

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, APRIL 28, 2005,**
4 **AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
5 **DISPATCH ON APRIL 7 AND 14, 2005.**
6

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

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

7
8 Mr. Wright - Welcome to the April meeting of the County of Henrico
9 Board of Zoning Appeals to order. Would you stand for the **Pledge of Allegiance to**
10 **the Flag of Our Country.** Mr. Secretary, would you read the rules, please.
11

12 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
13 and gentlemen. The rules for this meeting are as follows. As Secretary, I will announce
14 each case, and while I am speaking, the applicant should come down to the podium. I
15 will ask everyone who intends to speak on that case, in favor or in opposition, to stand
16 and be sworn in. The applicant will then present their testimony. After the applicant has
17 spoken, the Board will ask them questions, and then anyone else who wishes to speak
18 will be given the opportunity. After everyone has spoken, the applicant, and only the
19 applicant, will be given the opportunity for rebuttal. After hearing the case, and asking
20 questions, the Board will take the matter under advisement. They will render all of their
21 decisions at the end of the meeting. If you wish to know their decision on a specific
22 case, you can either stay until the end of the meeting, or you can check the Planning
23 Office website this afternoon. We update it within about a half an hour of when the
24 meeting ends. Or you can call the Planning Office later this afternoon. This meeting is
25 being tape recorded, so we will ask everyone who speaks, to speak directly into the
26 microphone on the podium, to state your name, and to spell your last name please.
27 And finally, out in the foyer, there are two binders, containing the staff report for each
28 case, including the conditions that have been recommended by the staff.
29

30 Mr. Wright - Thank you sir. Do we have any requests for withdrawals or
31 deferrals?
32

33 Mr. Blankinship - A-37-2005 has been withdrawn. We have a request for a
34 rehearing of one of last month's cases.

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Beginning at 9:00

A-22-2005 **FREDDY COBB** requests a variance from Section 24-95(d)(2) to build a one-family dwelling at 2725 Hungary Road (Parcel 770-758-9784), zoned R-3, One-family Residence District (Fairfield). The lot width requirement is not met. The applicant has 78 feet lot width, where the Code requires 100 feet lot width. The applicant requests a variance of 22 feet lot width.

Mr. Wright - Does anyone else desire to speak with reference to this matter? Would you raise your right hand and be sworn please?

Mr. Blankinship - Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. Cobb - I do. Freddy Cobb. My parcel has a width of 78 feet; the Code requires 100 feet width because there's no public sewer. We're requesting a variance of 22 feet lot width.

Mr. Blankinship - Mr. Chairman, this is the case that was deferred last month in order to get more information about either reserving or dedicating right-of-way, and we did confer with the Department of Public Works. They don't foresee any circumstances under which Mayfair would be taken into the County system, so they suggested that if the Board's concerned about that, they might require that the buildings be set back the additional distance necessary to provide right-of-way there, but that they did not foresee the need for any requirement to dedicate or reserve right-of-way.

Mr. Wright - All right. No need to take additional testimony. I think we've heard everything we need to hear on this case. That's the sole question. Any questions of members of the Board concerning that requirement for that setback?

Ms. Dwyer - Last month you weren't sure where the house would be located – do you have a better sense of that?

Mr. Cobb - No, I really have not put forth any effort or expense till we figure out whether we'll be able to build on it at all.

Mr. Wright - Would that setback cause you a problem?

Mr. Cobb - The short answer is "I don't know." The lot's kind of weird the way it's designed. One of the issues we were wrestling with, when we had the variance before, was getting the septic in there, and there are a couple of things we're dealing with there. As the lot goes back, it gets wet, and you lose an opportunity there. Also, there's an abandoned well, and my understanding is that you cannot put your septic field within a 100 feet or 50 feet of that, depending on whether it's been filled in or

81 not. If we've got to build on that little front area, we're dealing with a lot of things to
82 wrestle with right there. I don't know how the setback would affect that.

83
84 Ms. Dwyer - Would there be any chance in the future that this would be
85 subdivided again?

86
87 Mr. Cobb - No, it can't be, because of the frontage. I'm asking to get 22
88 feet of variance; it's got to have that 100 feet, so I'm sure that's impossible, because
89 Mayfair doesn't count since it's not a public road.

90
91 Mr. Blankinship - It would have to have Planning Commission approval if it
92 were divided a further time, unless it were a family division.

93
94 Mr. Cobb - You mean it could be with approval?

95
96 Ms. Dwyer - He said it would have to go to the Planning Commission for
97 subdivision approval.

98
99 Mr. Cobb - I don't think there's much chance of that, because that lot
100 gets very wet very quick. I don't think you're going to be able to build anything on the
101 back part of that lot.

102
103 Ms. Harris - I noticed that in our notes a variance for lot width was
104 approved for this property in 2003 – would that have any bearing on us today?

105
106 Mr. Blankinship - That was essentially the same application. It was granted,
107 but it's expired.

108
109 Mr. Cobb - Back then it was only a one-year grant; I didn't get on it as
110 soon as I should, and then we started running into wrestling with the septic issues, and
111 then time was up.

112
113 Mr. Wright - Any further questions of the Board? Hearing none, that
114 concludes the case.

115
116 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
117 Kirkland, the Board **granted** application **A-22-2005** for a variance to build a one-family
118 dwelling at 2725 Hungary Road (Parcel 770-758-9784). The Board granted the
119 variance subject to the following conditions:

120
121 1. This variance applies only to the minimum lot width requirement. All other
122 applicable regulations of the County Code shall remain in force.

123
124 2. At the time of building permit application, the applicant shall submit the
125 necessary information to the Department of Public Works to ensure compliance with the

126 requirements of the Chesapeake Bay Preservation Act and the code requirements for
127 water quality standards.

128
129 3. Approval of this request does not imply that a building permit will be issued.
130 Building permit approval is contingent on Health Department requirements, including,
131 but not limited to, soil evaluation for a septic drainfield and reserve area.

132
133 4. [ADDED] If the house is set back more than 110 feet from Hungary Road, it shall
134 be oriented to face Mayfair Avenue.

135
136 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
137 Negative: 0
138 Absent: 0

139
140 The Board granted this request, as it found from the evidence presented that, due to the
141 unique circumstances of the subject property, strict application of the County Code
142 would produce undue hardship not generally shared by other properties in the area, and
143 authorizing this variance will neither cause a substantial detriment to adjacent property
144 nor materially impair the purpose of the zoning regulations.

145
146 **A-36-2005** **JOSEPH HOLMES, JR.** requests a variance from Section 24-95(b)
147 to build a one-family dwelling at 8820 Midway Road (Westhampton
148 Settlement) (Parcel 751-740-0207), zoned R-3, One-family
149 Residence District (Tuckahoe). The lot width requirement is not
150 met. The applicant has 50 feet lot width, where the Code requires
151 65 feet lot width. The applicant requests a variance of 15 feet lot
152 width.

153
154 Mr. Wright - Does anyone else desire to speak with reference to this
155 matter? Would you raise your right hand and be sworn please?

156
157 Mr. Blankinship - Do you swear that the testimony you are about to give is the
158 truth, the whole truth, and nothing but the truth, so help you God?

159
160 Mr. Holmes - I do. My name is Joseph Holmes, Jr.

161
162 Ms. Holmes - My name is Sylvia Holmes. He's seeking variance for this
163 property. The Code requires 65 feet, and it's only 50 feet. We need to sell this
164 property. My husband had a stroke, and we have extensive medical expenses, but the
165 lot as is, is not buildable, so we're seeking variance in order to sell the property in order
166 to help with his medical expenses.

167
168 Mr. Wright - So you've got a 50-foot lot you want to sell, and you can't
169 sell it unless you get a variance for the frontage. Are there other homes in that area
170 with 50-foot frontage?

171

172 Ms. Holmes - Yes there are.
173
174 Ms. Dwyer - There's a lot next to you with 50-foot frontage – is there any
175 chance that that could be combined with your lot?
176
177 Ms. Bertsch - My name is Tatiana Bertsch. I'm their representative, and I
178 spoke with the person who owns the next-door property. In the tax records, it's Ms.
179 Oliver; she's deceased, and her relatives say they are not selling this land. They have
180 had it for many years, and it's part of their heritage, and they don't want to sell this
181 property.
182
183 Mr. Wright - So the property next door is not available for purchase? Mr.
184 Blankinship, I'm looking at our map. It looks like 8808, 8806, 8804, 8802, 8800, are all
185 50-foot lots – is that correct?
186
187 Mr. Blankinship - I believe so, unless they took a string of 50-foot lots and
188 eliminated one of them and made all the others 65, just looking at the aerial photograph,
189 those appear to be a little bit wider. Starting from this property and going to the west,
190 8822, 8902, 8904, those all appear to be 50-foot lots to me. We had two cases in the
191 past year on this road similar to this.
192
193 Mr. Wright - Is there anything further you wish to state?
194
195 Ms. Harris - Are you aware that this issue has come up before in this
196 neighborhood? Do you know when this came up?
197
198 Ms. Bertsch - Yes. No.
199
200 Mr. Wright - Is anyone here in opposition to this request? Hearing none,
201 that concludes the case.
202
203 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
204 Kirkland, the Board **denied** application **A-36-2005** for a variance to build a one-family
205 dwelling at 8820 Midway Road (Westhampton Settlement) (Parcel 751-740-0207).
206
207 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
208 Negative: 0
209 Absent: 0
210
211 The Board denied your request as it found from the evidence presented that authorizing
212 this variance would be of substantial detriment to adjacent property or would materially
213 impair the purpose of the zoning regulations.
214
215 **A-37-2005** **HERITAGE HOMES, INC.** requests a variance from Section 24-94
216 to build a one-family dwelling at 11521 Bell Tower Court (Bell
217 Tower) (Parcel 742-756-3637), zoned R-3C, One-family Residence

218 District (Conditional) (Three Chopt). The front yard setback is not
219 met. The applicant proposes 35 feet front yard setback, where the
220 Code requires 40 feet front yard setback. The applicant requests a
221 variance of 5 feet front yard setback.
222

223 Mr. Blankinship - A-37-2005 was withdrawn.
224

225 After an advertised public hearing, the Board **allowed withdrawal** of application **A-37-**
226 **2005** for a variance to build a one-family dwelling at 11521 Bell Tower Court (Bell
227 Tower) (Parcel 742-756-3637).
228

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

232

233 The Board granted withdrawal without prejudice because it was determined that the
234 application was unnecessary to obtain the building permit as submitted.
235

236 **A-38-2005** **GEORGE R. BACON** requests a variance from Section 24-95(i)(2)
237 to build a detached garage at 404 Berwickshire Drive (Sleepy
238 Hollow) (Parcel 752-736-2346), zoned R-1, One-family Residence
239 District (Tuckahoe). The accessory structure location requirement
240 is not met. The applicant proposes a detached garage in the side
241 yard, where the Code allows accessory structures in rear yard.
242

243 Mr. Wright - Does anyone else desire to speak with reference to this
244 case? Would you raise your right hand and be sworn please?
245

246 Mr. Blankinship - Do you swear that the testimony you are about to give is the
247 truth, the whole truth, and nothing but the truth, so help you God?
248

249 Mr. Bacon - I do. I'm George Bacon, the owner of the property. I
250 assume that you have the same paper that I do on this. The lot is quite large. That line
251 on the second page shows a drainage area that runs through my property for drainage
252 from a lake that was up above. That's been quite some time ago. The creek is inactive
253 now, except for rain, so the property sits up fairly well on a hill toward the area of the
254 photographs, and the photograph in front of you shows that there is a large area to the
255 side of my house. The main thing is that the house was set up on that ridge, so that it
256 wouldn't get wet, and the area to the left, as you're facing it, is all open in there so that I
257 can build the structure. It's the ideal location for it.
258

259 Ms. Dwyer - Mr. Bacon, the staff report and your drawings make it clear
260 that you have a breezeway that attaches the proposed carport to your existing
261 residence, and that if that carport were widened by 4.75 feet, you would not need the
262 variance. Is there some reason why you cannot widen that breezeway?
263

264 Mr. Bacon - The explanation that was given to me is that if I widened it,
265 then I would run into a variance on the rear of the property, which I think was requiring
266 50 feet, and this was simply a variance on the attachment. There is another structure
267 only two blocks away that's a much smaller one, on 204 Doverland, which has an
268 attached structure to the side of it. It's a much smaller piece of property than mine. As
269 you can see from the photograph of mine, the top picture, it's only halfway down my
270 driveway, down near the drainage area where that picture was taken. There's a
271 considerable length; you can see that car is sitting halfway down it in that rounded area,
272 and you can see there's a huge area off to the side that would make it ideal. There's no
273 way I could put the structure in the back because obviously there is no back area. It's
274 mostly to the side and to the front.

275
276 Ms. Dwyer - Mr. Blankinship, what is the setback that he's claiming he
277 would run into if he made the carport?

278
279 Mr. Blankinship - If he attaches it and it becomes part of the principal
280 structure, then he has to meet the setback for the principal structure, which would be 50
281 feet from that rear yard, so you would have to pull it forward into where the topography
282 becomes an issue.

283
284 Mr. Bacon - Then it would run into a drainage problem. It logically does
285 not fit the lot from where it sits. The house is only 22 feet; you can see it's close to the
286 edge on the other side that's only 22 feet away over there, so the proposed area
287 wouldn't be anywhere close to that on the side of the property.

288
289 Ms. Dwyer - How far is the proposed garage now from the property line?

290
291 Mr. Bacon - I don't recall what it would be, something like 40-50 feet from
292 that side area. It comes about 20 feet from the rear of the property. I guess there's
293 actually two rears; there's that rear over on the right, since it's a five-sided piece. You
294 can see from the aerial photograph that the structure would be approximately the same
295 width from the house, and you can see from the picture that the structure would not
296 come close to infringing on anyone else's land. It would fit right in that area where you
297 can see the creek, midway between that.

298
299 Ms. Dwyer - The rear yard setback, you said Mr. Blankinship, was 50
300 feet?

301
302 Mr. Blankinship - Yes, R-1 zoning is 50 feet.

303
304 Ms. Dwyer - And side yard is

305
306 Mr. Blankinship - I'll have to look that one up.

307
308 Mr. Bacon - Actually, even the house doesn't meet the requirement of the
309 50-foot setback.

310
311 Ms. Dwyer - I'm looking at the plat here that's part of your drawings, and I
312 was wondering that.
313
314 Mr. Blankinship - Yes, it's 20 for the minimum and 50 for the sum of the side
315 yards.
316
317 Mr. Kirkland - Mr. Bacon, what's the size of this garage?
318
319 Mr. Bacon - There are three carports; those are 36 feet, and the other
320 one is ten feet.
321
322 Mr. Kirkland - It's roughly a 46-foot wide garage by 26 feet?
323
324 Mr. Bacon - Well, each garage is twelve feet, allowing for the doors to be
325 open. I understand that's the standard size for garage width.
326
327 Ms. Dwyer - Would it be possible to angle the garage differently?
328
329 Mr. Bacon - I can angle it slightly. I can shift it towards the front of the
330 house slightly, but the question is, what is it going to look like architecturally? It does
331 not infringe on anyone else's property, as you can see from the photographs. It would
332 maintain that fifteen-foot rear setback.
333
334 Ms. Harris - So you have a storage area in a three-car garage, and a
335 storage area to the left of that.
336
337 Mr. Bacon - That is correct. The house has no storage in it, so I'm
338 adding the garage and the storage so that I could have easy access.
339
340 Mr. Wright - That's not really the issue that's before us; however the
341 issue is because the garage is in the side yard. The size of the garage is not the
342
343 Mr. Bacon - As you can tell, that's the only logical place for it, and the lot
344 is one of the largest in the area. You can see that from the photograph on the other
345 lots. You have an aerial photograph of that. You can also see the houses where
346 they're located on the other lots, so they aren't even close.
347
348 Ms. Dwyer - Mr. Blankinship, for this to be in the rear yard, it would have
349 to be behind the rear line of the house; that is the imaginary line drawn from behind the
350 house – it has to be any distance from that.
351
352 Mr. Blankinship - It would have to be between the house and the rear lot line.
353 Since the house is turned at an angle, it's a little difficult to determine.
354
355 Ms. Dwyer - But it could be beside the house as long as it were also

356 behind the house.

