

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, APRIL 27, 2006, AT 9:00 A.M., NOTICE HAVING BEEN**  
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON APRIL 6, 13 AND 20, 2006.**  
6

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

**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. Nunnally - Good morning, Ladies and Gentlemen. We welcome you to  
9 the April meeting of the Board of Zoning Appeals. Would you please stand and join us  
10 for the **Pledge of Allegiance** to the Flag of Our Country. Mr. Blankinship, do we have  
11 any deferrals or withdrawals?  
12

13 Mr. Blankinship - Yes sir, Mr. Chairman. The first two cases, which were  
14 carried over, A-9 and UP-14, have both been withdrawn.  
15

16 **A-9-2006** **BRC RICHMOND, LLC** appeals a decision of the director of  
17 planning pursuant to Section 24-116(a) regarding the property at 9498 West Broad  
18 Street (Parcel 755-758-7804), zoned B-2, Business District (Brookland).  
19

20 After an advertised public hearing, the Board **allowed withdrawal of** the above-  
21 referenced appeal as requested by the applicant’s representative.  
22

23 **UP-14-2006** **VERIZON WIRELESS, INC.** requests a temporary  
24 conditional use permit pursuant to Section 24-116(c)(1) to install a temporary  
25 communication tower at 8716 West Broad Street (Parcel 760-757-5611), zoned A-1,  
26 Agricultural District and B-3, Business District (Brookland).  
27

28 After an advertised public hearing, the Board **allowed withdrawal of** the above-  
29 referenced conditional use permit without prejudice because the request was made by  
30 the applicant’s representative.  
31

32 Mr. Nunnally - Both been withdrawn. Okay. All right, sir, would you read  
33 the rules of the meeting?

34  
35 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies  
36 and gentlemen. The rules for this meeting are as follows. I will announce each case  
37 and while I'm speaking, the applicant should come down to the podium. We will then  
38 ask everyone who intends to speak on that case to stand and be sworn in. Then the  
39 applicant will have their opportunity to speak. After the applicant has spoken, anyone  
40 else who wishes to speak will be given the opportunity. After everyone has spoken, the  
41 applicant, and only the applicant, will have an opportunity for rebuttal. After the Board  
42 has heard all the evidence and asked questions, they will take the matter under  
43 advisement. They will render all of their decisions at the end of the meeting. If you wish  
44 to know their decision on a specific case, you can either stay until the end of the  
45 meeting, or you can check the Planning Office website this afternoon—we usually  
46 update the website within about a half an hour after the end of the meeting—or you can  
47 call the Planning Department this afternoon. This meeting is being tape recorded, so  
48 we will ask everyone who speaks, to speak directly into the microphone on the podium,  
49 to state your name, and spell your last name please. And finally, out in the foyer, there  
50 are two binders that contain the staff reports for each case, including the conditions that  
51 have been recommended by the staff.

52  
53 Mr. Nunnally - Thank you sir. Would you call the first case?

54  
55 **UP-15-2006 RIDGETOP RECREATION ASSOCIATION** requests a  
56 conditional use permit pursuant to Section 24-12(b) to add lights to the existing tennis  
57 courts at 901 Ridgetop Road (Parcels 762-738-6196, 1098 and 2998), zoned R-3, One-  
58 family Residence District (Tuckahoe).

59  
60 Mr. Nunnally - Anyone here interested in this case?

61  
62 Ms. Dwyer - Mr. Chairman, if I may speak at this moment, we did have a  
63 full hearing on this case last month and we had suggested the parties perhaps get  
64 together in the meantime, between last meeting and this meeting. We had also  
65 indicated that we would have a statement from each side but not have another full  
66 hearing of the case. I believe the parties understood that. I just wanted to remind  
67 everyone of those facts.

68  
69 Mr. Nunnally - All right.

70  
71 Mr. Blankinship - I see the neighbor, but I don't see the applicant.

72  
73 Mr. Nunnally - Is the applicant here?

74  
75 Ms. Dwyer - Is there anyone here representing Ridgetop?

76  
77 Mr. Nunnally - Let me ask you, did you all work out anything at all?

78  
79 Ms. Barrett - My name is Linda Barrett and I live at 6919 Everview Road.

80 Thank you so much for letting us have that time to meet with them. A lot of things came  
81 up, a lot of things came out. I guess I'm here to speak today because my property has  
82 been most affected by this. I did bring a photograph I'd like to show.  
83  
84 Mr. Blankinship - Thank you.  
85  
86 Ms. Barrett - From the view from my deck of the tennis courts.  
87  
88 Ms. Dwyer - Mr. Chairman, are we going to proceed without the applicant  
89 being present?  
90  
91 Mr. Nunnally - I was just wondering if they worked out anything. If the  
92 applicant didn't show up this morning, that doesn't sound very good to me for him, or for  
93 them.  
94  
95 Mr. Kirkland - You want to pass it by for a couple of cases and see if they  
96 show up?  
97  
98 Mr. Nunnally - Well...  
99  
100 Ms. Barrett - We did not come to an agreement on the lights, no.  
101  
102 Mr. Kirkland - I think we need to have the applicant here.  
103  
104 Ms. Dwyer - Someone just walked in. You're not here for Ridgetop, by  
105 any chance, are you? You are. Okay. We're hearing the case now. You're just in time.  
106 Please come forward.  
107  
108 Ms. Barrett - Would you like him to go first?  
109  
110 Mr. Blankinship - Yes. Let me just swear you both, too, because you were not  
111 sworn before that previous statement. Raise your right hand please. Do you swear the  
112 testimony you're about to give is the truth, the whole truth, and nothing by the truth, so  
113 help you God? Thank you.  
114  
115 Mr. Nunnally - All right. Would you state your name for record and tell us  
116 what you're requesting.  
117  
118 Mr. Biltz - My name is Randy Biltz. I'm the representative of Ridgetop.  
119 We're back here to request permission to put lights on the tennis court. Per last  
120 month's meeting, they had the meeting with the neighbors on Sunday. Various topics  
121 were discussed. As with any neighborhood pool, there are always things that you  
122 change and make better and the Board has heard everyone's concerns. We're trying to  
123 get the right approach to put different plans into action to make a better general  
124 neighbor, whether it's cleanup or anything that has to do with it. As for the lighting—And  
125 I do understand some of the concerns with the lighting, because that's typical of any

126 neighborhood pool or tennis courts that have lights up. I do, however, as I stated last  
127 time, these are very good lights. They're total cut-off. The lights won't be anywhere near  
128 the property lines. I don't see the impact of the lights surrounding. There will be a glow  
129 in the distance, as with any streetlight. I described the lights to people as if you turn a  
130 flashlight upside down. The light is going down. You don't see the light source, but yes,  
131 if you stand back 10 feet, you still see the light. There's no way around that in order for  
132 us to use the tennis courts. We're not asking for flood lighting. We want to light the  
133 court to make them useable.

134  
135 We have resolved all parking concerns on Gardner.

136  
137 Ms. Dwyer - Would you please explain?

138  
139 Mr. Biltz - Through just not being very nice to our members and a very  
140 direct sign stating that there is to be no parking or drop-off on Gardner, and constant  
141 reminders. I have personally asked people to remove their car from the cul-de-sac. Not  
142 letting anyone have the exception to the rule. That was stated in the meeting that they  
143 were very pleased with the parking situation. That has been totally alleviated. I'm not  
144 making any commitments or promises to address her concern with this picture. I am  
145 currently looking into a full 10-foot windscreen. That will go top to bottom on the court. I  
146 have to figure out where it fits in our club budget, as with anything. But I think that would  
147 be the easiest way to resolve a portion of the glow across the tennis courts. I looked  
148 into the plantings and we have a 3-1/2 foot sheer drop from the edge of the tennis court  
149 down to where it goes to the creek. So, not only would it be hard to keep anything alive  
150 planting wise, but it's going to take years for it to become of use. There are some long-  
151 term thoughts on how we're going to upkeep these courts and that will be one of the  
152 concerns that we address in the future.

153  
154 Ms. Dwyer - You're looking at a 10-foot windscreen along?

155  
156 Mr. Biltz - Just her side, her corner.

157  
158 Ms. Dwyer - Which would be roughly the north side?

159  
160 Mr. Biltz - Yes, the north side. Basically, I'd like to take it from 20 feet  
161 back to her corner that's visible in this picture, and then another 80 feet, which would  
162 cover the first two courts. Obviously, that has to fit into a budget somewhere, so we're  
163 looking into that right now. I think that would be the easiest way to help with the visual  
164 problem.

165  
166 Ms. Dwyer - Okay. Thank you.

167  
168 Mr. Nunnally - Any other questions from the applicant? All right, young  
169 lady, you can come forward now.

170  
171 Ms. Barrett- Do you want me to state my name again?

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Mr. Blankinship - Please.

Ms. Barrett- Linda Barrett. I'm the resident at 6919 Everview Road. I'm speaking because I'm the neighbor that's most affected by the lights. This is a shot I took this Monday off the deck off the back of my house. You can see I have a clear view of a lot of the tennis courts. Not the lowest one, but these are the two right at the top and then there's two next to it that I can halfway see. I can pretty clearly see the first two up there. My backyard right now is very private. I have the whole end of the cul-de-sac. There is no lighting back there at all from other houses or other things. This would be the only light coming into my backyard. From what I've seen at other tennis courts, it's pretty bright. In the evenings in the summertime is when I want to sit out and enjoy my deck in the backyard in the privacy and beauty of the park-like yard that I have. I have an acre and a half in the back of the yard that goes down to the pool and borders the tennis courts. And I think the lights would interrupt my style of living back there. I think it needs to be brought up, one thing I noticed in the conditions that you had on there, that they are not to use the tennis courts for a profit. We found out at the neighborhood meeting that they are bringing in outside people as a profit center for the tennis club that they have. The tennis pro is bringing in outside members and making a profit off it, and the club is also making a profit. That was one of the conditions, that it would be non-profit. So, I thought I'd bring that up as well. With the lights, there is going to be the ambient lighting. It will be on till 10:00 at night, which is pretty late. I got to bed at 10:30, so my time is out there between the time it gets dark and the time I go to bed. I did discuss with them, I said if we can't fight the lights and have the lights not go up, can we bring it to 9:00. That will still give them extra hours. It's light until about 9:30 anyway in most of the summer. I did ask for that compromise with them, if the lights had to go up. I would like to see them not go up.

I guess my last point of appeal is, to them, this is a game, it's a tennis game. To me it's a life. It's a lifestyle. It's my home. That's why I'm here to fight this because I want to be able to be enjoying my home without the tennis game, without the lights going on until 10:00 next door. That's all I have to say.

Mr. Nunnally - What did they say when you asked them about the 9:00 time?

Ms. Barrett- He said they'd discuss it. No decision was made on that.

Mr. Nunnally - Thank you, ma'am.

Ms. Barrett- Thank you.

Ms. Harris - Ms. Barrett?

Mr. Nunnally - Oh, excuse me.

218 Ms. Harris - Are you accustomed to the lights being on for the swim  
219 meet? I see in the conditions that the closing time might be 10:30 on days of swim  
220 meets.

221  
222 Ms. Barrett- Right. A lot of times, swim meets run till midnight. We know  
223 that they're happening three times a year. What we've done in the past is the  
224 neighborhood will go to the movies that night because we know what day it's going to  
225 happen. It's not that big of a deal. I don't see the lights from the pool very much  
226 because they are an acre and a half away and there are three landscape terraces on  
227 the back my yard down to that. So, the pool lights do not bother me at all.

