

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 HENRICO COUNTY GOVERNMENT COMPLEX, ON**  
4 **THURSDAY, OCTOBER 23, 2008, AT 9:00 A.M., NOTICE HAVING BEEN**  
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH OCTOBER 2, 2008 AND**  
6 **OCTOBER 9, 2008.**

7  
Members Present: Elizabeth G. Dwyer, Chairman  
Helen E. Harris  
James W. Nunnally  
Robert Witte  
R. A. Wright

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

8  
9  
10 Ms. Dwyer - The October 23, 2008 meeting of the Board of Zoning  
11 Appeals will come to order. We'll begin our meeting with the **Pledge of Allegiance**  
12 **to the Flag of Our Country.**

13  
14 Mr. Secretary, before we begin, we received a notice about a change of location  
15 for our next two meetings, so I thought I would mention that while everyone's here  
16 at the beginning of our meeting today.

17  
18 Mr. Blankinship - Yes ma'am, that's a great idea. This room is going to  
19 be under renovation through November and December. So, all of the meetings that  
20 are normally held here are being rescheduled elsewhere. We will be meeting at  
21 the Glen Echo Building, which is where the School Board meets. It's on Nine Mile  
22 Road, part of the Dabbs House property, the Eastern Government Center. It's  
23 apparently where this Board met some years ago, where Mr. Wright and Mr.  
24 Nunnally recall having BZA meetings out there. So, going back home to roost.

26  
27 Ms. Dwyer - Thank you. Do we have any motions, or requests for  
28 deferrals or withdrawals?

29  
30 Mr. Blankinship - We do have one. If you remember case A-019-08 from  
31 last month, the one where the property is bordered by a strip of land that's owned  
32 by the County. It almost appears like it's road right-of-way, but it's not. The  
33 applicants deferred last month in order to try to resolve the access issues. They  
34 have not been able to resolve it yet, and they have requested to defer to the

35 the December meeting.

36

37 **A-019-08 VIRGINIA LANDBANK COMPANY** requests a  
38 variance from Section 24-9 to build a one-family dwelling at 2421 Hartman Street  
39 (Montezuma Farms) (Parcel 801-728-7752), zoned R-4, One-family Residence  
40 District (Fairfield). The public street frontage requirement is not met. The applicant  
41 has 0 feet public street frontage where the Code requires 50 feet public street  
42 frontage. The applicant requests a variance of 50 feet public street frontage.

44

45 Ms. Dwyer - Do I have a motion on this case to defer?

46

47 Ms. Harris - I move that we defer this case until the next meeting.

48

49 Mr. Nunnally - Second.

50

51 Ms. Dwyer - To the November meeting?

52

53 Mr. Nunnally - December meeting.

54

55 Mr. Blankinship - December.

56

57 Ms. Harris - December meeting.

58

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

61

62 After an advertised public hearing, **A-019-08, Virginia Landbank Company**, has  
63 been **deferred** until the December 18, 2008 meeting.

64

65

66 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5

67 Negative: 0

68 Absent: 0

69

70

71 Ms. Dwyer - Mr. Secretary, would you read the rules?

72

73 Mr. Blankinship - Good morning, Madam Chairman, member of the  
74 Board, ladies and gentlemen. The rules for this meeting are as follows. Acting as  
75 Secretary, I will call each case, and while I'm speaking, the applicant should come  
76 down to the podium. We will then ask everyone who intends to speak on that case  
77 to stand and be sworn in. The applicant will then have an opportunity to speak, and  
78 then anyone else who wishes to speak will be given an opportunity. After  
79 everyone has spoken, the applicant, and only the applicant, will be given an  
80 opportunity for rebuttal. After everyone has spoken and the Board has asked

81 questions, they will take the matter under advisement, and they will render all of  
82 their decisions at the end of the meeting. If you wish to know their decision on a  
83 specific case, you can either stay until the end of the meeting, or check the  
84 Planning Department website this afternoon, or call the Planning Department later  
85 this afternoon. This meeting is being recorded, so I will ask everyone who speaks  
86 to speak directly into the microphone on the podium, state your name, and please  
87 spell your last name so we get it correctly in the record. Finally, there are two  
88 binders out in the foyer that contain the staff report for each case, including the  
89 conditions that have been recommended by the staff. Particularly if you're the  
90 applicant for a use permit case, you need to be familiar with those conditions.

92

93 Ms. Dwyer - Thank you. Will you call the first case?  
94

95 **A-022-08** **LOUIS W. AND R.P. BARLOW** request a variance  
96 from Section 24-94 to build a one-family dwelling at 7496 Strath Road (Parcel 815-  
97 693-4628), zoned A-1, Agricultural District (Varina). The lot width requirement is  
98 not met. The applicant has 50 feet lot width where the Code requires 150 feet lot  
99 width. The applicant requests a variance of 100 feet lot width.

101

102 Mr. Hooker - Good morning.  
103

104 Ms. Dwyer - Good morning.  
105

106 Mr. Hooker - How are you? The—  
107

108 Ms. Dwyer - Excuse me just a minute. We need to swear in all the  
109 people who may speak on the case. Is anyone here to speak in favor, or against  
110 this case?  
111

112 Mr. Blankinship - Will you raise your right hand please? Do you swear  
113 the testimony you're about to give is the truth and nothing but the truth so help you  
114 God?  
115

116 Mr. Hooker - Yes.  
117

118 Ms. Dwyer - State your case, please.  
119

120 Mr. Hooker - My name is Randy Hooker. I'm here to represent the  
121 client this morning. I have reviewed the conditions with the client, and they have  
122 no disagreements with the conditions.  
123

124 Ms. Dwyer - You're requesting a variance?  
125

126 Mr. Hooker - Yes.

127  
128 Ms. Dwyer - Can you tell us why?  
129  
130 Mr. Hooker - The property has a 50-foot access onto this property. It  
131 does not meet the minimum front lot width requirements.  
132  
133 Ms. Dwyer - Why under the Code do you think a variance is  
134 justified?  
135  
136 Mr. Hooker - To gain access to this property, there's an existing  
137 house that creates an obstacle for creating the minimum road frontage. The  
138 existing house, like I say, it just creates an obstacle for them to be able to provide  
139 the minimum road frontage for this property.  
140  
141 Ms. Dwyer - So, this property was originally a six-acre parcel, and  
142 then two months ago was divided? Is that how I read the staff report?  
143  
144 Mr. Hooker - Yes ma'am.  
145  
146 Ms. Dwyer - Your clients have a lot that meets the standards of the  
147 Zoning Ordinance, and then they, by their own initiative, divided that property and  
148 created, by their own action, a lot that does not meet the ordinance requirements.  
149 So, you've created your hardship, and now you're coming and saying that you  
150 need a variance. I'm not sure that that's justified under the statute.  
151  
152 Mr. Hooker - This is a family subdivision. The parents, the mother  
153 granted this property to her son.  
154  
155 Ms. Dwyer - That takes care of the Subdivision Ordinance, but not  
156 the Zoning Ordinance.  
157  
158 Mr. Blankinship - Was there a reason they created the lot such that it  
159 wouldn't meet the requirements? They could easily have created two lots that  
160 would both meet the requirements.  
161  
162 Ms. Dwyer - Have you been sworn?  
163  
164 Mr. Nelson - No, I haven't.  
165  
166 Mr. Blankinship - Raise your right hand. Do you swear the testimony  
167 you're about to give is the truth and nothing but the truth so help you God?  
168  
169 Mr. Nelson - Yes, I do. My name is Robbie Nelson. I'm with  
170 Engineering Design, and I know the owner of this property. I've known him my  
171 whole life. The Barlow's owned this piece as an existing house. They have a son  
172 that they wanted to sell a back portion of it. I cut the back portion off so that their

173 son could build a house on it. The 50-foot strip, we actually could have probably  
174 made it about 70 feet, but I made a 50-foot strip to keep that property line from  
175 coming within the minimum setback on the existing home. There's a process of  
176 how we divided the 50-foot strip out.

177

178 Ms. Dwyer - It's a self-created hardship, is my point. You have  
179 created a lot that doesn't meet the zoning—

180

181 Mr. Nelson - That's the only thing that I could do to get access to  
182 Strath Road.

183

184 Ms. Dwyer - According to the staff report, there are other ways you  
185 could have divided the property to get lots that meet the standards of the  
186 ordinance.

187

188 Mr. Nelson - We may have been able to cut 150 feet on the  
189 southeast of the existing house, but it's a low area, it does not perk, and you just  
190 can't build there. The only buildable portion of the property was in the back. If I  
191 cut the 150 feet to the south, then I was coming back with a 50-foot strip across  
192 the rear property line. It just wasn't a good layout.

193

194 Ms. Dwyer - Are you referring to the layout that was in the staff  
195 report? Are you familiar with that?

196

197 Mr. Nelson - No ma'am, I'm not

198

199 Ms. Dwyer - Could we show that on the screen, please?

200

201 Mr. Blankinship - I don't know if we have that in the presentation.

202

203 Mr. Nelson - We don't have a copy, I don't believe. Yes, that's  
204 exactly what I'm talking about. That piece of land that the staff has shown as  
205 cutting out is not suitable for a drainfield, it's not suitable for house construction.

206

207 Mr. Nunnally - Mr. Nelson, did you say that the son was going to sell  
208 his property, or is he going to build on it for himself?

209

210 Mr. Nelson - No, he plans on building a house.

211

212 Mr. Nunnally - For himself.

213

214 Mr. Nelson - Yes sir. You could cut back, but then you still needed  
215 access to go along that rear property line to get to the back. It didn't look like a  
216 good division to me, and plus, you were creating a—If you did this, you were  
217 creating a problem with the existing home because it gets to the, and keep  
218 [unintelligible], it would create less than an acre with the existing house.

219  
220 Ms. Dwyer - As I look at the yellow—  
221  
222 Mr. Blankinship - Because it would still be attached to the property.  
223  
224 Mr. Nelson - Exactly. It would come back off along Strath Road, and  
225 then you have to turn to get to the portion in the back. If you're going to be  
226 pushing an acre, you get 150 feet south.  
227  
228 Ms. Dwyer - Are we looking at the same?  
229  
230 Mr. Nelson - It's going to be right [unintelligible].  
231  
232 Mr. Wright - Do you have this?  
233  
234 Mr. Nelson - Yes sir, that's what I'm looking at.  
235  
236 Mr. Wright - Do you see that yellow area that's there?  
237  
238 Mr. Nelson - Yes sir.  
239  
240 Mr. Wright - What the staff is saying, that could be the parcel that  
241 you could build a house on.  
242  
243 Mr. Nelson - That's un-buildable.  
244  
245 Mr. Blankinship - How do you know that's un-buildable?  
246  
247 Mr. Nelson - It doesn't perk, and it's in a low area.  
248  
249 Mr. Blankinship - You had a perk test done?  
250  
251 Mr. Nelson - I'm not sure if they've checked this area.  
252  
253 Mr. Blankinship - It's only two feet lower than the existing house. I'm  
254 looking at the topo now on my computer.  
255  
256 Mr. Nelson - The existing house, I don't know that you could get a  
257 drainfield in that area now. That's an existing structure. I know this area very well,  
258 and that curve, it's a lot lower than that curve in the back of this property.  
259  
260 Mr. Blankinship - Lower than in the back.  
261  
262 Mr. Nelson - Yes.  
263  
264 Ms. Dwyer - How long has the existing house been on the lot?

265  
266 Mr. Nelson - I'm guessing, but I would guess 40 years maybe.  
267  
268 Ms. Dwyer - So, you've had reasonable use of the entire parcel for  
269 40 years.  
270  
271 Mr. Nelson - The Barlow's haven't owned it for 40 years. I'm not  
272 quite sure what you're asking me.  
273  
274 Ms. Dwyer - How long have they owned the property?  
275  
276 Mr. Nelson - I'm guessing here, but I'd say probably 15 to 20 years.  
  
278  
279 Ms. Dwyer - So, they've had reasonable use of the entire six-acre  
280 parcel for that period of time.  
281  
282 Mr. Nelson - Yes ma'am.  
283  
284 Ms. Dwyer - With the dwelling on it as it is.  
285  
286 Mr. Wright - The staff report says they've owned it for 40 years.  
287  
288 Mr. Blankinship - Yes. According to the real estate records, they  
289 acquired it in 1968.  
290  
291 Mr. Nelson - Okay. I didn't know. Like I said, I was guessing. I  
292 didn't think they owned it for 40 years.  
293  
294 Ms. Harris - Do you have any concerns from Mr. Reed or O. D.  
295 Reed, who has adjacent property?  
296  
297 Mr. Nelson - Not that I've heard, no ma'am.  
298  
299 Ms. Dwyer - I don't believe the staff has heard any.  
300  
301 Mr. Blankinship - No ma'am, we have not.  
302  
303 Ms. Dwyer - Any other questions by Board members? Okay. That  
304 concludes the case. Thank you.  
305  
306 Mr. Nelson - All right, thank you.  
307  
308 Ms. Dwyer - Do I have a motion on the case?  
309  
310 **DECISION**

311  
312 Mr. Wright - I move we deny it. The grounds are I think this is  
313 something that the owner of the property can correct, maybe a deed or whatever.  
314 There was not sufficient evidence to satisfy me that this could not be corrected by  
315 readjusting the lot lines.

316  
317 Ms. Harris - I second the motion.

318  
319 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. Any  
320 discussion? I would agree with you, Mr. Wright. My reasoning is that it doesn't  
321 pass the Cochran test. They have a reasonable use of the property without the  
322 division, and certainly the way that they have divided it. It's a self-imposed  
323 hardship, and there are other options available to them to divide the property so  
324 that it does meet the code. Any other discussion?

325  
326 Mr. Witte - I felt like it's still family owned property next door, and  
327 they can make some type of arrangements to get the easement through there, if  
328 necessary.

329  
330 Ms. Dwyer - All right. All in favor say aye. All opposed say no. The  
331 ayes have it; the motion passes.

332  
333 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
334 Harris, the Board **denied** application **A-022-08, Lois W. and R. P. Barlow's**  
335 request for a variance from Section 24-94 to build a one-family dwelling at 7496  
336 Strath Road (Parcel 815-693-4628), zoned A-1, Agricultural District (Varina).

337  
338  
339 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
340 Negative: 0  
341 Absent: 0

342  
343  
344 **A-023-08** **AMANDA MCGIRT** requests a variance from Section  
345 24-9 to build a one-family dwelling at 7231 Hughes Road (Parcel 862-697-6411),  
346 zoned A-1, Agricultural District (Varina). The public street frontage requirement is  
347 not met. The applicant has 0 feet public street frontage where the Code requires  
348 50 feet public street frontage. The applicant requests a variance of 50 feet public  
349 street frontage.

350  
351 Mr. Blankinship - Madam Chairman, let me call your attention to an e-  
352 mail message that was printed and left on the table.

353  
354 Ms. Dwyer - All right. From whom? We have a couple up here.

355



356 Mr. Blankinship - It's regarding a phone call from a Mr. Edward L. Cheek.

358

359 Mr. Nunnally - Does he have a copy of it?

360

361 Mr. Blankinship - No, he has not seen it. This was regarding a phone  
362 conversation that took place yesterday at four.

363

364 Ms. Dwyer - This is from Edward Cheek of Hughes Road?

365

366 Mr. Blankinship - Yes ma'am.

367

368 Ms. Dwyer - He is not able to attend, but lists his concerns about the  
369 variance request. Does everyone on the Board have a copy of that? Thank you.  
370 All right. Is anyone here to speak for or against this case? Mr. Blankinship?

371

372 Mr. Blankinship - Will you raise your right hand please? Do you swear  
373 the testimony you're about to give is the truth and nothing but the truth so help you  
374 God?

375

376 Mr. McGirt - Yes. Hi. My name is Terry McGirt. I'm representing my  
377 daughter, Amanda. I'm here to request a variance because the property doesn't  
378 have any public road frontage. It has zero public road frontage. I'm requesting a  
379 variance of 50 feet of road frontage so I can build her a single-family dwelling. It's  
380 a family subdivision I had to create. I gave her two acres of the property.

382

383 Ms. Harris - You are the builder? Or you're the contractor?

384

385 Mr. McGirt - Yes ma'am. Today I am. I have two jobs, but today I'm  
386 a contractor.

387

388 Ms. Dwyer - This parcel was originally 25 acres, and now there are  
389 three houses on that 25-acre parcel? It's been divided, and three houses have  
390 been built on it?