357

358 Mr. Blankinship - Farther back, yes.

359

360 Mr. Bacon - It actually is in the back if you look at the angle, if you see
361 the aerial photograph there, you can see the location of the house and how it's angled.
362 From the side of my house I actually can see the stoplight on Parham Road. It isn't
363 facing directly front; if the property's here, it's angled at a 45 degree angle to the front of
364 the road. You can see it follows that creek line.

365

366 Ms. Harris - The reason I asked about the storage area is because that's
367 nine feet, four inches, right? You need ten feet for this variance to be unnecessary.

368

369 Mr. Bacon - Yes, but that's the connector; that is not the

370

371 Ms. Harris - I know, but I was wondering if you could alter your plans.

372

373 Mr. Bacon - I altered them and submitted them and said, "Now you don't
374 have the rear setback on there, and you have to get a variance for the rear setback" if I
375 altered them to the ten foot. This seemed like the most reasonable, since it's only a
376 connector that I'm trying to alter, rather than add another thirty feet to the back of my
377 property, and that's the variance that I would request then. Either way I go about it, I
378 have to have a variance in order to build the structure.

379

380 Mr. Wright - Any further questions of the Board? Is anyone here in
381 opposition to this request? Hearing none, that concludes the case.

382

383 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
384 Harris, the Board **denied** application **A-38-2005** for a variance to build a detached
385 garage at 404 Berwickshire Drive (Sleepy Hollow) (Parcel 752-736-2346).

386

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

388 Negative: 0

389 Absent: 0

390

391 The Board denied the request as it found from the evidence presented, that the
392 application of the zoning ordinance would not prohibit or unreasonably restrict the use of
393 the property.

394

395 **A-39-2005** **LISA WOOD AND ROBERT KAHL** request a variance from
396 Section 24-94 to allow the existing dwelling to remain at 4958
397 Charles City Road (Parcel 839-698-5795), zoned A-1, Agricultural
398 District (Varina). The minimum side yard setback and total side
399 yard setback are not met. The applicants have 1 foot minimum
400 side yard setback and 48 feet total side yard setback, where the
401 Code requires 20 feet minimum side yard setback and 50 feet total

402 side yard setback. The applicants request a variance of 19 feet
403 minimum side yard setback and 2 feet total side yard setback.

404
405 Mr. Wright - Does anyone else desire to speak with reference to this
406 case? Please stand and raise your right hand and you'll all be sworn in at the same
407 time.

408
409 Mr. Blankinship - Do you swear that the testimony you are about to give is the
410 truth, the whole truth, and nothing but the truth, so help you God?

411
412 Mr. Condlin - Mr. Chairman, Members of the Board, Mr. Blankinship, my
413 name is Andy Condlin, from Williams Mullen, representing Robert Kahl and Lisa Wood.

414
415 Mr. Wright - Mr. Condlin, before we begin this case, I want to make a
416 statement. Mr. Condlin was my former law partner. I'm now retired from that firm; I
417 have no interest in the firm whatsoever. However, I will proceed with the case unless
418 someone here has an objection with my doing so. If anyone here has an objection, I will
419 disqualify myself from sitting on this case. Anyone have an objection? Proceed.

420
421 Mr. Condlin - I have with me from Williams Mullen, Travis Hill, here for the
422 property – it's about one and a half acres on Charles City Road. I've taken the
423 assumption, instead of calling a lot of people up with a lot of things, it's a bit of a
424 convoluted case; I've spent a lot of time talking with a lot of folks. I've got a lot of them
425 here to tell me if I ever get anything wrong, but I'm going to go through some of the facts
426 of what happened and why it occurred. I gave a pretty detailed package of trying to get
427 everything done. I'd say 99% of what I put in there is correct. A few things I've found
428 out since, which I will highlight for you.

429
430 Mr. and Mrs. Kahl, the mom and dad, own a farm in the Varina District of Charles City.
431 In 1998 they gifted five acres to their son, James, the brother who lives next door. His
432 survey is on Exhibit D that I have provided to you. I think it's pretty important. What I
433 wanted to do is to point out Exhibit D. The thing that you can notice is the driveway. In
434 talking with Mr. and Mrs. Kahl, it was their absolute intention to place the property line
435 along this driveway, and this is exactly what the survey shows, is the property line along
436 this driveway. For many years, Mr. Kahl has farmed this entire property; a fence line
437 was along this driveway, and even after the gift in 1998, until he gifted the property to
438 his other son, which is what we're here for, he farmed the property from 1998 to 2004
439 right up to the fence line. He used that property as it was his; that fence line went right
440 up to the driveway; that driveway has never moved. Everyone's intent to get this gift
441 was to bring the property line along the driveway, and that's really what the crux of what
442 we're dealing with here, the intent was, the knowledge was, the survey shows, that the
443 driveway was the property line that would separate these two properties.

444
445 In 2004 Robert Kahl and Lisa Wood wanted to start their family, just recently have had a
446 son, and Exhibit F shows the 20-foot separation, the intended separation. I've
447 compared these two surveys; this property line is exactly the same as the survey to the

448 brother. There's no difference in the Kahls. Interestingly enough, the rod was found
449 here but had to be set off the corner between those six years that it was missing. When
450 they went to propose their house, you can see they've got the 20-foot separation here;
451 they put the proposed well with the drain field up here. They were to talk with some
452 various folks, but again, the intent was for this property line to be here so that Mr. and
453 Mrs. Kahl could gift this property and leave enough room for their son Robert and Lisa
454 Wood. Lisa and Robert intended to comply with all components of the Code. To do
455 that, they hired the Fleetwood Homes, an engineer, Mr. Ewing, a surveyor, and well and
456 septic to comply with all the requirements.

457
458 The survey was done in conjunction with the engineer to set the well and the drain
459 fields, and of course, the home location in compliance with the Code. You can see the
460 well's in the front yard, and the home meets all the Code requirements. Fleetwood
461 Homes is the one that put in the house at this location, and they had Mr. Dowdy put in
462 the well and the drain field. Mr. Stringer from the Health Department is unavailable; Mr.
463 Walker is here to answer any questions that you might have. I'm not sure it's
464 completely relevant, other than the fact that I've placed within there some of the Health
465 Department information. They actually moved the well from where it was flagged and
466 field located, to behind the house. Unfortunately, the well actually ended up being
467 located off the property line, but there was also a change on the field of the house
468 location, by Mr. Stringer. As some of the folks I've talked to said, he wanted to get the
469 well away from the road and bring the house closer to the road than what they had
470 originally intended. When Fleetwood Homes came in, Mr. R. B. Mozingo, from
471 Fleetwood Homes said their practice is to talk to the property owner about where the
472 property line is. Everybody intended the property line to be the driveway. The dad who
473 gifted both properties intended it to be the driveway. They measured everything off the
474 driveway. My first reaction was, "you've got a survey; you've got rods, why didn't you
475 take the rods and run a line and measure it off of that. His answer was, "Mr. and Mrs.
476 Kahl paid for title work to be done by Fleetwood Homes, paid for a survey to be
477 done, and they went off of the property owner's information. The dad came over and
478 talked to them; Robert even talked to them and said the property line's along the
479 driveway.

480
481 They hired folks to do this in good faith. I don't know what the procedure is by
482 Fleetwood Homes, but according to R. B., it is typically to take the property owner's
483 word for it. I've done enough of these things to know that most people don't know
484 where their property line is, and I think that's an unfortunate mistake that occurred. Plat
485 2 shows ultimately the "as built." The other one that shows the property exchange, the
486 well actually ended up being constructed off-site – you can see the reference to the well
487 right there. They actually paid \$8,000, when they came home from the hospital after
488 having the baby, to have the well moved back onto their property line. One of the
489 conditions that Mr. Blankinship has proposed is that we get that approved through the
490 Department of Health. I believe that's already been done. And it was a substantial cost
491 to move that well back onto the property line. Ultimately, this is an odd situation. I think
492 it qualifies for the good faith and that they did hire known professionals. I've talked to
493 every one of them; I brought a number of them who would attend. Nothing was done on

494 their part intentionally to violate. If you look at this exhibit, everything was intended to
495 be off of the driveway. Everything that was done on the fieldwork was done off of the
496 driveway. The staff report talks about it being self-imposed. I would disagree with that
497 because they hired folks to do this work, and it was done incorrectly. Whether that's
498 part of their procedure or not, it was still done incorrectly, but it was also done
499 incorrectly because of the survey and the problems with the survey and the driveway,
500 having those locations. Obviously this is a substantial hardship. I asked Fleetwood
501 Homes what it would cost to move the home, and the cost was going to be \$18,000.
502 You add that to the well, which they've already paid; that's a \$25,000 cost total because
503 of the mistakes. They've already paid \$8,000, and they're trying to avoid \$18,000 plus
504 costs to pick up the home and move it over.

505
506 Finally, I would make a statement about the detriment to the surrounding owners.
507 Obviously, mom and dad have not objected. Mom and dad actually own property on
508 this side of the property and on that side of the property. That's their home there, and
509 you can see, based on the survey, where that line ended up going when it should have
510 gone along this area and would have left the room per the original survey to meet the
511 setback requirements. Ultimately, I believe the only person objecting would be the
512 brother, and having gone out there, I could not see from one home to the other, as I was
513 standing in Robert Kahl and Lisa Wood's property, nor was there any detriment as you
514 go in on the driveway. The home is actually 20 feet away from the driveway, which was
515 the intent, to be able to get that separation. I don't see any real detriment coming; it's
516 not impacting; the home is already there for the brother's property.

517
518 Mr. Nunnally - Who owns 4956, his brother?

519
520 Mr. Condlin - Yes sir, that's Mr. James Kahl who owns that.

521
522 Mr. Nunnally - Has he tried to purchase some land to take care of this
523 variance.?

524
525 Mr. Condlin - One of the things that we've proposed is a property line
526 swap, which would give Mr. James Kahl property back here, and we would pick up this
527 property along the driveway, which was the intended property line, which would pick up
528 that additional necessary twenty feet. It is my understanding, in talking with my clients,
529 that has been rejected. There have been some offers – I'll let him speak to what it
530 would take to get that, but he wants more than the one and a half acres, to be able to
531 get that twenty feet, and they don't have but one and a half acres total, so they can't
532 give more than they have. They've offered to swap the same amount of land off the
533 back, to be about to get this, but that's been rejected.

534
535 The father, obviously, cannot give any land, but it doesn't do any good, because it's his
536 property line that's causing the problem. His home sits right on the property line, the
537 necessary distance, which was the intent, to put those homes in, based on this working
538 farm. Obviously a series of unfortunate mistakes and events have occurred, but Mr.
539 Kahl and Ms. Wood hired professionals to do the work. It's unfortunate that they didn't

540 go off of the survey. I will note that it's interesting that when this survey was done by
541 another surveyor to show the incorrect placement, the rod had to be set here and there.
542 When he went out there, he said the rods weren't there; they were there according to
543 the other survey that showed the twenty-foot distance. Somehow or other, they got
544 pulled back. I've seen those rods before; it's hard to take those out. I don't know what
545 happened to them, but he obviously had to set new rods at that location, which are the
546 critical corners of how this works out. That was part of the problem, I think, but also part
547 of the problem was everyone intended it to go off of the driveway, and that's where they
548 measured it when they did the actual fieldwork. It was good faith on everyone's part.
549 There is a hardship involved in moving a home, and of course we do not believe that
550 there is any detriment. The mom and dad are here to testify that there's no objection on
551 their part and Mr. James Kahl, the brother, I don't think has any real reasonable
552 objection to be able to say, we've offered to try to swap some land to try and make this
553 work, and that's been rejected. I'll be happy to answer any questions.

554
555 Ms. Harris - Is the mobile home on a foundation?
556

557 Mr. Condlin - Yes ma'am. It's on a foundation, and they put the utilities in
558 and stubbed everything to it but the septic and well. That's going to be the primary cost,
559 not just building a new foundation, but bringing all the utilities over to the new location.
560

561 Ms. Harris - Is it a double wide?
562

563 Mr. Condlin - Yes ma'am.
564

565 Ms. Harris - Could the reason why they located so close to the road
566 because it was a double wide?
567

568 Mr. Condlin - If it's a width issue, the width goes this way.
569

570 Ms. Harris - I mean to move it to different locations; I understand a
571 double wide sometimes poses a problem.
572

573 Mr. Condlin - I don't know if Mr. Kraus wants to speak to that or not.
574

575 Ms. Harris - Did they just drop it there because it was too much to
576 handle?
577

578 Mr. Condlin - It was my understanding that they put it there because they
579 wanted it to be twenty feet plus off the property line, and they didn't check the property
580 line against the survey; they checked it against the fieldwork, which was the driveway.
581 Everyone understood it to be the driveway, so they placed it in the location that they
582 thought was appropriate. It's twenty feet off of the driveway. That's what this shows,
583 and this would resolve the issue if we could swap the land right along the driveway.
584

585 Mr. Wright - There's no question, but if they could have put it on the

586 property, this particular house, so that it would have met all of the requirements, if it had
587 been over twenty feet, is that correct?

588
589 Mr. Condlin - Yes sir.

590
591 Mr. Wright - There's no question about the width of it because it would fit
592 if it had been moved over. In other words, there's enough side yard on the other side to
593 accommodate.

594
595 Mr. Condlin - The problem, as I understand, is the location got moved,
596 because if it was to be fit exactly per one survey, that's 82 feet, but when you look at the
597 other survey, that's a different distance. You can see the house and what was done by
598 the permit, that's where it was supposed to be placed, and you can see the distance is
599 all met. You've got twenty feet on one side and a total of fifty feet, and you've got the
600 distance in the front yard, and it fit exactly in that location. Mr. Stringer, according to my
601 clients, moved the well and moved the home as well, to suggest that they twist that
602 home, and everyone was just going on everyone else's word, and of course they said
603 okay, it'll fit anyway, because they went out and measured it based on the property lines
604 on the field, not on the survey. The pins, maybe they were there, maybe they were
605 gone. No one really looked for them; no one really knows. It would have fit, but they
606 just put it in a different location.

607
608 Mr. Wright - Is there anything else that you wish to present at this time?
609 Anybody else to speak?

610
611 Ms. Dwyer - I thought I heard you say that the survey was in error?

612
613 Mr. Condlin - I'm not a surveyor; when you look at some of the original
614 survey, this shows the driveway, this line, going right along the driveway, the property
615 line as being 55 feet right there. That would be Exhibit D, Mr. James Kahl's survey.
616 That shows 55 feet for his distance, and they measured off of the corner, 317 feet to
617 Charles City Road. I've talked to Mr. Hardyman, who ultimately did the survey, but
618 when you compare that to Exhibit F, which is the proposed construction, this looks
619 larger than the 55 feet. They didn't locate the driveway on this survey. This is 73.6 feet.
620 I'm talking now about Exhibit F, but of course that wasn't surveyed.

621
622 Ms. Dwyer - That dotted line is probably not accurate.

623
624 Mr. Condlin - He also used the starting point as off of the eastern line of
625 Poplar Spring Road – that's 389 feet. Exhibit D is 317 feet to Charles City Road, which
626 is where it's located. The first survey to James has something that does not fit; maybe it
627 does, but the two surveys don't compare to each other well, where the starting point is,
628 they reference different roads, and the numbers don't seem to add up exactly where this
629 property line is.