228  
229 Ms. Dwyer - Ms. Barrett, I appreciate your statement. I'm also thinking  
230 about your neighbors. Not your pool neighbors, but your homeowner neighbors. I have  
231 a neighbor who had spotlights on the back of their house and they shine into my yard all  
232 night long. There are lots of sources of lights other than pools that neighbors have to  
233 contend with, and other situations that we don't really have any control over.

234  
235 Ms. Barrett- This would be something new that's being added and I feel  
236 like I want to fight it. It's not something that was there when I purchased the house.

237  
238 Ms. Dwyer - But the recreation association was there when you  
239 purchased your house.

240  
241 Ms. Barrett- Yes, but the lighting was not.

242  
243 Mr. Nunnally - Any other questions? Thank you, ma'am.

244  
245 Ms. Barrett- Thank you very much.

246  
247 Mr. Nunnally - Sir, you want to rebut that?

248  
249 Mr. Biltz - Really just want to touch on two things. I, as a  
250 representative of the pool, didn't see asking for 10:00 as being out of the ordinary, being  
251 all the clubs that I play at, that's a pretty standard time. The main thing is, this isn't  
252 necessarily a nightly occurrence. I can't honestly say that there's going to be someone  
253 there every night till 10:00. They're not going to be on unless somebody's there  
254 because, one, it becomes a nuisance to people and, two, we have to pay the electric  
255 bill. I don't want to really bring in the whole non-profit thing, but as with any pool, any  
256 recreation club, you have to generate revenue to pay your own bills. So, the tennis  
257 clinics that we run, the tennis teams that we run, just like everything else, we do have  
258 paid employees and we do need to pay the bills. So, that's where everyone generated  
259 that thought. The lighting, we're picking a better fixture and there's not a good example  
260 in a lot of the courts of the fixture we're using, outside of some the newer clubs. As you  
261 guys know, the new County standards, we can't use the floodlight that used to be used  
262 to light tennis courts. The light, I don't believe, will be as much of a nuisance as they  
263 used to be in the terms of lighting and lighting spill.

264  
265 Ms. Dwyer - Are you familiar with the lighting at Kanawha?  
266  
267 Mr. Biltz - Yes.  
268  
269 Ms. Dwyer - Will they be similar to those?  
270  
271 Mr. Biltz - The middle courts at Kanawha, the newer ones, have the  
272 direct down lighting. Yes, they'll be just like that.  
273  
274 Ms. Dwyer - I've seen those in the field *[inaudible]*. Let me ask you a  
275 question about the photometric sheet that you presented to us last month. I'm not sure it  
276 was in this month's packet. That showed zero foot-candles at the property line? Is that  
277 correct?  
278  
279 Mr. Biltz - Absolutely.  
280  
281 Ms. Harris - Okay, question. How do you feel about the 9:00 curfew, as  
282 far as the lights are concerned?  
283  
284 Mr. Biltz - In the cases of a lot of people, I don't think 9:00 helps us  
285 very much in the summer. Summer does extend and let people that work late, that work  
286 odd hours, be able to still get out there and enjoy it. Like I said, there's a good chance  
287 that three nights out of the week, those lights never get turned on. In the case in which  
288 they run, they are on, I think 10:00—As with other local clubs, 10:00 is their cut-off time.  
289  
290 Ms. Harris - Would you change your mind about a 9:30, if that were a  
291 condition?  
292  
293 Mr. Biltz - I'd have to discuss it directly with the Board, but we are not  
294 asking for 10:00, year round. It's only in the summer hours in which people are up and  
295 moving.  
296  
297 Ms. Dwyer - Looking at Condition #7 which says the court shall not be lit  
298 after 10:00 May through October or 9:00 November through April. I think you stated last  
299 month that there was an automatic shut-off, an automatic timer?  
300  
301 Mr. Biltz - Yes. At 10:00, the lights will go off. Regardless of who's out  
302 there and what's happening, they go off at 10:00.  
303  
304 Ms. Dwyer - Okay. Would you object to putting that in the condition, that  
305 there will be an automatic timer that...  
306  
307 Mr. Biltz - I would have no objection to that.  
308  
309 Ms. Dwyer - That automatically shuts the lights off?

310  
311 Mr. Biltz - That is absolutely fine with me.  
312  
313 Ms. Dwyer - Okay.  
314  
315 Mr. Nunnally - Any other questions for Mr. Biltz? Hearing none, that  
316 concludes the case. Thank you for coming.  
317  
318 Mr. Biltz - Thank you.  
319  
320 **DECISION:**  
321  
322 Mr. Nunnally - UP-15-2006  
323  
324 Ms. Dwyer - I move that we approve this case. The photometrics show  
325 that the foot candles at the property line will be zero, which is even less than what the  
326 neighbors have at St. Mary's. There is substantial foliage and trees surrounding the  
327 tennis courts, between the tennis courts and neighboring homes. The tennis courts are  
328 bordered on two sides by the pool facility and Bandy Field Park, so there's no impact on  
329 any neighbor on those two sides of the tennis court. The distance from the courts to the  
330 two nearest houses is 170 and 200 feet respectively, which is a substantial distance.  
331 The applicant has agreed to a condition that states that the lights will be automatically  
332 shut off, so there's no question that at 9 or 10:00, depending on what time of year it is,  
333 the lights at the tennis courts will be shut off. This is an existing recreation zone. It's  
334 been there since 1954. I think the impact of allowing these lights is minimal and it  
335 serves the community, it serves the neighborhood. It will not unreasonably affect the  
336 health, safety, and welfare of the neighbors. In fact, some neighbors think the addition  
337 of these lights and the wholesome activity will improve the safety of this area.  
338  
339 Mr. Wright - I second it.  
340  
341 Mr. Nunnally - Motion by Ms. Dwyer, second by Mr. Wright it be approved.  
342 All in favor say aye. That's it.  
343  
344 Mr. O'Kelly - Ms. Dwyer, was there a condition to be added on that case  
345 for the automatic?  
346  
347 Ms. Dwyer - For the automatic? On condition 7?  
348  
349 Mr. Wright - Yeah, you do want to make it automatic.  
350  
351 Ms. Dwyer - It talks about, "courts shall not be lighted after 10:00 May  
352 through October or after 9:00 November through April." Yes. That's a condition where  
353 they agreed the cutoff would be automatic. I think I mentioned that.  
354  
355 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.

356 Wright, the Board **granted** application **UP-15-2006** for a conditional use permit to add  
357 lights to the existing tennis courts at 901 Ridgetop Road (Parcels 762-738-6196, 1098  
358 and 2998), zoned R-3, One-family Residence District (Tuckahoe). The Board granted  
359 the use permit subject to the following conditions:

360  
361 1. The swimming pool shall be enclosed by a fence as required by the Uniform  
362 Statewide Building Code.

363  
364 2. All facilities shall be operated on a non-profit basis and open for members and  
365 their guests only.

366  
367 3. The property shall be maintained in a park-like manner, operated in a quiet  
368 manner without creating a nuisance to the surrounding neighborhood and be properly  
369 supervised. When the pool is open, there shall be an adult on the premises to  
370 supervise members and ensure compliance with these conditions.

371  
372 4. Three swimming meets shall be permitted at the pool each swimming season.  
373 Starting guns and sound amplification equipment may be used at these meets, but they  
374 shall not be used at any other time.

375  
376 5. All outdoor lighting shall be directed so as not to produce glare or nuisance to  
377 adjoining properties.

378  
379 6. The pool may be open from 8:00 AM to 9:00 PM Monday through Saturday and  
380 1:00 PM to 9:00 PM Sunday. The closing time may be extended to 10:30 PM on days  
381 of swimming meets.

382  
383 7. [AMENDED] The tennis courts shall not be used prior to 8:00 AM. The tennis  
384 courts shall not be lighted after 10:00 PM May through October, or after 9:00 PM  
385 November through April. The lights shall be governed by a timer that cuts them off  
386 automatically at the prescribed time.

387  
388 8. A gate or chain shall be erected at the entrance to the parking lot and kept  
389 locked except during operation of the facilities.

390  
391 9. The membership in the association shall be limited to 275 family memberships  
392 and 50 limited memberships.

393  
394 10. During the pool season, trash and abandoned clothing shall be picked up and  
395 removed from the property daily.

396  
397  
398 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
399 Negative: 0  
400 Absent: 0  
401



448 yard, garden area, and so that's my concern about this particular request, that we are  
449 encroaching substantially into the side yard, and that would affect the character of the  
450 zoning district and affect in a negative way, the homes in the neighborhood.

451  
452 Mr. Wright - Do you know how far the house that's adjacent, on the side  
453 the garage would be, is from their property line?

454  
455 Ms. Donahue - The neighbor adjacent to where we want to build the  
456 garage? I don't know that.

457  
458 Mr. Wright - It seems to be a pretty good little distance between whatever  
459 that little addition, that little building on the side of their house is. Looking at this picture,  
460 are these trees on your line on your lot or on their lot that we see in these pictures?

461  
462 Ms. Donahue - I believe that they are on their lot, and they've just put up a  
463 privacy fence on their property line.

464  
465 Mr. Wright - Could we have that picture put up of the trees, or can you do  
466 that?

467  
468 Mr. Blankinship - Coming right up. That's getting there. One I think was a  
469 little better than that.

470  
471 Ms. Donahue - Those trees are on their lot.

472  
473 Mr. Wright - Those little small trees are on their side, on their lot? Then  
474 that fence is on their lot?

475  
476 Ms. Donahue - They just put that in.

477  
478 Mr. Wright - We don't have a shot from the road?

479  
480 Mr. Blankinship - There is one in the package; I don't know why it's not in  
481 the—What about the first one, Paul, the one the others are collapsed under? There it  
482 is.

483  
484 Mr. Wright - It appears to be some distance between that fence and that  
485 little addition to their big house.

486  
487 Ms. Dwyer - I was thinking it's at least twenty feet.

488  
489 Mr. Blankinship - Could be thirty on that side.

490  
491 Mr. Wright - The garage would extend beyond the driveway that comes in  
492 there?

493

494 Ms. Donahue - In depth? Yes, it's going to, some of the shrubbery in the  
495 back, where that fence is, it's going to be in that area. It's going to be set back  
496 significantly from the house.

497  
498 Ms. Dwyer - And it would be three feet from the fence, I assume.  
499

500 Ms. Donahue - From their privacy fence.

501  
502 Ms. Dwyer - So your garage wall would be three feet from their privacy  
503 fence?

504  
505 Mr. Wright - Is it a two-story garage? A one-story garage?  
506

507 Mr. Blankinship - Because we're counting it as a detached structure, they're  
508 limited to the fifteen-foot height.  
509

510 Mr. Nunnally - Any more questions for Ms. Donahue? Anyone here in  
511 opposition? Hearing none, that concludes the case. Thank you ma'am. UP-16-2006.  
512

513 **DECISION:**

514  
515 Do I hear a motion?  
516

517 Ms. Harris - I move that we deny.  
518

519 Ms. Dwyer - Which one is this? I'm sorry, are we on UP-16? I apologize.  
520 I move that we deny this case as well. This is for a conditional use permit, and it's not a  
521 variance, but when we look at the R-1 District that requires generally a twenty-foot side  
522 yard, with a fifty-foot total side yard, this one already has on one side a side yard that  
523 fails to meet the Code, and they want to have what amounts to a three-foot side yard,  
524 with the addition of this garage, and that crowds the lot; it diminishes the character of  
525 the R-1 zoning district and would have the effect, in my view, of diminishing the property  
526 values for the lots surrounding this home.  
527

528 Mr. Nunnally - Okay. Motion by Ms. Harris, second by Ms. Dwyer, that we  
529 deny. All in favor say aye.  
530

531 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.  
532 Dwyer, the Board **denied** application **UP-16-2006** for a conditional use permit to build a  
533 garage in the side yard at 8904 Glenmore Road (Mooreland Farms) (Parcel 744-732-  
534 5956), zoned R-1, One-family Residence District (Tuckahoe).  
535

536  
537 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
538 Negative: 0  
539 Absent: 0

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Mr. Nunnally - All right, Mr. Blankinship.