391

392 Mr. McGirt - Yes ma'am.

393

394 Ms. Dwyer - How many more houses would you like to build on  
395 that?

396

397 Mr. McGirt - I have two more daughters. I gave them each two-acre  
398 lots.

399

400 Ms. Dwyer - How much acreage would be left after that, after the  
401 five lots?

402  
403 Mr. McGirt - That would be it.  
404  
405 Ms. Dwyer - That would be all.  
406  
407 Mr. McGirt - Yes ma'am.  
408  
409 Ms. Dwyer - The family subdivision allows you to circumvent the  
410 Subdivision Ordinance, but not the Zoning Ordinance. So, there still has to be  
411 justification of the Zoning Ordinance for the variance.  
412  
413 Mr. McGirt - Yes ma'am.  
414  
415 Ms. Dwyer - Are you familiar with the requirements for a variance  
416 under this statute?  
417  
418 Mr. McGirt - I don't really understand. I know I have to come here  
419 before the Board and request a variance. I can't sell the property for five years.  
420 She has to own it for five years before she could sell it. I've already had the soil  
421 perked. The land does perk. I just did that to make sure it was a buildable lot.  
422  
423 Ms. Dwyer - Mr. Blankinship, if we allow yet another variance for this  
424 property, how many other lots do you estimate could be in the pipeline in the future  
425 to also use this dirt road as access?  
426  
427 Mr. Blankinship - You mean from Mr. McGirt's land, or from the whole  
428 area?  
429  
430 Ms. Dwyer - No, for the area.  
431  
432 Mr. Blankinship - I have no idea. If you cut it all into one-acre lots, I'm  
433 sure it would be quite a few. I think that's one of the points that Mr. Cheek made in  
434 his conversation that's recorded in that e-mail message, that he wants to do some  
435 divisions of his own in the future. There certainly are other property owners out  
436 there who are considering the options.  
437  
438 Ms. Dwyer - This would allow 14 houses on, essentially, a dirt and  
439 gravel road, and there are possibly 100 more that could be requested in the  
440 future?  
441  
442 Mr. Blankinship - I don't know whether a hundred is too high.  
443  
444 Ms. Dwyer - Hard to say?  
445  
446 Mr. Blankinship - Yes.  
447

448 Ms. Dwyer - There's essentially undeveloped land here.  
449  
450 Mr. Blankinship - There's a large part of the County out there that doesn't  
451 have any other road coming into it.  
452  
453 Mr. Wright - You have a 50-foot right-of-way. Is that correct?  
454  
455 Mr. McGirt - Yes sir, that's correct.  
456  
457 Mr. Wright - Describe how that has been improved? That's the  
458 concern, is access to the property for emergency vehicles.  
459  
460 Mr. McGirt - That's a very well-maintained gravel road. Well, we all  
461 maintain it. We don't have a property owners' association, but we all get together.  
462 When we need gravel, we buy gravel. I own a tractor, and I do most of the  
463 maintaining of the road. I know Mr. Cheek, and I was not aware that he sent this  
464 e-mail. I talked to him the other day, and he didn't say anything about it. I've never  
465 seen him drag the road, but you know, we all maintain the road.  
466  
467 Mr. Wright - Mr. Cheek states in this e-mail that he owns the road.  
468  
469 Mr. McGirt - Yes sir. Some way he owns the road. I'm not sure how  
470 that works out.  
471  
472 Mr. Wright - Well, if he owns the road—  
473  
474 Mr. McGirt - I know he pays the taxes on the road, but we do have a  
475 50-foot right-of-way to the property. I've been back there 20 years.  
476  
477 Mr. Wright - Is it a legal access? Do you have a legal agreement?  
478  
479 Mr. McGirt - Yes sir. Well, a legal agreement to maintain the road?  
480  
481 Mr. Wright - No, a legal agreement for access to use the road.  
482  
483 Mr. McGirt - Yes sir, in my deed. Yes sir, I do have—  
484  
485 Mr. Wright - In your deed?  
486  
487 Mr. McGirt - Yes sir. I do have a 50-foot right-of-way.  
488  
489 Mr. Wright - How far does that go? All the way back?  
490  
491 Mr. McGirt - All the way back, yes sir.  
492  
493 Mr. Wright - Which parcel are we talking about here?

494  
495 Mr. Blankinship - It's #4 on this plat. Can we look at the plat for a  
496 second? Can you tell us what's going on with lots 1 and 2? It looks like they were  
497 divided on this plat, but they are not divided on our database.  
498  
499 Mr. McGirt - They are not divided. This house was sold. There are  
500 only three lots—lots 3, 4, and 5. Lot 5 is my daughter Jennifer, 4 is Amanda, and 3  
501 is Amy.  
502  
503 Mr. Wright - They're not built on?  
504  
505 Mr. McGirt - Lot 5 is built on, yes sir.  
506  
507 Mr. Blankinship - Who lives in the house on Lot 2?  
508  
509 Mr. McGirt - It belongs to my daughter, Jennifer, but at this time, I'm  
510 renting the house from her.  
511  
512 Mr. Blankinship - Okay.  
513  
514 Mr. McGirt - I'm building a house in Lancaster.  
515  
516 Mr. Blankinship - Oh, okay. Is there a house just to the north of Lot 5?  
517  
518 Mr. McGirt - To the north? Yes sir, there is a house.  
519  
520 Mr. Blankinship - But that's not in your family.  
521  
522 Mr. McGirt - No. I owned those five acres at one time and I cut  
523 those five acres out when I bought the property and sold it. There's one house on  
524 that lot. It's a five-acre lot.  
525  
526 Mr. Wright - Is Hughes Road a public road?  
527  
528 Mr. Blankinship - It's public up to its intersection with Di's Way.  
529  
530 Mr. McGirt - It's a new subdivision there that's been created.  
531  
532 Mr. Blankinship - That's the end of public maintenance right there.  
533  
534 Ms. Dwyer - What is the distance between the end of the public  
535 right-of-way of Hughes Road, and this parcel?  
536  
537 Mr. Blankinship - Give me just a second, and I'll try to give you that.  
538  
539 Mr. McGirt - Three-tenths of a mile?

540  
541 Mr. Blankinship - Three-tenths?  
542  
543 Mr. McGirt - Yes.  
544  
545 Ms. Dwyer - Two thousand feet?  
546  
547 Mr. Blankinship - Almost a half a mile.  
548  
549 Mr. Wright - If there is that much property back there, and we have  
550 all these lots, is there any possibility that the County could extend the road back  
551 through there, extend Hughes Road?  
552  
553 Mr. Blankinship - If you look at the vicinity map, it shows a planned  
554 Hughes Road extending from the current end of public maintenance, more or less  
555 due east to the Charles City County line. I don't have any idea when that will be  
556 improved, or if that alignment is really a seriously thought-through alignment, or if  
557 it's just a line on a map. As those things get closer to construction, they go out and  
558 actually acquire right-of-way, and then they decide where the alignment will  
559 actually run.  
560  
561 Mr. Wright - So, there is something planned for that road?  
562  
563 Mr. Blankinship - Yes sir.  
564  
565 Mr. Wright - Don't know when?  
566  
567 Mr. Blankinship - Right.  
568  
569 Ms. Dwyer - Not for the easement we're talking about, according to  
570 the site map that I see.  
571  
572 Mr. Blankinship - Right. It would address some of the property out there.  
  
574  
575 Mr. McGirt - Right. At that point, Hughes Road branches to the left  
576 and right. You're talking about the one that goes off to the right.  
577  
578 Mr. Blankinship - It would provide access to some of the property out  
579 there that we were discussing earlier.  
580  
581 Ms. Dwyer - Right, but not to this parcel.  
582  
583 Mr. Blankinship - Not the particular parcel.  
584

585 Ms. Dwyer - It looks like it just extends kind of in a straight line to  
586 Charles City County.  
587

588 Mr. Blankinship - Again, I don't know if that's really a road alignment or  
589 just a line on a map at this point.  
590

591 Ms. Harris - Mr. McGirt, have you spoken with the other owners of  
592 properties there? It seems that Mr. Cheek has a point, if those other properties are  
593 developed. There is a lot of use on that 50-foot strip. Have you all had a  
594 homeowners' meeting to see just what can be done to head off this problem? It  
595 could be a large problem.  
596

597 Mr. McGirt - No ma'am, we have not.  
598

599 Mr. Witte - How about a road maintenance agreement? Does that  
600 exist?  
601

602 Mr. McGirt - Well, have an agreement between us. We don't really  
603 have a written agreement. We just all get together. If we need gravel, we get  
604 gravel. When the road needs dragging, or road maintained, we maintain it.  
605 Several of us in that area have tractors, and I'm one of them. We maintain the road  
606 as needed. Like I say, I've been back there 20 years. I've never had a problem.

608

609 Ms. Dwyer - The difference is you're developing sites now.  
610

611 Mr. McGirt - I agree.  
612

613 Ms. Dwyer - And he wants to develop sites. Who knows who else  
614 wants to develop sites.  
615

616 Mr. McGirt - Talk the County into coming in and paving the road for  
617 us.  
618

619 Ms. Dwyer - Typically, the County expects developers to do that.  
620

621 Mr. Blankinship - If you pave it, you might talk us into maintaining it.  
622

623 Mr. McGirt - I don't know if we can afford that.  
624

625 Mr. Wright - The staff report says there are currently 13 homes that  
626 use this road.  
627

628 Ms. Dwyer - We can expect an explosion of growth, I think, in the  
629 East End. We can expect a lot more to be coming out there using this gravel road.

631  
632 Mr. Wright - It's a shame that we have all this property that could be  
633 used on these I'll say legal lots. They're legal lots in so far as the way they were  
634 created on the road and people can't build homes.  
635  
636 Ms. Dwyer - Any other questions?  
637  
638 Mr. McGirt - I don't think anybody except for Mr. Lacy—he has, like,  
639 200 acres, but his is kind of low land—would be able to develop any more lots on  
640 the other side, the north side of me. Mr. Cheek owns 40-some acres, and Mr.  
641 Beck owns—he has a large chunk of property, too, before me. Mr. Knight, I think  
642 he has 11 acres, before me. He may be able to. Nobody else except maybe on  
643 the back side of me.  
644  
645 Mr. Wright - The eleven acres you said Mr. Knight has?  
646  
647 Mr. McGirt - Yes.  
648  
649 Mr. Wright - Is that the smallest?  
650  
651 Mr. McGirt - I think that's the smallest piece of property, yes, except  
652 for these lots here.  
653  
654 Mr. Blankinship - There's an owner named Beck who has 53 acres; an  
655 owner named Green who has 76.  
656  
657 Mr. McGirt - Green?  
658  
659 Mr. Wright - Those people you just mentioned, Mr. Blankinship, do  
660 they have homes on the land?  
661  
662 Mr. Blankinship - No sir, not at this time.  
663  
664 Mr. McGirt - Does Mr. Green [unintelligible], Mr. Blankinship?  
665  
666 Mr. Blankinship - Well, he actually has two parcels. One is 76, and the  
667 other is 85, but the 85 is getting over towards Elko Road. Theoretically, he could  
668 build a road in parallel to the railroad track.  
669  
670 Ms. Dwyer - The parcels you were mentioning are roughly in the  
671 vicinity of the Hughes Road gravel driveway.  
672  
673 Mr. Blankinship - Yes. It's everything more or less between Hughes  
674 Road—There's a private portion of Hughes Road, and the railroad right-of-way  
675 going north.  
676

677 Ms. Dwyer - That's 40 acres, 11 acres, 53 acres, and 76 acres that  
678 you've mentioned?

679  
680 Mr. Blankinship - Yes ma'am.

681  
682 Mr. McGirt - That's Eddie's house in the square at the top. He owns  
683 that. Mr. Knight owns the one down to the left. He has cows on his property.

685  
686 Mr. Blankinship - Of course, a lot of that property is floodplain.

687  
688 Mr. McGirt - Yes sir.

689  
690 Ms. Dwyer - Any other questions by Board members? Thank you.  
691 That concludes the case.

692  
693 Mr. McGirt - Thank you.

694  
695 **DECISION**

696  
697 Ms. Dwyer - Do I have a motion on the case?

698  
699 Mr. Wright - I move we approve this request on the grounds that the  
700 lot is a legal lot through a family division. I view it as taking that lot as a whole.  
701 There's no reasonable use of the property. Without the approval of the application  
702 for the variance, it cannot be used.

703  
704 Mr. Nunnally - I second it.

705  
706 Ms. Dwyer - Motion by Mr. Wright, seconded by Mr. Nunnally. Any  
707 discussion?

708  
709 Ms. Harris - Yes. I feel that on this case, there is a larger issue at  
710 stake. Since there are so many lots, so many acres of land that will have to use  
711 this road, or certainly some road, I feel that they need to solve that first before they  
712 come before us. Maybe if they solve that, they won't need to come before us. We  
713 have so many owners there who own so many acres of land. The letter from the  
714 person who has been maintaining the road concerns me. That's why I cannot  
715 support this variance.

716  
717 Ms. Dwyer - I agree with you, Ms. Harris. I think this illustrates the  
718 problem with granting these variances with lack of road frontage. There are 180  
719 acres around this particular gravel driveway. There is no reason if we grant this  
720 variance, as we've granted others, not to grant more. There are already 14 houses  
721 on this gravel road, and I think we're building a lot of problems in health, and  
722 safety, and welfare related to access to the property by ambulance and fire, in



723 in particular. I think having 14 houses on a gravel road, and the potential for so  
724 many more looking at the acreage here, it violates the public interest, which is one  
725 of the findings that we have to make.

726

727 Any more discussion on this case?

728

729 Mr. Witte - I have some concerns about that, but I also have  
730 concerns that it is a legal lot by subdivision. I feel like that should have been  
731 addressed when it was subdivided.

732

733 Ms. Dwyer - It didn't go through the subdivision process. What  
734 happened was they just divided it.

735

736 Mr. Wright - Family division.

737

738 Mr. Witte - Oh, okay.

739

740 Ms. Dwyer - So, when we say it's a legal lot, I have a question about  
741 it. It's not a legal lot under the Zoning Ordinance. That's why they're here to get a  
742 variance.

743

744 Mr. Blankinship - It's legal in the sense that they could sell it.

745

746 Ms. Dwyer - It's a parcel of land.

747

748 Mr. Witte - Right. Okay.

749

750 Ms. Dwyer - When you say it's legal, I mean, that could mean a lot  
751 of different things. To me, it's not a legal lot because it doesn't meet the law, the  
752 legal requirement that it have road frontage. So, you could say in some senses it's  
753 a legal lot, and in some senses it's not.

754

755 Mr. Witte - Thank you.

756

757 Ms. Dwyer - Anyway. Any other discussion? Okay. We have a  
758 motion to approve the request for a variance. All in favor say aye. All opposed say  
759 no. The ayes have it; the motion passes.

760

761 Motion carried three to two, and the variance request is approved.

762

763 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
764 Nunnally, the Board **approved** application **A-023-08, Amanda McGirt's** request  
765 for a variance from Section 24-9 to build a one-family dwelling at 7231 Hughes  
766 Road (Parcel 862-697-6411), zoned A-1, Agricultural District (Varina). The public  
767 street frontage requirement is not met. The Board approved the variance subject  
768 to the following conditions:



815  
816 Mr. Radvany - Yes.  
817  
818 Ms. Dwyer - Would you state your name and your case, please?  
819  
820 Mr. Radvany - My name's Andrew Radvany. I own the lot in Battlefield  
821 Park, and all I have is 85 feet of lot width, and the code requires 150 feet. I'm  
822 requesting a variance of 65 feet.  
823  
824 Ms. Dwyer - Why do you feel a variance is justified under the Code?

826  
827 Mr. Radvany - So I can improve the property, and put a family dwelling  
828 on it.  
829  
830 Ms. Dwyer - Any questions by Board members?  
831  
832 Mr. Wright - Are you planning on building this house for yourself?  
833  
834 Mr. Radvany - Yes.  
835  
836 Mr. Wright - Are you going to sell it, the lot, or what?  
837  
838 Mr. Radvany - For a family member.  
839  
840 Mr. Wright - You're going to build it for a family member?  
841  
842 Mr. Radvany - Yes.  
843  
844 Mr. Wright - Where do you live, sir?  
845  
846 Mr. Radvany - I live off Gill Dale Road. I live in Varina.  
847  
848 Ms. Harris - Are you the contractor, the builder? You said you're  
849 going to build it.  
850  
851 Mr. Radvany - Yes.  
852  
853 Ms. Harris - In which sense?  
854  
855 Mr. Radvany - Yes.  
856  
857 Ms. Harris - Okay.  
858  
859 Mr. Wright - How long has this property been owned?  
860

861 Mr. Radvany - I'm sorry?  
862  
863 Mr. Wright - How long has this property been owned?  
864  
865 Mr. Radvany - Have I owned it? I finally closed on it in 2007, and I  
866 requested the variance in 2006. I wanted to make sure I received the variance. It  
867 took a while to close on the property. I just happened to go with my attorney, and  
868 he had to go through some other matters, legal matters to get everything to close.  
869 That took up quite a bit of time. Then I had it surveyed. My time just ran out, as  
870 far as getting everything done that I wanted to do. I have owned it for a year.