630
631 Ms. Dwyer - I appreciate that your clients did not intend for this to

632 happen, and the errors were made by people whom they hired, who were in fact their
633 agents, but it still seems to me that it's a self-inflicted hardship, and I wish you could
634 address that. I was looking at a Supreme Court case that's very much on point, that
635 said that in a case where misplaced property lines were drawn and errors were made,
636 that it was self-inflicted hardship, that's Steele vs. Fluvanna County.
637

638 Mr. Condlin - I recognize that. With respect to being self-inflicted, I
639 understand the point that those who work for you are agents, I will say that much of
640 what happened, was when the dad had gifted the property, was out there talking to
641 folks, and saying that the property line (I don't think he's an agent of the son) was on the
642 driveway, and that's where it was supposed to be done. Also, the County had an
643 influence in changing where the location of the home, and the well certainly got
644 changed, but the home, based on my discussion with my clients as to where the home
645 got located, I don't think the property line technically is an issue. This is the same
646 property line; that's why I'm not sure that it's a different property line that's shown on Mr.
647 James Kahl's survey, because this is exactly the same call and the same meets and
648 bounds for that survey. So it's not the survey itself; it's the location of where the home
649 was placed, and while Mr. Kahl and Lisa Woods tried from the extent of good faith in
650 that they hired folks to do it; they didn't construct it themselves. These folks made the
651 mistake in not taking the property line from the survey itself and running the line as they
652 should have done. They also took the word of the County and an adjacent neighbor,
653 the dad.
654

655 Ms. Dwyer - In light of the fact that Fleetwood did not use rods to set the
656 property line and determine where to place the house; they just used the driveway and
657 verbal advice from family members, it would seem that there might be a cause of action.
658 In other words, your clients have another remedy possibly against people who may
659 have made errors.
660

661 Mr. Condlin - They certainly would have potential remedy for being able to
662 do that, but that's up in the air too, and this was to them, from a variance standpoint, it's
663 questionable what they did versus what the County did, certainly there's no suit that I
664 can bring against the County that I can bring for approvals on that. As to where the
665 home was located, I can only go on that they relied on those folks to do the work,
666 whether we can prove that, that's another cause of action against them that's money
667 damages. This would avoid that issue, to be able to get the variance when there's
668 really no harm to anyone around the area or to the adjacent owner. This is an open
669 area; he's already built his home; his home's not going to be built, nor can it be built, at
670 this location right next to our home, so there's no question about separation of houses
671 from a safety standpoint. Whether there's a cause of action there, I'd have to get into
672 what the typical procedure of the industry is, and is it typical for them to go off of what
673 the property owner says versus what the survey says. If they went off the surveys, this
674 survey shows this property line, and this survey shows the property line along the
675 driveway. They actually could have argued technically they did go off the surveys.
676 They did do the surveys based on the driveway, and the driveway has never moved.
677

678 Ms. Dwyer - But the survey for this property doesn't show the driveway
679 on the adjacent property, and your statement earlier was that they relied not on the
680 survey and the rods, but

681
682 Mr. Condlin -they relied on the driveway, based on the fact that
683 this was the intent; they'd used that area up to the driveway for many, many years,
684 including after they'd gifted this property to James Kahl, and that driveway has never
685 moved, and that's why they rightfully assumed that the property line was right along the
686 driveway. There's absolutely no explanation of why the survey shows the driveway
687 here, but the driveway's technically not on the property line.
688

689 Ms. Dwyer - Just to make sure I understand your statement, how do you
690 distinguish the Steele case from this case?
691

692 Mr. Condlin - The surveys do show the property line along the driveway,
693 which is what was relied on. Mr. Kahl, the father, and all the folks in the County who
694 took a look at this, had insisted that this is where the home should be, and they moved
695 the home to the location where it was, with respect to that property line being the
696 driveway. Otherwise, I hadn't read the Steele case specifically for this, but whether this
697 is a good faith or self-inflicted harm on themselves, they relied on the information that
698 they had to be able to put in. They didn't intentionally do anything, and while it may
699 have been their agents who actually put the home in, they relied on what the agents did,
700 based on information they got from both the County and from Mr. Kahl the father and
701 the survey that was done for the brother, showing that was on there. They did not have
702 the survey done. The survey shows the property line and the fence line all along the
703 driveway.
704

705 Ms. Dwyer - You're bringing the County in, in response to these
706 questions, and I hadn't heard you mention that earlier. How is the County involved in
707 this, in terms of placing the house?
708

709 Mr. Condlin - That's why I asked Mr. Stringer's colleague to be here.
710 When the original plan was to place the home at this location, which met all the Code
711 requirements, and the well at this location, if you flip to my Exhibit G, the information
712 from the Department of Health, the septic tank, I think four pages in, is the survey which
713 shows the well location being moved. They actually ended up moving the home as well,
714 based on Mr. Stringer's recommendation, to be able to move the well to behind the
715 house, which is separate from what was field located, which is separate from what the
716 engineer that they hired, Mr. Ewing, to place in there, but also according to my clients,
717 they moved the home location because Mr. Stringer recommended that.
718

719 Ms. Dwyer - So Fleetwood set the home location based on what the
720 Department of Health said?
721

722 Mr. Condlin - Also based on the fact that everyone thought that the
723 property line was off the driveway.

724
725 Ms. Dwyer - That was my understanding from your original testimony,
726 that they set it based on the driveway.
727
728 Mr. Condlin - But I also mentioned that Mr. Stringer had twisted the home
729 and moved its location slightly back to be able to put the location where it actually
730 ended up versus what you see on the screen.
731
732 Ms. Dwyer - You mean he recommended that it go back and not closer to
733 the driveway?
734
735 Mr. Condlin - Correct. Not at the location showing where it is.
736
737 Ms. Dwyer - It sounds like he didn't advise anyone to move the house
738 closer to the driveway.
739
740 Mr. Condlin - He advised them where the home should be located, which
741 happened to be closer to the driveway. I wasn't there. We're going off his testimony,
742 maybe triple hearsay at this point.
743
744 Ms. Dwyer - We need to hear from Mr. Stringer.
745
746 Mr. Condlin - Mr. Stringer is on leave from the County. We've tried to
747 reach him. We've certainly tried to call his office, and his colleague, Mr. Walker, is here
748 to testify to that. But the home was placed at the location that Mr. Stringer
749 recommended when he moved the well, he moved it back here, and he also
750 recommended twisting the home, which ended up being closer to the property line.
751 Everyone said okay, that's fine, and they measured it from what was assumed to be the
752 property line, which was the driveway, which was twenty feet away from the driveway.
753 Based on the staff report, there is a reference in here to the extent of the variance. The
754 extent, I'm not sure, impacts, whether we need one foot or sixteen feet or nineteen feet,
755 the variance is what it is, and this is not that different from a lot of cases that you hear,
756 that practically speaking, from a hardship, it's going to cost \$18,000 plus to move this
757 home, and technically whether it meets the Code or not. It was done in good faith; it
758 was done without intentional harm on their part; there's really no harm being done
759 otherwise. It certainly is of substantial harm for someone to have to move this home for
760 \$18,000 plus. It's not different from a lot of cases that you hear of residential property,
761 where people aren't intentionally trying to do that, whether they come in here before
762 they do it or after they do it.
763
764 Mr. Wright - Any further questions of the Board? Is anyone here in
765 opposition to this request? Please come forward.
766
767 Ms. Woods - My name is Attorney Linda Woods, and I represent James
768 Kahl. I'd like to give a summary. I don't have fancy stuff up there, but I think I can use
769 that to show you what the harm is, and also to answer your question regarding whether

770 this was self-imposed or not. I want to start with the letter that was sent to you on
771 March 8, concerning first the hardship. The first thing that Robert Kahl says to you is
772 that there is no hardship, and so this should be an easy move. First he cites that the
773 cost to relocate the well would be \$8,000. My client called the folks regarding moving
774 the well. They cited him \$2,700 to move the well. Let's look at why the well had to be
775 moved. If you'll recall, on the survey, the well was located in front. Then the well had to
776 be moved. I can't speak to exactly why the well had to be moved, but the well was
777 moved and instead of looking again at the survey, this is a very strange piece of land.
778 You'll admit for 1.5 acres, with the bend, this is a difficult piece of property to locate
779 anything on. Nevertheless, the well was located on the other side of the line. The well
780 was located properly the first time, and then someone, and I would suggest that my
781 client would say that his father, when locating the well, said this is where it goes. As a
782 matter of fact, I also called the folks who put the well in, and that's what they said. They
783 were told where to put the well, by a family member. So the well had to be moved.

784
785 Next you were told that they had no idea that they weren't going to have water, that they
786 came home from the hospital after they had their baby and they had no water. What I
787 will tell you is that the brothers had extensively talked about this issue, that my client,
788 James Kahl, sent him a notarized letter, telling him how many days he had, that he was
789 informed by the Health Department that they had to do something, as two wells on his
790 property, he wasn't allowed to do that. He got permission from the Health Department
791 to cap off the well. He was informed of that; he was given time, and if he came home
792 from the hospital without any water, that was because he wasn't paying any attention
793 and decided that his brother couldn't do that, and he just wasn't going to pay any
794 attention to it, but nonetheless, eventually, because the Health Department required it,
795 he put another well in.

796
797 Mr. Nunnally - You say he sent a Certified Letter to his brother? Do you
798 have a copy that we could see, please?

799
800 Ms. Woods - Yes, and I'm going to hand my file to my client to look
801 through, so he can get it out of my file, so I can go on, if you don't mind. Next he says
802 in his letter, that the applicant relied on the good faith on the brother's plat. What you
803 weren't told, was that Robert, the applicant, hired a surveyor, Mr. Jolliffe & Associates,
804 and on March 2004, had a survey done. It was Mr. Jolliffe who did the survey that
805 you're looking at here, and he needed this survey to go along with putting in, and you'll
806 see it says "proposed well," he needed this to go to the Board of Health to get the
807 approvals for the septic system that he put in and for the well. This all has to be
808 approved. Mr. Jolliffe will testify that he explained to the applicant that it was very
809 important that when he cited where the house was going to go, that he called him back
810 so that he could stake it out, because he had a matter of inches on the twenty feet. He
811 had a matter of inches on the other side, so he told him, "when you're finally going to do
812 this, call me back, and we will stake it out, since it is so tight." What Mr. Jolliffe will
813 testify to, is that not only did the applicant not call him so that it could be properly staked
814 out, but he also didn't pay him for the survey. We can only guess that he didn't call him
815 back because of that. We're talking about good faith, it seems to me that what you've

816 heard here is the applicant saying he had no responsibility whatsoever, he relied on this
817 and that person, but if you'll hear the testimony, he didn't rely on anyone. What he did
818 was, he may have relied on his father, but his father's the one who gave him the
819 property, but it was Robert, the applicant, who did get a survey. He knew he needed a
820 survey; he knew it was tight. Who relied on who, was that the well installer installed it
821 pursuant to the applicant and his father. The mobile home people installed it, not off of
822 a survey, but where he was told to put it. If I were in the home installer's position, I'd
823 say I just did what I was told. Now the applicant comes before you and says he trusted
824 everybody else, and I'm going to tell you that there was no trust in anybody else. In
825 terms of the impact on the neighboring property, this is a tough case. What we have
826 here are some real significant problems, so significant that my client, James, was
827 arrested for trespassing a couple of weeks ago, on his own property, because his
828 brother, the applicant, told the police that he was on his property. If you'll look at the
829 December 14, 2004, survey, which my client had done again because there was such
830 controversy over his original survey, that survey and the original survey, all of the
831 original numbers and all the dimensions are identical. If you'll look at that survey, look
832 at the "rod set" and this particular one that you're looking at is the applicant's wish list,
833 give me my brother's land so I can correct what I wanted to do to begin with, that one
834 was done, the one up there, was done in January 2005. It's really funny that in
835 December 2004, just the month before, Mr. Jolliffe saw those rods in that critical
836 position, so in one month, what could have happened to the rods? I'd like to pass this
837 up. What happened to the rods, was someone put a huge boulder on top of the rod so
838 it couldn't be found. Mr. Jolliffe, who knows how to do a survey, could pinpoint it when
839 they went to that point and found the boulder, they could move the boulder and there's
840 the rod. My question is, who would have profited from hiding the rods so that you
841 couldn't see what the actual survey was? Do you have a photograph of the actual line
842 where it hits the house?

843
844 Mr. Blankinship - This line here shows the existing property.

845
846 Ms. Woods - If you'll look at this photograph, because photographs are so
847 much better than lines, this photograph, that second driveway over there, is one foot off
848 of that house; that's on my client's property. What the applicant did, he built or threw
849 rocks down over there to put a second driveway in, which is actually still on my client's
850 property, and when he did that, he filled in the drainage ditch that my client had installed
851 to properly drain to keep water from being on the driveway and to properly drain into the
852 drain in the front of the property. That second driveway, all that property, past where
853 the grass is, is on my client's property. And in fact, standing on that, he was arrested
854 just a couple of weeks ago. I'm sure he will be exonerated once the police see the
855 actual survey of the property, so when you talk about harm, we're talking about
856 animosity between these folks so much that the applicant will have my client arrested.
857 He's saying there's no harm, but he's actually creating the harm.

858
859 I also want to point out, we're talking about invasion of property. I will agree with the 90-
860 some percent, because he's asking for a variance of 18.9 feet, and 18.9 feet, at one
861 point, you're going to see on the surveys that he's 1.1 foot in the front and 2 feet in the

862 back. His overhang on his roof goes over that, so his overhang is actually on my
863 client's property. If he wanted to do any repairs to that side, if he needed to even wash
864 his windows, he'd have to be on my client's property. Normally I would say, why can't
865 they just share a driveway. Not only is he sharing it with his brother, but he's also
866 sharing it with people who happen to come down, trying to get to his brother, and
867 they're told they can go down either driveway. Here's a UPS truck; there's mud in
868 between the two areas. The UPS truck comes down my client's driveway, cuts across
869 his second driveway, trying to get to the back of his brother's house, which is the only
870 way they can do it, because that's all my client's property, and it gets stuck. What was
871 a nice roadway going back to my client's property, is now flooded when it rains, it's got
872 holes, it's got wash-away.

873
874 When the applicant says that the twenty feet, and the variance he's asking for, has no
875 impact on the neighbor, it has a great deal of impact on his brother. When he says that
876 he relied on other people, think in terms of what these other people told him. The
877 surveyor said, "call me back so I can properly stake out this house." The applicant
878 says, "The County made me do it because they made me move my house; they tilted it."
879 The County didn't make him move it over to his brother's property. He says, "My father
880 did it, because we all thought it was the driveway." We're not talking about strangers
881 here. Do any of you doubt that my client told his brother where he was putting the
882 house, where he was putting the trailer, was wrong? Does anyone here believe that he
883 didn't have notice from my client? Does anyone here believe that this would have
884 happened if the applicant had called back the surveyor and said, "Okay, I'm ready to put
885 this in; please stake it out." I make no comment on the home installer, because I know
886 what a difficult position these folks have, and he relied on the applicant and the
887 applicant's agent, because how much more of an agent can a father be? The person
888 who sold him the land, that the applicant is trying to pass blame that this wasn't his fault,
889 and he shouldn't be held accountable because of the cost. I suggest to you that the
890 cost to my client, you can see more readily on the Dec. 4 that a portion of this beginning
891 of the drive is on the applicant's property, but the vast majority that goes up by the
892 house, all of that is my client's property.

893
894 Even if you give a variance to say you can have your property sitting right on the line, it
895 still doesn't give him access to his own property, because the driveway that he's using,
896 and having his brother arrested for standing on, is my client's property. We would ask
897 that you not allow this variance, that if there is a hardship, the hardship really has been
898 my client's. It's really not a simple matter of okay, just move the road over. This Board
899 can't say "sell the property," that's not this Board's role. This Board's role is to find out
900 whether there was a good faith mistake, if there was, and I suggest to you that we have
901 other folks here who can answer questions, and my client is here, who might better be
902 able to answer specific questions about what he said to his brother when they were
903 putting the property in. I think he would speak well to that and would like for him to have
904 an opportunity to answer non-legal questions if you have them.

905
906 Ms. Harris - If this Board denies this variance as you stated, how would
907 this benefit your client?

908
909 Ms. Woods - He probably wouldn't be arrested any more for being on his
910 own property. He could repair his driveway, and it wouldn't continue to be flooded,
911 because he could put the drainage ditch back in this property where his brother has
912 filled it in. While we're not saying that this would be about the peace between the
913 two brothers, it would certainly put my client's property back in better order so he can
914 get in and out of his property on his driveway, rather than having to make another
915 driveway that goes right by. They need more than twenty feet, but the law only requires
916 twenty feet.