**A-12-2006** **THERESA J. JORDAN** requests a variance from Section 24-9 to build a one-family dwelling at 439 Hanover Road (Parcel 830-723-9129 (part)), zoned A-1, Agricultural District (Varina). The public street frontage requirement is not met. The applicant has 0 feet public street frontage, where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.

Mr. Nunnally - Is anyone else here interested in this case? If so, please stand and raise your right hand and be sworn.

Mr. Blankinship - Sir, would you raise your hand? Do you swear the testimony you're about to give is the truth, the whole truth, and nothing but the truth so help you God?

Ms. Jordan - I do.

Mr. Nunnally - Will you state your name for the record, ma'am, and tell us what you're requesting.

Ms. Jordan - My name is Teresa Jordan. I own property at 437 Hanover, which is 2-1/4 acres, but it's a deep property rather than a wide property. When I bought the property originally in 2000, I had the idea of eventually, because of the amount of property, of building a house in the rear for my parents to live in, so that they would be near me to take care of in their older years. When the subdivision next to us, Hanover Estates, started building, I started questioning them what I would need to do to make this work, make it a feasible thing. I originally started back in 2002 talking to Lee Householder. He suggested I talk with the builder, Finer Homes, about buying a piece of property next to mine. That kind of a little addition thing there, which he agreed to sell me as long as I did not affect his subdivision. In the end, it did not and he sold me the property.

Ms. Dwyer - I'm confused, which property are you talking about now that was sold?

Ms. Jordan - Hanover Estates, when that property was developed, as I said, I had talked to Lee Householder about what I needed. He suggested that I talk to the builder about buying a strip of property down my side, basically that little dogleg type thing there.

Mr. Blankinship - It's 20-foot wide.

Ms. Jordan - Yes. I purchased an additional 20 feet from the builder

586 because...  
587  
588 Mr. Blankinship - This strip where the existing gravel drive is, correct?  
589  
590 Ms. Jordan - Yes. I purchased the existing driveway  
591  
592 Ms. Dwyer - Okay.  
593  
594 Ms. Jordan - So that I could have access. We had discussed deed access  
595 to the property or whatever and he said it would be better if I could buy it from the guy,  
596 which I did. I have since talked with Public Works to make sure I had all the proper  
597 water and sewer, since water and sewer is now in Hanover Estate, to make sure I have  
598 access, which I do. Barbara Dovell and Virginia Woody were actually very nice. She  
599 gave me very many suggestions on how to work it, what the cost would be. I've got  
600 access to sewer from Broken Oak Court, access to water from Hanover Road. She had  
601 suggested that the only thing they might would need would be deeded access from  
602 each piece of property to make sure water and sewer could then get to each piece of  
603 property since the water's up front and sewer's in the back. I told her that would be no  
604 problem, because my parents and I live in there. Her concern was down the road when  
605 my parents pass away and you sell and that type thing. I talked with Ben Blankinship  
606 about how to go about doing this, whether I should do the little dog leg like that and  
607 actually deed that piece to the back property, or just cut it straight in half and just have  
608 right-of-ways, ingress/egress water/sewer, that type of thing. He said it didn't really  
609 matter, whatever the County decided was best. Like I said, I did get that extra driveway  
610 so that I would have permanent access to that piece of property. There's already a road  
611 there, a gravel road there. I know it would probably have to be upgraded a little bit,  
612 more gravel, whatever. There are no other houses because that's wetlands on the  
613 other side. There are never going to be any other houses over there.  
614  
615 Ms. Dwyer - Never say never.  
616  
617 Ms. Jordan - Right. Never say never. They can always fill the wetlands in,  
618 right? My parents are 70 and 72 now. I did help take care of a relative last year that  
619 was ill. It's quite a challenge running all the way across town to take care of someone  
620 when they get older and I just want them behind me where I can take care of them if  
621 need be.  
622  
623 Mr. Wright - Ms. Jordan, have you read the suggestion conditions for the  
624 case?  
625  
626 Ms. Jordan - The road frontage?  
627  
628 Mr. Wright - No, the conditions.  
629  
630 Mr. Blankinship - Page 3 of the staff report.  
631

632 Mr. Wright - I wanted to ensure that you'd read these conditions. If this is  
633 approved, it would be subject to these conditions.  
634  
635 Ms. Jordan - No, I don't think I have. The only way I would sell the  
636 property is if they passed away.  
637  
638 Mr. Wright - Well, you couldn't for five years.  
639  
640 Ms. Jordan - Yes.  
641  
642 Mr. Wright - I just want to make sure that you understand if we approve  
643 this, it would be subject to those conditions.  
644  
645 Ms. Jordan - Yes, I understand that.  
646  
647 Ms. Dwyer - Is the access drive 20 feet or 30 feet wide?  
648  
649 Ms. Jordan - I think it's actually 20 feet wide, but there is land there that  
650 can be, you know, on the side yard to the original property.  
651  
652 Ms. Dwyer - There's a note on the plat that we have. It says, "30-foot  
653 easement requested." I wasn't sure what that meant.  
654  
655 Ms. Jordan - I think they were going to make that gravel road from 20 feet  
656 to—Not that I actually had to widen the road, but just make the easement 30 feet.  
657  
658 Ms. Dwyer - Who was suggesting that, the County?  
659  
660 Ms. Jordan - Ben Blankinship, the County.  
661  
662 Ms. Dwyer - Would you be willing to agree in the conditions to convey  
663 water and sewer access to both properties since they're coming from different  
664 directions?  
665  
666 Ms. Jordan - Yes.  
667  
668 Ms. Dwyer - And you are separating them, even though...  
669  
670 Ms. Jordan - That's what Virginia Woody had suggested, that I would give  
671 right-of-way to both pieces, from the back piece to the front piece for sewer, and from  
672 the front piece to the back piece for water.  
673  
674 Ms. Dwyer - If we add that as a condition, that would be agreeable to  
675 you?  
676  
677 Ms. Jordan - Oh, yes.

678  
679 Ms. Dwyer - How about the 30-foot right-of-way for the access to the rear  
680 piece?  
681  
682 Ms. Jordan - Yes.  
683  
684 Mr. Nunnally - Any other questions?  
685  
686 Ms. Jordan - The only question I would have is if I build the house and  
687 they pass away, am I still subject to paying for that house for five years?  
688  
689 Mr. Nunnally - Yes ma'am.  
690  
691 Mr. Blankinship - Yes ma'am. You could convey it to someone else within the  
692 family.  
693  
694 Ms. Jordan - Another question was—this is what I had asked Virginia  
695 Woody. I want to keep both pieces of property in my name, because I have family that I  
696 wouldn't want to come in, should my parents pass away, and try to claim that they want  
697 their share.  
698  
699 Mr. Blankinship - The only way you can do that kind of a division without going  
700 through the full-blown Planning Commission approval, is to convey it to a member of  
701 your immediate family. You can't hold both parts. But it doesn't have to be the person  
702 who lives there. It could be another member of the immediately family. We can discuss  
703 that outside of the meeting. That's a matter of law, it's not something the Board can  
704 change.  
705  
706 Ms. Dwyer - I have a question about this picture. I'm not sure what the  
707 picture is in our packet, but it looks like there are two houses on the site?  
708  
709 Ms. Jordan - No. The back drawing is just—  
710  
711 Mr. Blankinship - That's looking toward the subdivision in the back.  
712  
713 Ms. Jordan - Right.  
714  
715 Mr. Blankinship - The house, the side of which is facing us—  
716  
717 Ms. Jordan - Is in the subdivision.  
718  
719 Mr. Blankinship - Right. The brick one—Is one of these the original house that  
720 this driveway went to before the subdivision?  
721  
722 Ms. Jordan - Yes. The brick one.  
723

724 Mr. Blankinship - The brick one. Okay.  
725  
726 Ms. Jordan - The brick one was the original driveway, yes.  
727  
728 Mr. Blankinship - So, the brick house was there before the subdivision and this  
729 driveway went to it. As part of the subdivision, that house got access to the subdivision  
730 street and the siding house there was built as part of the subdivision.  
731  
732 Ms. Dwyer - It looks like it's facing the driveway?  
733  
734 Mr. Blankinship - It was originally facing Hanover Road and now with this  
735 access—it's kind of like that case we had a few months ago where they were cutting off  
736 a lot.  
737  
738 Mr. Nunnally: You are not seeing it on this picture, but right down in front of  
739 that house they put a great big cul-de-sac.  
740  
741 Ms. Harris - Is your property visible from this slide?  
742  
743 Ms. Jordan - Yes, that's my property on the right side where the grape  
744 arbor is.  
745  
746 Mr. Nunnally - If you put that property in her mother and father's name,  
747 can't she put her name in as far as survivorship?  
748  
749 Mr. Blankinship - Yes. We can work on all that.  
750  
751 Mr. Nunnally - Okay. Any other questions for Ms. Jordan? Hearing none,  
752 that concludes the case. Thank you for coming.  
753  
754 **DECISION:**  
755  
756 Mr. Nunnally- A-12-2006.  
757  
758 Mr. Wright - I move we approve it.  
759  
760 Mr. Nunnally - Motion by Mr. Wright it be approved. Second?  
761  
762 Ms. Harris - Second.  
763  
764 Ms. Dwyer - There were some conditions I think she agreed to on that  
765 one as well.  
766  
767 Mr. Kirkland - Thirty-foot access or something?  
768  
769 Mr. Blankinship - *[Inaudible]* water and sewer easement.

770  
771 Mr. Wright - With the new conditions that we suggested, I think Ms.  
772 Dwyer suggested. The access be 30 feet and that easement for sewer and water be  
773 granted out to the street. Is that what it was?

774  
775 Mr. Blankinship - Yes.

776  
777 Ms. Dwyer - I think sewer was coming from one direction and water was  
778 coming from the other and she agreed to have both lots served by water and sewer.

779  
780 Mr. Nunnally - All right. Motion by Mr. Wright, second by Ms. Harris it be  
781 approved. Everybody in favor say aye.

782  
783 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
784 Harris, the Board **granted** application **A-12-2006** for a variance to build a one-family  
785 dwelling at 439 Hanover Road (Parcel 830-723-9129 (part)), zoned A-1, Agricultural  
786 District (Varina). The Board granted the variance subject to the follow conditions:

787  
788 1. This variance applies only to the public street frontage requirement. All other  
789 applicable regulations of the County Code shall remain in force.

790  
791 2. At the time of building permit application, the applicant shall submit the  
792 necessary information to the Department of Public Works to ensure compliance with the  
793 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
794 water quality standards.

795  
796 3. At the time of building permit application, the owner shall demonstrate that the  
797 parcel created by this division has been conveyed to members of the immediate family,  
798 and the subdivision ordinance has not been circumvented. Ownership of the parcel  
799 shall remain in the immediate family for a minimum of five years.

800  
801 4. [AMENDED] The applicant shall present proof with the building permit  
802 application that a legal access to the property 30 feet wide has been obtained, including  
803 utility easements for both lots.