872  
873 Ms. Dwyer - Do you own any other property in the area? Do you  
874 own the contiguous lot?  
875  
876 Mr. Radvany - Yes. I own a lot just adjacent to it. It's like one lot over,  
877 and I have a house on that also.  
878  
879 Ms. Dwyer - Okay. Which lot is that?  
880  
881 Mr. Radvany - 7884. It's two lots over.  
882  
883 Ms. Dwyer - Okay. But you don't own a lot that is directly next to  
884 this lot.  
885  
886 Mr. Radvany - No, I don't.  
887  
888 Ms. Dwyer - So, you couldn't combine that to create a legal lot.  
889  
890 Mr. Radvany - No, I couldn't.  
891  
892 Mr. Wright - Have you tried to acquire that lot?  
893  
894 Mr. Radvany - I've asked my neighbor, Ms. Walker, before about it.  
895 She said it was her family member who owned the lot next door, and she said that  
896 he wouldn't be interested in selling it when I went to purchase this lot. That's why I  
897 didn't even bother trying to ask him or anything like that.  
898  
899 Mr. Wright - Which one are we talking about, 7892 or 7900?  
900  
901 Mr. Radvany - 7900.  
902  
903 Mr. Wright - How about 7892? That already has a house on it?  
904  
905 Mr. Radvany - Yes, it does.  
906

907 Mr. Wright - So, you have tried to acquire title to 7900?  
908  
909 Mr. Radvany - Well, I asked Ms. Walker at 7892 if her family member  
910 would be interested in selling. She said that she had asked him, and he said that  
911 he wasn't interested.  
912  
913 Mr. Wright - Who owns 7900?  
914  
915 Mr. Radvany - I believe it's Mr. Fields, Horace Fields.  
916  
917 Mr. Wright - Have you talked to him about acquiring title to it?  
918  
919 Mr. Radvany - I talked to Ms. Walker, who is his family member  
920 somehow. She said that she had contacted him, and he said that he wasn't  
921 interested in selling it.  
922  
923 Mr. Wright - Mr. Blankinship, how long has this lot existed in its  
924 current condition?  
925  
926 Mr. Blankinship - I believe this is the one that when we tried to do the  
927 deed research, we ran into some wills, and some other kind of dead ends in the  
928 records. I don't think we were able to nail down exactly when it was created.  
929  
930 Mr. Gidley - [Off mike.] It goes back to at least 1960.  
931  
932 Mr. Blankinship - Back to at least 1960. We traced it back that far.  
933  
934 Mr. Wright - So, this lot in its current configuration has been there  
935 since 1960.  
936  
937 Mr. Nunnally - Didn't you say you bought this land in 2007?  
938  
939 Mr. Radvany - Yes, I did.  
940  
941 Mr. Nunnally - The note we have here says in 2006, you received a  
942 variance for this property; however, the variance expired since it had not been  
943 acted on within the past two years. Why was that?  
944  
945 Mr. Radvany - I was checking with the Parks Service to make sure I  
946 had direct access to this property. That was my main concern. I checked with Mr.  
947 Stringer in the Health Department to make sure the soil would perk, and that's  
948 been passed. I have permits for that. I just never went and got my building permit,  
949 my actual building permit to build the house. That's why it expired. I just ran out of  
950 time as far as doing that.  
951

952 Mr. Wright - That's not the question. Did you own the property in  
953 2006?  
954  
955 Mr. Radvany - Oh, no, I didn't. I wanted to make sure I got the  
956 variance first.  
957  
958 Mr. Wright - That's what he was asking you.  
959  
960 Mr. Radvany - Oh, okay.  
961  
962 Ms. Harris - Which other parcel do you own?  
963  
964 Mr. Radvany - 7884.  
965  
966 Ms. Dwyer - 7884, when you got the variance for that lot, you also  
967 asked for a variance for the side yard setback. Is that correct?  
968  
969 Mr. Radvany - Yes.  
970  
971 Ms. Dwyer - The staff report notes that the house next to the parcel  
972 that you're asking for a variance for today is located only ten feet from their side lot  
973 line. I'm concerned about the fact that this lot is 85 feet; code requires it to be 150  
974 feet. First of all, are you going to come back for a side yard variance? Secondly,  
975 how will you situate the house on the lot so that it's not too close to the house next  
976 door?  
977  
978 Mr. Radvany - In talking with Mr. Stringer, we've set it back I'd say  
979 about 230 to 250 feet from Battlefield Park Road. That's how I plan on positioning  
980 the house on the property.  
981  
982 Ms. Dwyer - Will you need a side yard variance as well?  
983  
984 Mr. Radvany - I'm not too sure on that. I think I'll have like maybe 10  
985 to 15 feet on one side. I might, I'm not sure.  
986  
987 Ms. Dwyer - What is required for the agricultural zoning, Mr.  
988 Blankinship?  
989  
990 Mr. Blankinship - The least side yard has to be 20, and the sum of the  
991 side yards has to be 50.  
992  
993 Ms. Dwyer - So you only have an 85-foot-wide lot, and you're going  
994 to have to have 50 feet of side yard. That gives you 35 feet for your house.  
995

996 Mr. Radvany - I wanted the house to be 40-foot wide. That's what I  
997 had planned on when I went to fill out for this variance. Again, he said all I needed  
998 was the lot width.  
999

1000 Mr. Blankinship - Because this lot existed prior to 1960, we would apply  
1001 the exception standards. It would be 10% and 30%, so the least side yard would  
1002 have to be 8.5 or 8.8, depending on exactly what the width is. Less than nine feet.  
1003 The sum of the yards would have to be less than 27, probably about 27 feet.  
1004

1005 Ms. Dwyer - You would have more room.  
1006

1007 Mr. Wright - He could build a 40-foot wide house on it, is that what  
1008 you're saying?  
1009

1010 Mr. Blankinship - Under the exception standards, yes sir.  
1011

1012 Ms. Dwyer - Mr. Blankinship, why does the Code require 150-foot lot  
1013 width in agriculturally zoned areas?  
1014

1015 Mr. Blankinship - That's a difficult question to really give a direct answer  
1016 to, but some of the issues involved are well and septic systems have to spaced out  
1017 in order to work properly. You can't put them right on top of each other, or on top  
1018 of each other's houses. Another is just the general pattern of land use in  
1019 agricultural areas. The lots tend to be larger and more spread out. By requiring that  
1020 wider lot, we ensure that from one house to the next will be further apart; the  
1021 neighbors won't be as close as they are in a more suburban area.  
1022

1023 Mr. Wright - He has a deep lot here, and he has plenty of room for a  
1024 septic system, assuming it perks.  
1025

1026 Mr. Blankinship - He has had that tested.  
1027

1028 Mr. Wright - So, the property does perk.  
1029

1030 Mr. Radvany - Yes sir.  
1031

1032 Mr. Blankinship - That's one of the reasons it took him two years.  
1033

1034 Mr. Radvany - It will be a conventional system also.  
1035

1036 Mr. Wright - Have you read the conditions on this, in case it is  
1037 approved?  
1038

1039 Mr. Radvany - Yes sir.  
1040

1041 Mr. Wright - I see where you have to have permission from  
1042 Battlefield Park, the National Park Service to go into Battlefield Park Road. Do you  
1043 have that okay from them?  
1044

1045 Mr. Radvany - Yes sir. I've already talked to Tim Mock with Battlefield  
1046 Park, and I do have that on paper that I do have access to my property.

1048

1049 Mr. Wright - All right.  
1050

1051 Ms. Harris - What are your plans for the 7884? Realizing how close  
1052 we're putting these homes if you should be granted the variance, what plans do  
1053 you have for 7884? You did say you owned that.  
1054

1055 Mr. Radvany - Yes, I have been renting it out to Ms. Walker's niece for  
1056 a while, then she moved out. Her nephew is interested in renting it right now.  
1057

1058 Ms. Dwyer - You already have a house on that lot.  
1059

1060 Mr. Radvany - Yes.  
1061

1062 Mr. Witte - There's a house on 7884?  
1063

1064 Mr. Radvany - Yes, there is.  
1065

1066 Ms. Harris - It doesn't show on our aerial photo.  
1067

1068 Mr. Blankinship - That's correct. The aerial photo is from 2003, and he  
1069 built that house in 2005?  
1070

1071 Mr. Radvany - 2006.  
1072

1073 Mr. Blankinship - 2006.  
1074

1075 Mr. Radvany - Well, that's when I finished it, in 2006.  
1076

1077 Ms. Dwyer - Any other questions by Board members?  
1078

1079 Mr. Witte - How far is the front yard setback on 7892? Do we have  
1080 any idea?  
1081

1082 Mr. Blankinship - Let's see if I can measure that here. Approximately 35  
1083 feet.  
1084

1085 Mr. Witte - Okay. So, if he went back 200+ feet, it shouldn't  
1086 encroach on that property.



1087  
1088 Mr. Blankinship - Right.  
1089  
1090 Ms. Dwyer - Any other questions by Board members? That  
1091 concludes the case, thank you.  
1092  
1093 Mr. Witte - We have people who—  
1094  
1095 Ms. Dwyer - I'm sorry. Will the opposition come forward, please?  
1096 Why don't you all come down at once, so we'll have a smooth transition.  
1097  
1098 Mr. Blankinship - You can have a seat right there. You will have an  
1099 opportunity to rebut.  
1100  
1101 Ms. Bethea - Good morning. I'm Arlene Bethea. My husband and I  
1102 own 11-1/2 acres on Battlefield Park Road.  
1103  
1104 Ms. Dwyer - Could you spell you last name, please?  
1105  
1106 Ms. Bethea - Bethea. The property that we own originally was  
1107 owned by my husband's grandmother. A lot of those families out there are related;  
1108 they're cousins. We don't want cluster housing. This is the only national park in  
1109 the country where the people who live there own the land. The deeds are very,  
1110 very old. We were never notified that this building activity was going to occur. Mr.  
1111 Johnathan here is an adjacent owner.  
1112  
1113 Mr. Wright - Excuse me. Where is your property in relationship to  
1114 this plat?  
1115  
1116 Ms. Bethea - We're at 7918. I don't think it's showing there.  
1117  
1118 Mr. Wright - Where would that be, Mr. Blankinship?  
1119  
1120 Mr. Blankinship - 7918?  
1121  
1122 Mr. Wright - Did you say 7918 or 5918?  
1123  
1124 Ms. Bethea - 7 9 1 8.  
1125  
1126 Mr. Wright - Okay.  
1127  
1128 Mr. Blankinship - There's a 7906 and a 7922.  
1129  
1130 Ms. Harris - Is that Battlefield Park Road?  
1131  
1132 Ms. Bethea - Yes.

1133  
1134 Ms. Dwyer - Maybe to the left?  
1135  
1136 Ms. Bethea - Yes.  
1137  
1138 Mr. Blankinship - Is it owned by Mr. Johnathan?  
1139  
1140 Mr. Wright - You say it's 7918?  
1141  
1142 Ms. Bethea - Our lot sits back and to the left.  
1143  
1144 Mr. Blankinship - Excuse me. It's still farther west.  
1145  
1146 Ms. Dwyer - Is it where the hand is? Do you see the hand on the  
1147 picture?  
1148  
1149 Mr. Blankinship - No, it's farther west than that.  
1150  
1151 Ms. Dwyer - Okay.  
1152  
1153 Mr. Blankinship - If you go to the site map, it might show there.  
1154  
1155 Mr. Wright - Yes, I see it.  
1156  
1157 Ms. Bethea - The County has minimum lot sizes. We would like to  
1158 maintain that. We are going to be subject to a huge development where they're  
1159 planning to put in something like 6,300 new units of housing. I think that's Wilton  
1160 Estates. We would like to have some country left. We are being overrun with deer.  
1161 The natural habitat for the wildlife is becoming very scarce. We would like to  
1162 maintain as much agricultural aesthetics as possible. To start clustering houses in  
1163 there in a national park, where we have to try to keep things kind of serene.  
1164 During the Civil War, there was a lot of activity in there. It should have a feeling of  
1165 serenity when you enter that Battlefield Park Road. The earthworks are still there.  
1166 We don't want to see them destroyed.  
1167  
1168 Ms. Dwyer - Your concern is that the County ordinance requires 150  
1169 feet.  
1170  
1171 Ms. Bethea - Yes, and we would like for you to maintain that.  
1172  
1173 Ms. Dwyer - Thank you. Next?  
1174  
1175 Mr. Johnathan - Good morning.  
1176  
1177 Ms. Dwyer - Good morning.  
1178

1179 Mr. Johnathan - My name is Christie S. Johnathan.  
1180  
1181 Ms. Dwyer - Johnathan?  
1182  
1183 Mr. Johnathan - J-o-h-n-a-t-h-a-n. We would definitely like to maintain  
1184 the 150-foot requirement, because to our knowledge, it has been adhered to rather  
1185 strictly. The National Battlefield Park definitely discourages development,  
1186 especially houses that are close in proximity to each other. They want it to remain  
1187 as natural as possible in conjunction with that period during the Civil War. There  
1188 are quite a few out-of-town visitors that visit National Battlefield Park from all over  
1189 the country. It's not uncommon to see out-of-state license plates every day. The  
1190 earthworks are a real historic draw. Of course, there are people who like to hunt  
1191 the artifacts, and they are very strict about that. If a person is caught, they have to  
1192 suffer the consequences. The fact that it's agriculturally-zoned area, a 150-foot lot  
1193 is required. We would definitely not like to see deviation from that for someone  
1194 just to build a house to rent it out to someone, for someone who didn't really own  
1195 the property for some time back, but just bought it to perhaps build a house to rent  
1196 it out for financial gain. I don't think that's adequate enough reason to come up 65  
1197 feet short of the requirement just for that purpose. We sent in a signed petition. I  
1198 don't know who might have that, but quite a few of the other neighbors are in  
1199 opposition to that.  
1200  
1201 Ms. Dwyer - Do we have that, Mr. Blankinship?  
1202  
1203 Mr. Blankinship - I don't remember seeing it.  
1204  
1205 Mr. Johnathan - Who did you send it to?  
1206  
1207 Male - [Off mike.] Emerson, Mr. Emerson.  
1208  
1209 Mr. Blankinship - Mr. Emerson? Okay.  
1210  
1211 Ms. Harris - How many signatures did you have on it?  
1212  
1213 Mr. Johnathan - I have copies here.  
1214  
1215 Ms. Harris - Oh, that's what we need to see.  
1216  
1217 Ms. Harris - What is your address again, Mr. Johnathan?  
1218  
1219 Mr. Johnathan - My address is 8000 Battlefield Park Road, but I have  
1220 interest in other property because it's in our family.  
1221  
1222 Mr. Blankinship - You're just on the other side of the fort?  
1223  
1224 Mr. Johnathan - Yes. I'm right across from Fort Gilmer.