917
918 Mr. J. Kahl - My name is James William Kahl. I'm Robert Kahl's brother.
919 This all started back in September, when they were going to put the house in, and I told
920 him then what they were doing, and I even told my mother, "please don't let them put
921 that driveway in, don't let them put that house in there. I told my brother, "if you do, it's
922 going to be on my property." They went to put the driveway in; I had my brother
923 arrested for trespassing. I had his girlfriend, Lisa Wood, arrested for trespassing in
924 Henrico County. They were; they ignored it; they kept telling the police that they owned
925 the property, that it was their property. They're arguing about the driveway. They're
926 saying it's a different survey. If you look at the survey, it's original of 55 feet. There
927 were three rods driven, one at one end with the original survey of mine. It will show 50-
928 some feet, then it will show a radius for the third stake at seventeen feet and fifteen
929 inches. If you add that up, you'll come up with the same total that's been surveyed
930 every time. The only rods that had been replaced are the ones at the road that Henrico
931 County dug up, because Ms. Lisa Wood told Henrico County that was her property, take
932 down a privacy fence that was on my property. The other ones are all in place. The
933 problems were this. They filled the ditch in; I've got a graded back yard; they brought a
934 grader and built it up higher than it was. They hauled asphalt and everything else. It's
935 just been constant trouble. It shows on one of these pictures clearly; they said they
936 didn't know where the property line was; it shows clearly on this picture right here; they
937 put a "posted" sign right on the edge of their house. They knew where the property line
938 was the whole time. I can't keep people off my property, day or night, whoever visits
939 them comes over there.

940
941 Mr. Wright - On this picture that's up there now, is the driveway to the
942 right the one that Mr. Robert Kahl put in?

943
944 Mr. J. Kahl - Yes sir, there was a ditch running through there, for the
945 water to come down. They built it up and filled it in.

946
947 Mr. Wright - Your driveway is to the left?

948
949 Mr. J. Kahl - Yes sir. Everybody knew for years and years, the fence was
950 there where my father was grazing cows; the whole back side of my property my father
951 had cows over there grazing. I'm supposed to have 150-foot road frontage, which my
952 father knew, because back in the early '90's when I got a building permit to build back
953 there, he signed a paper, Henrico County filled it out, because the first one was denied

954 for fifty feet, so he had to re-do it. We've got the papers here with his name on it, that
955 it's 150 feet that he signed. He didn't grant it all in my name when he transferred the
956 land over, so on 7/19/95 for a variance, I would receive the rest of the land and the
957 three acres upon his death. I can't do that now, because he gave it to him. The Code
958 stated back in the early '80's when they switched it back in 1989. Mr. Blankinship will
959 tell you they switched it; it used to be fifty feet; then it went to 150 feet; that's the reason
960 when they put the permit in to build back there, I had to have 150 feet.
961

962 Mr. Kirkland - When they were constructing this home, when they poured
963 the footings, did you make a comment to the County at that time? I assume it has a
964 footing underneath of it?
965

966 Mr. J. Kahl - No sir, it has pilings underneath of it. It's supposed to be on
967 a permanent foundation. It's not on a permanent foundation, as you can see. That's
968 fake brick there; it comes in four by eight sheets. I've complained to everybody who
969 came out there; I called the road people, and I was told by Henrico County we were just
970 going to have wait and see how it turned out and have it re-surveyed.
971

972 Mr. Wright - Was this before the house was put there?
973

974 Mr. J. Kahl - Yes sir. I called Fleetwood Homes, and they're here to
975 testify, that I called them before they brought it in, and told them not to bring that home
976 across my driveway, because where they've got the four stakes driven, was where my
977 brother drove them. I watched him drive them in the ground. I said they were on my
978 property.
979

980 Mr. Wright - That's before they even put the foundation?
981

982 Mr. J. Kahl - That's before they put in the foundation, before they dug it or
983 brought the home there. Everybody's been aware of this from the beginning.
984

985 Ms. Harris - I think I know the answer already after listening to the
986 attorneys, that you would rather your brother invest \$18,000 to move his mobile home
987 than to exchange land with him.
988

989 Mr. J. Kahl - Where he wants to exchange land there are septic tanks on
990 that piece. I don't even have enough road frontage now. They want to take more road
991 frontage away from me, exchange for a piece in the back, where there's septic tanks on
992 it?
993

994 Ms. Harris - So there's no part of his parcel of land that you could
995 exchange?
996

997 Mr. Wright - This doesn't affect your road frontage. It looks like to me the
998 point starts at the same place in the road. It's on an angle, but I don't think it would cost
999 you any road frontage.

1000
1001 Mr. J. Kahl - As I was told by Mr. Blankinship and the people in Planning
1002 and Zoning, Henrico County has a Code of 150 feet road frontage, but it measures from
1003 the road back fifty feet

1004
1005 Mr. Wright -but you don't have that to start with. You'll have
1006 to get a variance to put your house in.

1007
1008 Mr. J. Kahl - I had a variance back in 1985.

1009
1010 Mr. Wright - You had to get a variance because you don't have the road
1011 frontage to begin with.

1012
1013 Mr. J. Kahl - Yes sir.

1014
1015 Mr. Wright - This doesn't affect your road frontage.

1016
1017 Mr. J. Kahl - It will if you take more away.

1018
1019 Ms. Dwyer - What he's saying is that the measurement is taken fifty feet
1020 off of the road, and so if you measure fifty feet into the interior of the property to
1021 determine the lot width requirement, what your brother's proposing to do is take away
1022 some of that lot width, that would affect you.

1023
1024 Mr. Blankinship - The lot width is what we're talking about.

1025
1026 Mr. Wright - For what? Affect him how? His house is already built on the
1027 back of the lot.

1028
1029 Ms. Woods - Because you need road frontage, and the road frontage
1030 doesn't go from the point on the road.

1031
1032 Mr. Wright - I understand that; you're supposed to take it back at the
1033 building line, but he's already built his house on the back of the property, so what is he
1034 going to build another house on the front?

1035
1036 Mr. J. Kahl - Yes sir, I was going to build two more houses there.

1037
1038 Mr. Wright - Well I didn't hear that.

1039
1040 Ms. Harris - I'm trying to understand this case clearly, and I don't know if
1041 I need to speak with the father, but when the land was divided between brothers or
1042 relatives along the common road, wasn't there a purpose in that division, so that maybe
1043 all of you could use the same private road?

1044
1045 Mr. J. Kahl - No ma'am.

1046
1047 Ms. Harris - The reason I'm asking is because we have cases where we
1048 have estates

1049
1050 Mr. J. Kahl - That would not be the case. My brother has property in the
1051 back of the property, a log cabin that I've built, and my oldest brother lives there now.
1052 His land came out, instead of coming across my land, he got a variance to come across
1053 my grandma's old property. That way it keeps everybody off of each property, because
1054 it's been a hardship in our family since we were kids, with each other. This has been
1055 going on for years and years. Now, if they want me to do this, and I don't get my 150
1056 feet, which I was supposed to have a grant to, I can't build back there. My sons can't
1057 build back there, and that's what we're trying to do. This is our home they're trying to
1058 take away from us.

1059
1060 Mr. Wright - What do you have now? Fifty-five feet?

1061
1062 Mr. J. Kahl - I have 70-some feet. The 55 feet is from one stake to
1063 another rod; then you can measure over to the next rod because it was a radius. That's
1064 17 feet and 15 inches.

1065
1066 Mr. J. Kahl - Whether you agree to this or not, it's not going to give you
1067 150 feet. You're going to be short any way you cut it.

1068
1069 Ms. Woods - Excuse me, but I don't think that's his issue, that he's going
1070 to have 150 feet. I think his issue is that his brother purposefully built on his property,
1071 after he was told, "this is my property," and I think that the hard part here is that they're
1072 brothers. But I think that whether they're brothers or not, you need to say that these are
1073 two strangers. I don't think there's part of the law that says if you're related, that you
1074 should have to do one thing or the other. I think the issue here is that there are two
1075 individuals. One individual built his house where he knew he shouldn't, and in terms of
1076 him moving it for the cost, I dare say that's his issue, not my client's, because he
1077 purposefully, knowingly, and willingly, violated the Code of Henrico County regarding
1078 the setback, and I don't mean by a foot or two; I'm talking about close to 19 out of 20
1079 feet. That's not a little mistake. That's a purposeful, in-your-face, County, I'm going to
1080 do it where I want to. This Board, I think, in compliance with the law, needs to deny this
1081 variance and tell this gentleman that he needs to deal with the consequences of the
1082 brazenness of his refusal to be in compliance with the law.

1083
1084 Ms. Dwyer - May I hear from the surveyor?

1085
1086 Ms. Woods - Mr. Jolliffe would like to speak.

1087
1088 Mr. Jolliffe - My name is Todd Jolliffe.

1089
1090 Ms. Dwyer - Mr. Jolliffe, you did two surveys, one in December of 2004,
1091 and one for each brother, and the first survey was done for the applicant, and the

1092 second survey was done for his brother. Was there any difference in the two surveys
1093 that you did? Did you ask the applicant to call you back?

1094
1095 Mr. Jolliffe - I told him that he was going to need to have his house
1096 located, because he had very tight setbacks here. As you see, it's kind of an odd-
1097 shaped lot. I told him when he was ready, to let me know, and I'd come out and stake
1098 his house for him.

1099
1100 Mr. Wright - Did Mr. Robert Kahl, the applicant, ask you to stake his
1101 house out for him?

1102
1103 Mr. Jolliffe - No, he did not. All he asked me to do was the survey.

1104
1105 Mr. Wright - Did you suggest to him that you could stake the house,
1106 locate the house on the lot properly? What did you tell him in that regard?

1107
1108 Mr. Jolliffe - I told him that when he was ready to situate the house on the
1109 lot, to let me know, that I would come out and stake the corners so that they could put
1110 the foundation in there.

1111
1112 Mr. Wright - Did you indicate to him that he could have difficulty with it if
1113 he didn't stake it?

1114
1115 Mr. Jolliffe - I told him he was going to be very tight on his setback
1116 regulations. When we put the proposed house in there, we were having trouble twisting
1117 it around, just on a piece of paper, so I knew being out in the field, it was going to be
1118 even more difficult.

1119
1120 Ms. Dwyer - Were you ever called back to do that?

1121
1122 Mr. Jolliffe - No.

1123
1124 Ms. Dwyer - Were you involved in locating the actual well that was
1125 installed?

1126
1127 Mr. Jolliffe - Not until I went back and did the survey for the brother, and
1128 then we saw that the well was located on his property.

1129
1130 Ms. Dwyer - And on your original one that you did for the applicant,
1131 shows the well in the front. Do you know why it was moved?

1132
1133 Ms. Harris - Can you show us on this map where the private road,
1134 driveway, is.

1135
1136 Mr. Jolliffe - The driveway started at the corner and looped around, like
1137 it's shown.

1138
1139 Mr. Wright - Who put that driveway in on that survey that we see there?
1140 Who dotted the driveway in, right along the property line?
1141
1142 Mr. Jolliffe - That was an original survey that was done in '98. I was an
1143 employee of the company that did that survey; I didn't have anything to do with it, as far
1144 as that goes, but how it was drawn in there, I don't have any idea.
1145
1146 Mr. Wright - Evidently it's not drawn accurately.
1147
1148 Mr. Jolliffe - I have no idea as far as that goes. When I went back in
1149 2004, the re-survey of the other one; that's where the driveway is looping around. I
1150 think she gave you a copy of that. When we relocated the driveway, re-established the
1151 corners, and things like that. We've basically been out on the property two or three
1152 times to re-establish the lines and things like that.
1153
1154 Ms. Harris - So the house of the applicant is not on this property; it's just
1155 one foot from the property, is that correct.
1156
1157 Mr. Jolliffe - That is correct.
1158
1159 Mr. Wright - All right. Is there any further testimony or questions?
1160
1161 Mr. Kirkland - It was made in a statement that the people at Fleetwood
1162 were called about the placing of the home – is Mr. Condlin going to respond?
1163
1164 Mr. Wright - Mr. Condlin, you have a short time to rebut.
1165
1166 Mr. Condlin - I'm going to ask R. B. and Lisa to come up. I'm going to limit
1167 the testimony, unless you want to hear from mom and dad, specifically. My clients
1168 never received a phone call from the brother. The mom and dad and Fleetwood Homes
1169 received a phone call from the brother about the house. I've got three different people
1170 saying they never were called; the first time they knew there was a problem was based
1171 on the well and the County,
1172
1173 Mr. Mozingo - My name is R. B. Mozingo, and I'm the construction
1174 superintendent for this job. When I went over and met Mr. and Mrs. Kahl, the father and
1175 the son, the property lines were shown to me, the two fence lines. We knew we would
1176 need to be twenty feet off of the left property line, so we made sure we pulled twenty
1177 feet off the fence line, which I was told was the property line, so that's what was done.
1178 The house was set twenty feet off that line, because that was Code, off of the fence line.
1179
1180 Mr. Wright - Fence line doesn't tell you where the property line is.
1181
1182 Mr. Mozingo - The homeowner and the father said that was their property
1183 line.

1184
1185 Mr. Wright - Did you see a survey, or did anyone show you a survey or
1186 plat or anything?
1187
1188 Mr. Mozingo - They had one there that showed the driveway up beside the
1189 property line.
1190
1191 Mr. Wright - That's incorrect; we've already established that.
1192
1193 Mr. Mozingo - But that's the one that I saw. I went by what the homeowner
1194 showed me.
1195
1196 Mr. Wright - When you set a house on a lot, you don't check with the
1197 survey to be sure that it's off of the survey line?
1198
1199 Mr. Mozingo - If the homeowner knows where his property line is, I feel like
1200 there's no need to check the survey. The home is sitting on a foundation. In a
1201 manufactured home, the pier footers are a permanent foundation in a manufactured
1202 home, so that is set on a permanent foundation.
1203
1204 Mr. Wright - Were you ever told at the beginning, by anybody, that the
1205 house could be too close to the property line? Nobody indicated anything of that nature
1206 to you?
1207
1208 Mr. Mozingo - No sir.
1209
1210 Mr. Wright - Any other questions of members of the Board? Thank you.
1211
1212 Mr. R. Kahl - My name is Robert Kahl.
1213
1214 Mr. Wright - Did you tell the gentleman who put the house on the lot that
1215 you located from the fence line?
1216
1217 Mr. R. Kahl - Yes, we went by the original deed that my parents had
1218 signed when they gave the property to my brother.
1219
1220 Mr. Wright - Did you have a survey?
1221
1222 Mr. R. Kahl - We got a copy of the deed survey.
1223
1224 Mr. Wright - I've got a copy of the deed, but did you have a survey?
1225
1226 Ms. Dwyer - Is that the September 11, 1998, survey, done by Robert
1227 Thomas, that is Exhibit D?
1228
1229 Mr. R. Kahl - Yes.

1230
1231 Mr. Wright - Is that the one that incorrectly shows the driveway along the
1232 property line? Is there a fence?
1233
1234 Mr. R. Kahl - Right. There was a fence there, right beside the driveway,
1235 that we all measured off of.
1236
1237 Mr. Blankinship - When was that fence removed?
1238
1239 Mr. R. Kahl - When we put the driveway in, I took the fence down that my
1240 dad had there. It was 2004.
1241
1242 Mr. Blankinship - Sometime between September and December?
1243
1244 Mr. R. Kahl - They say that I got notice in the mail and all that, but we
1245 didn't get any notice or anything on any of these property lines until we put that
1246 driveway in there, and the County contacted us about the well. We got no
1247 communications from my brother at all, other than he had me arrested five times for
1248 trespassing on my own driveway. This last time I didn't get him for trespassing. My
1249 wife did, Lisa Wood, my wife-to-be. It was at 10:00 at night, and he was on our house,
1250 not just because he was in the driveway, because he was right there touching the
1251 house.
1252
1253 Mr. Wright - You just heard the surveyor tell you when he surveyed this
1254 property, it would be tight, and he suggested that you call him back and let him place
1255 the house on the property. Why didn't you call him back?
1256
1257 Mr. R. Kahl - That isn't the particular gentleman who I dealt with at the
1258 survey place, and they didn't tell me that at all.
1259
1260 Mr. Wright - He just testified that he told you.
1261
1262 Mr. R. Kahl - That other gentleman who worked with the survey company
1263 is who I dealt with. I didn't have contact with him, other than seeing him once or twice in
1264 the office.
1265
1266 Mr. Wright - Are you saying that you were not told by any surveyor that
1267 you should call a surveyor to set your house?
1268
1269 Mr. R. Kahl - No sir; they gave me no notice at all. I got the thing; I told
1270 them I needed a building permit; he gave me this paper to go get it with.
1271
1272 Mr. Wright - Anything further you want to state?
1273
1274 Mr. R. Kahl - No sir, other than the whole discrepancy here is, we all went
1275 by the deed that my dad had when he gave them the property.

