. The plat and, if necessary, construction plans must be
1756 furnished, detailing information on the private road. A signed maintenance
1757 agreement should accompany the submittal. The plans are forwarded to County
1758 departments and State agencies for review and comment.

1759

1760 Once the plans are deemed satisfactory by staff, the proposal is scheduled for
1761 Planning Commission review. The Planning Commission will base their decision
1762 on the standards for review outlined in Section 19-100. Briefly, the proposed lots
1763 must meet basic zoning requirements for the particular zone. The subdivision is
1764 for family purposes, and a restrictive covenant must be placed on the property to
1765 allow only transfer to immediate family members, and must be held for five
1766 years.

1767

1768 A maximum of three lots will be served by the private drive and must meet the
1769 following standards:

1770

- 1771 - It must connect to a public street;
- 1772 - the drive shall be located within a recorded thirty-foot-wide easement
1773 unobstructed from the ground up;

- 1774 - a utilities easement shall be designated on the plat and can be
- 1775 included within the thirty-foot easement, and this is really what's
- 1776 encouraged;
- 1777 - an eighteen-foot-wide driving surface composed of two inches of
- 1778 asphalt over six inches of compacted #21A stone must be provided;
- 1779 - adequate drainage shall also be provided to convey all surface and
- 1780 groundwater runoff away from the driving surface;
- 1781 - the drive must meet minimum public standards for a public street for
- 1782 sight distance, horizontal and vertical curves, and points of access;
- 1783 - all new dwellings shall be within 1,000 feet of a public street as
- 1784 measured along the path of travel;
- 1785 - there are specific addressing requirements for each house along the
- 1786 drive and at the street intersection; and
- 1787 - a joint access and maintenance agreement must be approved and
- 1788 recorded with the subdivision, with these agreements being binding on
- 1789 all successor interest in the properties.

1790
1791 If the plat is denied, the applicant shall receive written reasons for denial and a
1792 punch list of deficiencies to address prior to re-submittal. They can apply once all
1793 of their issues are addressed.

1794
1795 If the plat is approved or conditionally approved, it shall be prepared for
1796 recordation. As part of the recordation of the final plat, the sub-divider must
1797 complete construction of the private drive, and third-party certification by a
1798 licensed engineer must be submitted certifying that the drive was constructed as
1799 per the approved plans and is in compliance with County code. All easements,
1800 restrictive covenants, and maintenance agreements shall accompany the plat for
1801 review, and shall be recorded concurrently with the plat. The final plat shall be
1802 prepared with our standard inscription requirements and a notation that PC
1803 approval was required. Finally, staff will verify all the required information and the
1804 planning director will sign the final plat noting that Planning Commission approval
1805 was required. One copy will be kept in our files and a second copy will be given
1806 back to the applicant for recordation. The applicant shall have twelve months to
1807 record the final plat from date of approval.

1808
1809 This essentially concludes my presentation. I stand ready to answer any
1810 questions you may have. If you like, I do have copies of the ordinance.

1811
1812 Mr. Wright - I'd like to have a copy.

1813
1814 Mr. Wright - I have a question. To me, this seems to address it.
1815 But it looks like to me it's going to impose a real hardship on some people putting
1816 in asphalt driveways back to their properties, etcetera. My question is this. Can a
1817 property owner still elect to come before the Board of Zoning Appeals rather than
1818 going through all this process?

1819

1820 Mr. Madrigal - My understanding is no. We've developed this
1821 process specifically for family subdivisions.
1822

1823 Mr. Wright - So they would not be able to file a variance and go
1824 before the Board.
1825

1826 Mr. Blankinship - I think if they have an existing lot like Mr. Serpa's lot
1827 this morning, that would still come here. But if they're creating a new lot where
1828 they have the use of a property and they want to create a new lot, we almost
1829 always run into Cochran. They could apply in other words, but if they're creating
1830 a new lot, you can almost never approve it.
1831

1832 Mr. Wright - But if there were family subdivisions that had been in
1833 place for a long time and hadn't been used, they could come before this Board to
1834 get a variance?
1835

1836 Mr. Blankinship - Right. Like Mr. Serpa, or Parcel B off of Mr. Serpa's
1837 property, where you have an existing lot that doesn't meet the requirements.
1838 That's a different case from creating a new lot.
1839

1840 Mr. Wright - That puts us right back in the kettle of fish again.
1841

1842 Mr. Blankinship - But at least you're past Cochran.
1843

1844 Mr. Wright - Oh yes, you're past Cochran; no question about that.
1845

1846 Mr. Blankinship - On the existing lots you're past Cochran. Creating
1847 new lots is where we couldn't get around Cochran.
1848

1849 Mr. Wright - You still get down to that last one. [Blank section] that
1850 we've been trying to skirt that just to help people.
1851

1852 Mr. Madrigal - Staff will review these requests on a case-by-case
1853 basis. It's something that we will spend time on with the applicant.
1854

1855 Mr. Wright - But it really doesn't deal with the overall problem.
1856

1857 Mr. Blankinship - Not every solution.
1858

1859 Mr. Wright - I was hoping that it would be dealt with sort of like we
1860 do the pools in the side yard. This Board has a lot of experience and should be
1861 given some discretion to deal with these on a case-by-case basis. This Board
1862 would find that granting a variance, —they could take a variance out of it and put
1863 it as a use permit. We could examine if the access were good, I mean— if they
1864 could do it successfully, and nobody could have any detriment to the abutting
1865 property owners, we should be able to grant those things.

1866
1867 Mr. Blankinship - That was the first draft that we presented to the Board
1868 of Supervisors, but they did not like that solution. They felt like the Planning
1869 Commission is the body that normally handles subdivisions and that they would
1870 be the most appropriate body to handle these. But we tried.
1871
1872 Mr. Wright - It doesn't help a lot of these poor property owners out
1873 there. They have land that they can't use.
1874
1875 Mr. Baka - I just have one general question. What other localities
1876 or counties did you consider as comparables when you were looking to create
1877 the language in the ordinance?
1878
1879 Mr. Madrigal - Ben wrote the ordinance. He looked at about five or
1880 six different localities. He'll have to help me with the names.
1881
1882 Mr. Blankinship - We usually pull Chesterfield, the City, Hanover,
1883 Goochland, New Kent—you know, the surrounding counties. And then we'll
1884 usually at least discuss it with some of the other larger counties such as Prince
1885 William, Fairfax, Loudoun, and sometimes Spotsylvania and Stafford.
1886
1887 Mr. Wright - What do they do?
1888
1889 Mr. Blankinship - Very similar to what we proposed. Most places do not
1890 have a hard-and-fast public street frontage requirement. They will allow division
1891 on private roads under certain circumstances.
1892
1893 Mr. Wright - That's the key. We have that fifty-foot road frontage
1894 ordinance. If they're not faced with that, then they don't have the issue.
1895
1896 Mr. Blankinship - Right.
1897
1898 Mr. Madrigal - From what I remember of the material, the crux of it
1899 was the access. In other words, there was a lot of variation on the width of the
1900 access and the maximum depth. It was discussed at length and resulted with
1901 what we have now.
1902
1903 Mr. Wright - Okay.
1904
1905 Ms. Harris - Thank you, Mr. Madrigal, for providing this for us. Is
1906 there a motion to adjourn the meeting?
1907
1908 Mr. Witte - I make the motion we adjourn.
1909
1910 Mr. Wright - Second.
1911

1912 Ms. Harris - Moved by Mr. Witte, seconded by—everyone else.
1913 The meeting is adjourned.

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Helen E. Harris
Chairman

Benjamin Blankinship, AICP
Secretary