1225  
1226 Ms. Dwyer - If you could hand it to Mr. Blankinship. Thank you. Any  
1227 other question for Mr. Johnathan?  
1228  
1229 Ms. Harris - Were you aware of the variance that Mr. Radvany  
1230 secured back in 2005?  
1231  
1232 Mr. Johnathan - No, I was not.  
1233  
1234 Ms. Harris - You were not aware of the previous variance.  
1235  
1236 Mr. Johnathan - No.  
1237  
1238 Ms. Harris - Okay. You say your family owns property on this  
1239 street?  
1240  
1241 Mr. Johnathan - Yes. 7922.  
1242  
1243 Ms. Harris - 7942.  
1244  
1245 Mr. Johnathan - 22. 79 2 2.  
1246  
1247 Ms. Harris - Okay.  
1248  
1249 Mr. Blankinship - How long have you owned your property, Mr.  
1250 Johnathan?  
1251  
1252 Mr. Johnathan - What's that?  
1253  
1254 Mr. Blankinship - How long have you owned the property for your family?  
1255 How long has it been in the family?  
1256  
1257 Mr. Johnathan - Way back. Probably 18-something.  
1258  
1259 Mr. Blankinship - Okay. We couldn't trace the records.  
1260  
1261 Mr. Johnathan - I'm getting old, but I can't go back quite that far.  
1262  
1263 Ms. Harris - To the 1800's, you're saying?  
1264  
1265 Mr. Johnathan - Somewhere in the 1800's. I would say about, I don't  
1266 know, 1870 or so. I'm really guessing, but it's just back farther I could trace.  
1267  
1268 Ms. Harris - Where are the earthworks located in that area? I have  
1269 not visited. Are they all over?  
1270

1271 Mr. Johnathan - [Off mike.] [Inaudible.] All these are earthworks right  
1272 here, and they extend all around. The earthworks are all up and down Battlefield  
1273 Park Road. There's a visitor's center around where I live. There's Fort Gilmer, and  
1274 of course, there's a visitor's center further down on Battlefield Park Road.  
1275 Battlefield Park Road, and that sharp curve, all of that is earthworks there, and it  
1276 continues right on around.

1277  
1278 Mr. Witte - Are any of these earthworks going to be damaged by  
1279 making an entrance to the proposed variance property?

1280  
1281 Mr. Johnathan - No, I don't think so.

1282  
1283 Mr. Witte - Okay.

1284  
1285 Mr. Johnathan - We, as a community, just don't want to see houses built  
1286 right up on each other, especially if the 150-foot requirement is not met. As Ms.  
1287 Bethea said, we begin to get into the form of cluster housing. Also, for the sake of  
1288 building it for monetary gain, to rent it out to someone. This is just my opinion, but  
1289 I would think if someone owned it that had an heir, and they just needed one  
1290 house—but he already has one house on it—then maybe I could understand. But  
1291 just to put another house there just for the sake of renting it out, or for monetary  
1292 gain in this Battlefield Park area where the adherence to these requirements have  
1293 been rather strict. I'm sure you have come across cases before in National  
1294 Battlefield Park. You have to really go through some changes before you can get  
1295 access to the road. Most everybody who attempts to build has to go through this  
1296 regimen.

1297  
1298 Ms. Harris - One more question. For 7884, where a house was built,  
1299 a variance was sought and granted, you have referred to that house. I mean,  
1300 you've seen their house. This is the type of house that you do not wish built on the  
1301 other side?

1302  
1303 Mr. Johnathan - That's correct.

1304  
1305 Ms. Harris - Okay. I just wanted to clarify that.

1306  
1307 Mr. Johnathan - Yes. And the close proximity.

1308  
1309 Ms. Harris - Right.

1310  
1311 Mr. Johnathan - It doesn't have the required footage. If that's the rule,  
1312 we on Battlefield Park Road, as a community, we definitely do not want to see  
1313 exceptions granted for this reason, to have two houses close together where it will  
1314 begin to look—it's going to destroy some of the natural beauty of the area. It  
1315 becomes like—not a development, per se, because a development would probably  
1316 have a hundred houses. But we just don't even want it to get to look like that. I'm

1317 like that. I'm sure that National Battlefield Park discourages it, too, because they  
1318 want it left as natural as possible, as it was during the Civil War. We, as a  
1319 community, don't want it either, especially when you don't have adequate footage.

1321  
1322 Mr. Blankinship - Paul, could you put the site map up, please? Would it  
1323 change your opinion at all, Mr. Johnathan, to realize that he's building the house  
1324 250 feet or so back from the road? It's not going to right up in line with the other  
1325 homes. As you see on the map here, it will be quite a bit farther back.

1326  
1327 Mr. Johnathan - But it's visible, it's very visible.

1328  
1329 Mr. Blankinship - That would not change your opposition to this.

1330  
1331 Mr. Johnathan - No, no, no. It's very visible. It's not like there's a line of  
1332 trees that would block the view or something. It's very visible.

1333  
1334 Ms. Dwyer - Thank you, Mr. Johnathan. Is there anyone else to  
1335 speak?

1336  
1337 Mr. Bethea - Good morning.

1338  
1339 Ms. Dwyer - Good morning.

1340  
1341 Mr. Bethea - My name is Cleve Bethea. I'm Arlene Bethea's  
1342 husband of 49 years. We oppose this variance, the easement. This will be the  
1343 second piece of property that he has, and he's building them to rent out. My  
1344 understanding is that he has an idea for another piece of property that he'd like to  
1345 get his hands on. I believe that's two lots down where this young lady wasn't given  
1346 the right the cross from her driveway to the battlefields. She was not given the right  
1347 to by the Park. Consequently, she died from heartbreak and what have you. She's  
1348 the second young lady that we lost on that battlefield. It was another young lady  
1349 that retired, moved down, built on a part of her family's estate. They harassed her,  
1350 and she had dormant cancer. Her cancer was dormant. From the harassment,  
1351 she died. So, we had two young ladies that died trying to get their homes squared  
1352 away. And Mr. Radvany, he was able to come in at 7984. I think that house was  
1353 .88 acres. It wasn't even an acre. He was able to get that property from a family  
1354 who had built a home, and they were descendants of the Fields. His wife was the  
1355 Fields. They refused to give her and her husband a right-of-way to get to  
1356 Battlefield Park. He was able to come in. Not only did he get that property, .88  
1357 acres, but he got a driveway from way back, about midway, almost back to the end  
1358 of the property at 7984. He got a driveway right smack up into the driveway of  
1359 Battlefield Park Drive.

1360

1361 I have diagrams that I drew up. I hope you all will just take a second to maybe take  
1362 a peak at them. I did it by numbers, this diagram that I drew. If you'll just follow the  
1363 numbers, I'll be able to just explain the different problems. My people go back.  
1364 There were [unintelligible] Indians, so we were there long before that Civil War  
1365 cranked up. We cooperated with Henrico County with a lot of money that they  
1366 needed at the time. We also sold them 30 acres to make up that battlefield. We're  
1367 descendents of Tom and Mary Elizabeth Baugh. We just lost our cousin maybe  
1368 two months ago. He was Howard Baugh, a Tuskegee fighter pilot that flew 135  
1369 missions. They're going to put a statue of him down in Petersburg, I believe.

1371  
1372 Ms. Dwyer - Did you have something to pass out, Mr. Bethea?

1373  
1374 Mr. Bethea - Yes ma'am. If I could just find my little diagrams here  
1375 that I drew.

1376  
1377 Ms. Dwyer - Okay. If you could hand them to Mr. Blankinship, and  
1378 he'll pass them down to us. Just hand them to Mr. Blankinship. Thank you.

1379  
1380 Mr. Bethea - They're all the same. I just want to show you the ease  
1381 that he's able to just move through here to get these homes in. The other property  
1382 is—If I could just take a look at this map up here. [Off mike.] [Inaudible.] [Back at  
1383 mike.] Another place to rent out. Do you see the numbers on there from 1 to 5?

1385  
1386 Ms. Dwyer - Yes.

1387  
1388 Mr. Bethea - Okay. If you look at #1, that's where this young lady,  
1389 Peggy, passed away from heartache, and problems, and stuff like that that she  
1390 had with just the park rangers measuring to make sure that her well was four  
1391 inches on her side of the property, and not on the battlefield. Mr. Gray up here at  
1392 #2, he had to get a lawyer to cross ten feet to get to Battlefield Park, across the  
1393 shoulder. I don't know, I think my wife might have been in my folder last night.  
1394 Everything has disappeared.

1395  
1396 Mr. Johnathan - Excuse me. With this limited amount of property, we  
1397 are also concerned how can he get the correct well and sewage system in,  
1398 because many of us have had to stretch and kind of deviate in order to get this in.  
1399 The sewage has to be on one part of the property, and the well at the other part.

1401  
1402 Mr. Blankinship - But it's a long and deep property, and he has had a test  
1403 done by the Health Department, and approved to put the septic system farther  
1404 back than the house, and about 300 feet from the road. I'm not sure if the well is  
1405 shown, but I presume it's on the front side of the house. It is. Yes, the well would  
1406 be about halfway back to the house, and then the septic field would be back on the

1407 be back on the other side of the house.

1408

1409 Mr. Bethea - Okay. All right, sir. I'd like to just get back to this now.  
1410 You see #3 where it says, "New Home"? Does everybody see #3, the new home?

1412

1413 Ms. Dwyer - Yes.

1414

1415 Mr. Bethea - Okay. Now, this young man, he built his home there  
1416 and all. They refused to give him access to Battlefield Park. He had to go behind  
1417 the earthworks, and that was an additional expense. Had to cut down all those  
1418 trees, and put a road in there in order to get to Battlefield Park. Number 4 is the  
1419 Field Family descendents, and they weren't allowed to get to Battlefield Park. They  
1420 swung off in like a V-shape in order to get to their houses. Number 5, that's where  
1421 this gentleman's house is now, or that he built.

1422

1423 All the people around there have horror stories to tell you about, the different  
1424 problems that they ran into to get their homes situated where they could live. Also,  
1425 I'm afraid that if these homes go up, people will rent these homes, and they won't  
1426 know the value, they don't know the history, they won't know the culture of the  
1427 people that lived there for years. Mr. and Mrs. Field, they were old-timers. They  
1428 had been there a long time, I guess around the Civil War time. When you're renting  
1429 out houses like this, you can't really pick and choose, and do a good background  
1430 investigation on the people that you're going to put in there. A lot of times, the way  
1431 things are now with this drug culture, and stuff like that, you will rent to a crack  
1432 addict, a drug addict. They'll say anything, do anything to get access to a home  
1433 where they can go to work. They can go to work. Out there in country, it would be  
1434 ideal for them to pull up, and run in and get whatever they had, and come on out.  
1435 With that, you haven't seen problems yet. With this new house that's going up,  
1436 that would give him two homes that he's going to rent out. And if he can get his  
1437 hands on that other piece of property—they call this young lady Little Mary, that  
1438 died of heartbreak because she was just denied access to the road, and there  
1439 were other problems. She had a doublewide that was ready to go. She tore down  
1440 the old house, and had a doublewide ready to go. If he gets his hands on this  
1441 property, we'll have three. That's that clustered housing I was talking about.

1443

1444 I'm a retired New York City detective. I was part of a Federal task force, and we  
1445 worked on the first domestic terrorist that hit our land. We took down the whole  
1446 cell, except one individual that was taken out a maximum-security prison and flown  
1447 to Cuba. We took down the whole group. It was 35 members of the task force that  
1448 I was part of. I walk with a limp now because I was hit twice in a gun battle with  
1449 two individuals. But I was able to return fire, my partner and I. We were able to kill  
1450 both of them. We received a lot of publicity, a lot of it that I didn't care to have, on  
1451 TV and radio, and different agencies and all. We were the toast of the City at the  
1452 time.



1453

1454 But anyhow, I beg you, please don't let this second house go in. He's got one  
1455 house up, please don't let him go in because he's got his eye on another piece of  
1456 property here that he wants to put another house up. I can almost bet, because  
1457 it's been rumored from people that he has approached to buy the land, and stuff  
1458 like that. This Little Mary, she died with a broken heart because they wouldn't give  
1459 her access to Battlefield Park, where there was a driveway. Mr. George Fields and  
1460 his wife lived there.

1461

1462 Ms. Dwyer - Thank you, Mr. Bethea. Any questions from by Board  
1463 members? Did you have any new points to make?

1464

1465 Mr. Bethea - No ma'am, that was it, along with the petition.

1466

1467 Ms. Dwyer - Okay, thank you. We have a copy of the petition; we  
1468 have a copy of your map.

1469

1470 Mr. Bethea - Okay. Do you have the certified copy that I gave, the  
1471 certified showing that I sent it in the mail? I had some here that are certified that  
1472 I'd like to just—

1473

1474 Ms. Dwyer - Maybe you can look at your materials while the next  
1475 person speaks, so we can move the hearing along.

1476

1477 Mr. Bethea - Oh, yes.

1478

1479 Ms. Dwyer - Thank you. Mr. Blankinship will keep that in the file.

1480

1481 Mr. Bethea - Right. Okay. Thanks, ma'am. Thanks for your time  
1482 and consideration.

1483

1484 Ms. Dwyer - Thank you. Sir, have you been sworn?

1485

1486 Mr. Hatch - No, I haven't.

1487

1488 Ms. Dwyer - Okay.

1489

1490 Mr. Blankinship - Will you raise your right hand please? Do you swear  
1491 the testimony you're about to give is the truth and nothing but the truth so help you  
1492 God?

1493

1494 Mr. Hatch - Yes I do. Good morning, ladies and gentlemen.

1495

1496 Ms. Dwyer - Good morning.

1497

1498 Mr. Hatch - My name is Glen Hatch. I own the property at 7871  
1499 Battlefield Park Road.  
1500  
1501 Mr. Blankinship - On the south side?  
1502  
1503 Mr. Hatch - Yes sir. Moving out there—I think it’s the year 2001—  
1504 so far, I really have enjoyed my neighbors. I love my neighbors, and I love the  
1505 country living. It’s nothing for me to walk outside and see deer, rabbit, and wild  
1506 turkeys out in the yard. But at the same time, I heard the gentleman say that he  
1507 had no problem as far as gaining access, as far as the driveway. Now, I think my  
1508 family and I did just about everything to gain access for a driveway from our house  
1509 to the road, but we were not permitted. He had to end up using an easement to go  
1510 across my neighbors just to get back and forward.  
1511  
1512 Ms. Dwyer - Access through the park is not an issue that we have  
1513 responsibility for; that’s up to the Park Service.  
1514  
1515 Mr. Hatch - Okay.  
1516  
1517 Ms. Dwyer - So, that’s not something that we need to discuss.  
1518  
1519 Mr. Hatch - Okay.  
1520  
1521 Mr. Blankinship - If the variance is approved, they’ll be a condition that he  
1522 has to get permission from the Park Service. The variance won’t do him any good  
1523 unless he can get permission from the Park Service.  
1524  
1525 Mr. Hatch - Okay. Thank you very much for your time.  
1526  
1527 Ms. Dwyer - Thank you. Any other questions by Board members for  
1528 any of the opposition?  
1529  
1530 Ms. Harris - What was the address of Mr. Hatch? What was his  
1531 address?  
1532  
1533 Mr. Blankinship - 7871 is Mr. Hatch. He’s #3 on the map that Mr. Bethea  
1534 passed out, the one that was not allowed roadway directly to the road.  
1535  
1536 Ms. Dwyer - Mr. Radvany, would you like to respond? You’ll have a  
1537 maximum of five minutes.  
1538  
1539 Mr. Radvany - I’ll only take a minute. Yes, as far as the property, of  
1540 me renting the property and everything else, when I first bought the property at  
1541 7884 Battlefield Park Road, there was a house on it. The taxes had gotten high or  
1542 whatever, so I went ahead and purchased that property. There was an existing  
1543 house on there, which the roof was falling in and everything else. So, the County

1544 County condemned that unsafe. Tore it down. That's why I built the new house on  
1545 that property. At 7896, there's a lot of trash on all the lots in there. That was  
1546 owned by another lady. The taxes had not been paid up. Her husband had  
1547 bought it years ago, and he had it for a while. So, I bought it from her, because she  
1548 didn't have any use for it. She was an older lady. She didn't want to build anything  
1549 on it.

1550

1551 As far as the other two properties, 7902, me wanting to acquire that, the only  
1552 reason I was asking about those two properties—and that's why I guess maybe  
1553 they got the understanding that I wanted to get that other piece—is so I could  
1554 combine all three parcels so I wouldn't have to go for a variance.

1555

1556 That's all I have to say.

1557

1558 Ms. Dwyer - Any questions for Mr. Radvany?

1559

1560 Mr. Nunnally - You are going to rent this house out, too.

1561

1562 Mr. Radvany - Ms. Walker who is at 7892, the house in between the  
1563 two properties I own, I also told her if she had any family members, I would give  
1564 them first option to buy, if they wanted to buy the land or whatever they wanted to  
1565 do after I had everything gone through the County. Her niece was looking to buy  
1566 7884 Battlefield Park Road, but she wasn't able to. So, now she has a nephew  
1567 who I'm going to rent to for a while. He said he'd like to purchase it. She said she  
1568 also has another family member interested in 7896, which I have bought. If I do  
1569 build a home, I want to make sure I have someone I can rent it to until—She said  
1570 that she had a cousin who was interested in that one also. So, I don't know what  
1571 their relation is to Ms. Walker or however, but I know her family has been in that  
1572 house for many years. I give them the first right, because I understand as far as  
1573 having family around. That's pretty much it.