1276
1277 Mr. Wright - I understand that, but that was in error.
1278
1279 Mr. R. Kahl - That's the error we're working from.
1280
1281 Mr. Wright - Let me ask you a practical question. If this Board were to
1282 grant this variance, that would not give you authority to go on your brother's land. It's
1283 been very clearly set forth here, that your driveway that you put in is on his land. We
1284 don't have anything to do with that.
1285
1286 Mr. R. Kahl - I've put in another driveway since then; we don't even use
1287 that any more. It's on the other side of the house now. As far as the UPS truck that
1288 he's bringing up,
1289
1290 Mr. Wright - Aside from that, you also understand that you don't have
1291 enough area, room there, to go around the side of your house, without encroaching or
1292 walking on your brother's land.
1293
1294 Mr. R. Kahl - Right, the back corner of the house, there's no room for me
1295 to get there. I can even put up a fence so I can't cross over the line. There's no need
1296 for me to cross the line.
1297
1298 Mr. Wright - If the house needed painting or any repairs on the side, you
1299 couldn't even get to it.
1300
1301 Mr. R. Kahl - There's two feet from the corner of my foundation to his
1302 property line; it's not right on it like they're leading you to believe.
1303
1304 Mr. Wright - Your house is not parallel to Charles City Road.
1305
1306 Mr. R. Kahl - No, it's not straight. The front part of the house is two to
1307 three feet that I can walk in and not be on his line. The back corner of the house is
1308 maybe two feet before his line, and as far as the roof sitting over on his property, there
1309 is no roof overhang on that side of the house.
1310
1311 Mr. Condlin - Mr. Wright, I just wanted to have Mr. Kahl, the father, talk,
1312 since there was a statement made that the parents had also been notified as to what
1313 had occurred.
1314
1315 Mr. E. Kahl - Edward Kahl.
1316
1317 Mr. Wright - Were you notified early on before this house was put on this
1318 lot that there was a problem with the house or the location?
1319
1320 Mr. E. Kahl - No sir.
1321

1322 Mr. Wright - Anybody talk to you at all about the house or the location of
1323 the house?
1324
1325 Mr. E. Kahl - The only thing they told me, after they put the trailer in there,
1326 that the trailer wasn't going to stay there.
1327
1328 Mr. Wright - After it was all in?
1329
1330 Mr. E. Kahl - And I can't understand why, on the first drawing, that
1331 property line went up beside the driveway, and now someone down the line has
1332 changed it and put the property line 25 or 26 feet over.
1333
1334 Mr. Wright - Evidently, the person who did that survey just sketched the
1335 driveway in, and it wasn't done due to measurements.
1336
1337 Mr. E. Kahl - What he's talking about, that they put a big rock over top of
1338 the rod, that hole in the ground wasn't, I had a cedar post in the ground, running a hot
1339 wire over the top so he could get the tractor-trailer up the driveway. That pin wasn't
1340 there; somebody put that pin in there later on, after all this mess was stirred up.
1341
1342 Mr. Wright - Anybody else? Mr. Condlin, do you want to speak?
1343
1344 Mr. Condlin - I'll wrap up here real quick. This is obviously an unfortunate
1345 circumstance that could easily have been resolved but for some problems with some
1346 relationships, and it's unfortunate that it occurred with respect to the driveway, which
1347 was the intent of all the parties and the original gift to the brother. There were a number
1348 of statements made, and Robert already talked about it, and it seemed to be a big issue
1349 about the driveway and the impact. They've already placed a driveway on this side of
1350 the property that was able to access through and working with their parents, be able to
1351 put the driveway in. The County's already come in and the Kahls have already
1352 arranged for the ditch to be put in along the road, which is what the original ditch was.
1353 They've already rectified that situation. That certainly should take care of, and I think
1354 there's no problem with picking up the gravel and getting rid of that driveway, so there's
1355 no issue on that. That certainly can be a condition, so there's no confusion as to the
1356 driveways. It's already been rectified they're not using it from that standpoint. I hate to
1357 get into this "he said, she said," and I'm not going to, but arrests were made by other
1358 folks. There's two sides to every story, and these folks have already been to court five
1359 times, because they've been called for trespassing. Whether it was a revenge issue or
1360 what, but it doesn't have anything to do with what's going on. They feel they can
1361 operate and live where they're located. It was, again, a very unfortunate mistake. I
1362 would turn you to the Code definition of a variance, which specifically talks about giving
1363 a variance from the strict application of the Ordinance, when the need for the variance
1364 was not shared generally, but also whether it would result in substantial justice being
1365 done. This is not people that \$18,000 is going to come by easy. This is going to be a
1366 substantial cost. They relied on folks; they relied on the original survey, and whether
1367 the surveyor told them to stake the house or not, they don't remember, they didn't hear,

1368 he didn't know that, and they relied on Fleetwood Homes to place it in its appropriate
1369 location. They already testified to the issue as to what's going on. It was obviously a
1370 reference again to the extent of the variance. We don't feel that there's any real
1371 damage that could occur, once we've taken care of the driveway and put in the ditch,
1372 and they can operate as it exists. I feel that we've met all jurisdictional prerequisites.
1373 This was not done intentionally; they've testified to that fact. It was always intended that
1374 the property line go along the driveway, and unfortunately, the professionals that they
1375 hired, and with the father and with the County, things got twisted around, and it was
1376 located too close to the property line. We're not trying to put it in anyone's face; they're
1377 just trying to live, start their family, and they've moved the well, already at a cost of
1378 \$8,000, according to them. Again, that's not your issue; we're not asking for a variance
1379 for the well or to put it on anyone else's property. They've rectified those situations
1380 where they can, and this is the one thing that they feel like they can't legitimately do,
1381 and they want to be able to rectify through the variance process.
1382

1383 Mr. Wright - Thank you very much. That concludes everything. I just
1384 want to ask the gentleman surveyor to come back up once more, and I want to clarify
1385 one issue. Please identify yourself.
1386

1387 Mr. Jones - I'm Todd Jones.
1388

1389 Mr. Wright - You stated that you notified somebody, you talked to
1390 somebody about coming back and staking the house.
1391

1392 Mr. Jones - When he came in and picked up his plans.
1393

1394 Mr. Wright - Who is he?
1395

1396 Mr. Jones - Mr. Kahl.
1397

1398 Mr. Wright - Mr. Kahl himself? You didn't do the survey then?
1399

1400 Mr. Jones - I did not physically go out on the property, no. I run the
1401 company, and I have field crews that go out and do it. He dealt with one of my
1402 employees.
1403

1404 Mr. Wright - So that's true, when he says he did not see you on the
1405 property?
1406

1407 Mr. Jones - Not on the property, no.
1408

1409 Mr. Wright - You're saying that when he came back, he, himself came
1410 back and picked the plats up?
1411

1412 Mr. Jones - Yes, that is correct.
1413

1414 Mr. Wright - And you talked to him then?
1415
1416 Ms. Dwyer - And when you said Mr. Kahl, you meant Mr. Robert Kahl?
1417
1418 Mr. Jones - Correct.
1419
1420 Mr. Wright - That concludes the case. Thank everyone for appearing. A
1421 decision will be made at the end of the docket today, or you can call the Planning Office
1422 and get the results.
1423
1424 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
1425 Dwyer, the Board **denied** application **A-39-2005** for a variance to allow the existing
1426 dwelling to remain at 4958 Charles City Road (Parcel 839-698-5795).
1427
1428 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1429 Negative: 0
1430 Absent: 0
1431
1432 The Board denied your request as it found from the evidence presented, that the
1433 application of the zoning ordinance would not prohibit or unreasonably restrict the use of
1434 the property.
1435
1436 Mr. Wright - We're going to take a five-minute recess.
1437
1438 **A-40-2005** **MR. AND MRS. F. MICHAEL CROWLEY** request a variance from
1439 Section 24-95(i)(2) to build an in-ground swimming pool at 901
1440 South Gaskins Road (West Knoll) (Parcel 739-733-2504), zoned R-
1441 0, One-family Residence District (Tuckahoe). The accessory
1442 structure location requirement is not met. The applicants propose
1443 an in-ground swimming pool in the side yard, where the Code
1444 allows accessory structures in the rear yard.
1445
1446 Mr. Wright - Does anyone else desire to speak with reference to this
1447 matter? Would you raise your right hand and be sworn please?
1448
1449 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1450 truth, the whole truth, and nothing but the truth, so help you God?
1451
1452 Mrs. Crowley - I do. I'm Mrs. Michael Crowley. I had a landscape architect
1453 start to design a swimming pool, and he pointed out to me that by Code it needed to be
1454 in the rear yard. I have recently moved back to Richmond from Georgia and didn't
1455 realize that this was the case. Fortunately, I have not paid him any money, because he
1456 said that I needed to come here. If you can see from my property, my house sits way
1457 back on the lot, and in the rear yard, it sits very close to the golf course, as well as to
1458 the cart path, and so I wanted to build a swimming pool on the side yard of this property.
1459 It is more private for me, and is more private from the Country Club of Virginia golf

1460 course.
1461
1462 Ms. Dwyer - Mrs. Crowley, if you moved the swimming pool back, kept it
1463 at its same location generally in the side yard, but moved it back so that it was behind
1464 the dotted line, would that be acceptable in the rear yard, Mr. Blankinship?
1465
1466 Mr. Blankinship - Yes.
1467
1468 Ms. Dwyer - Is there any reason why the pool couldn't be moved back,
1469 even though it's roughly in the same orientation?
1470
1471 Mrs. Crowley - It could; it would be totally in the shade; it would have no sun
1472 there. It's screened right there and moving closer to the golf course. It is right by green
1473 # 9 on the golf course, so to sit back, coming in directly across from my house, for me
1474 it's more pleasant. You're then putting more of the pool stuff back there by the golf
1475 course.
1476
1477 Ms. Dwyer - You have some substantial evergreen trees back there.
1478
1479 Mrs. Crowley - Screening, yes, and we're adding more, but not until we can
1480 draw the plan by the landscape architect.
1481
1482 Ms. Dwyer - You don't have any screening directly behind your house?
1483
1484 Mrs. Crowley - No, I do not. I have one tree, and it's totally open to the golf
1485 course.
1486
1487 Ms. Dwyer - Is that where you want to add screening, or did you want to
1488 preserve that?
1489
1490 Mrs. Crowley - We're probably going to leave that open so that we have a
1491 view from our back brick patio to the golf course. It's sort of an opening there, where we
1492 can see them and they can see us, if they go by, and from the clubhouse, the Country
1493 Club of Virginia James River Clubhouse, they cannot see into where this pool would be,
1494 nor could I see them. If I build it in the rear yard, they can, from sitting out there on their
1495 back terrace, when people are having drinks or whatever, see my swimming pool. I
1496 think that, from talking to the person at the Country Club of Virginia, Skip Harris, he
1497 didn't have any objection of where we planned to place this pool.
1498
1499 Ms. Dwyer - But if you moved it back, if you left it in its present orientation
1500 but just moved it closer to the rear property line, you would still have the benefit of those
1501 existing screen trees.
1502
1503 Mrs. Crowley - Yes we could, but we would be pretty much total shade, and
1504 if we were to add any kind of small little enclosure there for the pool equipment, it would
1505 be pushing it right up to the cart path on the golf course.

1506
1507 Ms. Harris - Are there any more variances on this property, the history, I
1508 was concerned about the narrow way to gain access to your property.

1509
1510 Mrs. Crowley - I saw that, but we own the actual 903 South Gaskins Road;
1511 we own all the way to Gaskins Road, so we've got about two acres in the front of this
1512 property. We own the part that's above that also, where it says 903, that is our property
1513 also.

1514
1515 Mr. Kirkland - Are they combined into one parcel. or are they separate
1516 parcels?

1517
1518 Mrs. Crowley - I guess they're separate parcels; all I know is I paid taxes on
1519 both, so I guess they're separate parcels. And in the front of the yard, obviously where
1520 we would not build the property, is a septic tank location, septic drain fields and the
1521 tank.

1522
1523 Mr. Wright - Any further questions of the Board? Is anyone here in
1524 opposition to this request? Hearing none, that concludes the case.

1525
1526 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
1527 Harris, the Board **denied** application **A-40-2005** for a variance to build an in-ground
1528 swimming pool at 901 South Gaskins Road (West Knoll) (Parcel 739-733-2504).

1529
1530 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1531 Negative: 0
1532 Absent: 0

1533
1534 The Board denied your request as it found from the evidence presented, that the
1535 application of the zoning ordinance would not prohibit or unreasonably restrict the use of
1536 the property.

1537
1538 **UP-8-2005 UNITED METHODIST PUBLISHING HOUSE (COKEBURY)**
1539 requests a temporary conditional use permit pursuant to Section
1540 24-116(c)(1) to hold two tent sales per year at 3700 West End Drive
1541 (Parcel 759-757-0604), zoned B-2, Business District (Brookland).

1542
1543 Mr. Wright - Does anyone else desire to speak with reference to this
1544 matter? Would you raise your right hand and be sworn please?

1545
1546 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1547 truth, the whole truth, and nothing but the truth, so help you God?

1548
1549 Ms. Fahrig - I do. My name is Rebecca Fahrig. I'm here with Ellen
1550 Thompson, to get a conditional use permit for a tent sale to be held May 19 through 21
1551 of this year. The tent will be installed May 17 and removed May 23. It was based on

1552 the recommendations from this committee to have a tent sale and permission to do it
1553 twice a year for two years, for 2005 and 2006. The tent we use is 900 square feet,
1554 which doesn't require a building permit, and the company we use is licensed and is the
1555 same one that we've been using for the past several years. We would also have five
1556 walls to protect the product inside at night, as well as these would come up to access
1557 the customers back and forth, so there would be no blocks that way, and we'd have a
1558 small fire extinguisher available inside the tent as well. We've had tent sales going on
1559 since 1995, and we haven't had any complaints.

1560
1561 Mr. Wright - Is this the same type of operation you've had the past few
1562 years. Have we had any complaints, Mr. Blankinship?

1563
1564 Mr. Blankinship - No sir, I think the only difference is that you've only done it
1565 once annually in the past.

1566
1567 Ms. Dwyer - You said you would have the tent removed by May 23 and
1568 the conditions say May 21.

1569
1570 Ms. Fahrig - Right, it's a Saturday, and the company would come back
1571 out on Monday.

1572
1573 Ms. Dwyer - So you might want to change that date.

1574
1575 Ms. Harris - Is the parking agreement that you have with the neighboring
1576 business in writing?

1577
1578 Ms. Fahrig - No, it's not in writing.

1579
1580 Ms. Harris - Do we need that as general policy?

1581
1582 Mr. Blankinship - It would be better.

1583
1584 Ms. Harris - What color is the tent?

1585
1586 Ms. Fahrig - White.

1587
1588 Ms. Harris - As long as it's not yellow.

1589
1590 Mr. Wright - Any further questions of the Board? Is anyone here in
1591 opposition to this request? Hearing none, that concludes the case.

1592
1593 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
1594 Harris, the Board **granted** application **UP-8-2005** for a temporary conditional use permit
1595 to hold two tent sales per year at 3700 West End Drive (Parcel 759-757-0604). The
1596 Board granted the use permit subject to the following conditions:
1597

1598 1. The tent will be removed by the close of business on May 23, 2005. A tent may
1599 be erected again in October 2005 and twice in 2006. The dates for the October 2005
1600 and the 2006 tent sales must receive written approval from the Director of Planning..

1601
1602 2. The length of each sale may be no more than three consecutive days and the
1603 tents may not be displayed for more than five consecutive days.

1604
1605 3. The height of the tent may not exceed that of the principal structure on the
1606 property.