804  
805  
806 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
807 Negative: 0  
808 Absent: 0

809  
810  
811 The Board granted this request, as it found from the evidence presented that, due to the  
812 unique circumstances of the subject property, strict application of the County Code  
813 would produce undue hardship not generally shared by other properties in the area, and  
814 authorizing this variance will neither cause a substantial detriment to adjacent property  
815 nor materially impair the purpose of the zoning regulations.

816  
817 Mr. Nunnally - Next case, Mr. Blankinship.  
818  
819 **A-13-2006** **GLADYS PEGEAS** requests a variance from Section 24-9 to  
820 build a one-family dwelling at 8578 Gibbs Lane (Parcel 818-681-2641), zoned A-1,  
821 Agricultural District (Varina). The public street frontage requirement is not met. The  
822 applicant has 0 feet public street frontage, where the Code requires 50 feet public street  
823 frontage. The applicant requests a variance of 50 feet public street frontage.  
824  
825 Mr. Nicholson - I'm David Nicholson.  
826  
827 Mr. Nunnally - Hold on a minute please, sir. Anyone else here interested in  
828 this case? Please stand and raise your right hand and be sworn. Do you swear the  
829 testimony you're about to give is the truth, the whole truth, and nothing but the truth so  
830 help you God?  
831  
832 Mr. Nicholson - Yes.  
833  
834 Mr. Nunnally - All right, thank you. Please state your name for the record,  
835 sir, and tell us what you're requesting.  
836  
837 Mr. Nicholson - I'm David Nicholson. I have under contract to purchase the  
838 2.6 acres from Gladys Pegeas. Requesting a variance for 50 feet road frontage.  
839  
840 Mr. Nunnally - You're a builder, sir?  
841  
842 Mr. Nicholson - I'm going to hire a builder, but I'm not. I'm a realtor.  
843  
844 Mr. Nunnally - Are these going to be spec homes?  
845  
846 Mr. Nicholson - Yes. Just one.  
847  
848 Mr. Nunnally - Just one home?  
849  
850 Mr. Nicholson - Yes sir.  
851  
852 Ms. Dwyer - For you to live in?  
853  
854 Mr. Nicholson - No, to sell.  
855  
856 Ms. Dwyer - Just to sell. Tell me about access to this parcel.  
857  
858 Mr. Nicholson - Right now, access comes in off Gibbs as a 50-foot right-of-  
859 way easement. The road is definitely not 50 feet wide. It comes all the way to the edge  
860 of this property.  
861

862 Ms. Dwyer - It goes through three other parcels before it gets to yours.  
863  
864 Mr. Nicholson - Yes.  
865  
866 Ms. Dwyer - The easements have all been agreed to?  
867  
868 Mr. Nicholson - Variances have been granted on the other two houses.  
869  
870 Ms. Dwyer - I'm talking about your access, though. Do you have an  
871 easement across these other parcels?  
872  
873 Mr. Nicholson - Yes.  
874  
875 Ms. Dwyer - I'm concerned about this kind of patchwork, large acreage  
876 parcels that seem to be sprouting up in this area without road access and they have this  
877 kind of circuitous easement paths from Gibbs Lane to the interior space. It looks like  
878 about eight multi-acre parcels back here are essentially landlocked with no public street.  
879 It seems to be me if we're going to be building spec houses, we ought to be looking at  
880 having some kind of public road access to this area.  
881  
882 Mr. Nicholson - I read that in the notes. I don't know if Henrico County has  
883 planned on doing that or if it would be done by the neighbors.  
884  
885 Ms. Dwyer - Typically, developers participate in that.  
886  
887 Mr. Nicholson - Right.  
888  
889 Ms. Dwyer - I just think we're buying trouble in the future to allow these  
890 kinds of substandard lots to continue when each lot could have multiple houses on it  
891 and there are other lots that are blocked by this particular lot.  
892  
893 Mr. Nicholson - Right. Depending on what they want to do, we can talk about  
894 widening the road or expanding it, just improving it.  
895  
896 Mr. Nunnally - What size home are you planning on?  
897  
898 Mr. Nicholson - Around 1500 square feet, give or take 10%.  
899  
900 Mr. Nunnally - Rancher?  
901  
902 Mr. Nicholson - Yes. Which is similar to the other homes.  
903  
904 Mr. Nunnally - Vinyl siding or brick or what?  
905  
906 Mr. Nicholson - Vinyl.  
907

908 Ms. Dwyer - Does the major thoroughfare plan have any planned roads to  
909 get access to all these parcels back here, Mr. Blankinship?  
910

911 Mr. Blankinship - Not that I'm aware of. I can check it myself. It should have  
912 been checked when the report was written.  
913

914 Ms. Dwyer - So, we don't know.  
915

916 Mr. Blankinship - I can't say with absolutely certainty. Let's see if I can find  
917 out why.  
918

919 Ms. Dwyer - There's a lot of acreage back here that could be developed  
920 in an orderly fashion under the subdivision ordinance instead of the way it's being  
921 developed now.  
922

923 Ms. Harris - Do we have a picture in our package from the road that is  
924 here? This is the road? How wide is the existing road?  
925

926 Mr. Nicholson - I don't think it's wider than 20 feet, if it's that.  
927

928 Mr. Blankinship - I would guess closer to 12.  
929

930 Mr. Nicholson - Yes.  
931

932 Ms. Harris - Do you have this picture, because I was wondering where is  
933 the property in relation to—  
934

935 Mr. Nicholson - The one that you've taken? That should be right at the edge  
936 of the property line, the one that I'm looking to purchase. Looking out.  
937

938 Ms. Harris - Can you see the picture on the screen?  
939

940 Mr. Nicholson - Yes.  
941

942 Ms. Harris - The property is where?  
943

944 Mr. Nicholson - If I'm standing here, this would be the edge of the property  
945 looking at the road coming out and then it takes a sharp right back out to Gibbs.  
946

947 Ms. Dwyer - Would you be agreeable to allocating or reserving a 50-foot  
948 right-of-way across your property to provide access to other properties?  
949

950 Mr. Nicholson - I would consider it.  
951

952 Ms. Dwyer - Would you agree to having that as a condition to this  
953 request?

954  
955 Mr. Nicholson - Would it be paid for by any of the other neighbors?  
956  
957 Ms. Dwyer - No.  
958  
959 Mr. Nicholson - On the bottom of me? Which would be, I guess—  
960  
961 Ms. Dwyer - No. What I'm asking is would you dedicate 50 feet of your  
962 property?  
963  
964 Mr. Nicholson - Okay.  
965  
966 Ms. Dwyer - You might be able to, you might be able to.  
967  
968 Mr. Nicholson - Right. I would consider that, yes.  
969  
970 Ms. Dwyer - My question is I need to know whether you would agree to  
971 it—  
972  
973 Mr. Nicholson - Yes.  
974  
975 Mr. Kirkland - Mr. Nicholson, have you read the conditions proposed?  
976  
977 Mr. Nicholson - Yes. Number six looks like it was cut off, though. I'm not  
978 sure how that ended.  
979  
980 Mr. Wright - I don't understand #6, either, Mr. Blankinship. It's not  
981 complete.  
982  
983 Mr. Blankinship - It's sure not.  
984  
985 Mr. Nicholson - I can fill it in.  
986  
987 Mr. Blankinship - That is the beginning of the standard condition dealing with  
988 family divisions and since this property has already been divided, that condition would  
989 not really be appropriate here.  
990  
991 Mr. Kirkland - Do you want to strike it?  
992  
993 Mr. Blankinship - I think that is the mistake that was made, is that all of  
994 condition six was supposed to be struck. It was in a draft and all of six was supposed to  
995 be struck, and almost all of it was struck. I apologize for that.  
996  
997 Mr. Nunnally - The property is not being divided. Ms. Dwyer will add a new  
998 #6.  
999

1000 Ms. Dwyer - Right, and that condition would be that you agree to dedicate  
1001 a 50-foot right-of-way along the eastern boundary of the property, which as I look at the  
1002 map, would continue the existing right-of-way that gives access to your property.  
1003  
1004 Mr. Nicholson - Okay. Yes.  
1005  
1006 Ms. Dwyer - You would grant an easement for right-of-access, however  
1007 that may come about, to anyone else who may need it.  
1008  
1009 Mr. Nicholson - Yes.  
1010  
1011 Ms. Dwyer - Without charging them. It's something you would reserve—  
1012  
1013 Mr. Nicholson - Right. Yes.  
1014  
1015 Ms. Dwyer - The point is, I want other parcels to have some sort of road  
1016 access and they might need it through your property, just as you're gaining access.  
1017  
1018 Mr. Nicholson - Sure.  
1019  
1020 Ms. Harris - How much acreage do you have here?  
1021  
1022 Mr. Nicholson - 2.6 acres.  
1023  
1024 Ms. Harris - Okay.  
1025  
1026 Mr. Nunnally - Any more questions before we ask for the opposition? All  
1027 right. If you'll have a seat and we'll listen to the opposition and we'll call you back.  
1028  
1029 Mr. Cozino - Good morning, ladies and gentlemen. My name is Neil  
1030 Cozino. I own the property adjacent to what he's talking about. I also have something  
1031 I'd like to put up on the screen, if we could, please.  
1032  
1033 Ms. Dwyer - Could you tell us which adjacent property you own?  
1034  
1035 Mr. Cozino - Yes. It's 8622 Gibbs Lane.  
1036  
1037 Ms. Dwyer - All right. I'm not clear where that is.  
1038  
1039 Mr. Blankinship - Which parcel would that be, sir?  
1040  
1041 Ms. Dwyer - Kind of at the end of Gibbs?  
1042  
1043 Mr. Cozino - Yes, right at the end.  
1044  
1045 Ms. Dwyer - It looks like it's not adjacent, unless you own two parcels.

1046  
1047 Mr. Cozino - Well, what I'm trying to say is can you see on the screen  
1048 where they've got the piece highlighted there coming off of Gibbs Lane?  
1049  
1050 Ms. Dwyer - Yes.  
1051  
1052 Mr. Cozino - All right. My property is right here. They're talking about  
1053 coming in that way. I had a developer come to me and was trying to give me some kind  
1054 of offer on cutting an easement through there. I'm not interested in it. I'm thinking we're  
1055 talking about the same property right next door, right?  
1056  
1057 Mr. Wright - No.  
1058  
1059 Mr. Kirkland - No.  
1060  
1061 Ms. Dwyer - If we could put the aerial photograph.  
1062  
1063 Mr. Wright - That's the wrong property.  
1064  
1065 Ms. Dwyer - That shows.  
1066  
1067 Mr. Wright - 8622 is not even close to this property. Show him where  
1068 8622 is.  
1069  
1070 Ms. Harris - In the right corner.  
1071  
1072 Mr. Wright - He's down here, all the way down adjacent to 295. There's  
1073 his property right there.  
1074  
1075 Mr. Cozino - I didn't know that.  
1076  
1077 Ms. Dwyer - As I understand it, he's doglegging and that white dotted line  
1078 from Gibbs makes several right angle turns.  
1079  
1080 Mr. Cozino - Okay. All right.  
1081  
1082 Ms. Dwyer - Making several right-angle turns.  
1083  
1084 Mr. Cozino - I see what you're saying. Anyway, just to let you all know,  
1085 Gibbs Lane is not but 10 feet wide. There's a lot of traffic on Gibbs Lane now. We've got  
1086 12 houses that's built on that road right now. I've been there since 1983. You have a lot  
1087 of school-age children there, and I just want to add that. Like I say, if we pass another  
1088 vehicle—. Me and my neighbor, Mr. Cuffee here, would come in. If he's going one way  
1089 and I'm going the other, we've got to get up in people's front yard. It's just a lot of traffic  
1090 on that little road right now. There's 12 houses there and each house has got at least  
1091 four vehicles. School-age children, of course, at the end of Gibbs Lane. We've got a

1092 bus stop there. A lot of kids walk the road. It is a 25 mile an hour speed limit sign, which  
1093 I think is entirely too fast through there because the road's not but 10, 12 feet wide. It's  
1094 just not enough room there to pass two vehicles now, is what I'm saying. To me, it just  
1095 looks like an accident looking for a place to happen. It's just a lot of traffic. When I  
1096 moved there in 1983, there was four houses on that road and it's constantly building,  
1097 building, building, and building. Next thing you know, there's more traffic, traffic, traffic,  
1098 traffic. Like I said, the road's just not wide enough to handle it.