1574

1575 Mr. Nunnally - All right, thank you, sir.

1576

1577 Ms. Dwyer - Thank you.

1578

1579 Mr. Radvany - Thanks.

1580

## 1581 **DECISION**

1582

1583 Mr. Nunnally - I move we approve it because I don't think it will be  
1584 detrimental to the neighborhood, and he cannot build unless he gets the okay from  
1585 the National Park Service. For that reason, I move we approve it.

1586

1587 Mr. Wright - I second it.

1588

1589 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. Any  
1590 discussion?

1591  
1592 Ms. Harris - Yes. When we look at #2 and why we say no to  
1593 variances, we talk about the detriment to the community—the clustering of homes,  
1594 someone mentioned in testimony. We can already see what has happened with  
1595 one of the houses, and it can be repeated as many as three more times. I feel that  
1596 these neighbors who have been citizens of Henrico County have been harassed  
1597 too much. I think it's too close to the neighborhood. I think it definitely adversely,  
1598 affects the neighborhood. So, I'll have to speak out against this.

1600  
1601 Mr. Wright - I don't understand how these people being harassed  
1602 has anything to do with approval of this application. This man is not harassing  
1603 them, and this has been done over a number of years, whatever all this testimony  
1604 was. This lot has been there. It was a legal lot before the ordinance was adopted.  
1605 I understand from Mr. Blankinship that this lot was legal prior to the adoption of the  
1606 50-foot requirement.

1607  
1608 Ms. Harris - Though it was a legal lot, we have a zoning ordinance  
1609 that says 150-foot frontage. The width is required. So, though it was a legal lot, we  
1610 have another code that keeps us from using a legal lot that is conflicting with the  
1611 requirement for zoning.

1612  
1613 Mr. Wright - I understand that, but I think that it's been  
1614 demonstrated, or the testimony was that a house would conform to the  
1615 requirements. All the requirements for building a house on this lot can be met.  
1616 This is a very deep lot. It's not just a short lot without a lot of acreage in it. I think  
1617 that would offset any objection along that line.

1618  
1619 Mr. Witte - I, too, sympathize with the existing residents, but I feel  
1620 like Mr. Radvany has done most everything he could possibly do. If, in fact, we  
1621 insist on a large setback, front yard setback of 200 or 250 feet, and maybe some  
1622 plantings to help block the view, I think that would be a type of compromise that  
1623 hopefully would be acceptable.

1624  
1625 Ms. Dwyer - There is nothing in the conditions, I don't think that  
1626 requires him to build off the road. Is there, Mr. Blankinship?

1627  
1628 Mr. Blankinship - Well, he's shown at 250 feet back, and the condition  
1629 says that he's bound by what he submitted, doesn't it?

1630  
1631 Ms. Dwyer - Where does he show that it's—

1632  
1633 Mr. Wright - Or we could put a condition that he build it back. He  
1634 testified that that's what he was going to do.

1635  
1636  
1637  
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1679

Mr. Blankinship - And it's a variance, so you can impose a condition without his approval. No, you're right, we didn't. That should be added. That should be the standard condition. Well, he didn't submit any building plans, that's why. So, we can't tie him to the building plans he submitted, because he didn't submit any. He did submit a plat showing a building location.

Ms. Dwyer - So, we could have a condition to that effect.

Ms. Harris - What is our obligation to preserving the history of a national historic site?

Ms. Dwyer - One of the things we have to find is that the granting of the variance will not materially impair the purpose of the chapter. One of the purposes of this chapter—I was looking at it as we were listening to the people talk. One of the purposes of the chapter is to—let me find it—protect against destruction of, or encroachment upon historic areas. That's in Section 24-1. Also, making sure that there's adequate fire protection, and that the purposes of the zoning ordinances are preserved so that there is convenient access, and harmonious development within the community protecting historic areas

All right, any more discussion.

Mr. Nunnally - Are we going to add that condition on there to build back 250 feet?

Mr. Witte - I would like to do that.

Ms. Dwyer - Mr. Wright, you're in agreement to do that?

Mr. Wright - Yes, 250 feet.

Ms. Dwyer - Okay. So, the motion is to approve the variance request with an additional condition, Condition #6, which would require the house to be built 250 feet off the roadway.

Any more discussion? Okay. All in favor say aye. All opposed say no. The ayes have it; the motion passes.

Motion carries three to two.

Mr. Blankinship - Three to two, was it?

Ms. Dwyer - Yes. The variance request is approved.

1680 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
1681 Mr. Wright, the Board **approved** application **A-024-08, Andrew P. Radvany's**  
1682 request for a variance from Section 24-94 to build a one-family dwelling at 7896  
1683 Battlefield Park Road (Parcel 808-689-0421), zoned A-1, Agricultural District  
1684 (Varina). The lot width requirement is not met. The Board granted the variance  
1685 subject to the following conditions:

1686

1687 1. This variance applies only to the lot width requirement for one dwelling only. All  
1688 other applicable regulations of the County Code shall remain in force.

1689

1690 2. Approval of this request does not imply that a building permit will be issued.  
1691 Building permit approval is contingent on Health Department requirements,  
1692 including, but not limited to, soil evaluation for a septic drainfield and reserve area,  
1693 and approval of a well location.

1694

1695 3. At the time of building permit application, the applicant shall submit the  
1696 necessary information to the Department of Public Works to ensure compliance  
1697 with the requirements of the Chesapeake Bay Preservation Act and the code  
1698 requirements for water quality standards.

1699

1700 4. At the time of building permit application, the applicant must submit  
1701 documentation from the National Park Service, granting permission for the lot's  
1702 driveway to access Battlefield Park Road.

1703

1704 5. The applicant shall maintain a 25 foot wide wooded buffer along the front of the  
1705 property, with the exception of a driveway entrance that shall enter the lot so as to  
1706 minimize any tree removal.

1707

1708 6. [ADDED] The dwelling shall be set back 250 feet from the right-of-way of  
1709 Battlefield Park Road as shown on the plot plan filed with the application.

1710

1711

1712 Affirmative: Nunnally, Witte, Wright 3

1713 Negative: Dwyer, Harris 2

1714 Absent: 0

1715

1716

1717 **A-025-08 EMERALD LAND DEVELOPMENT** requests a  
1718 variance from Section 24-9 to build a one-family dwelling at 5311 Eanes Lane  
1719 (Parcel 807-711-0289), zoned R-4, One-family Residence District (Varina). The  
1720 public street frontage requirement is not met. The applicant has 0 feet public street  
1721 frontage where the Code Requires 50 feet public street frontage. The applicant  
1722 requests a variance of 50 feet public street frontage.

1723

1724 Mr. Blankinship - Madam Chairman, let me call your attention to the other  
1725 note that was left on the table that's relevant to this case.

1726  
1727 Ms. Dwyer - Was this another e-mail?  
1728  
1729 Mr. Blankinship - No, this was a letter received from a Ms. Lorraine  
1730 Chandler.  
1731  
1732 Ms. Dwyer - Does everyone have a copy of that? All right. Is there  
1733 anyone here to speak for or against this case? Please stand so that you can be  
1734 sworn.  
1735  
1736 Mr. Blankinship - Will you raise your right hand please? Do you swear  
1737 the testimony you're about to give is the truth and nothing but the truth so help you  
1738 God?  
1739  
1740 Ms. Dwyer - Okay. Will the applicant come forward and state your  
1741 case?  
1742  
1743 Mr. Baker - Good morning, Madam Chairperson, members of the  
1744 Board. My name is Mark Baker. I'm here today on behalf of Emerald Land  
1745 Development, who is the contract purchaser at 5311 Eanes Lane. The request is  
1746 a waiver for the public street frontage requirement to permit the construction of a  
1747 single-family dwelling. I want to thank Mr. Blankinship and the staff for putting  
1748 together a thorough report. Based on that report, which we are satisfied with, I'll  
1749 be brief.  
1750  
1751 I do want to talk quickly about background. I want to talk about the all-important  
1752 threshold requirement, and the three tests. As far as background goes, the  
1753 property's located near the end of a long private drive, which is approximately  
1754 2,200 feet south of Williamsburg Road. The property is 1.24 acres in area. It was  
1755 originally part of a 2.4-acre parcel that was divided in half in 1948—that's a key  
1756 year—as part of a family division. The subject property is the southernmost of  
1757 those two parcels. It's vacant. It has no public street frontage. It fronts on a private  
1758 driveway that runs south from Williamsburg Road. The northernmost parcel of the  
1759 original—the two parcels split from the original parcel also includes 1.2 acres, and  
1760 it's occupied by a single-family dwelling. The subject property is a legal lot of  
1761 record. It meets all R-4 zoning standards, with the exception of the public street  
1762 frontage requirement.  
1763  
1764 Now, getting into the threshold question, as you know, the Supreme Court of  
1765 Virginia in Cochran versus Fairfax County set the threshold as to whether the  
1766 effect of the Zoning Ordinance upon the property under consideration as it stands  
1767 interferes with all reasonable, beneficial uses of the property taken as a whole.  
1768 Our belief is that, yes, the language of threshold applies. As staff notes, the  
1769 property was created in 1948, which precedes the public street frontage  
1770 requirement in 1960. Therefore, the property is non-conforming. It met the

1771 requirements in 1948; does not meet the requirements today. Absent a variance,  
1772 the property is not suitable for any other reasonable, beneficial use.

1773  
1774 Looking at the three tests, the first is that the property is affected by exceptional  
1775 narrowness, shallowness, size, shape or topographic conditions rather than an  
1776 ordinary situation or condition. Of course, the exceptional condition as noted by  
1777 staff is that the property has no public street frontage. The lot is otherwise of  
1778 sufficient size to meet the applicable setback requirements to permit the  
1779 development of a single-family dwelling.

1780  
1781 The second test of the variance is it will not be a substantial detriment to adjacent  
1782 property, and the character of the district will not be changed. Staff noted in their  
1783 comments that the proposed home is consistent and a reasonable fit with the  
1784 dwellings on the adjacent parcels, so I think in character with the development on  
1785 adjacent properties. I think what also helps is the ability to meet the setbacks as  
1786 required under normal zoning.

1787  
1788 Some concerns were raised by the owner of 5305, and as I'm just learning now,  
1789 5308 Eanes Lane with regards to legal right to use the private drive. That is the  
1790 first issue, the second being wear and tear on the private drive. At least in the staff  
1791 report, there were some comments about concerns over some existing potholes.  
1792 Looking at the first—

1793  
1794 Ms. Dwyer - Excuse me, Mr. Baker. May I ask a question? How are  
1795 you planning to gain access? It looks like there could be access from Eanes  
1796 Lanes, or Wendel Road. When you talk about the private drive, are we talking  
1797 about Eanes or Wendel?

1798  
1799 Mr. Baker - Wendel.

1800  
1801 Ms. Dwyer - The letter we received is from a person who resides at  
1802 5508 Eanes Lane.

1803  
1804 Mr. Baker - I think the thing is that the access is coming off Wendel.  
1805 The one concern was from 5305. I think 5308 would have frontage as well on the  
1806 private road, Wendel. That's the same road that would be used continuing further  
1807 south to the subject property.

1808  
1809 Ms. Dwyer - What is the status of Wendel Road?

1810  
1811 Mr. Baker - It's a private road. It's clearly shown in the title work  
1812 that they have the right to use the property. Of course, I would suggest that it's a  
1813 legal issue. It's a condition in the variance, and similar to the park issue you were  
1814 just discussing in the last case. I could suggest the variance doesn't give them the  
1815 right necessarily to use that. It does condition, however, if approved with the



1816 condition that they would have to provide evidence of that prior to a building  
1817 permit.

1818

1819 Ms. Dwyer - That's true, but I think that's one thing that we want to  
1820 consider as part of the variance is whether it is possible to gain legal access, or  
1821 whether legal access has been obtained. It's not good public policy for us to  
1822 approve a lot that doesn't have legal access.

1823

1824 Mr. Baker - I understand. When you're looking at a piece of  
1825 property like this, it's always going to be raised as a possible issue from the  
1826 developer's side as well. The developer's attorney in conjunction with speaking  
1827 with the attorney for the title company, found that there wasn't an issue from an  
1828 access standpoint and that they had the ability to access via the private road.

1829

1830 Ms. Dwyer - Has an easement been granted?

1831

1832 Mr. Baker - Do you want the nature of that is? Is there an  
1833 easement or? Apparently, their understanding was the private road, based on the  
1834 documentation that was given to them through surveys, was a right-of-way, but a  
1835 private right-of-way, and that they had the right to use it. I don't know if that's been  
1836 formulated as an easement across somebody else's property.

1837

1838 Ms. Dwyer - So we don't really know.

1839

1840 Mr. Baker - No.

1841

1842 Ms. Dwyer - Okay. I'm not clear. Okay.

1843

1844 Mr. Baker - I obviously didn't prepare the title for it, but they felt  
1845 comfortable in ensuring the title on the property as to access.

1846

1847 Ms. Dwyer - Okay.

1848

1849 Mr. Wright - Your testimony is that you would use Wendel Road for  
1850 the access, and not Eanes Lane.

1851

1852 Mr. Baker - Yes. Yes sir. If I can continue, I guess the other issue  
1853 is wear and tear. Of course, there's a condition in approval of the variance as well,  
1854 which would suggest that the access would have to be maintained. Obviously, I  
1855 assume that would include repair of potholes, things of that nature.'

1856

1857 The third test is that the condition or situation of the property concerned is not of so  
1858 general a recurring nature as to make reasonably practical the formulation of a  
1859 general regulation to be adopted as an amendment to the ordinance. Staff noted  
1860 here that it's not unusual for the Board to hear requests for variances from the  
1861 public street frontage requirement; however, this request is unique among those in

1862 those in that the lot existed in its current configuration prior to the public street  
1863 frontage requirement being put in place. It would definitely not suggest a general  
1864 regulation might be appropriate.

1865  
1866 In summary, we're very simply dealing with a single lot, with has no reasonable  
1867 use with a variance. The owner has reasonable expectations for beneficial use of  
1868 the property, which as it stands today cannot be accommodated. The three tests  
1869 are met. We thank you for your consideration. We ask that you rule in favor of the  
1870 applicant based on a demonstrated hardship. I'll answer any additional questions  
1871 that you have at this time.

1872  
1873 Mr. Witte - Can you show me exactly how the access gets to  
1874 Wendel Road?

1875  
1876 Mr. Baker - Basically, you're 2,200 feet south of Williamsburg  
1877 Road. Williamsburg Road is up—it was beyond the mouse. There we go. To the  
1878 north, that's Williamsburg Road.

1879  
1880 Mr. Witte - Okay.

1881  
1882 Mr. Baker - The private road runs north/south from the subject  
1883 property.

1884  
1885 Mr. Witte - So, it runs the back yard of all those properties off  
1886 Williamsburg Road.

1887  
1888 Mr. Baker - Yes sir.

1889  
1890 Mr. Witte - Okay, thank you.

1891  
1892 Ms. Harris - Wendel Road is not a paved street at this point?

1893  
1894 Ms. Dwyer - I'm referring to the letter. Have you see the letter that  
1895 we received from Lorraine Chandler?

1896  
1897 Male - The one that says, "I own property at 5508 Eanes  
1898 Lane?"

1899  
1900 Ms. Dwyer - That's right.

1901  
1902 Male - That driveway is also my property. It's a private  
1903 driveway; I want to keep it that way. I will not agree to having anyone else using  
1904 my driveway.

1905  
1906 Ms. Dwyer - She had the impression, apparently, that—And I'm not  
1907 sure if she's speaking of Wendel or Eanes Lane.