1607
1608 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1609 Negative: 0
1610 Absent: 0

1611
1612 The Board granted the request because it found the proposed use will be in substantial
1613 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1614
1615 **A-41-2005** **ROBIN EDMONDS** requests a variance from Section 24-95(k) to
1616 build a detached garage at 3000 Summerhaven Court (Tall Oaks)
1617 (Parcel 770-764-0054), zoned R-2AC, One-family Residence
1618 District (Conditional) (Brookland). The minimum side yard setback
1619 is not met. The applicant proposes 8 feet minimum side yard
1620 setback, where the Code requires 65 feet minimum side yard
1621 setback. The applicant requests a variance of 57 feet minimum
1622 side yard setback.

1623
1624 Mr. Wright - Does anyone else desire to speak with reference to this
1625 matter? Would you raise your right hand and be sworn please?

1626
1627 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1628 truth, the whole truth, and nothing but the truth, so help you God?

1629
1630 Mr. Edmonds - I do. Robin Edmonds. I'm the owner of the property in
1631 question, 3000 Summerhaven Court. My request is to build a detached garage off of
1632 Brookemoor Lane. As you can see by the plat, I have added a few additions over the
1633 years. My intent when I purchased the property in 1990 was to have a detached
1634 garage. At some point in time, Russ Malone asked to change the zoning on the
1635 property behind me, which is approximately ten acres. I believe it was zoned A-1. I
1636 spoke in favor of that, in placing those two homes back there. I believe most of that
1637 property is in a hundred-year flood plain, so no additional homes could be built back
1638 there, and I know Ms. George does not request that the road ever be cut through from
1639 Brookemoor to Hamilton. As far as traffic issues, there are two families which use that
1640 road now, along with deliveries from mail, FedEx, and UPS. I would use it for my own
1641 cars, just to have it there. Most of the homes in the subdivision do have it, and to place
1642 it across the back yard, where my little tool shed is, would require me to basically build a
1643 driveway 65-plus feet, which would actually be 65 feet from the property line, plus an

1644 additional ten or twelve feet of grass area to the road, since we don't have curb and
1645 gutter. That would also require me to relocate the existing tool shed, which could be
1646 made portable, and I would probably need a variance to move that to another portion of
1647 the yard.

1648
1649 As far as placing, the gravel drive is not there; it's actually an asphalt drive, and it
1650 doesn't angle in that way – it actually angles in along the property line. But to extend a
1651 double asphalt drive singly, through the back yard back there, I probably would not go
1652 that route. I would actually take it across the back yard if I were required to place the
1653 garage on the opposite side of the road. Other issues that have come up are the size of
1654 the garage and the height of the garage. According to what the website said was the
1655 fifteen foot, plus the six foot, my intentions would never be to put a cupola on it, nor to
1656 put it as an apartment. The only utilities that would go to that would be electricity. I live
1657 in the home by myself, and I don't need any additional space for living. It would be used
1658 for storage or possibly a wood workshop, which I enjoy doing now and then. As far as
1659 traffic, it is minimal, as it is now. I know the mailboxes that are there have been
1660 knocked over once or twice, but I don't think that would be an issue with me. I wouldn't
1661 have guests using that part of my drive.

1662
1663 The size, I believe the County recommended nineteen by nineteen; being an odd
1664 building size and the size of the material lumbars, it should be an even space. I believe
1665 that I measured out quite clearly that a 24 by 24 could be put in there, meeting the ten
1666 feet from the main structure, six feet from the accessory structures, and off the
1667 easement on both sides. I have a fence line that runs a majority of the rear property line
1668 and down the side line. I have noticed in the subdivision in front of us that there are at
1669 least two, possibly three, that have the reverse corner lot, and they have the garages
1670 set not in accordance with the 65-foot setback line. Two of them are at very busy
1671 intersections at Attems Way and Heritage, and I don't know of any accidents that have
1672 been caused there. As far as the height issue, if I put it with a 4-12 pitch roof, or a 12-
1673 12 pitch, which I've asked for, to make it architecturally congruent with the existing
1674 home, which has a 12-12 pitch on one part of the roof, a 14-12 pitch on the other part of
1675 the roof, and 3-12 pitches on the front porch and on the addition, which has a 3-12 pitch
1676 along with a cupola that goes up to about a 14-12 pitch. I'm trying to keep it in a
1677 Victorian nature, and the picture that I provided was actually from a garage that is built
1678 at Oak Park off of Huguenot Road, where it's like a little community over there of turn-
1679 of-the-century homes. I've tried to keep everything in accordance with the architecture
1680 of my house, and I know I have probably the most unusual house in that subdivision,
1681 and I just think it would be appropriate that I be allowed to have that garage. I believe
1682 my hardship is that when I purchased the property, the reverse corner lot did not exist,
1683 and I had planned to put this here from there, nothing on paper, but I had planned to put
1684 it there originally. A condition came up after the fact.

1685
1686 Mr. Wright - We have two letters of opposition from Mr. and Mrs. Mitten
1687 and Mr. and Mrs. Kenny. Have you seen those letters?

1688
1689 Mr. Edmonds - Yes, I got them day before yesterday. That's why I was

1690 stressing some of the height issues and some of the recommendations. As far as
1691 visibility, whether the garage will be 19 by 19 and a 4-12 pitch or 24 by 24 with a 12-12
1692 pitch, just as long as it doesn't go over the requirements on height on an outbuilding, it's
1693 still going to block some visibility. The existing plantings there block quite a bit of
1694 visibility right now, where I have three Leyland Cypresses in the springtime, and then in
1695 the summer the red and white oaks and crape myrtles also create quite a visibility issue.
1696 I don't think visibility would be impacted. You can see the fence line, and there's the
1697 Leyland Cypresses. My property line pretty much starts back up where that bare spot
1698 is, and the other is all County property, but you can see the pitches on my roof, the little
1699 tool shed across the way, the deck is octagonal shaped. It's just me who lives there.

1700
1701 Mr. Wright - Is that a Leyland back there?

1702
1703 Mr. Edmonds - All the three green ones are Leyland Cypresses.

1704
1705 Mr. Wright - Would that garage be along side that Leyland?

1706
1707 Mr. Edmonds - Yes sir, it would be. The two trees that I need to take out,
1708 you can see one blew over, and I tied it to the oak tree right there, that tree, a willow
1709 oak, and the one in the center is a red oak, if I place the garage there, they are pretty
1710 much the only trees I need to take out. I'm going to try to relocate the crape myrtle that
1711 I have there that is closest to the Leyland Cypress on the end that's tied up.

1712
1713 Mr. Wright - You have two houses that would be west of you, is that
1714 correct?

1715
1716 Mr. Edmonds - It's exactly north. The rear of my house faces directly north.

1717
1718 Mr. Wright - Is there much traffic on Brookemoor Lane that goes past
1719 your house?

1720
1721 Mr. Edmonds - No, just the residents, the Mittens, they drive, and her
1722 parents come over occasionally. Mr. and Mrs. George live in the house that's in front of
1723 theirs. They have two children who drive, and their cars, and as far as deliveries and
1724 visitors, absolutely not. Before those homes were built, we had a lot of teen-age traffic
1725 back there that would park there at night and on weekends. I did have a floodlight on
1726 the side of my house and in the rear of my house too. Prior to those two homes being
1727 constructed, it was just an open grassy field, and then closer to the railroad tracks on
1728 the George's house was an old building with an open well, but that was all cleaned up
1729 about thirteen years ago. I think the visibility issue is moot, whether I put a smaller
1730 building there or one that I think would accommodate at least the two cars. As you can
1731 see, there's my asphalt driveway that's not gravel any more.

1732
1733 Ms. Dwyer - One of the things the staff report mentions is that one of the
1734 reasons for the reverse corner ordinance is to keep accessory buildings such as yours
1735 from being essentially in the front yard of your next-door neighbor, which would be the

1736 case here because your garage would in effect be clearly visible and adjacent and very
1737 close to their front yard. That's one of the reasons why this ordinance exists, and it
1738 seems to me that there's a good reason for that ordinance, and this case illustrates that
1739 good reason.

1740
1741 Mr. Edmonds - But I propose to you that when I purchased the property, the
1742 condition didn't exist, and that it was put upon me after the fact. As far as the front yard,
1743 yes it's in the front yard, but if you look at the size of their front yard, if I put it where the
1744 tool shed is, it's going to be actually closer to their home. It's not going to be a junk
1745 garage; it's going to be an attractive building. I'm going to spend some money on it, but
1746 I'm trying to keep it in accordance with the architecture of my home.

1747
1748 Ms. Dwyer - The other point I wanted to make about the height is that it's
1749 not just a safety issue. It's also, given the location, how imposing the building is, being
1750 located close to the road and close to your adjacent neighbor.

1751
1752 Mr. Edmonds - I can see that issue; however, looking at the building that I
1753 took a picture of, which backs up to Huguenot Road, I see it as architecturally friendly
1754 for road visibility.

1755
1756 Ms. Dwyer - Huguenot Road is a lot different from Brookemoor.

1757
1758 Mr. Edmonds - Exactly. There's a lot more traffic and a lot more visibility,
1759 but I don't see it as that being an issue. Again, if I were required to move the garage, I
1760 would need to move my tool shed, and I couldn't put it within a 65-foot requirement, or I
1761 don't know if that would be required of a portable building. I haven't checked the Code
1762 on that. If the Code didn't apply to portable buildings, ultimately what I would end up
1763 having to do is to relocate my 10 by 12 tool shed to the opposite side of the yard, locate
1764 the garage in that area, make sure that I would be off the easements there, three feet
1765 off of that property line, and then out of the rear utility easement, and construct a drive
1766 through the rear yard off of Brookemoor. I just don't think it would look proper squeezed
1767 beside my family room.

1768
1769 Ms. Dwyer - The conditions proposed by staff state that the structure
1770 shall contain only one story with a 4-12 roof pitch. You do not want that condition to
1771 apply?

1772
1773 Mr. Edmonds - No, I don't want that condition. It wouldn't be congruent with
1774 the construction of the house, and I would propose to put a condition that no utility other
1775 than electricity be brought to the building. I have no need to have that type of space.
1776 It's just me and 2500 square feet.

1777
1778 Ms. Dwyer - Our decisions run with the land in perpetuity, so it's not just
1779 how you would use it.

1780
1781 Mr. Edmonds - Personally, I would like that condition put in there. There

1782 would be no way I could bring water and sewer to it, being the location of the existing
1783 sewer lines, but I wouldn't consider that in the first place. I have no desire to do that.
1784 The attic part of it would be pretty much storage or a woodshop, but not one of a utility
1785 nature or an apartment. There are actually three garages, one in Tall Oaks, on
1786 Brookemoor Place that is probably taller than 21 feet, and there's one on Attems Way
1787 that was just recently constructed, with dormers, and there's one across the street from
1788 there; all of those have second floors with windows, dormers, etc. All I'm trying to do is
1789 keep the construction congruent with what I have.

1790
1791 Mr. Kirkland - Would this be built of the same materials as your home?
1792

1793 Mr. Edmonds - It would be built of similar materials. The actual siding that
1794 my home is made out of, masonite, double-wide five siding, I understand, is no longer
1795 manufactured, but it would be very much similar with the vinyl the same color. It would
1796 not be a standing seam metal roof; it would be an architectural shingle or one to match.
1797 The windows would be to match. The only difference would probably be, I'm going to
1798 look into the pricing of a wooden garage door that would match my front door and my
1799 atrium door off the dining room that goes off the front porch, because all of those are
1800 stained wooden doors. I want to make sure that it looks appropriate. When I did my
1801 addition, my deck, a lot of people came by and say it doesn't look like an addition
1802 because it matches the house so well.

1803
1804 Mr. Wright - Any further questions of members of the Board? I
1805 understand we have some opposition, which we will listen to, and then you'll have a
1806 short time to rebut.

1807
1808 Ms. George - Kathleen Maloney George. I'm speaking for Susanne and
1809 Bob Mitten, who have the property directly behind Mr. Edmonds. She had to pick up
1810 her five-year-old from nursery school and will be returning with him and could speak if
1811 she gets here in time. I know Robin has addressed some of the concerns. Mr.
1812 Blankinship apparently called him after Mrs. Mitten and I visited him, to understand what
1813 the variance was when we got the notification. We went to find out what 57 feet was.
1814 This plat is not to scale. Mr. Blankinship tried to measure when we were there, and it
1815 looks like it was thirteen feet from the corner of the garage to the corner of Mr. Edmonds
1816 deck. I believe it's actually only six feet, and I believe Mr. Edmonds did say the gravel
1817 drive, which was dotted in by someone, really wasn't done by the surveyor, goes
1818 straight back. However, these are the big concerns of Mrs. Mitten, if you have copies of
1819 the photos that were included with her letter.

1820
1821 Photo # 1 shows a footprint extended up by her husband who is an engineer, with the
1822 dimensions of this proposed structure. Photo # 1 shows a footprint, standing right in
1823 front of their porch, looking down to where the garage would be. As you can see, you
1824 can normally see through the trees, but if that structure were there, your view would be
1825 blocked. There are six or seven children in the area, all eight years or younger, who
1826 play and come down, to all the houses, come around this corner, so the fight now would
1827 necessitate going all the way down the driveway.

1828
1829 Photo # 2, contrary to what Mr. Edmonds said, shows another footprint of his garage,
1830 and completely blocks out the house. Concern for safety and welfare, if there were a
1831 fire, God forbid, and the fire engines came down, they wouldn't be able to see the
1832 house. I don't know if they have GPS, but they can tell where a fire has been called in,
1833 but coming down the road with that structure, you wouldn't be able to see the house
1834 unless you continued to the end.

1835
1836 Photo # 3, you would have to get to the second red line before you could actually be
1837 able to see the house, and that photo also shows the three driveways. The paved
1838 driveway in the center is the Mittens. The red lines we assume, and I know what
1839 happens when we assume, but we are assuming from the flags that Mr. Edmonds has
1840 placed, that that's where his driveway would be, that's his, and then directly to the right
1841 of the split rail is our driveway, so we would have three driveways converging within, I
1842 think ours is fifteen feet wide; I think the Mittens is no more than ten; I don't know how
1843 wide Mr. Edmonds' would be, but within about fifty feet we could have three driveways.
1844 Mr. Edmonds is a single person, and he's only there, but he does have three vehicles,
1845 which means, I assume, that one would always be parked in the driveway, since it's
1846 only a double garage, which would further block sight there. The Mittens' driveway,
1847 because it curves, you actually have to get pretty far down to be able to see to come
1848 out. The garage would further block that sight line. We have had a lot of problems; a
1849 lot of people think that Brookemoor connects with Hamilton, and they come roaring
1850 down and hit our gravel and put on the brakes when all of a sudden they realize that
1851 maybe this doesn't go through, and then instead of backing up, they attempt to turn
1852 around. We have a portable basketball goal that has been hit numerous times, and our
1853 mailboxes, located roughly directly across from Mr. Edmonds' proposed driveway, has
1854 been broken off about three times. The convergence is of concern to us.

1855
1856 Photo # 4 projects the lines of Mr. Edmonds' proposed structure, and you can see it's
1857 quite close to his deck. I realize it would be an extra burden on Mr. Edmonds to move
1858 this garage to the location of his shed, but in looking at the master plan, I don't know
1859 what Tall Oaks Subdivision deed restrictions are, but it seems to me that it would be
1860 more plausible for a garage, since he already has a driveway that extends, basically
1861 coming to the end of where his family room is, and he has almost eighteen feet, and it's
1862 already half-way there, he could extend that and put this garage in the rear corner of his
1863 yard. I would be farther away from his structure; yes, it would back up to the Mittens'
1864 yard, but it would take away the lack of sight at the end of the driveway, and he could
1865 move his shed. We just feel it's too large a structure in that corner, and this plat doesn't
1866 really show you how large it is. I do believe that if you look at Photos # 1 and 2, that
1867 show a footprint of it, you get a better idea of what the volume of the structure is.

1868
1869 Mr. Wright - Anybody else wish to speak in opposition? Mr. Edmonds,
1870 you have a brief time to rebut.