1099  
1100 Ms. Dwyer - You're concerned about the existing road system?

1101  
1102 Mr. Cozino - Right.

1103  
1104 Ms. Dwyer - That it cannot support additional development?

1105  
1106 Mr. Cozino - Right. I think that Mr. Cuffee built 10 years ago, right  
1107 adjacent to my property there. They've just been adding, adding, adding, and the  
1108 traffic's worse and worse and worse and worse. Like I said, I've seen some things on  
1109 Gibbs Lane. I've been around there for a long time. Of course, children walk that road.  
1110 I'm going to try to work out something with the County to drop the speed limit on that  
1111 road because you see some things that's just not right. I'm just afraid if we keep putting  
1112 traffic, traffic, traffic on this road, something's going to happen.

1113  
1114 Mr. Nunnally - That's a County road.

1115  
1116 Mr. Cozino - Yes

1117  
1118 Mr. Nunnally - Mr. Blankinship, are there any plans to widen that road?

1119  
1120 Mr. Blankinship - We didn't receive any comments to that affect from Public  
1121 Works.

1122  
1123 Mr. Cozino - I haven't heard anything either, but I'm just saying—

1124  
1125 Mr. Nunnally - Is it unusual for a County road to be only 12 feet wide?

1126  
1127 Mr. Blankinship - Yes sir.

1128  
1129 Ms. Harris - We will see another case this morning that has the same  
1130 situation. I think the old county roads were sort of narrow.

1131  
1132 Mr. Cozino - Yes. It's been like that since 1983 and really, the only thing  
1133 they do is come down there and drop a sickle when they're cutting the grass on the  
1134 shoulder. They really haven't done any maintenance, of course. The road is not real  
1135 pot-hole or whatever, that kind of thing. We're not complaining about the condition of  
1136 it, what we're saying is the width of it.

1137

1138 Mr. Nunnally - It ought to be widened.  
1139  
1140 Mr. Blankinship - It's a quarter of a mile dead-end road.  
1141  
1142 Mr. Cozino - That's right.  
1143  
1144 Mr. Blankinship - My guess is that it's the old 30 feet, but—  
1145  
1146 Mr. Wright - It certainly seems to be a number of houses.  
1147  
1148 Mr. Cozino - It's 12 houses in there and, like I say, it was four there when  
1149 I built there and it wasn't so bad. Now, all of a sudden, they've got a dozen houses in  
1150 there. You've got children driving to school, you've got some of them walking to the bus  
1151 stop, that kind of thing. You've really got to be careful when you go through there. You  
1152 have to be awake when you go through there because you never know when one of  
1153 them kids is going dart out of one of them driveways on a bicycle. Where you going to  
1154 go? There's no where to go. I suggest, like everybody else does, me and Mr. Cuffee  
1155 here, we slow down. It says 25, but I wouldn't dare do it. I think it needs to be dropped.  
1156 I see some people now that really do some stupid things on that road, of course.  
1157 They're just not thinking, because if one of those kids darts out of the driveway, with a  
1158 neighborhood full of kids, you never know when one's going to walk out in the middle of  
1159 the road, ride a bicycle—you don't know.  
1160  
1161 Mr. Wright - The road needs to be widened.  
1162  
1163 Mr. Cozino - Yes. I'm just saying, if they keep building, building, building,  
1164 building, the road's just not going to handle all the traffic. It's really 40 cars. That's a lot  
1165 of cars on that road. I'm not saying they come out there all at one time, but normally, a  
1166 family's got four different cars. Like I say, you've got 16-, 17-year-old drivers, school-  
1167 age kids. You've got some young kids walking that road going to the bus stop and  
1168 you've just got to be careful and watch what you're doing. Like I say, if somebody was  
1169 to run out in front of you, you wouldn't have no where to go. If you pass another car on  
1170 that road, you're in somebody's front yard. Common courtesy says I'll let this guy come  
1171 by and pull over. They do it for us, too. Just building, building, building more and more  
1172 and more, it's just not going to handle it.  
1173  
1174 Ms. Harris - Mr. Cozino, how many acres do you have?  
1175  
1176 Mr. Cozino - I have less than an acre now because 295 had took the back  
1177 corner of my lot and I have less than an acre now.  
1178  
1179 Ms. Harris - Mr. Cuffee, where do you live and how many acres do you  
1180 have?  
1181  
1182 Mr. Cuffee - *[Off mike.] I have [inaudible] acres.*  
1183

1184 Ms. Harris - Where do you live? What is your address?  
1185  
1186 Mr. Cuffee - 8600.  
1187  
1188 Ms. Harris - Okay. Have you all ever thought about giving, you and your  
1189 neighbors, giving some of your property for this development, the widening of this road?  
1190  
1191 Mr. Cozino - Mine, probably, wouldn't be so much involved in that,  
1192 ma'am, being the simple fact that I'm all the way down at the end of the road. I kind of  
1193 made my own parking lot, kind of like a cul-de-sac. It's not a cul-de-sac. People do use  
1194 it as a cul-de-sac, come down, because they got nowhere else to go, gotta turn around  
1195 and go back out. So, I kind of made my own little parking lot there because, like I say,  
1196 we've got four vehicles, too. My driveway's just not enough. It's cut short. It's not  
1197 enough to handle four vehicles, so I had to make my own little place there, but I come  
1198 out of my driveway and I'm straight on Gibbs Lane down. So, mine probably wouldn't  
1199 even be involved in it.  
1200  
1201 Ms. Harris - Mr. Cuffee, would you consider using some of your property  
1202 for widening of that road, since you have many landlocked, you know, lots here.  
1203  
1204 Mr. Cuffee - *[Off mike.]* I might consider it, but *[inaudible]* that much  
1205 traffic on the road, so we really don't have—  
1206  
1207 Mr. Cozino - Down there where we're at—  
1208  
1209 Mr. Wright - The County could take it, couldn't they?  
1210  
1211 Ms. Harris - The County can always seize the land.  
1212  
1213 Mr. Kirkland - The County has a 30-foot right-of-way. They've got enough  
1214 room to do a little expansion there.  
1215  
1216 Mr. Wright - Make the road 25 feet. That would double it. At least 20.  
1217  
1218 Mr. Nunnally - Any other questions?  
1219  
1220 Mr. Cuffee - The only thing I had to say was I had a gentleman come to  
1221 my home about two or three months ago, and he wanted to know if I would agree to  
1222 them putting a pipeline on the right side of my home. If they're going to have a one-  
1223 home dwelling, why would they need a pipeline, a sewer to run down to the Wastewater  
1224 Treatment Plant? We all have wells or septic tanks. I'm thinking that they may try to  
1225 stick a subdivision back in there.  
1226  
1227 Mr. Cozino - I feel the same way. They say now one home. It's going to  
1228 be more and more, 'because I know it's 8 point some odd acres back there. They could  
1229 say they're going to build one, but we all know that it's going to be more than one.

1230  
1231 Mr. Blankinship - Well, this house is proposed to be on well and septic, too, so  
1232 that must have been something unrelated to this request.  
1233  
1234 Mr. Cozino - They wanted to come through with some kind of sewage line  
1235 going back to Strath Road.  
1236  
1237 Mr. Blankinship - That would be another separate hearing.  
1238  
1239 Mr. Cozino - Sure. Anyway, what I'm trying to say about eight acres, we  
1240 know it's going to be more. It's not going to stop at one; we know that.  
1241  
1242 Ms. Harris - This is all over Henrico County because we live on premium  
1243 land.  
1244  
1245 Mr. Cozino - I totally understand, ma'am, you're exactly right. I totally  
1246 understand and you're exactly right. I'm just saying, we all know what's going to  
1247 happen before it happens and I'm aware of it.  
1248  
1249 Ms. Dwyer - Your point is we need the infrastructure to support that  
1250 development.  
1251  
1252 Mr. Cozino - Yes. I certainly don't oppose anybody building any house  
1253 there.  
1254  
1255 Mr. Nunnally - All right. Any other questions?  
1256  
1257 Mr. Cozino - Thank you.  
1258  
1259 Mr. Nunnally - Were you sworn, sir?  
1260  
1261 Mr. Gibbs - My name's John Gibbs and you haven't sworn me in.  
1262  
1263 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
1264 the whole truth, and nothing but the truth so help you God?  
1265  
1266 Mr. Gibbs - I do. My name's John Gibbs. I own the two pieces of  
1267 property that are just south of the property you all are considering. I wasn't originally  
1268 going to speak, but Mr. Nicholson has represented he'll give a 50-foot easement along  
1269 the east boundary of his property and I'm satisfied I'll be able to access my property. I  
1270 would like that put in the chain because if he builds on the property and sells and that  
1271 doesn't get put in the chain of title, it is not a condition on his property. I want to have it  
1272 put in the chain of title.  
1273  
1274 Ms. Dwyer - It'll be a condition of the variance. I'm not sure how else it'll  
1275 be recorded. Could you point out your parcels?

1276  
1277 Mr. Gibbs - The two pieces. The one that's directly south and the one  
1278 that's one east. Those two.  
1279  
1280 Mr. Nunnally - All right. Anything else, Mr. Gibbs? Thank you sir.  
1281  
1282 Mr. Gibbs - Thank you.  
1283  
1284 Mr. Nunnally - Anyone else in opposition?  
1285  
1286 Ms. Dwyer - I have one question. How much acreage is contained in  
1287 those two parcels?  
1288  
1289 Mr. Gibbs - *[Off mike.]* One is a three-acre parcel and one is a five-acre  
1290 parcel.  
1291  
1292 Ms. Dwyer - A three-acre and a five-acre. A total of 13 acres.  
1293  
1294 Mr. Nunnally - Do you want to rebut? No rebuttal? Any other questions?  
1295 Hearing none, that concludes the case. Thank you for coming.  
1296  
1297 **DECISION:**  
1298  
1299 Mr. Nunnally: A-13-2006.  
1300  
1301 Mr. Wright - We had something on this one. We made a condition on this  
1302 one. I move we approve it with the condition that he agreed to dedicate the 50 foot  
1303 across the east line of the property, if and when it became necessary for development.  
1304  
1305 Mr. Kirkland - I want to eliminate condition #6, which was incomplete.  
1306  
1307 Mr. Nunnally - Motion by Mr. Wright it be approved with conditions.  
1308  
1309 Ms. Harris - Second.  
1310  
1311 Mr. Nunnally - Second by Ms. Harris. All in favor say aye.  
1312  
1313 Ms. Dwyer - I vote for denial on that one, too, to be consistent. Seems to  
1314 be a theme today. I'm concerned about substandard lots and lack of access.  
1315  
1316 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
1317 Harris, the Board **granted** application **A-13-2006** for a variance from Section 24-9 to  
1318 build a one-family dwelling at 8578 Gibbs Lane (Parcel 818-681-2641), zoned A-1,  
1319 Agricultural District (Varina). The Board granted the variance subject to the following  
1320 conditions:  
1321

1322 1. Only the improvements shown on the plan filed with the application may be  
1323 constructed pursuant to this approval. Any additional improvements shall comply with  
1324 the applicable regulations of the County Code.