1908  
1909 Male - I don't know either.  
1910  
1911 Mr. Gidley - [Off mike.] She called me, and she's referring to  
1912 western Eanes Lane. She was concerned that there were some flags out there  
1913 [inaudible] coming across her property. I told her that the applicant [inaudible].  
1914  
1915 Ms. Dwyer - So, Mr. Gidley is saying that based on a phone  
1916 conversation, Ms. Chandler's concern is that access would be through Eanes  
1917 Lane, and that's not the case. Maybe that should be a condition if the Board  
1918 considers approving this case. Any other questions by Board members? Thank  
1919 you, that concludes the case. I'm sorry, I keep forgetting. Just keep raising your  
1920 hand.  
1921  
1922 Mr. Lanning - Good morning, ladies and gentlemen.  
1923  
1924 Ms. Dwyer - Good morning. Please state your name, please.  
1925  
1926 Mr. Lanning - My name is Robert James Lanning, and I live at 5305  
1927 Eanes Lane.  
1928  
1929 Ms. Dwyer - Could you spell your last name, please?  
1930  
1931 Mr. Lanning - L-a-n-n-i-n-g.  
1932  
1933 Ms. Dwyer - Okay, thank you.  
1934  
1935 Mr. Lanning - I'm here to state my case that this is my private, legal,  
1936 deeded driveway. I moved into that home in 1976 when my second little daughter  
1937 was first born, and I've been there for about 32 years. This road is called Wendel  
1938 Road—W-e-n-d-e-l Road. It is a private road, and I maintain that road, with a little  
1939 help from Old Dominion Landfill (BFI), which I'm sure you all are aware where the  
1940 landfill is over on Charles City Road. Mr. Eric Spencer is the manager over there.  
  
1942  
1943 I'm here to represent my neighbors also. Could I just read this letter from them  
1944 while I'm here?  
1945  
1946 Ms. Dwyer - Yes.  
1947  
1948 Mr. Lanning - October 21, 2008. This is all our feelings. This is to the  
1949 County of Henrico, Virginia, Department of Planning, P.O. Box 90775, Henrico,  
1950 Virginia, 23273. "Dear Henrico County Board of Zoning Appeals." I'm a little  
1951 nervous, and my throat is dry because I'm borderline diabetic. Anyway, it says:  
  
1953

1954 With regard to your letter of October the 6<sup>th</sup>, 2008, allow me to offer the  
1955 following response.

1956  
1957 You have received a request from Emerald Land Development for a  
1958 variance from Section 24-9 to build a one-home dwelling at 5311 Eanes  
1959 Lane, Parcel 807-711-0289, zoned R-4, One-Family Resident District,  
1960 Varina. The road you have received the request for is named Wendel  
1961 Road, which runs along the front of the following properties: 5301, 5303,  
1962 5305, 5508, and 5313 of Eanes Lane.

1963  
1964 Now, they've also built some new houses up close to Williamsburg Road where the  
1965 road comes out on Williamsburg Road. It's like a subdivision up there now. I think  
1966 it's called Carter's Pond, or something like that. I'm not sure; I'd be guessing.  
1967 That's where this is taking place, Wendel Road. It says: "The road right in front of  
1968 Carter's Pond. Robert and Sam Carter were [sic] the sons of George..." And I  
1969 forget. I call them Ms. George Carter; they're deceased. But they had a farm right  
1970 there on Charles City Road.

1971  
1972 What I'm telling you is that we're opposed to it. It says:

1973  
1974 This letter is to officially notify you that we, the undersigned of this letter,  
1975 do not give our permission, or consent to access Wendel Road. This is a  
1976 private road maintained by Robert Lanning and some assistance from  
1977 Old Dominion Landfill. We will continue to decline any future requests.  
1978 Thank you for your time.

1979  
1980 I'll just make it very brief. It's signed by David and Loretta Smith that live at 5303  
1981 Eanes Lanes; my wife and myself that live at 5305 Eanes Lane; and Eric and  
1982 Lorraine Chandler, whose land borders this road, although they never had access  
1983 to the road. Ms. Chandler is here now, right there. She's opposed to it. Also Ricky  
1984 and Rhonda Leavell. Ricky and Rhonda Leavell live at 5313 Eanes Lane. They  
1985 oppose it also. They couldn't be here today because they were all working. I'm  
1986 here to represent that.

1987  
1988 I don't know how to show you, but this is my plot that Nelson Shaw—he was a land  
1989 surveyor down on Osborne Pike. I bought my home at 5305 from Ethel Anderson.  
1990 That was her name then, but it was formally Ms. Perry. Nelson Shaw surveyed  
1991 this land, and it shows that it's my legal deeded driveway that goes all the way  
1992 from—well, in fact, it goes all the way—There used to be Concrete Structures, and  
1993 now it's something else.

1994  
1995 Mr. Blankinship - Metromont.

1996  
1997 Mr. Lanning - Metro. You're exactly right.

1998  
1999 Mr. Blankinship - The next thing on the agenda.

2000  
2001 Mr. Lanning - Yes. So, we're opposed to this. One thing I would like  
2002 to say is that Old Dominion Landfill (BFI). Robert Carter owned part of this road  
2003 that I'm accessing. Even though it's my legal deeded driveway, I think they own the  
2004 biggest part of that road.  
2005  
2006 Ms. Dwyer - You're walking about Wendel Drive.  
2007  
2008 Mr. Lanning - Wendel Road, yes ma'am.  
2009  
2010 Ms. Dwyer - Road.  
2011  
2012 Mr. Lanning - Yes ma'am. He's not here. He's on a business trip.  
2013 Eric Spencer, he's the manager of Old Dominion Landfill. It's my understanding,  
2014 now, that he's opposed to this too, because we have so much traffic coming in and  
2015 out of there now that goes to different neighbors' houses. I'm not here to stop  
2016 anybody that has the legal right-of-way to use that road. I state my case. I'm not  
2017 opposed to anyone that wants to come to see their neighbors down that road, or  
2018 has business. Matter of fact, the water system used to be an old [unintelligible]  
2019 hydrodynamics, and now it's owned by the County of Henrico. They bought it from  
2020 Aqua Virginia. They have the right to come down there to read the meters, the  
2021 County does. We, the landowners, do not want any more traffic on that road.

2023  
2024 Ms. Dwyer - Mr. Lanning?  
2025  
2026 Mr. Lanning - I guess what I'm trying to say, ma'am—I'm sorry. The  
2027 owner of the road actually is not here, so I'd like to get a continuance until I can get  
2028 an attorney or whatever I need if this is going to be denied or—If it's going to be  
2029 approved, I'd like a chance to—  
2030  
2031 Mr. Wright - One of the conditions, if this were approved, would be  
2032 that he would have to have legal access, and he would have to prove to the  
2033 County that he has legal access.  
2034  
2035 Mr. Lanning - Yes sir.  
2036  
2037 Mr. Wright - If we approve this, we don't get into the legal  
2038 determination.  
2039  
2040 Mr. Lanning - Yes sir.  
2041  
2042 Mr. Wright - There is a condition if we approve this that it's subject  
2043 to the owners obtaining legal access, and proving to the County. Not just saying  
2044 he has it, he has to get legal documentation that he has legal access, or it would  
2045 not be valid.

2046  
2047 Mr. Lanning - Yes sir, that's a very good point.  
2048  
2049 Mr. Wright - Even if we approve this, that doesn't mean it's  
2050 approved.  
2051  
2052 Mr. Lanning - Yes sir, that's a very good point.  
2053  
2054 Mr. Wright - I just want to make sure you understand that. We don't  
2055 determine whether he has legal access or not.  
2056  
2057 Mr. Lanning - Yes sir.  
2058  
2059 Mr. Wright - That's not the jurisdiction of this Board.  
2060  
2061 Mr. Lanning - Yes sir. I'd just like the Board members to know that  
2062 fact number one is that no person on that lot where he wants to get approved has  
2063 ever used that road going in or out, either way. Fact number two is that it's been a  
2064 grown up area forever. It's just been like a field, just grown up, and it's only been  
2065 cut down this past summer. I guess when they came down and took bore  
2066 samples, and tried to lay out whatever they want to build there. I'm not getting into  
2067 that, but I'm just saying we're against it, the landowners are against it. I thank you  
2068 all very much for your time.  
2069  
2070 Ms. Dwyer - Mr. Lanning, I have a question for you. Your address is  
2071 on Eanes Lane, right?  
2072  
2073 Mr. Lanning - Eanes Lane, yes ma'am. My address is 5305 Eanes  
2074 Lane.  
2075  
2076 Ms. Dwyer - Okay. But you access your property from Wendel.  
2077  
2078 Mr. Lanning - Yes ma'am, I do. I do also have access that I can go  
2079 out at 5303 if I want to. I have that in writing, and I have it notarized. The lady  
2080 gave me lifetime rights to go through her driveway, unless they move or  
2081 something.  
2082  
2083 Ms. Dwyer - Do you happen to know what the legal status of Wendel  
2084 Road is?  
2085  
2086 Mr. Lanning - I'm sorry?  
2087  
2088 Ms. Dwyer - The legal status of Wendel Road. You said it's a private  
2089 road, but do you know if an easement has been granted to all the properties along  
2090 there, or? You said you thought someone else owns the road?  
2091

2092 Mr. Lanning - I'm not going to josh around. To the best of my ability,  
2093 Old Dominion owns so much of that road. But I know it's my private legal—Like I  
2094 say, if you want to look at it, you can see the plot right here that was drawn up by  
2095 [goes off mike] Mr. [inaudible] down on [inaudible]. [Back at mike.] I think he's  
2096 deceased, too, now.  
2097  
2098 Ms. Dwyer - Thank you. We'll return this to you after we have a  
2099 chance to look at it. Thank you very much.  
2100  
2101 Mr. Lanning - I'd like to get that back.  
2102  
2103 Ms. Dwyer - Okay.  
2104  
2105 Mr. O'Kelly - Mr. Lanning, does Mr. Meyers still live in the  
2106 neighborhood?  
2107  
2108 Mr. Lanning - Spec Meyers died. I knew Spec Meyers and his wife,  
2109 Bessie. She worked in the cafeteria down at Baker School when I was yai high.  
2110 I've been in Varina all my life.  
2111  
2112 Mr. O'Kelly - Yes sir. I know many years ago, we did research on  
2113 Wendel Road for Mr. Meyers. I don't know whether we can find it or not, but the  
2114 County has looked at it in past years  
2115  
2116 Ms. Dwyer - What did they determine?  
2117  
2118 Mr. O'Kelly - I don't remember.  
2119  
2120 Mr. Blankinship - My best understanding is that it's a public right-of-way,  
2121 but the road has never been publicly maintained. It's a strip of land that's like 20  
2122 feet wide there. It was considered a road back by the Byrd Act in 1932, but when  
2123 the County took over the right-of-way, it never took over maintenance of the road.  
2124 So, it's not part of the County road system. The best we can determine is that  
2125 there is a strip of land in there that is publicly owned.  
2126  
2127 Mr. Lanning - Excuse me. One last thing and I'm going to be done,  
2128 and sit down, and close my mouth. I have receipts right here where I've  
2129 maintained. I've put gravel in that road, and maintained it. All of my neighbors  
2130 know that I've been up there working on the road. I haven't done as good a job  
2131 this year because the guy that usually helps me drag it and all, his name is  
2132 Wallace Hart, and he's way up in age. He retired from Dominion Virginia Power,  
2133 just like I did. I worked for Dominion Virginia Power for 39 years, and I was a  
2134 lineman. I climbed poles, and strung wire, and hung transformers and things like  
2135 that. He's way up in age. He's not able to do that anymore, so I had been going  
2136 up there. Even my little grandson goes up there with me and helps me, you know.  
2137 Joe Briden that lives right there at 5301 had been helping me. He had like some

2138 some heart problems and things, so he hasn't been able to get out there and work  
2139 on it.

2140  
2141 As far as maintaining it, I have receipt after receipt. Here's one for \$325 that I put  
2142 gravel in there from Martin Marietta.

2143  
2144 Mr. Blankinship - I think we all agree that you maintain the road.

2145  
2146 Mr. Lanning - Yes sir, I maintain that road.

2147  
2148 Mr. Blankinship - It's not part of—

2149  
2150 Mr. Lanning - And it's not in the best of shape, I can tell you all. I'm  
2151 not going to stand here and try to be liar. It has some potholes in it. It's going to be  
2152 maintained, because I keep it up every year. Wintertime's coming on. We have to  
2153 be able to get in and out of that road.

2154  
2155 Ms. Dwyer - All right. Thank you, Mr. Lanning.

2156  
2157 Mr. Lanning - Thank you.

2158  
2159 Ms. Dwyer - Do we have other opposition? Anyone else want to  
2160 speak?

2161  
2162 Ms. Chandler - Hi, I'm Lorraine Chandler. I'm a little nervous, too. I  
2163 was concerned about my driveway. I've seen pink ribbons all the way down it.

2164  
2165 Mr. Blankinship - Excuse me. You're talking about your driveway from  
2166 Eanes Lane to the western side of your property.

2167  
2168 Ms. Chandler - Yes sir.

2169  
2170 Mr. Blankinship - Okay.

2171  
2172 Ms. Chandler - Where Eanes Lane turns into Shirleydale. That is a  
2173 private drive, and I don't know what the ribbons were or whatever. I've been going  
2174 through a lot, too, with my family, so I didn't even notice they were doing that with  
2175 that lot. I kind of like it country. I don't like houses on top of each other. My  
2176 driveway is a private drive. That would put another driveway going right through  
2177 my front yard.

2178  
2179 Mr. Blankinship - We're all the way at the other end.

2180  
2181 Ms. Chandler - At the other end. Okay, okay. I just want to make sure.

2182  
2183



2184 Ms. Harris - Before you sit down, can we see the photos of the one  
2185 that says, "View of Wendel Drive Towards Street" in our packet? I believe it's the  
2186 last photo in the packet. Okay, yes. Whose house is this, do you know? This is  
2187 Wendel Drive. Okay, Wendel Road. Do you know whose house that is Ms.  
2188 Chandler or Mr. Lanning?  
2189  
2190 Ms. Chandler - Is that your house?  
2191  
2192 Mr. Lanning - [Off mike.] What?  
2193  
2194 Ms. Chandler - This house right here. See, my house faces the other  
2195 way.  
2196  
2197 Mr. Lanning - [Off mike.] That's my house right there, yes ma'am.  
2198  
2199 Ms. Harris - Okay. That's what I need to know. Thank you.  
2200  
2201 Ms. Dwyer - Any other questions by Commission members? All  
2202 right. The applicant may come forward and have five minutes for rebuttal.  
2203  
2204 Mr. Baker - There's not a whole lot to say. I think it's clear, based  
2205 on the configuration of the lot, that it was contemplated as part of the original  
2206 division in 1948 for development with a single-family dwelling. The lot and request  
2207 meet the threshold question, and meets the three tests. I think the access issue is  
2208 a legal issue. I think Mr. Blankinship may be, with his comments, looking at the  
2209 same issue that both the real estate attorney and the general counsel for the title  
2210 company had reviewed and found there to be access. Again, I would note the BZA  
2211 condition would require that we come back with that information, and we don't get  
2212 a building permit until that's perfectly documented. I apologize for not having that  
2213 here today. The second thing is with regards to maintenance. There is a  
2214 commitment to the conditions to take responsibility in maintaining access to the  
2215 property.  
2216  
2217 Mr. Wright - Let me ask you. Was it your statement that you already  
2218 have a title policy? This property has been insured?  
2219  
2220 Mr. Baker Yes. There's already a title policy—  
2221  
2222 Mr. Wright - Title commitment. And it has no objection as to  
2223 access?  
2224  
2225 Mr. Baker - That's correct.  
2226  
2227 Mr. Wright - Thank you.  
2228

2229 Mr. Witte - I have a question. The road looks reasonably well  
2230 cared for, although you can see a pothole here and there. How much damage do  
2231 you anticipate causing to that road with the construction equipment? I know it's  
2232 concrete trucks, and—

2233

2234 Mr. Baker - Yes, I know, and I don't know to what extent it has load-  
2235 bearing capacity to handle all that. I would suggest that to the extent that it is  
2236 damaged, it would have to be repaired. But I don't know that we got an estimate on  
2237 exactly how much, or to what extent it would be damaged.

2238

2239 Ms. Dwyer - From a public safety standpoint, I'm kind of concerned  
2240 that all these houses have addresses on Eanes, but their access is from Wendel.  
2241 Mr. Blankinship, maybe you could address that.

2242

2243 Mr. Blankinship - That's been confusing to me since we received the  
2244 application. I don't know why that is, and it ought to be corrected.

2245

2246 Ms. Dwyer - When I went to look at the property, I went down  
2247 Eanes. I wasn't even aware of Wendel.

2248

2249 Mr. Blankinship - I vaguely remember actually saying to other staff when  
2250 we did our site visit, I'm glad I'm not driving an ambulance. It took us three or four  
2251 tries.

2252

2253 Ms. Harris - How wide is this road, this access road? Do you know?

2255

2256 Mr. Blankinship - It's 20 feet. The right-of-way I believe is 20 feet.

2257

2258 Ms. Dwyer - Any other questions by Board members? That  
2259 concludes the case.

2260

2261 **DECISION**

2262

2263 Mr. Nunnally - I move that we approve it. I don't think it will be a  
2264 detriment to the neighborhood. In fact, I think it'll be an improvement.