1871
1872 Mr. Edmonds - I would not park any cars outside the garage. I would
1873 maintain my existing driveway for any additional cars I have or would get. The reason

1874 for the garage is, I have a Thunderbird that I leave outside now. I would like to park it in
1875 the garage. I would like to acquire some other cars, again, only for collection purposes.
1876 I would not leave cars parked in a driveway on Brookemoor Lane to hinder any visibility.
1877 Again, with the visibility issue, whether a structure is six or twelve or twenty feet tall, it's
1878 going to have some visual impact on sighting that house. When you look down
1879 Brookemoor Lane, the Mittens' house pretty much can't be seen until you get to where
1880 the 39.7 line hits my property line. I have a fire hydrant right beside rod F; I know the
1881 Fire Department does use GPS, and they know their locations very well.
1882

1883 She is correct about the scale issue; however I talked to Mr. Blankinship, and the
1884 requirements are ten feet from the main structure and six feet from any accessory
1885 structure. With proper placement, but it would have to be pinned out very closely to
1886 make sure that it was off the easement, within eight or ten feet of the property line on
1887 Brookemoor, and no closer than ten feet to the main structure and six feet to the deck,
1888 where I propose an exterior door for the garage to actually tie into the sidewalk; that's
1889 where those steps are off the deck where the little raised octagon part is. It is a nice
1890 structure; whether it's imposing or not, I can't say. I think it would be architecturally
1891 friendly to the neighborhood and really not create the visibility issues.
1892

1893 Another issue that she brought up is with the covenants of Tall Oaks; the covenants do
1894 allow outbuildings and detached garages; they have been built by the original builder
1895 and by others in the subdivision. One is on Ismet, and that is a reverse corner lot that
1896 has a driveway that goes all the way across the back yard. If I were to place it over
1897 there, I would probably go that route, rather than squeeze it on that side, and just totally
1898 reconfigure the landscaping in my back yard and remove several more trees. There is
1899 one on Radcliffe that is a detached garage; there is one on Attems Way that has a
1900 detached garage and a swimming pool, and then one on Brookemoor Court that has a
1901 huge detached garage. The covenants do allow for those buildings, and there is a "No
1902 Outlet" sign right past Ismet's intersection with Brookemoor, where it becomes a "no
1903 outlet."
1904

1905 I also requested of the County Traffic Engineering to place "Children Playing" signs up;
1906 however, they felt that condoned children playing in the street, and they refused to do it.
1907 My concern for the kids is just as large as hers. If anything is conditionally decided that
1908 I need to place it on the other side of the yard, would there be a condition allowing me to
1909 move the tool shed within the non-65-foot setback? I don't know if that portable building
1910 is covered under that issue. It is covered? I would need one or the other.
1911

1912 Mr. Wright - Thank you very much. That concludes the case.
1913

1914 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
1915 Dwyer, the Board **denied** application **A-41-2005** for a variance to build a detached
1916 garage at 3000 Summerhaven Court (Tall Oaks) (Parcel 770-764-0054).
1917

1918 Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
1919 Negative:		0

1920 Absent: 0
1921
1922 The Board denied the request as it found from the evidence presented that authorizing
1923 this variance would be of substantial detriment to adjacent property and would
1924 materially impair the purpose of the zoning regulations.
1925
1926 **A-42-2005** **ALICE HARRISON** requests a variance from Section 24-94 to build
1927 a carport at 10102 Timber Road (Terry Heights) (Parcel 771-762-
1928 1138), zoned R-3, One-family Residence District (Brookland). The
1929 minimum side yard setback and total side yard setback are not met.
1930 The applicant proposes 3 feet minimum side yard setback and 18
1931 feet total side yard setback, where the Code requires 12 feet
1932 minimum side yard setback and 30 feet total side yard setback.
1933 The applicant requests a variance of 9 feet minimum side yard
1934 setback and 12 feet total side yard setback.
1935
1936 Mr. Wright - Does anyone else desire to speak with reference to this
1937 matter? Would you raise your right hand and be sworn please?
1938
1939 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1940 truth, the whole truth, and nothing but the truth, so help you God?
1941
1942 Ms. Harrison - I do. Alice Harrison. I'm not really prepared for this because
1943 the gentleman who was going to do my carport was going to appear here, and he's not
1944 doing it anymore, so I didn't know what I was supposed to do. You have the
1945 information.
1946
1947 Mr. Wright - You want to build a carport?
1948
1949 Ms. Harrison - A two-car carport.
1950
1951 Mr. Kirkland - Do you still want to build it?
1952
1953 Ms. Harrison - Yes. I need a variance because it's too close to the property
1954 next door. I think the gentleman who lives next door wrote a letter, and he didn't object
1955 to that. The carport is going to match the house. It's going to have shingles on it like
1956 the house; it's going to have the siding on the A-frame part of it like the siding on the
1957 house, so it's not going to be just one of those things that are thrown together. I think
1958 three of the neighbors have written you letters.
1959
1960 Mr. Wright - We have letters from three of the neighbors in favor of it.
1961 This carport would be open, completely open, just have the roof and supporting beams.
1962
1963 Ms. Harrison - And concrete for the floor.
1964
1965 Mr. Kirkland - Mr. Blankinship, in this photo we have, there is a carport on

1966 the house next door, correct?
1967
1968 Ms. Harrison - There is one on the house next door; it's not as large.
1969
1970 Mr. Kirkland - We gave a variance for that one too?
1971
1972 Mr. Blankinship - I don't remember seeing it on the map or in the notes.
1973
1974 Mr. Kirkland - Ms. Harrison, on the wood fence you have that's in the
1975 picture, I assume that's your white pick-up and blue car?
1976
1977 Ms. Harrison - Yes.
1978
1979 Mr. Kirkland - Where is the property line; it looks like there's a bench
1980 against that fence?
1981
1982 Ms. Harrison - Right. At the end of that fence; it's probably right there.
1983
1984 Mr. Kirkland - Where it butts the other gentleman's line with his garage?
1985
1986 Ms. Harrison - The fence is down now.
1987
1988 Mr. Kirkland - But all that fence in the photo was yours, correct?
1989
1990 Ms. Harrison - Correct, but it's already down.
1991
1992 Mr. Wright - Any further questions of the Board? Is anyone here in
1993 opposition to this request? Hearing none, that concludes the case.
1994
1995 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
1996 Nunnally, the Board **granted** application **A-42-2005** for a variance to build a carport at
1997 10102 Timber Road (Terry Heights) (Parcel 771-762-1138). The Board granted the
1998 variance subject to the following conditions:
1999
2000 1. This variance applies only to the minimal and total side yard setback
2001 requirements. All other applicable regulations of the County Code shall remain in force.
2002
2003 2. Only the improvements shown on the plan filed with the application may be
2004 constructed pursuant to this approval. Any additional improvements shall comply with
2005 the applicable regulations of the County Code. Any substantial changes or additions
2006 may require a new variance.
2007
2008 3. The new construction shall match the existing dwelling as nearly as practical
2009 in materials and color.
2010
2011 Affirmative: Kirkland, Nunnally, Wright

3

2012 Negative: Dwyer, Harris, 2
2013 Absent: 0

2014
2015 The Board granted this request, as it found from the evidence presented that, due to the
2016 unique circumstances of the subject property, strict application of the County Code
2017 would produce undue hardship not generally shared by other properties in the area, and
2018 authorizing this variance will neither cause a substantial detriment to adjacent property
2019 nor materially impair the purpose of the zoning regulations.

2020
2021 **A-43-2005** **LARRY AND ROSITA PITTS** request a variance from Section 24-
2022 95(q)(5) to build an addition at 5505 Kimbermere Court
2023 (Winterberry) (Parcel 754-770-6221), zoned R-3C, One-family
2024 Residence District (Conditional) (Brookland). The rear yard
2025 setback is not met. The applicants propose 26 feet rear yard
2026 setback, where the Code requires 35 feet rear yard setback. The
2027 applicants request a variance of 9 feet rear yard setback.

2028
2029 Mr. Wright - Does anyone else desire to speak with reference to this
2030 matter? Would you raise your right hand and be sworn please?

2031
2032 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2033 truth, the whole truth, and nothing but the truth, so help you God?

2034
2035 Mr. Pitts - Yes I do. My name is Larry P. Pitts, Sr. February of this
2036 year I went to River City Design Group to design some plans for an addition on the back
2037 of my house. At that time I did not know that I had to have a 35-foot setback, so I went
2038 ahead and paid the money and had it done, not knowing that he or I should have known
2039 that I needed a variance to do what I'm doing today. I got all my plans drawn up and
2040 went to the County to submit them, and the guy told me I needed a variance and I didn't
2041 have enough property for this. Then I came to your office to apply for the variance. I've
2042 been to all my neighbors, behind me, beside me, in front of me, and even a block or two
2043 away, and asked them. It's not going any further than the deck is now, and I've got a
2044 copy from the homeowners association saying that it has been approved, as long as it's
2045 in your codes. The hardship, if it is one, is that I have a 74-year-old mother-in-law who
2046 is coming to live with me, and I've got a three-bedroom home. My third room is a
2047 computer room and exercise room, kind of a storage room, so I need to move some of
2048 this stuff out to take care of her. I did write a letter saying what we're trying to do. I'm
2049 sorry I didn't know this when we originally did this; I wouldn't be here if I had. Whatever
2050 I need to do, I'm at your mercy.

2051
2052 Mr. Wright - You followed the proper procedure.

2053
2054 Ms. Dwyer - You didn't build it first; that's a real good sign.

2055
2056 Mr. Pitts - I don't have the signatures of my neighbors, but they're all in
2057 agreement.

2058
2059 Mr. Wright - Is this going to replace the deck?
2060
2061 Mr. Pitts - Yes sir. On the left-hand side, where you have the pictures
2062 of the tree, they're Cypress pines also; it's not like these people will be able to see me
2063 anyway. The room will extend, on this side right here, to that deck.
2064
2065 Mr. Wright - One-story addition?
2066
2067 Mr. Pitts - Yes sir.
2068
2069 Mr. Wright - About the size of the deck? No deeper than that?
2070
2071 Mr. Pitts - Yes sir. No deeper.
2072
2073 Ms. Dwyer - But it will run the whole length of the house? And the
2074 footprint of your house is already larger than the other houses in the neighborhood.
2075
2076 Mr. Pitts - According to you and everybody else it is, but my house is a
2077 lot of roof. I have 1800 square feet. Most of those homes are anywhere from 1700 to
2078 2300 square feet.
2079
2080 Ms. Dwyer - But the footprint's smaller, because they're two story.
2081
2082 Mr. Pitts - I know I'm taking up most of the land, but I don't care about
2083 the yard.
2084
2085 Mr. Blankinship - I may have misunderstood what you said about the deck.
2086 I'm looking at the first floor plan now, and it shows this addition coming out four feet
2087 farther back than the deck and about ten or twelve feet farther to the side than the
2088 existing deck, so this addition is actually quite a bit larger than the existing deck.
2089
2090 Mr. Pitts - No, it's twelve feet; it's coming right off the back of the house
2091 to the twelve feet of the deck. You see that little bay window? It's the exact size of the
2092 deck.
2093
2094 Ms. Dwyer - I see the line of the deck that you're talking about now.
2095
2096 Mr. Blankinship - This is showing the addition going all the way around there,
2097 and it's showing the deck to be removed right here, so the addition is quite a lot larger
2098 than the deck, if the drawing is correct.
2099
2100 Mr. Kirkland - At least four feet.
2101
2102 Mr. Pitts - If you see the way, and I originally talked to the gentleman
2103 back here in the office, if you could see where it was measured, it's not but twelve feet,

2104 twelve by 44.
2105
2106 Mr. Blankinship - Is this drawing wrong, or am I not reading it correctly? You
2107 said the deck to be removed on this, and I don't want to get something in the record that
2108 you're going to build something different from what's in the record.
2109
2110 Mr. Pitts - It's twelve by 44 is what I think it's supposed to be.
2111
2112 Mr. Blankinship - That is the outside dimensions of this addition, but the
2113 existing deck is shown a lot smaller.
2114
2115 Mr. Kirkland - What's the size of your deck, do you know? From the back
2116 of the house to the outside of the deck, how wide is it?
2117
2118 Mr. Pitts - I think it's 12 by 33.
2119
2120 Mr. Blankinship - The 33 looks about right, but according to that drawing, it's
2121 more like eight feet. Either this drawing is wrong, or we're going to have a conflict
2122 between your testimony and your plans when they come in. I don't want to see you in a
2123 position where we have to come back here two months from now.
2124
2125 Mr. Pitts - Everyone that I've had pricing it, has been pricing it as a 12
2126 by 44.
2127
2128 Mr. Kirkland - Mr. Blankinship, why don't we put a condition "not to extend
2129 any further than the existing deck."
2130
2131 Mr. Pitts - That's all I'm going.
2132
2133 Mr. Blankinship - Unless this drawing is wrong, what he wants is a lot larger
2134 than the existing deck.
2135
2136 Mr. Dwyer - Another question on this drawing, is it mentions "old
2137 windows, " so why would there be old windows?
2138
2139 Mr. Pitts - What we're going to try to do is save my windows and put
2140 the old windows in. Instead of doing one bay window, we're going to try to do two, but I
2141 don't think that would make the structure any different.
2142
2143 Mr. Dwyer - Would they be cantilevered, or would they have foundation
2144 under them?
2145
2146 Mr. Pitts - I think the first one that you said, and that's more in my
2147 wife's line; it sticks out, yes ma'am.
2148
2149 Mr. Kirkland - Mr. Blankinship, I think that deck line's wrong.

2150
2151 Mr. Pitts - That's what I've been priced at.
2152
2153 Mr. Blankinship - The 12 by 44 is correct; what you're saying there matches
2154 this drawing, this shows the existing deck as 8 by 33.
2155
2156 Mr. Pitts - No, it's bigger than that, plus that little bit that sticks out.
2157 That is three feet, but it's not going that extra three feet.
2158
2159 Mr. Wright - Put a condition in the thing, and if he says it's true, we'll just
2160 hang with that, if this is approved.
2161
2162 Ms. Dwyer - The drawing shows it's twelve feet, and nine plus three, so if
2163 it's done according to the drawing, then it wouldn't be any more than twelve feet out.
2164
2165 Mr. Wright - Any further questions of the Board? Is anyone here in
2166 opposition to this request? Hearing none, that concludes the case.
2167
2168 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
2169 Harris, the Board **granted** application **A-43-2005** for a variance to build an addition at
2170 5505 Kimbermere Court (Winterberry) (Parcel 754-770-6221). The Board granted the
2171 variance subject to the following conditions:
2172
2173 1. This variance applies only to the minimum rear yard setback requirement. All
2174 other applicable regulations of the County Code shall remain in force.
2175
2176 2. Only the improvements shown on the plan filed with the application may be
2177 constructed pursuant to this approval. Any additional improvements shall comply with
2178 the applicable regulations of the County Code. Any substantial changes or additions
2179 may require a new variance.
2180
2181 3. The new construction shall match the existing dwelling as nearly as practical in
2182 materials and color.
2183
2184 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2185 Negative: Dwyer 1
2186 Absent: 0
2187
2188 The Board granted this request, as it found from the evidence presented that, due to the
2189 unique circumstances of the subject property, strict application of the County Code
2190 would produce undue hardship not generally shared by other properties in the area, and
2191 authorizing this variance will neither cause a substantial detriment to adjacent property
2192 nor materially impair the purpose of the zoning regulations.
2193
2194 **A-44-2005 SARAH M. AND MICHAEL F. IRWIN** request a variance from
2195 Section 24-94 to build a screened porch at 5516 Barnsley Terrace

2196 (Hampshire) (Parcel 742-775-6716), zoned R-2AC, One-family
2197 Residence District (Conditional) (Three Chopt). The rear yard
2198 setback is not met. The applicants have 32 feet rear yard setback,
2199 where the Code requires 45 feet rear yard setback. The applicants
2200 request a variance of 13 feet rear yard setback.
2201

2202 Mr. Wright - Does anyone else desire to speak with reference to this
2203 matter? Would you raise your right hand and be sworn please?
2204

2205 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2206 truth, the whole truth, and nothing but the truth, so help you God?
2207

2208 Ms. Irwin - I do. I'm Sarah Irwin. My husband, Michael Irwin, could not
2209 be here today, so I'm representing both of us. We are requesting a variance to build a
2210 screened porch, in place of where we already have a standing deck, which is at the rear
2211 of our home on Barnsley Terrace. We realize that the County Code requires a 45-foot
2212 rear setback, and this would be a 32, so the variance request is for the 13 feet setback.
2213 My husband spoke with you, Mr. Blankinship, a few days ago. I think one of the
2214 questions might have been with the rear setback having a buffer, which we just took
2215 care of a couple of weeks ago, building a tree line back there. You should have copies
2216 of letters from our neighbors that have view of where we are building the sunroom, and
2217 they all had no problem with it.
2218

2219 Ms. Dwyer - Ms. Irwin, this shows the deck at 45 feet from the rear
2220 property line?
2221

2222 Ms. Irwin - That's correct. We also will be building the sunroom so the
2223 framing of it will be the exact siding to match the house, as well as the brick footwork
2224 will be the exact to match the house, so that it will not look like an addition, but will look
2225 like it was existing with the home. Our biggest concern has been my husband and my
2226 son have allergies. My son's allergies are severe, and we feel like we could enjoy the
2227 outdoors more, eating outside as a family if we had the enclosed screen porch.
2228

2229 Ms. Dwyer - Ms. Irwin, the reason we have a reverse corner lot ordinance
2230 is because the rear of your property abuts very close to the side yard and to the front
2231 yard area of your neighbor. That's why more of a setback is required.
2232

2233 Ms. Irwin - Right, I realize that. I do want to mention you can see those
2234 are the current pictures we sent the other day with the tree line. The deck itself extends
2235 out ten feet, and even though we have requested thirteen for the sunroom, the actual
2236 plan we plan to do is twelve, so it's really just an addition two feet, that extension, but
2237 we wanted to have that approval for thirteen just for safe measure, but we are talking
2238 about an additional two feet. It also backs up not to the full view of our neighbor, who
2239 we have a great relationship with, and they're the ones who sent the letter; it's the side
2240 of their home, as you can see, so it's not something they're looking at directly. It is the
2241 side of their home that it backs up to. It's the Chappelles.