1325  
1326 2. Approval of this request does not imply that a building permit will be issued.  
1327 Building permit approval is contingent on Health Department requirements, including,  
1328 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
1329 of a well location.

1330  
1331 3. The applicant must present proof with the building permit application that a legal  
1332 access to the property has been obtained.

1333  
1334 4. At the time of building permit application, the applicant shall submit the  
1335 necessary information to the Department of Public Works to ensure compliance with the  
1336 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1337 water quality standards.

1338  
1339 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
1340 for maintaining access to the property until such a time as the access is improved to  
1341 County standards and accepted into the County road system for maintenance.

1342  
1343 6. [ADDED] The applicant shall reserve a right-of-way 50 feet wide along the  
1344 eastern property line for future access to adjoining property.

1345  
1346  
1347 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
1348 Negative: Dwyer 1  
1349 Absent: 0

1350  
1351  
1352 The Board granted this request, as it found from the evidence presented that, due to the  
1353 unique circumstances of the subject property, strict application of the County Code  
1354 would produce undue hardship not generally shared by other properties in the area, and  
1355 authorizing this variance will neither cause a substantial detriment to adjacent property  
1356 nor materially impair the purpose of the zoning regulations.

1357  
1358  
1359 Mr. Nunnally - Next case, Mr. Blankinship.

1360  
1361 **A-14-2006** **CARLTON AND AVERY LEWIS** request a variance from  
1362 Section 24-94 to build a one-family dwelling at 9536 Kennedy Station Terrace (Kennedy  
1363 Station) (Parcel 781-760-8971), zoned R-3, One-family Residence District (Fairfield).  
1364 The rear yard setback is not met. The applicants have 19 feet rear yard setback, where  
1365 the Code requires 40 feet rear yard setback. The applicants request a variance of 21  
1366 feet rear yard setback.

1367

1368 Mr. Blankinship - There's a letter on the table with reference to this case.  
1369  
1370 Mr. Nunnally - Anyone else here interested in this case? If so, please stand  
1371 and be sworn.  
1372  
1373 Mr. Blankinship - Raise your right hands, please. Do you swear or affirm that  
1374 the testimony you're about to give is the truth, the whole truth, and nothing but the truth  
1375 so help you God?  
1376  
1377 Mr. Walker - I affirm.  
1378  
1379 Mr. Nunnally - All right, sir. Please state your name for the record, sir, and  
1380 tell us what you're requesting.  
1381  
1382 Mr. Walker - My name's Eric Walker. I'm with Attic-Walker Construction.  
1383 I'm the contract purchaser and a representative of Mr. Carl and Avery Lewis. Today,  
1384 ladies and gentlemen, I'm here requesting a variance to build a single-family dwelling at  
1385 9536 Kennedy Station Terrace. The crux of the issue in front of us is basically the size  
1386 of this existing lot. If I understand the history, this lot was subdivided and developed  
1387 back in '95. Back before I believe the subdivision was recorded, the original developer  
1388 requested a variance to keep the remaining house on this property. At some point in  
1389 the future, the plan was to demolish that house and to build a new home that would  
1390 comply with all of the requirements. I can't speak, because I wasn't there at that time,  
1391 but based on the size, shape, and depth of this lot, and looking at the houses that were  
1392 built, even back then, there's really no house that could be built that would be consistent  
1393 or comparable to the adjacent homes in the subdivision. So, at the point we're at now,  
1394 is I'm proposing a house that meets the front and side yard setbacks, but it doesn't meet  
1395 the rear yard setback. The County requires 40, I'm proposing 19.8. The existing home  
1396 there was actually six feet off that back property line, so this is going to be less of an  
1397 impact to the adjoining property owner than the original house was. I'll be happy to  
1398 answer any questions, if there are any.  
1399  
1400 Ms. Harris - How many square feet are you proposing?  
1401  
1402 Mr. Walker - The house that I'm proposing is approximately 2600 square  
1403 feet. It's a 4-bedroom, 2-1/2 bath, 2-car garage home, which is comparable to what is  
1404 currently built in this subdivision. I met with several of the owners yesterday for the first  
1405 time, to give them an opportunity to see what I'm proposing. One of the points that I  
1406 made with them, and I'm also going to make with the Board, is there's a house that  
1407 potentially could be built on this property without a variance. The issue is whether that  
1408 house going to be comparable with the adjacent houses? Based on what I see in terms  
1409 of the plat and the lot size, it won't be. So, with that being said, that in itself, I believe  
1410 lessens a reasonable beneficial use of this property because you can't build anything  
1411 here that's going to be comparable.  
1412  
1413 Ms. Dwyer - As I look at the lot, I realize that it's an oddly shaped lot. Of

1414 course, that was completely within the control of the developer when the developer set  
1415 out these lots. It's a self-created problem, so let me just get that out first. It looks like  
1416 even given the odd shape of the lot, a T-shaped house or an L-shaped house might  
1417 allow a house to be built maybe larger than, say, a rectangular-shaped house on that  
1418 lot. That would allow you some extra square footage.

1419  
1420 Mr. Walker - I think you made an excellent point. If my research is  
1421 correct, again, this variance was requested and approved prior to this subdivision being  
1422 recorded, so there was always a potential for this layout to be reconfigured to make this  
1423 lot, in terms of size, more consistent with the rest of the lots, but that wasn't the case. In  
1424 itself, with the County approval of the plans and the way the land was set up, that  
1425 created the current issue that we have now. I also—and I think it's in your package—  
1426 submitted a plot plan that shows the buildable area of this particular lot. I also have—  
1427 and I should have added this to package—but I can pass around a plot plan that shows  
1428 two different scenarios of a house, just a box that could be built there. Based on what  
1429 you see, you really can't build anything, again, that's comparable to what's in that  
1430 neighborhood.

1431  
1432 Ms. Dwyer - Again, my point is that if you built a house that conformed  
1433 more to the shape of the buildable area, that is an L-shaped house or a T-shaped  
1434 house, then you'd be able to get more square footage within the buildable area. If you  
1435 plot a rectangle on this lot, you're right, it's not going to work as well because the  
1436 developer chose to create a very peculiar lot. My concern about the rear-yard setback  
1437 being minimized is that this house, the back of this house is going to be in the front yard  
1438 of 2532.

1439  
1440 Mr. Walker - Can I see the overall, because I can speak to that.

1441  
1442 Ms. Harris - It's not showing on here. The aerial photos, I think, show it  
1443 better.

1444  
1445 Ms. Dwyer - The aerial photo shows it better. 9532 is the flag lot that's  
1446 adjacent to this.

1447  
1448 Mr. Walker - Correct. I think one of the conditions of either the variance  
1449 or of the subdivision approval was that the developer had to erect a fence. There's  
1450 currently a fence that's on the adjoining property line in between 9532 and 9536. So,  
1451 there's currently a fence there that would minimize the impact. Again, just to compare  
1452 what I'm proposing and what the existing house was, again, it's less of an impact. I'm  
1453 meeting the side yard setbacks. I'm just not meeting the rear yard and that's probably  
1454 one of the reasons why the County did away with flag lots, because of this same issue. I  
1455 think one of the things they tried to do to minimize the impact was to erect a fence and  
1456 put some landscaping up there.

1457  
1458 Mr. Blankinship - Paul, would you put up the photo please?  
1459

1460 Ms. Harris - I need to ask a question about this particular photo before  
1461 we move it.  
1462  
1463 Mr. Blankinship - Sorry.  
1464  
1465 Ms. Harris - The structure that we see in the area that has been indicated  
1466 here, that structure right there, what is that?  
1467  
1468 Mr. Walker - That was the original home, which has now been  
1469 demolished. That was the original home on all the property. So, before it was  
1470 developed, that was the original home.  
1471  
1472 Ms. Harris - Okay. Did you see this structure actually in existence?  
1473  
1474 Mr. Walker - I did. Actually, I live a couple blocks away, so I kind of feel  
1475 like this is my neighborhood, too. I live over on Forest Glen Road, which is down North  
1476 Run and left on Hungry. So, I saw that home for years and it was old and dilapidated. I  
1477 think everybody was probably elated when it was finally demolished. In terms of  
1478 erecting a home more L-shape, I played with this scenario with my surveyors to try to  
1479 come up with a buildable area that was going to fit within the requirements, and I  
1480 couldn't come up with something that would fit. I understand your point in terms of L-  
1481 shape, building something that conforms with the lot setbacks, but to be honest with  
1482 you, I couldn't come up with anything that would work.  
1483  
1484 Mr. Blankinship - By "work," you mean something that would be—  
1485  
1486 Mr. Walker - That would fit within the setbacks.  
1487  
1488 Mr. Blankinship - It would work. You could meet the requirements of Code.  
1489  
1490 Mr. Walker - Right. You can build a house. My point is, you can build a  
1491 house on this lot, but it won't be consistent with the adjacent properties.  
1492  
1493 Ms. Dwyer - It will be smaller.  
1494  
1495 Mr. Walker - It will be smaller.  
1496  
1497 Mr. Blankinship - I think there was a view of the fence.  
1498  
1499 Ms. Harris - So, is that a threat, Mr. Walker?  
1500  
1501 Mr. Walker - No ma'am.  
1502  
1503 Ms. Harris - Okay.  
1504  
1505 Mr. Walker - No. I wanted the facts to be out in the open so everybody

1506 understands. I'm the contract purchaser, so if the variance is not approved, more than  
1507 likely, I'm not going to buy the property. Now, the owner of the property is a builder, so  
1508 there is the potential—There's economics involved. He's not going to walk away and  
1509 leave the property vacant. Those are the facts.

1510  
1511 Mr. Blankinship - Right in the middle of the screen here, is that the fence  
1512 you're describing?

1513  
1514 Mr. Walker - Yes sir.

1515  
1516 Ms. Dwyer - So, the rear of this house is going to be facing the house  
1517 we're looking at now. That's the flag lot.

1518  
1519 Mr. Walker - No ma'am. The side of the house will face that flag lot. If  
1520 you look at the plot plan that shows the proposed dwelling—I'll be happy to pass this  
1521 one if it's not in your packet. But the flag lot will face the side of the house and the  
1522 proposed house will face Kennedy Station Terrace.

1523  
1524 Ms. Dwyer - As I see it, it looks like the flag lot's really going to be facing  
1525 the rear yard, maybe the side rear yard.

1526  
1527 Mr. Walker - Okay.

1528  
1529 Ms. Dwyer - It's going to be facing the rear yard—

1530  
1531 Mr. Walker - Can I show you this plat?

1532  
1533 Ms. Dwyer - I have that. I'm looking at the aerial photograph, too.

1534  
1535 Mr. Walker - Do you have a view facing the flag lot that shows that lot,  
1536 because there's currently a large tree there.

1537  
1538 Mr. Blankinship - You're looking down the driveway of the flag lot there. You  
1539 see the curve in the driveway—

1540  
1541 Mr. Walker - I mean, more in the cul-de-sac. Just to give her a better  
1542 idea.

1543  
1544 Ms. Dwyer - I looked at this site in person, so I'm familiar with it.

1545  
1546 Mr. Blankinship - I think she's right. I think it faces the corner of the proposed  
1547 dwelling. The house is going to be looking straight into the corner of the proposed  
1548 dwelling.

1549  
1550 Mr. Walker - The back corner?