2265

2266 Mr. Wright - I'll second it.

2267

2268 Ms. Dwyer - Motion by Mr. Nunnally, seconded by Mr. Wright. Any  
2269 discussion?

2270

2271 Mr. Witte - I would like to make sure that the road is repaired by  
2272 the applicant, maintained during the process, and addressed at the end of it to  
2273 prevent normal automobile traffic from being impaired with ingress and egress due  
2274 to large potholes, which, obviously, large trucks cause, especially in inclement

2275 inclement weather.  
2276  
2277 Mr. Wright - I think that would be a condition that could be added to  
2278 ensure that.  
2279  
2280 Mr. Witte - That's presuming that when the road is legally  
2281 accessible to that.  
2282  
2283 Mr. Wright - Yes. It has to be legally accessible, because that's in  
2284 the conditions.  
2285  
2286 Ms. Harris - Can we add this without having to have the approval of  
2287 the applicant?  
2288  
2289 Mr. Blankinship - On a variance, yes ma'am.  
2290  
2291 Ms. Dwyer - As long we're approving all of these substandard—  
2292 what I consider illegal—lots that don't have access, there's a reason, I think, why  
2293 the Board of Supervisors has said lots need to have access to public streets. As  
2294 long as we're approving these, particularly ones like this that are located so far up  
2295 the road, my concern is the road maintenance. There are no written agreements,  
2296 as I can tell from listening to the people talk today, for a lot of these roadways. I  
2297 think it's very easy to see how disputes can arise, and how these roads can fail to  
2298 be properly maintained over time. I don't know if any of the other board members  
2299 share this concern. I think that if we as a Board approve these, we are getting  
2300 involved in facilitating and enabling these substandard lots to be on private drives  
2301 that may or may not be appropriately maintained. We don't really have any way to  
2302 ensure that, to ensure the safety of the people. Another concern on this one is that  
2303 everyone's address is on Eanes Lane, and they have access through Wendel. If  
2304 someone calls for an ambulance—I mean, when I drove by to look at the property,  
2305 I went down Eanes. I would have a lot of difficulty finding, probably, the right  
2306 house. I think there is a serious health, safety, and welfare issue that arises  
2307 because of the address confusion, and the road maintenance issue.

2309  
2310 Mr. Wright - Condition #6 says that the owner shall accept  
2311 responsibility for maintaining access to the property.  
2312  
2313 Ms. Dwyer - What does that mean? There's no way to really ensure  
2314 that the road is property maintained.  
2315  
2316 Mr. Blankinship - That standard condition's been there longer than I've  
2317 been here, but my understanding is the purpose of that is just to put everyone on  
2318 notice that the County is not going to maintain the road.  
2319  
2320 Ms. Dwyer - Right.

2321  
2322 Mr. Blankinship - It's more about who doesn't maintain it than about who  
2323 does.  
2324  
2325 Ms. Dwyer - We've had people come and say, "Well, I don't think I  
2326 should have to pay to maintain the whole road, because I only live in the front  
2327 part." That's one issue that we've already seen come up. There are people who,  
2328 out of the kindness of their hearts, have maintained the road, but they may not be  
2329 able to do that forever. I think we're really creating a serious health, safety, and  
2330 welfare issue by allowing all these substandard lots to be located so far off public  
2331 roadways that may or may not be maintained, and we have no control over it. We  
2332 have no ability to ensure that it's done. I think we're just creating a real safety  
2333 problem for future owners and residents of these houses.  
2334  
2335 Any other discussion?  
2336  
2337 Mr. Wright - Does the motion include something to add to the  
2338 suggested conditions that the property owner here will ensure that the road will be  
2339 repaired?  
2340  
2341 Mr. Nunnally - Put back in the condition.  
2342  
2343 Mr. Wright - Well, it's going to have to be put back in better  
2344 condition than that, especially, as Mr. Witte says, about the construction equipment  
2345 coming in there and so forth.  
2346  
2347 Ms. Dwyer - How would you want to word that, Mr. Wright? I believe  
2348 it's your motion?  
2349  
2350 Mr. Blankinship - I have that Mr. Nunnally made the motion.  
2351  
2352 Ms. Dwyer - Mr Nunnally.  
2353  
2354 Mr. Wright - My Nunnally made the motion. How do you want to  
2355 word it?  
2356  
2357 Mr. Nunnally - I don't know.  
2358  
2359 Mr. Witte - To repair prior to construction, and maintain throughout  
2360 construction the surface of the road so that it doesn't impede normal traffic. I  
2361 agree with Ms. Dwyer, but there's a house that uses Wendel Road past this  
2362 property, and it's the last one that can be used over here. I still think we need to  
2363 make sure that the fire, rescue, police, property owners, everybody can access  
2364 their property without going through potholes caused by the construction.  
2365  
2366 Ms. Dwyer - How are you going to do that?

2367  
2368 Mr. Nunnally - He was saying gravel it or—  
2369  
2370 Mr. Witte - I think they need to repair the road prior to construction,  
2371 maintain it through construction, and then repair any damage after construction  
2372 prior to occupancy.  
2373  
2374 Ms. Dwyer - So, you're going to require this one lot owner to repair  
2375 the road for all the people who live on that road.  
2376  
2377 Mr. Witte - If they're going to damage the road with the  
2378 construction equipment, I think they need to do that.  
2379  
2380 Ms. Dwyer - No, but I thought you said—  
2381  
2382 Mr. Blankinship - Restore it to the condition it's in before construction?  
2383  
2384 Mr. Witte - At the very least.  
2385  
2386 Ms. Dwyer - I'm sorry. I thought I heard you say repair before  
2387 construction, maintain it during construction, and then restore it.  
2388  
2389 Mr. Witte - That's true. Maintain it during construction.  
2390  
2391 Ms. Dwyer - It has potholes now.  
2392  
2393 Mr. Witte - It's accessible now, when I drove down it. Somebody  
2394 in a small vehicle or a low-sitting ambulance, once construction vehicles get  
2395 through there, won't be able to access it.  
2396  
2397 Ms. Harris - Could you add to Condition 6, repairing any damage  
2398 caused by construction?  
2399  
2400 Mr. Wright - Maintain it during construction, and repair any damage  
2401 caused by construction. How about that?  
2402  
2403 Ms. Harris - Okay.  
2404  
2405 Mr. Witte - Okay.  
2406  
2407 Mr. Wright - That sounds good. Do you have that, Mr. Blankinship?  
  
2409  
2410 Mr. Blankinship - Yes sir.  
2411  
2412 Ms. Dwyer - Do we want to require access only from Wendel?

2413  
2414 Mr. Witte - I don't believe there is any other access.  
2415  
2416 Ms. Dwyer - There is kind of a roadway from Eanes.  
2417  
2418 Mr. Witte - That's private property. She said that was deeded  
2419 access to her property.  
2420  
2421 Mr. Wright - He can't get to it.  
2422  
2423 Mr. Witte - He can't get to it from Eanes.  
2424  
2425 Ms. Dwyer - I don't think we really know what the status is on that.  
2426  
2427 Mr. Wright - This lady that wrote us this letter said that she owned it.

2429  
2430 Mr. Blankinship - There's no harm adding that condition.  
2431  
2432 Mr. Wright - You can put a condition in there if you want to.  
2433  
2434 Ms. Dwyer - Should we make require the address to be Wendel?  
2435  
2436 Mr. Blankinship - I'm a little hesitant to do that.  
2437  
2438 Mr. Wright - Can we do that?  
2439  
2440 Mr. Blankinship - I don't know exactly how that's determined.  
2441  
2442 Mr. Witte - From a public standpoint, I would be more comfortable  
2443 if all of them had a Wendel Road address.  
2444  
2445 Mr. Blankinship - I think they should be, but I'm sure that's within this  
2446 Board's purview.  
2447  
2448 Mr. Wright - Isn't that something that the County should look into?  
2449  
2450 Ms. Dwyer - Who would look at that?  
2451  
2452 Mr. Blankinship - The Planning Department, but I don't know enough  
2453 about how that function operates to advise you on a condition that might create  
2454 more problems than it resolves.  
2455  
2456 Ms. Harris - Wouldn't that have to be requested by the residents?  
2457 I've known residents to change street addresses, to change street names.  
2458

2459 Mr. Blankinship - I know we do sometimes require people to change their  
2460 addresses, but it usually creates quite a fuss. We try not to.

2461  
2462 Mr. Wright - You have to change everything.

2463  
2464 Mr. Blankinship - I'll certainly bring it up with staff, but I'm uncomfortable  
2465 advising you on how a condition could be put on this case.

2466  
2467 Mr. Wright - I don't think we should get into that. I think we could  
2468 put a condition on here that the property be accessed over Wendel Road, if we  
2469 want to, to make sure that they don't try to go through Eanes.

2470  
2471 Ms. Dwyer - All right. We have a motion to approve the variance  
2472 request with two added conditions. One is that access would only be from  
2473 Wendel, and the second condition would be that the applicant will maintain the  
2474 roadway during construction, and repair any damage done to the roadway during  
2475 construction.

2476  
2477 All in favor say aye. All opposed say no. The ayes have it; the motion passes.

2478  
2479 Ms. Dwyer - No. And my reason for opposition is that I think that creating another  
2480 lot without public right-of-way, without a maintenance agreement, and with a  
2481 confusing address creates a health, safety, and welfare issue that we should not  
2482 participate in doing.

2483  
2484 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
2485 Mr. Wright the Board **approved** application **A-025-08, Emerald Land**  
2486 **Development's** request for a variance from Section 24-9 to build a one-family  
2487 dwelling at 5311 Eanes Lane (Parcel 807-711-0289), zoned R-4, One-family  
2488 Residence District (Varina). The public street frontage requirement is not met. The  
2489 Board approved the variance subject to the following conditions:

2490  
2491 1. This variance applies only to the public street frontage requirement for one  
2492 dwelling only. All other applicable regulations of the County Code shall remain in  
2493 force.

2494  
2495 2. Only the improvements shown on the plot plan and building design filed with the  
2496 application may be constructed pursuant to this approval. Any additional  
2497 improvements shall comply with the applicable regulations of the County Code.  
2498 Any substantial changes or additions to the design or location of the improvements  
2499 may require a new variance.

2500  
2501 3. Approval of this request does not imply that a building permit will be issued.  
2502 Building permit approval is contingent on Health Department requirements,  
2503 including, but not limited to, soil evaluation for a septic drainfield and reserve area,  
2504 and approval of a well location.

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2550

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

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

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

7. Construction activity on the site shall be limited to the hours of 7 a.m. to 8 p.m. Monday through Saturday.

8. [ADDED] The property shall be accessed from Wendel Road and not from Eanes Lane.

9. [ADDED] The applicant shall maintain Wendel Road during construction. Before a certificate of occupancy is issued, the applicant shall restore Wendel Road to its condition prior to construction.

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

**UP-023-08 METROMONT CORPORATION** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to place three temporary office trailers at 1640 Darbytown Road (Parcel 806-710-8061), zoned R-5AC, General Residence District (Conditional) (Varina)

Ms. Dwyer - All those who want to speak for or against the case, please stand to be sworn.

Mr. Blankinship - Will you raise your right hand please? Do you swear the testimony you're about to give is the truth and nothing but the truth so help you God?

Mr. Theobald - I do. Good morning, ladies and gentleman, my name is Jim Theobald. I'm an attorney with Hirschler Fleischer. I'm here on behalf of the applicant, Metromont Corporation.



2551 Metromont is a pre-cast concrete manufacturer specializing in the construction of  
2552 sports arenas, office buildings, parking decks, and industrial buildings. It presently  
2553 owns and operates a structural concrete plant at 1650 Darbytown Road near the  
2554 intersection of Darbytown and Louisa Street. Metromont also owns the adjacent  
2555 25-acre parcel at 1640 Darbytown Road, which is the subject of this request for a  
2556 two-year temporary conditional use permit. Metromont's requesting the temporary  
2557 conditional use permit for the placement of three temporary modular structures in  
2558 the parking area to support industrial operations that occur at his plant.  
2559 Essentially, the facilities housing the administrative office, the break room and the  
2560 restrooms, are becoming dilapidated. They are in dire need of repair, and we need  
2561 to provide alternate facilities in order to accommodate the workers and the  
2562 administrative staff.

2563

2564 We're proposing these structures. One is a modular building for office space, one  
2565 is for a break area for employees, and one is for a restroom facility. Ultimately, we  
2566 intend to make these or other structures permanent. The property which is  
2567 currently zoned R-5AC—an odd little cluster zoning case that some of you may  
2568 remember; I know I was here that evening—is the subject of a rezoning application  
2569 that we filed last week. Metromont's requested to take the property back to M-2,  
2570 and is working with the Planning Department on a set of proffered conditions, and  
2571 there are community meetings planned in the near future.

2572

2573 We believe that approval of this conditional use permit, and the placement of the  
2574 temporary modular buildings will not adversely affect the health, safety, nor welfare  
2575 of persons residing in the nearby neighborhoods. There is a very large natural  
2576 buffer between the proposed temporary structures and the Richland Heights  
2577 neighborhood to the northwest. We further intend to place fencing between the  
2578 temporary development in that same neighborhood.

2579

2580 Approval of this request will not unreasonably impair an adequate supply of light  
2581 and air to any adjacent property owners. These are low-lying small structures. The  
2582 aggregate square feet in these three structures is 5,400 square feet, and they are  
2583 located several hundred feet from the adjacent residential properties. The request  
2584 will not increase congestion in the streets, as it will not generate additional traffic at  
2585 the industrial plant. The number of employees is not changing, the entrance is not  
2586 changing. So, no additional impact with regard to traffic. This request will not  
2587 increase public danger from fire or otherwise unreasonably affect public safety, as  
2588 it will be constructed and maintained in a quality manner, and in accordance with  
2589 all state and local requirements. It will not impair the character of the district, as  
2590 the structures will be located in an industrial area, and are buffered from residential  
2591 neighborhoods. It's not incompatible with the general plans and objectives of the  
2592 Land Use Plan, which suggests the property for heavy industrial use. Finally, it will  
2593 not likely reduce or impair the value of buildings or property in the surrounding  
2594 areas.

2595

2596 For these reasons, I would respectfully request the Board approve Metromont's  
2597 request for a temporary conditional use permit to place these three temporary  
2598 structures in a temporary parking lot at 1640 Darbytown Road. We have reviewed  
2599 the proposed conditions, and are in agreement with them. With that, I'd be happy  
2600 to answer any questions.

2601

2602 Mr. Blankinship - There's an existing house on the property. Is that going  
2603 to be demolished?

2604

2605 Mr. Theobald - At some point, yes it will be.

2606

2607 Mr. Wright - What will happen when this permit expires, Mr.  
2608 Theobald?

2609

2610 Mr. Theobald - We have filed a case, Mr. Wright, to change the zoning  
2611 back to M-2 so that these facilities may be made permanent. That request was  
2612 filed I believe last week. To the extent that request was not approved, then these  
2613 facilities would have to be removed within a two-year period, per your condition, as  
2614 the permit would expire.

2615

2616 Mr. Wright - If that request is approved—

2617

2618 Mr. Theobald - Then these would remain permanent.

2619

2620 Mr. Wright - They would remain because they would be approved  
2621 under that zoning.

2622

2623 Mr. Theobald - Yes sir. Correct. This allows us to, basically, take  
2624 down dilapidated structures, and fix some old setback issues. This plant has been  
2625 there for over 60 years, so we've been working with the County to make sure we  
2626 work through some of those old issues. This allows us to take the next step prior to  
2627 receiving the other zoning.

2628

2629 Ms. Dwyer - The structure that's closest to Darbytown is eventually  
2630 going to be removed entirely?

2631

2632 Mr. Theobald - Yes ma'am.

2633

2634 Ms. Dwyer - It's replacement office space—assuming you get the  
2635 rezoning—will be on the parcel that we're discussing today.