2242
2243 Mr. Wright - You have several letters. They have sent a letter agreeing
2244 to this screened porch.
2245
2246 Ms. Irwin - I do also want to mention that the additional part for the
2247 width of it is on the other side. It's not beyond where you can see when you mentioned
2248 about it being a reverse corner lot. It is not any additional to extend beyond where you
2249 already see the corner as it is, with the standing deck right now.
2250
2251 Ms. Dwyer - Are you building a sunroom or a screened porch?
2252
2253 Ms. Irwin - Did I say sunroom; I meant to say screened porch? It is a
2254 screened porch. I think it's because I've been looking at a sunroom/screened porch, but
2255 it is definitely going to be just a screened porch.
2256
2257 Mr. Wright - You're going to remove the deck?
2258
2259 Ms. Irwin - Yes sir.
2260
2261 Mr. Wright - It'll be a little bit larger than the deck.
2262
2263 Ms. Irwin - Yes, that's correct.
2264
2265 Mr. Wright - Do you know how big your deck is?
2266
2267 Ms. Irwin - It is a ten by twelve. The extension from the rear of my
2268 house out is ten feet, and the request for a variance is for thirteen, even though the plan
2269 is really just twelve, so it's an additional two feet.
2270
2271 Mr. Wright - Any further questions of the Board? Is anyone here in
2272 opposition to this request? Hearing none, that concludes the case.
2273
2274 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2275 Kirkland, the Board **granted** application **A-44-2005** for a variance to build a screened
2276 porch at 5516 Barnsley Terrace (Hampshire) (Parcel 742-775-6716). The Board
2277 granted the variance subject to the following conditions:
2278
2279 1. This variance applies only to the rear yard setback requirement. All other
2280 applicable regulations of the County Code shall remain in force.
2281
2282 2. Only the improvements shown on the plan filed with the application may be
2283 constructed pursuant to this approval. Any additional improvements shall comply with
2284 the applicable regulations of the County Code. Any substantial changes or additions
2285 may require a new variance.
2286

2287 3. The new construction shall match the existing dwelling as nearly as practical in
2288 materials and color.

2289
2290 Affirmative: Harris, Kirkland, Nunnally, Wright 4
2291 Negative: Dwyer 1
2292 Absent: 0

2293
2294 The Board granted this request, as it found from the evidence presented that, due to the
2295 unique circumstances of the subject property, strict application of the County Code
2296 would produce undue hardship not generally shared by other properties in the area, and
2297 authorizing this variance will neither cause a substantial detriment to adjacent property
2298 nor materially impair the purpose of the zoning regulations.

2299
2300 **A-45-2005** **CLINT W. MULLINS** requests a variance from Section 24-9 to build
2301 a one-family dwelling at 12735 Kain Road (Timberlakes) (Parcel
2302 732-771-8130), zoned A-1, Agricultural District (Three Chopt). The
2303 public street frontage requirement is not met. The applicant has 0
2304 feet public street frontage, where the Code requires 50 feet public
2305 street frontage. The applicant requests a variance of 50 feet public
2306 street frontage.

2307
2308 Mr. Blankinship - Mr. Chairman, let me call your attention to a letter that we
2309 left on the table. I will give the applicant a copy of this.

2310
2311 Mr. Wright - Does anyone else desire to speak with reference to this
2312 matter? Would you raise your right hand and be sworn please?

2313
2314 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2315 truth, the whole truth, and nothing but the truth, so help you God?

2316
2317 Mr. Mullins - I do. My name is Clint Mullins, and I'm applying for a
2318 variance because I'd like to build a new house behind my house on the existing
2319 property. I don't have enough road frontage. I need a house that's going to go right
2320 there where you've got it, and I want the driveway to come right up the edge, passing
2321 behind my garage, between me and Mr. Fair, to access the rear piece. I haven't done
2322 anything with it yet, waiting for your decision to let us know where we need to go. Mr.
2323 Fair and I have talked about it, and if I need an easement or something bordering his
2324 property, we can work that out fairly easily.

2325
2326 Ms. Dwyer - What is that structure that looks like it's right on the property
2327 line, not on your property, but next to it?

2328
2329 Mr. Mullins - The little square box? That's a shed? I talked to someone
2330 in Henrico County, and they said I should apply for a variance to keep the thing, but I
2331 decided not to. It's just an old tractor shed.

2332

2333 Ms. Dwyer - Is that on your property? So you own 12701?
2334
2335 Mr. Mullins - Yes. Those dimensions don't look right. This is sitting on
2336 my property, looks like it's shifted to the left a little bit.
2337
2338 Ms. Dwyer - How long have you lived in this house?
2339
2340 Mr. Mullins - Twenty years.
2341
2342 Ms. Dwyer - So you've used this property for twenty years as a home?
2343
2344 Mr. Mullins - Yes. I've got to meet Mr. Stringer this afternoon; it may not
2345 perk, I don't know. It should perk.
2346
2347 Mr. Wright - Have you read this letter that was submitted by Mr.
2348 Angstadt? We just got that today. He says he's not concerned about the new house as
2349 much as the continued and growing safety concerns resulting from the increased traffic
2350 caused by continued development along Kain Road.
2351
2352 Mr. Mullins - No, I didn't. They definitely are developing Kain Road. I
2353 don't see how it's going to really impact the amount of traffic if we build one house
2354 there. They just subdivided a piece of property behind me, and they're putting like 105
2355 lots in there, that are dumping out on Kain Road too.
2356
2357 Mr. Fair - My name is Bill Fair, and I own the property east of Clint,
2358 and we share the common boundary line, and if you see on Kain Road, I have plenty of
2359 road frontage, and I can give him some of mine if he really needs it he doesn't get a
2360 variance. He's perfectly welcome to come up my boundary line; that would give me
2361 access to the back of my property if he built a driveway there, to my strawberry patch.
2362
2363 Mr. Wright - Are you at 12701?
2364
2365 Mr. Fair - Yes.
2366
2367 Mr. Wright - It looks like his shed is on your property.
2368
2369 Mr. Mullins - I've got ten feet from the edge of my garage to my property
2370 line, between them
2371
2372 Mr. Wright - That's not an accurate line then.
2373
2374 Mr. Mullins - I don't think so. East of me, 100 feet, is going to be the
2375 entrance to the new Kain Road Estates, which is going to be built back behind me,
2376 behind him, and all of that, so traffic impact, I don't know how much. I'm going to have
2377 to come through that before I get home, and so will he. At one time Mr. Fair and I talked
2378 and if this is a problem, we're going to share this driveway.

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Mr. Wright - Have you seen the conditions that have been proposed to this request? The conditions will take care of your driveway problem. Before you can obtain a building permit, you have to satisfy the Planning Department that you have legal access to the property, so that will be taken care of. If we approve this, that condition would be in there.

Mr. Wright - Any further questions of the Board? Is anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **granted** application **A-45-2005** for a variance to build a one-family dwelling at 12735 Kain Road (Timberlakes) (Parcel 732-771-8130). The Board granted the variance subject to the following conditions:

1. This variance applies only to the public street frontage requirement. All other applicable regulations of the County Code shall remain in force.
2. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
3. 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.
4. The applicant shall present proof with the building permit application that a legal access to the property has been obtained.
5. 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.

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

The Board granted this request, as it found from the evidence presented that, due to the unique circumstances of the subject property, strict application of the County Code would produce undue hardship not generally shared by other properties in the area, and authorizing this variance will neither cause a substantial detriment to adjacent property nor materially impair the purpose of the zoning regulations.

UP-9-2005 **COLE SHOWS AMUSEMENT CO.** requests a temporary

2425 conditional use permit pursuant to Section 24-116(c)(1) to operate
2426 a carnival at 10101 Brook Road (Parcel 785-771-0111), zoned B-
2427 3C, Business District (Conditional) (Fairfield).
2428

2429 Mr. Wright - Does anyone else desire to speak with reference to this
2430 case? Would you raise your right hand and be sworn please?
2431

2432 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2433 truth, the whole truth, and nothing but the truth, so help you God?
2434

2435 Mr. Weber - I do. Ron Weber. We're applying for a variance to hold a
2436 carnival at the Simon-owned Virginia Center Commons mall. They've had several
2437 carnivals that Simon does corporately throughout the country, and there have been
2438 several at this mall that have been approved in the past. We've made the contacts with
2439 the police. Sgt. Gray has provided police protection; the Health Department and all the
2440 applicable things that must be done, provided for dumpsters and porta-johns. Mr. Cole
2441 will be providing the carnival. His company is a Virginia company, and he's worked
2442 many of the County fairs and malls in the state of Virginia for many years. We'd like
2443 your approval if possible.
2444

2445 Mr. Wright - Is this the same operation that's been conducted there in the
2446 past?
2447

2448 Mr. Weber - It's not the same company, no sir. The Simon Properties
2449 contracts with different companies. They screen them, obviously, and actually, I do
2450 myself work with Simon and pick the carnival companies that go to different places.
2451

2452 Mr. Wright - But it will be about the same operation?
2453

2454 Mr. Weber - It will be substantially the same, absolutely. Any complaints,
2455 Mr. Blankinship, in the past?
2456

2457 Mr. Blankinship - Not that I'm aware of, Mr. Chairman.
2458

2459 Mr. Kirkland - Didn't we put this two-police condition on it last time?
2460

2461 Mr. Weber - Yes, I followed the same guidelines as was approved before.
2462 There is one typo that I made – in the request, it's for the 5th through the 15th, and that
2463 includes a Monday and a Tuesday, and for some reason it didn't have Monday and
2464 Tuesday hours, but it's the same as it was on Wednesdays and Thursdays. The
2465 inclusive dates are the same, but for some reason it doesn't say Mondays and
2466 Tuesdays specifically, but the police request that we've made and the hours would be
2467 the same.
2468

2469 Mr. Blankinship - I would have assumed that you were not going to operate
2470 Monday and Tuesday.

2471
2472 Mr. Weber - I think last time it was a one-week request, and when it was
2473 copied, it just wasn't changed.
2474
2475 Ms. Dwyer - So that needs to be added to paragraphs 2 and 4, relating to
2476 police and hours.
2477
2478 Mr. Weber - The police have already been requested and scheduled for
2479 that time.
2480
2481 Ms. Harris - Did you see the plans from last year? These are similar to
2482 those?
2483
2484 Mr. Weber - Exactly the same footprint.
2485
2486 Mr. Wright - Any further questions of the Board? Is anyone here in
2487 opposition to this request? Hearing none, that concludes the case.
2488
2489 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
2490 Dwyer, the Board **granted** application **A-14-2005** for a temporary conditional use permit
2491 to operate a carnival at 10101 Brook Road (Parcel 785-771-0111). The Board granted
2492 the use permit subject to the following conditions:
2493
2494 1. This approval is only for a carnival at the Virginia Center Commons shopping
2495 center from May 5 -15, 2005.
2496
2497 2. [AMENDED] The applicant shall satisfy all requirements of the Henrico County
2498 Division of Police concerning the security of the site and the patrons of the event. In
2499 addition to mall security, the applicant shall employ two off-duty police officers on site
2500 Friday and Saturday evenings and one off-duty police officer Sunday through Thursday.
2501
2502 3. The applicant shall satisfy all the requirements of the Henrico County Department
2503 of Health and the Henrico County Department of Building Inspections.
2504
2505 4. [AMENDED] Hours of operation shall be limited to 5:00 PM to 10:00 PM Sunday
2506 through Thursday, 5:00 PM to 11:00 PM Fridays, and 12:00 Noon to 11:00 PM
2507 Saturdays and 12:00 Noon to 10:00 PM Sundays.
2508
2509 5. Adequate site distance must be provided entering onto public roads.
2510
2511 6. All tents and accessory structures shall be removed from the site by May 16,
2512 2005, at which time this permit shall expire.
2513
2514 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2515 Negative: 0

2516 Absent: 0
2517
2518 The Board granted the request because it found the proposed use will be in substantial
2519 accordance with the general purpose and objectives of Chapter 24 of the County Code.
2520
2521 Mr. Wright - We've got one thing further – the Brady letter. What's your
2522 pleasure? Evidently the only way this can be resolved, at least to listen to it, would be
2523 to have him come back before the Board at the next meeting.
2524
2525 Ms. Dwyer - He wants to come back next month because the condition
2526 that we added, requiring the garage to be 25 feet from the roadway was not something
2527 that we mentioned to him while he was testifying, so he would like a chance to speak to
2528 that condition. I don't have any problem with that.
2529
2530 On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **granted** a rehearing of
2531 **A-34-2005**, Mr. Bradford J. Brady's, requested variance.
2532
2533 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2534 Negative: 0
2535 Absent: 0
2536
2537 On a motion by Ms. Dwyer, seconded by Mr. Harris, the Board **approved as**
2538 **corrected**, the Minutes of the **January 27, 2005**, Henrico County Board of
2539 Zoning Appeals meeting.
2540
2541 On a motion by Ms. Dwyer, seconded by Mr. Harris, the Board **approved** the Minutes of
2542 the **February 24, 2005**, Henrico County Board of Zoning Appeals meeting.
2543
2544 Ms. Dwyer - Ms. Harris and I have been to the BZA Training Course, and
2545 we have studied this Supreme Court Cochran case, which I've been wrestling with ever
2546 since, having studied it very carefully, not only in the class, but then looked at it in some
2547 other cases in the meantime. I think there's a lot that the Supreme Court has to say to
2548 us, and I would like a chance to discuss it among ourselves as a Board. What would be
2549 a good time to do that? I would like to get opinions on the case and what it means and
2550 to get feedback.
2551
2552 Mr. Wright - We haven't read it yet, but if we could get a copy of the case,
2553 I'd say we just have it after the meeting next month.
2554
2555 Mr. O'Kelly - Ms. Dwyer, the General Assembly was lobbied very hard in
2556 the last session, by the homebuilders associations, and there's some legislation coming
2557 out in the near future that somewhat reverses the Cochran Decision, so we'll have to
2558 deal with that too.
2559
2560 Ms. Dwyer - The state of the law is in flux, but it is the law now.
2561

2562 Mr. Wright - Let's get a copy of the case, and we'll discuss it after the
2563 next meeting.

2564
2565 There being no further business, and on a motion by Ms. Harris, seconded by Mr.
2566 Kirkland, the Board adjourned until **May 26, 2005**, at 9:00 am.

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2569
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2571
2572 Russell A. Wright, Esq.

2573 Chairman

2574

2575

2576 Benjamin Blankinship, AICP

2577 Secretary

2578