1551

1552 Ms. Dwyer - It's going to be facing the rear yard of this lot.  
1553  
1554 Mr. Blankinship - It'll definitely look into the rear yard.  
1555  
1556 Mr. Walker - Again, that was consistent with the existing home.  
1557  
1558 Ms. Dwyer - Right, but it raises the issue of whether we should allow this  
1559 house to be built farther back on the lot. That's my point.  
1560  
1561 Mr. Walker - You want it further back?  
1562  
1563 Ms. Dwyer - No. You're asking for a variance to allow it to be built more  
1564 in the rear yard that it's permitted to be.  
1565  
1566 Mr. Walker - Well, I guess the other issue with that is Mr. Gunn, who's to  
1567 the right, and I believe he's at 9540, one of the issues he brought up is he wanted to  
1568 ensure that he's not looking at the back of the house.  
1569  
1570 Mr. Blankinship - Somebody is going to be looking into the backyard of this  
1571 house.  
1572  
1573 Mr. Walker - Right, at some point. I argue that—I think it's 9530, or the  
1574 flag lot—  
1575  
1576 Mr. Blankinship - 32.  
1577  
1578 Mr. Walker - There's a big tree there. There's also a fence there. So, the  
1579 impact is going to be less if those things weren't there.  
1580  
1581 Ms. Harris - This is a difficult site. I'm a neighbor, too, been neighbors  
1582 there for 32 years.  
1583  
1584 Mr. Walker - Okay.  
1585  
1586 Ms. Harris - Coming down Mountain Road, before it was torn down in  
1587 2005, I could not see the house before the subdivision. The house was completely  
1588 encircled by houses. I've very familiar with the fact that the former owner owned a lot of  
1589 that property and evidently sold part of property and agreed to stay there.  
1590  
1591 Mr. Walker - Yes ma'am.  
1592  
1593 Ms. Harris - Because it was not an ideal location. You are surrounded by  
1594 homes. I don't know of any other area in Fairfield District that was quite like this one  
1595 that I'm aware of.  
1596  
1597 Mr. Walker - Yes.

1598  
1599 Ms. Harris - I don't know if we need to create it again.  
1600  
1601 Mr. Walker - I appreciate that. I think, again, if we want to just look at  
1602 what the facts are. Please don't take this as a threat, but I want you to understand that  
1603 if this variance is not approved to allow somebody to build something that's more  
1604 consistent with the neighborhood, someone can still build something there. You can  
1605 find a house that will fit within the setback. So, at this point, the neighbors have an  
1606 opportunity to voice their opinion and have some kind of influence on what's going to be  
1607 built there. If not, you can build whatever.  
1608  
1609 Ms. Harris - You said it three times, so we got it.  
1610  
1611 Mr. Walker - Okay.  
1612  
1613 Mr. Nunnally - Thank you, sir. We'll listen to the opposition now. Please  
1614 state your name for the record, sir.  
1615  
1616 Mr. Hunter - My name is Kevin Hunter and I live at 9717 North Run Road,  
1617 which this property would be in my backyard. I'm the one most affected by this.  
1618  
1619 Mr. Nunnally - What is the number of yours again?  
1620  
1621 Mr. Hunter - 9717.  
1622  
1623 Mr. Nunnally - 9717.  
1624  
1625 Mr. Hunter - Yes sir. My name, again, is Kevin Hunter. Okay. The only  
1626 thing is, again, as you all had talked about earlier, the property that was there before  
1627 mine, it was very close to my property line and it was kind of an eyesore. Just the way  
1628 the houses were built around this old structure, we just had to deal with that. When the  
1629 property came down, I had no idea that they would build another home there. My  
1630 concern is, if they build another home, when I go to my bathroom window or my wife  
1631 goes to the bathroom window or my kids, or whenever we go out the back porch where  
1632 the deck is located, will we be looking right into the backyard again, just as we were  
1633 before? Again, before, it was an eyesore, but we dealt with it because of the fact that  
1634 we had to. We knew that the house was going to come down some day, so we dealt  
1635 with it for that length of time. I just don't want another house right in my backyard again,  
1636 just like the old one had been. I have some pictures with me. I don't know if you guys  
1637 want to see the old—This is when the old structure was up. So, I did bring some. It  
1638 basically seems that you all know the situation. I had proposed to put the house  
1639 forward, but when I spoke with my neighbor, Mr. Gunn, that would obstruct his view and  
1640 it wouldn't be right for him. Then on the other property, 9532, it's going to put her in a  
1641 bad position. She couldn't be here; she goes to school. So, it's going to put her in a bad  
1642 position because she's going to be at the backdoor of this person. I think, basically, I'm  
1643 just saying things over that you just said, but I just wanted to express my concern and

1644 show you all that I'm just not against the property being built there.  
1645  
1646 Mr. Blankinship - Mr. Hunter, you realize a house can be built on that lot.  
1647  
1648 Mr. Hunter - Yes, and I have a question. Excuse me, I'm sorry. I have a  
1649 question about that also.  
1650  
1651 Mr. Wright - There's a buildable area there. Can you show him Ben?  
1652 The area that the house could be built in and they would not have to come to this Board  
1653 or anybody for any approval except to get a building permit.  
1654  
1655 Mr. Hunter - Right, and my question to you all is, you're saying that a  
1656 house is buildable. I'm thinking if you can't get a variance for one house, how can you  
1657 get a variance for the other? So, you're saying a house can be set inside that?  
1658  
1659 Mr. Blankinship - It would have to be 40 feet away from you, though, rather  
1660 than 19.  
1661  
1662 Mr. Wright - Look at that picture that's up there. Do you see that area,  
1663 that little triangular area?  
1664  
1665 Mr. Hunter - Yes sir  
1666  
1667 Mr. Wright - That's the buildable area on that lot. If they can configure a  
1668 house that fits into that area, they can build it.  
1669  
1670 Mr. Hunter - Like a triangle you mean?  
1671  
1672 Mr. Wright - Whatever. If they could build it within that area, they can  
1673 build it. They don't have to get any variance of anything.  
1674  
1675 Ms. Dwyer - The variance would allow him to go outside that buildable  
1676 area and come closer to the back property line. That's what he's asking.  
1677  
1678 Mr. Wright - He's trying to go outside of that area.  
1679  
1680 Mr. Hunter - Okay, and I understand that. Again, like I said, am I going to  
1681 be subject to the same thing I was subject to before? That means that they're going to  
1682 have 40 feet from my line to—  
1683  
1684 Mr. Wright - It'll be further from your line.  
1685  
1686 Mr. Blankinship - You have 40 feet.  
1687  
1688 Mr. Wright - That's the purpose of the zoning ordinance, to preserve the  
1689 rear yard area there.

1690  
1691 Ms. Dwyer - That's if the variance is not granted he has to be 40 feet  
1692 away from the rear property line. If we grant the variance he's asking for, he'd be 19  
1693 feet away.  
1694  
1695 Mr. Hunter - Right.  
1696  
1697 Mr. Blankinship - Would you rather have a larger house consistent with the  
1698 other houses that are closer to you, or would you rather have a smaller house that might  
1699 not fit the neighborhood as well but would be farther away from you?  
1700  
1701 Mr. Hunter - Well, I mean, of course I wouldn't want the property value to  
1702 go down. That's the first point. The second point is, I'm just looking at the size of the  
1703 space between the back yards. I don't want it to be in my back window, and I'd be  
1704 looking into someone else's back window.  
1705  
1706 Ms. Dwyer - *[Inaudible.]*  
1707  
1708 Mr. Hunter - That's the only thing.  
1709  
1710 Mr. Blankinship - Yes sir.  
1711  
1712 Mr. Hunter - That's my main concern.  
1713  
1714 Mr. Blankinship - That's your main concern.  
1715  
1716 Mr. Hunter - That's *my* main concern. My second concern is my  
1717 neighbors. I don't want to put them at a discomfort and put them in a bad position  
1718 either.  
1719  
1720 Mr. Blankinship - That's good.  
1721  
1722 Mr. Hunter - You all understand.  
1723  
1724 Mr. Hunter - That's my case.  
1725  
1726 Mr. Nunnally - Thank you, Mr. Hunter. Anyone else? State your name, sir.  
1727  
1728 Mr. Gunn - My name is Reamous Gunn. I reside at 9540 Kennedy  
1729 Station Terrace. My residence is the one directly to the east of the proposed dwelling. I  
1730 would like to state my initial concern first, and it's been stated at least once already  
1731 today. My family is concerned that the proposed dwelling not be moved forward and  
1732 that the front requirements not be changed because that would allow that house to  
1733 obstruct my view to the street, and also, I believe it would be a detriment to my family if,  
1734 indeed, we ever decide that we're going to move on. When I looked at the zoning  
1735 appeal case report, that point was noted in there. That's my major point. My second

1736 point is I'm also very concerned about the neighborhood itself and that we protect the  
1737 integrity of the entire neighborhood. Basically, summing up what I have to say is that I'd  
1738 like the Board, if you would, to please consider the fact that if the house is moved  
1739 forward, it would significantly impact my family personally, and also any other detriment  
1740 that may occur to my neighbors because of it as well. Thank you very much.

1741  
1742 Mr. Nunnally - You live at 9540?

1743  
1744 Mr. Gunn - Yes sir.

1745  
1746 Ms. Harris - Mr. Gunn, did you get a copy of the County's case report.

1747  
1748 Mr. Gunn - Yes ma'am, I did.

1749  
1750 Ms. Harris - Did you see under the background? It not only states that  
1751 any new house would meet setback requirements and would need to be screened from  
1752 adjacent properties by means of landscaping of a fence. The second part of that  
1753 sentence, "screened from adjacent property." If worse came to worse and a triangle-  
1754 shape home were built without the need for a variance, it would still have to be  
1755 screened by landscaping or a fence. You're familiar with that?

1756  
1757 Mr. Gunn - Yes ma'am.

1758  
1759 Mr. Nunnally - I'm not so sure that that would hold.

1760  
1761 Mr. Blankinship - No. If he builds by right, he's not going to be bound.

1762  
1763 Mr. Nunnally - He's not bound by anything.

1764  
1765 Ms. Dwyer - If we don't grant the variance, the ordinance requires that  
1766 house to be 40 feet back, which is about all he's proposing with the variance. He's  
1767 proposing 41 feet back. So, if we didn't grant the variance, it would still have to be  
1768 about the same distance from the road, as I see it. Is that correct, Mr. Blankinship?

1769  
1770 Mr. Blankinship - That's exactly right.

1771  
1772 Ms. Harris - Okay. Mr. Blankinship, can we go back to my statement I  
1773 just made, "and would need to be screened." Why would this no longer apply?

1774  
1775 Mr. Blankinship - Well, that's a condition of the variance.

1776  
1777 Ms. Harris - When they were granted the variance before the subdivision  
1778 was built, this was a condition of the variance. So, you're saying this condition would no  
1779 longer apply?