2636

2637 Mr. Theobald - Correct.

2638

2639 Mr. Witte - What purpose do the buildings closest to Darbytown  
2640 have now? Or are they just vacant?

2641

2642 Mr. Theobald - If I misspeak, I hope someone will correct me, but  
2643 they're used for office space, a break room, and restrooms. So, they're for  
2644 administrative purposes. That's what we're attempting to replace. Did I say that  
2645 correctly?  
2646  
2647 Ms. Dwyer - Are you familiar with the conditions?  
2648  
2649 Mr. Theobald - Yes ma'am. We're in agreement with them.  
2650  
2651 Ms. Dwyer - So, the trailer will be connected to public water and  
2652 sewer.  
2653  
2654 Mr. Theobald - Yes ma'am.  
2655  
2656 Ms. Dwyer - In our packet, there's a note that the request for break  
2657 room and restroom trailers has been deleted.  
2658  
2659 Mr. Blankinship - The limitation to those two. When it was originally  
2660 submitted, they were thinking the office trailer was going to be handled differently  
2661 from the restroom and break room, so they were saying that this request applied  
2662 only to the others. That sentence should be deleted. I'm sorry, that is a very  
2663 confusing way that we did that. That sentence should be deleted so that this  
2664 approval would apply to all three.  
2665  
2666 Ms. Dwyer - All three.  
2667  
2668 Mr. Witte - Are these trailers going to be connected?  
2669  
2670 Mr. Theobald - No, I believe they're separate.  
2671  
2672 Mr. Blankinship - The restroom and break room I think are connected by  
2673 a deck.  
2674  
2675 Mr. Theobald - Right, by a deck. Separate structures connected by a  
2676 deck as to the break room and the restroom. You can see that they're physically  
2677 adjacent to the concrete plant, and significantly away from any residential areas.  
2678  
2679 Ms. Dwyer - Any questions by Board members?  
2680  
2681 Mr. Blankinship - I'm sure they'll be at least as attractive as the existing  
2682 building.  
2683  
2684 Mr. Theobald - I think that's a fair statement.  
2685

2686 Mr. O'Kelly - I was going to say, Mr. Theobald, would you have any  
2687 objection to adding a condition requiring a landscaping plan for this facility, should  
2688 it become permanent?  
2689  
2690 Mr. Theobald - I don't have an objection to that, keeping in mind that  
2691 as we go through the zoning, I guess we'd have to go through POD, and you  
2692 would have a landscape and lighting plan, presumably, as a part of that. But if  
2693 you'd like to also make that a condition, that would not be a problem.  
2694  
2695 Mr. O'Kelly - Okay.  
2696  
2697 Mr. Theobald - That would be in the event it were permanent.  
2698  
2699 Mr. O'Kelly - Correct.  
2700  
2701 Ms. Dwyer - Landscaping plans for these trailers? Is that what you  
2702 mean?  
2703  
2704 Mr. Theobald - If they became permanent, I think was his—But you'll  
2705 get that through a POD process, if we're successful with the rezoning.  
2706  
2707 Ms. Dwyer - I'm assuming Mr. O'Kelly's thinking more in the near  
2708 term, that is landscaping now for when the trailers are installed. Is that what you're  
2709 thinking?  
2710  
2711 Mr. O'Kelly - It would be nice.  
2712  
2713 Mr. Witte - What's the expected life of these trailers?  
2714  
2715 Mr. Theobald - They're actually capable of being permanent facilities.  
2716 They'll be put on foundations with brick skirting, etcetera, so these are designed for  
2717 decades of use. These are not temporary in that sense.  
2718  
2719 Ms. Dwyer - They're modular.  
2720  
2721 Mr. Theobald - They are. They're modular buildings.  
2722  
2723 Ms. Harris - What setback are you using for these trailers on  
2724 Darbytown Road?  
2725  
2726 Mr. Theobald - I'm sorry?  
2727  
2728 Ms. Harris - What setbacks.  
2729  
2730 Mr. Theobald - Oh, the setbacks?  
2731

2732 Ms. Harris - Yes.  
2733  
2734 Mr. Theobald - I'm not sure what they show.  
2735  
2736 Ms. Harris - I was trying to find it.  
2737  
2738 Mr. Blankinship - It's about 65 feet.  
2739  
2740 Mr. Theobald - Further back than the existing buildings.  
2741  
2742 Ms. Harris - The structure that is already there is about, what, 30  
2743 feet maybe?  
2744  
2745 Mr. Theobald - The existing house, or the existing buildings?  
2746  
2747 Ms. Harris - The building that's on the land now. Will it be further  
2748 back, is my question.  
2749  
2750 Male - On this site, or the adjacent site? The existing building  
2751 on the adjacent site is like a foot off the right-of-way. The existing house that's on  
2752 this subject property—I think when we surveyed it, it's probably 30 feet off the  
2753 right-of-way. It's closer to the right-of-way than the proposed administration  
2754 buildings they want to put in.  
2755  
2756 Ms. Harris - Okay. Thank you.  
2757  
2758 Ms. Dwyer - Any more questions by Board members? Thank you.  
2759 We did have another speaker. Ms. Chandler, did you want to speak in opposition?

2761  
2762 Ms. Chandler - Yes. I wasn't real sure. Like I said, this is all new to me.  
2763 My grandfather owned the property I think down from it. So, if they're going to do  
2764 this on their property, I have no problem with that. I just wasn't real sure what was  
2765 what.  
2766  
2767 Ms. Dwyer - Okay. So, you don't have any questions, then?  
2768  
2769 Ms. Chandler - No.  
2770  
2771 Ms. Dwyer - Thank you. That concludes the case.  
2772  
2773 **DECISION**  
2774  
2775 Ms. Harris - I move that we approve this use permit.  
2776  
2777 Mr. Witte - I'll second that.

2778  
2779 Ms. Dwyer - Okay. Do we have any changes to the conditions?  
2780  
2781 Mr. Witte - My only interest is since they plan to make this a  
2782 permanent structure is to have landscaping on the Darbytown Road side while it's  
2783 a temporary structure.  
2784  
2785 Ms. Dwyer - Mr. O'Kelly, you brought that up.  
2786  
2787 Mr. O'Kelly - I've drafted a condition, which would be #7: A  
2788 landscaping plan shall be submitted for administrative review and approval, and  
2789 the landscaping installed prior to the issuance of a Certificate of Occupancy.  
2790  
2791 Ms. Dwyer - Is that agreeable to everyone?  
2792  
2793 Ms. Harris - The reason that I am seeking the approval of this use  
2794 permit is because I don't think that it will adversely affect the health, safety, or  
2795 welfare of that area. In fact, I think it will enhance the welfare of that area.  
2796  
2797 Ms. Dwyer - Do we have a second? Mr. Witte, did you—  
2798  
2799 Mr. Witte - Yes, I'll second that.  
2800  
2801 Ms. Dwyer - I'm sorry, did you?  
2802  
2803 Mr. Witte - Yes.  
2804  
2805 Mr. Wright - Yes, he did.  
2806  
2807 Ms. Dwyer - Motion made by Ms. Harris, seconded by Mr. Witte.  
2808 Any discussion? All in favor say aye. All opposed say no. The ayes have it; the  
2809 motion passes.  
2810  
2811 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
2812 Witte the Board **approved** application **UP-023-08, Metromont Corporation's**  
2813 request for a temporary conditional use permit pursuant to Section 24-116(c)(1) to  
2814 place three temporary office trailers at 1640 Darbytown Road (Parcel 806-710-  
2815 8061), zoned R-5AC, General Residence District (Conditional) (Varina). The  
2816 Board approved the Conditional Use Permit subject to the following conditions:

2818  
2819 1. Only the improvements shown on the plot plan and building designs filed with  
2820 the application may be constructed pursuant to this approval. Any additional  
2821 improvements shall comply with the applicable regulations of the County Code.  
2822 Any substantial changes or additions to the design or location of the improvements  
2823 may require a new use permit.



2870 garage is considered by the County in the front yard, but it's actually to the right of  
2871 the house. We're just trying to get a garage built to the right of the house.  
2872  
2873 Ms. Dwyer - As your house is built, the garage is really in the rear  
2874 yard of your house, though not technically in the rear yard.  
2875  
2876 Ms. Clark - It's right here, so most of it's to the rear of the house.  
2877  
2878 Ms. Dwyer - We've run across this before where we have a corner  
2879 lot, and the house is oriented toward one street, but the official front yard is  
2880 another street. That's the source of your problem.  
2881  
2882 Ms. Clark - That's exactly right.  
2883  
2884 Mr. Wright - Those doors that we see on the plan, will they face—  
2885 What side? It says left side elevation, so that means it's going to be on Town Hall  
2886 Drive. Is that correct?  
2887  
2888 Ms. Clark - It will face Town Hall Court. It will face the front of—the  
2889 street. The house faces the street, and the garage doors will face the street. They'll  
2890 face forward.  
2891  
2892 Mr. Witte - Your house actually faces Town Hall Court?  
2893  
2894 Ms. Clark - Correct.  
2895  
2896 Mr. Witte - But your address is Town Hall Drive.  
2897  
2898 Ms. Clark - No, it's Town Hall Court.  
2899  
2900 Mr. Witte - Your front yard is Town Hall Drive.  
2901  
2902 Mr. Blankinship - Yes.  
2903  
2904 Ms. Clark - No, my front yard is Town—Well—  
2905  
2906 Mr. Blankinship - Based on the Zoning Ordinance the front yard is Town  
2907 Hall Drive.  
2908  
2909 Mr. Witte - Oh, okay. All right. Thank you.  
2910  
2911 Ms. Clark - Yes.  
2912  
2913 Mr. Blankinship - You'll drive off Town Hall Court, up your driveway, past  
2914 your house on the left, and go straight into the garage.  
2915



2916 Ms. Clark - Basically, yes.  
2917  
2918 Mr. Blankinship - Okay.  
2919  
2920 Ms. Dwyer - Any questions by Board members? How far back is the  
2921 garage from Town Hall Court?  
2922  
2923 Ms. Clark - I don't know the exact distance, but from the street to  
2924 the house is 75 feet. So, it's going to be more than 75 feet; I don't know how far.  
2925  
2926 Ms. Dwyer - You've read the conditions?  
2927  
2928 Ms. Clark - Yes.  
2929  
2930 Ms. Dwyer - Are you in agreement with those?  
2931  
2932 Ms. Clark - Yes. I did want to ask if we were going to get the plan  
2933 returned to us.  
2934  
2935 Mr. Blankinship - You can after 30 days. We have to hold them for 30  
2936 days in case there's an appeal.  
2937  
2938 Ms. Clark - Okay.  
2939  
2940 Ms. Harris - One question more. The rear yard setback for that  
2941 garage, do you know how many feet? I'm just looking at the drawing, and it seems  
2942 very close to your line.  
2943  
2944 Mr. Blankinship - It shows five, and that is the minimum.  
2945  
2946 Ms. Dwyer - Plus there's an easement behind that, I believe.  
2947  
2948 Ms. Clark - Correct.  
2949  
2950 Mr. Blankinship - One-hundred and fifty feet worth.  
2951  
2952 Ms. Clark - Yes, that's correct. That is an easement.  
2953  
2954 Ms. Dwyer - Any more questions by Board members?  
2955  
2956 Mr. Nunnally - I think Ms. Dwyer, you did ask if she read the  
2957 conditions. You're in agreement with them.  
2958  
2959 Ms. Clark - Yes sir.  
2960  
2961 Mr. Nunnally - Okay, thank you.

2962  
 2963 Ms. Dwyer - All right, that concludes the case.  
 2964  
 2965 Ms. Clark - Thank you.  
 2966  
 2967 Ms. Dwyer - Thank you.  
 2968  
 2969 **DECISION**  
 2970  
 2971 Mr. Nunnally - I move we approve it.  
 2972  
 2973 Mr. Wright - Second.  
 2974  
 2975 Ms. Dwyer - Motion made by Mr. Nunnally, seconded by Mr. Wright.  
 2976 Any discussion?  
 2977  
 2978 Mr. Blankinship - State some sort of reason?  
 2979  
 2980 Ms. Dwyer - The basis for the motion?  
 2981  
 2982 Mr. Nunnally - I think it certainly will not be a detriment to any property  
 2983 around it, and it's back 800 feet, I think it is, isn't it. I don't think you can see it from  
 2984 the road. That's the reason I move we approve it.  
 2985  
 2986 Mr. Wright - Also, it will not affect the health, safety, and welfare of  
 2987 the persons residing in the area. It will not be likely to reduce or impair the values  
 2988 of buildings or property in the surrounding area. I think it's certainly in substantial  
 2989 accordance with the general purpose and objectives of Chapter 24 of the County  
 2990 Code.  
 2991  
 2992 Ms. Harris - It seems to be a very nice garage, and I think it's in  
 2993 keeping with the other real estate.  
 2994  
 2995 Ms. Dwyer - A motion's been made to approve the case. All in favor  
 2996 say aye. All opposed say no. The ayes have it; the motion carries unanimously.

2998  
 2999 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by  
 3000 Mr. Wright the Board **approved** application **UP-024-08, Ronald and Cynthia**  
 3001 **Clark's** request for a conditional use permit pursuant to Section 24-95(i)(4) to build  
 3002 a garage in the front yard at 8391 Town Hall Court (New Market Heights) (Parcel  
 3003 827-684-9118), zoned A-1, Agricultural District (Varina). The Board granted the  
 3004 Conditional Use Permit subject to the following conditions:  
 3005 1. Only the improvements shown on the plot plan and building design filed with the  
 3006 application may be constructed pursuant to this approval. Any additional  
 3007 improvements shall comply with the applicable regulations of the County Code.

3008 Any substantial changes or additions to the design or location of the improvements  
3009 may require a new use permit.

3010  
3011 2. The new construction shall match the existing dwelling as nearly as practical in  
3012 materials and color.

3013  
3014 3. The garage may not be used for dwelling purposes and there shall be no  
3015 plumbing provided to the second floor of the garage.

3016  
3017  
3018 Affirmative: Dwyer, Harris, Nunnally, Witte, Wright 5  
3019 Negative: 0  
3020 Absent: 0

3021

3022

3023 Ms. Dwyer - All right. Any comments or changes to the minutes?  
3024 Any changes, additions or corrections to the minutes?

3025

3026 Mr. Wright - Page 10, line 415. It's a typo. Ms. McGetrick. It says,  
3027 "as said." It should be "has said," of course. On page 38, line 1708, I think it  
3028 should be, "what was the ordinance in effect at that time," instead of, "was what the  
3029 ordinance."

3030

3031 Ms. Dwyer - All right.

3032

3033 Mr. Blankinship - What was the line number again?

3034

3035 Mr. Nunnally - 1708.

3036

3037 Mr. Wright - 1708.

3038

3039 Ms. Dwyer - 1708. I had one on page 21. It says, "fairly visible." I  
3040 think I said barely—b-a-r-e-l-y. Line 949. Any other changes? Do I have a  
3041 motion on the minutes?

3042

3043 Mr. Wright - I move we approve the minutes as submitted.

3044

3045 Ms. Harris - I second the motion.

3046

3047 Ms. Dwyer - Is that, "as corrected," Mr. Wright?

3048

3049 Mr. Wright - As corrected.

3050

3051 Ms. Dwyer - Motion by Mr. Wright, seconded by Ms. Harris. All in  
3052 favor say aye. All opposed say no. The ayes have it; the motion passes.

3053

3054 On a motion by Mr. Wright, seconded by Ms. Harris, the Board **approved** as  
3055 corrected the **Minutes of the September 25, 2008** Henrico County Board of  
3056 Zoning Appeals meeting.

3057

3058

3059	Affirmative:	Dwyer, Harris, Nunnally, Witte, Wright	5
3060	Negative:		0
3061	Absent:		0

3062

3063

3064 Ms. Dwyer - Is there any other business?

3065

3066 Mr. Wright - You better get up before dawn next time.

3067

3068 Mr. Blankinship - Yes. Let me remind you again, the location has been  
3069 moved for the next two meetings.

3070

3071 Mr. Nunnally - I don't have to get up until 8:30.

3072

3073 Ms. Dwyer - You can sleep in. Motion for adjournment?

3074

3075 Ms. Harris - I so move.

3076

3077 Mr. Witte - I'll second.

3078

3079 Ms. Dwyer - All in favor say aye. All opposed say no. The ayes  
3080 have it; the motion passes.

3081

3082

3083	Affirmative:	Dwyer, Harris, Nunnally, Witte, Wright	5
3084	Negative:		0
3085	Absent:		0

3086

3087

3088 There being no further business, the Board **adjourned** until the November 20,  
3089 2008 meeting at 9 a.m.

3090

3091

3092

3093

3094

3095 Elizabeth G. Dwyer  
3096 Chairman

3097

3098

3099

3100  
3101  
3102  
3103  
3104  
3105

Benjamin Blankinship, AICP  
Secretary