1780  
1781 Mr. Blankinship - Right. If they built within the buildable area. That old

1782 variance lasted until the building was taken down. Once that building was demolished,  
1783 that old variance, as I understand it, is no longer in force because there's no building  
1784 there for the variance to apply to. The variance was specific on that point, that when  
1785 they moved out, that building had to come down. Now, you're kind of starting from  
1786 scratch. If they build according to the buildable area, then they're just bound by the  
1787 requirements.  
1788

1789 Ms. Dwyer - I'm not sure I agree with that, Mr. Blankinship, because it  
1790 says if the developer made a commitment as to the new house, why wouldn't that  
1791 commitment still be binding? If the developer said the new house would meet setback  
1792 requirements and need to be screened, why wouldn't that still apply?  
1793

1794 Mr. Nunnally - I'm not sure that's a valid condition.  
1795

1796 Mr. Blankinship - The developer indicated that any new house would meet  
1797 setback requirements and would need to be screened from the adjacent property. Well,  
1798 we'd need to do some more research into that. I see your point of view. We'll need to  
1799 look into that further.  
1800

1801 Mr. Nunnally - Anyone else for the opposition?  
1802

1803 Ms. Blackwell - Good morning. My name is Beverly Blackwell and I'm a  
1804 resident at 9520 Kennedy Station Terrace. I moved into Kennedy Station in 1996. The  
1805 dwelling at 9536 was there and it was my understanding when we bought our home,  
1806 that that dwelling would eventually be torn down and something would be built there that  
1807 would be comparable to the other houses in the area. My concern now is that we don't  
1808 want to impact our neighbors in a negative way. We don't want to have a house that is  
1809 much smaller than the other houses, which will bring down property values. We also  
1810 don't want to have our neighbors looking out of their back window and looking into  
1811 another person's house. Right now, it's like being between a rock and a hard place.  
1812 You don't know exactly what you should do. It does not impact me directly, although  
1813 from my back porch, I can look and I can see the property, but my neighbors, 9540,  
1814 9717, 9532, and 9528, are all people that are directly going to be impacted by this. Like  
1815 I say, this will affect the entire subdivision and that is my main concern. We have a  
1816 property that's going to be comparable to what we have now and also will not impact the  
1817 neighbors negatively. Thank you.  
1818

1819 Ms. Harris - Ms. Blackwell?  
1820

1821 Ms. Blackwell - Yes.  
1822

1823 Ms. Harris - Have neighbors ever considered buying the property from  
1824 the developers? You can erect a toddler trail, park, whatever would benefit the  
1825 neighborhood. Have you ever thought about that?  
1826

1827 Ms. Blackwell - Well, we haven't talked about it because we really were not

1828 that aware of what was happening with the property. The property, we knew that the  
1829 lady who lived there had been granted the right to stay there until she passed away or  
1830 she decided to move. Suddenly, the property was vacant and they started tearing it  
1831 down. We had to work with the County to eventually get it torn down. I just found out  
1832 about the fact that they were even considering building when one of my neighbors came  
1833 to me on Tuesday night and said, "You know, there's going to be a meeting on  
1834 Thursday." I didn't even know anything about it. The notices weren't sent to everyone in  
1835 the subdivision. It was only sent to the people who adjoin that property. So, I think that  
1836 maybe if we had more time, we could, as a community, get together and talk about it,  
1837 but I think most of the neighbors at this particular time don't even know what's going on.  
1838 I think it's an excellent idea. It may be something that we want to consider.  
1839

1840 Ms. Harris - Mr. Blackwell, I'll just say that I think we want what the  
1841 neighbors want, and that is a comparable home that doesn't exceed the setback. That  
1842 is, it doesn't encroach too far into the setbacks and become an overbuilt lot that  
1843 negatively affects the neighbors. I think the problem here is that we can't have both.  
1844

1845 Ms. Blackwell - That's exactly right. I don't know what the solution is. I met  
1846 with the builder last night and he had some very good suggestions. His ideas sound  
1847 wonderful, but then again, like you say, we have to look at what's going to happen to the  
1848 people on North Run, what's going to happen to the people on Kennedy Station. Again,  
1849 you don't want someone to come in and build a house that's not comparable to the  
1850 other houses because then that impacts your property values.  
1851

1852 Mr. Kirkland - Mr. Blankinship, what's the minimum requirement here for  
1853 square footage, under that zoning?  
1854

1855 Ms. Dwyer - It's R-3.  
1856

1857 Mr. Blankinship - I believe it's 1100.  
1858

1859 Mr. Kirkland - I was just curious. That would be a beginning point.  
1860

1861 Mr. Blankinship - I think there's a proffered condition, too, which I don't have in  
1862 front of me.  
1863

1864 Mr. Kirkland - You have to build a house that satisfies the minimum square  
1865 footage for that zoning area.  
1866

1867 Mr. Blankinship - The Code requirement is only 1100, but I think there is a  
1868 proffered condition on the zoning.  
1869

1870 Ms. Dwyer - That requires it to be larger?  
1871

1872 Mr. Blankinship - Mr. Walker may know.  
1873

1874 Mr. Walker - *[Off mike.] I believe that [inaudible].*  
1875  
1876 Mr. Blankinship - Mr. Walker suggests 1600 or 1800 square feet. Oh, I'm  
1877 sorry. This lot is just outside of the zoning boundary, so it's not subject to the proffers.  
1878  
1879 Mr. Nunnally - Any other questions for Ms. Blackwell?  
1880  
1881 Ms. Blackwell - Thank you.  
1882  
1883 Mr. Nunnally - Anyone else to speak? Hearing none, that concludes the  
1884 case. I'm sorry; you've got time to rebut.  
1885  
1886 Mr. Walker - I don't have anything additional to add other than I'm willing  
1887 to minimize the impact to 9717 and 9540 by putting up a landscaping buffer and/or a  
1888 fence. I'll be happy to attach that to, or make that a condition of the variance.  
1889  
1890 Mr. Nunnally - Okay, thank you sir.  
1891  
1892 Mr. Walker - I have read the conditions and I'm not opposed to what they  
1893 are. To speak to a comment I think I heard you make, Paul. I looked at the covenants  
1894 and there's nothing in the covenants that require any size, style, shape house.  
1895  
1896 Mr. Gidley - *[Off mike.] I think the landscaping requirement meant more*  
1897 *than just a fence. That condition would mean more than just a fence.*  
1898  
1899 Mr. Walker - Okay. I'm not opposed to that.  
1900  
1901 Mr. Nunnally - Okay, that concludes the case. Thank you for coming.  
1902  
1903 **DECISION:**  
1904  
1905 Mr. Nunnally: A-14-2006.  
1906  
1907 Ms. Harris - I move that we deny this request. This is the request in  
1908 Kennedy Station. I really believe it would recreate a problem that existed when  
1909 Kennedy Station was constructed. After reviewing the evidence and the information  
1910 presented at the hearing, I find that this proposed variance will adversely affect the  
1911 welfare of the neighbors and impair the character of the district, and will not be  
1912 compatible with the zoning ordinance and comprehensive plan. I am quite aware that  
1913 another type of structure could be built within the guidelines, a triangular-type home with  
1914 about 1100 feet, square footage. It would be a strange looking thing, but I am aware of  
1915 that. I feel that the community can work with the owner of the property and resolve what  
1916 could be done with that lot that's assessed for about \$35,000, I believe.  
1917  
1918 Ms. Dwyer - Also, under Cochran, there is a use for this property. A  
1919 home can be built on it. I'm also convinced that it wouldn't have to be a triangular-

1920 shaped home, but a T-shaped or L-shaped home, I think. Maybe he doesn't have ready  
1921 plans for that, but I think he could probably squeeze more square footage out of it if they  
1922 were a little creative with the design.

1923  
1924 Ms. Harris - Did you second that?

1925  
1926 Ms. Dwyer - Yes. That was my second.

1927  
1928 Mr. Nunnally - Motion that A-14-2006 be denied by Ms. Harris and  
1929 seconded by Ms. Dwyer. All in favor say aye.

1930  
1931 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.  
1932 Dwyer, the Board **denied** application **A-14-2006** for variance to build a one-family  
1933 dwelling at 9536 Kennedy Station Terrace (Kennedy Station) (Parcel 781-760-8971),  
1934 zoned R-3, One-family Residence District (Fairfield).

1935  
1936  
1937 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1938 Negative: 0  
1939 Absent: 0

1940  
1941  
1942 Mr. Nunnally - Mr. Blankinship.

1943  
1944 **A-15-2006** **MARK E. DAVIS** requests a variance from Section 24-9 to  
1945 build a one-family dwelling at 7950 Haptops Lane (Parcel 859-688-3726), zoned A-1,  
1946 Agricultural District (Varina). The public street frontage requirement is not met. The  
1947 applicant has 0 feet public street frontage, where the Code requires 50 feet public street  
1948 frontage. The applicant requests a variance of 50 feet public street frontage.

1949  
1950 Ms. Wilson - Good morning, I'm Nancy Wilson.

1951  
1952 Mr. Nunnally - Excuse me. Is anyone else here interested in this case? If  
1953 so, please stand, raise your right hand and be sworn.

1954  
1955 Mr. Blankinship - Raise your right hand, please. Do you swear the testimony  
1956 you're about to give is the truth, the whole truth, and nothing but the truth, so help you  
1957 God?

1958  
1959 Ms. Wilson - I do.

1960  
1961 Mr. Nunnally - Please state your name for the record, ma'am, and tell us  
1962 what you're requesting.

1963  
1964 Ms. Wilson - Thank you. My name is Nancy Wilson. I'm representing  
1965 Mark Davis. We're requesting a variance of 50 feet public street frontage.

1966  
1967 Ms. Dwyer - Tell me about the access to your property from the public  
1968 street, which I assume is Charles City Road?  
1969  
1970 Ms. Wilson - It's a fire trail.  
1971  
1972 Ms. Dwyer - And it runs through someone else's property? I guess two  
1973 other parcels before it gets to your parcel.  
1974  
1975 Ms. Wilson - Right.  
1976  
1977 Ms. Dwyer - Do you have an easement?  
1978  
1979 Ms. Wilson - Yes.  
1980  
1981 Ms. Dwyer - Some sort of an access agreement?  
1982  
1983 Ms. Wilson - Mmm-hmm.  
1984  
1985 Ms. Dwyer - So, that land has not been dedicated.  
1986  
1987 Ms. Wilson - No.  
1988  
1989 Mr. Nunnally - What relationship are you to Mr. Davis?  
1990  
1991 Ms. Wilson - I am his lawyer. I am his girlfriend.  
1992  
1993 Mr. Nunnally - Are you planning on building a house for yourself, ma'am?  
1994  
1995 Ms. Wilson - Yes sir.  
1996  
1997 Mr. Nunnally - Just the one house?  
1998  
1999 Ms. Wilson - Yes.  
2000  
2001 Ms. Dwyer - Would you be willing to dedicate a 50-foot right-of-way along  
2002 Haptops Lane through your property to allow access to other parcels?  
2003  
2004 Ms. Wilson - Yes, we do now. They use it to go down to the other end of  
2005 the street.  
2006  
2007 Mr. Wright - Have you read the conditions?  
2008  
2009 Ms. Wilson - Yes.  
2010

2011 Mr. Nunnally - Any other questions of Ms. Wilson? Any opposition?  
2012 Hearing none, that concludes the case. Thank you, Ms. Wilson.  
2013  
2014 Ms. Wilson - Thank you.  
2015  
2016 **DECISION:**  
2017  
2018 Mr. Nunnally - A-15-2006, Mark E. Davis.  
2019  
2020 Mr. Kirkland - This is the one that has the fire lanes.  
2021  
2022 Mr. Wright - I move we approve it.  
2023  
2024 Mr. Nunnally - Motion by Mr. Wright to be approved. Second?  
2025  
2026 Ms. Harris - Second.  
2027  
2028 Mr. Nunnally - Second by Ms. Harris. All in favor say aye.  
2029  
2030 Ms. Dwyer - Can we have some discussion? I think she did agree to  
2031 allow access through her property, to dedicate a 50-foot right-of-way through the  
2032 property. Did anyone make that note?  
2033  
2034 Ms. Harris - I did.  
2035  
2036 Mr. Wright - Yes, we can add that.  
2037  
2038 Ms. Dwyer - Add that as a condition, that it be reserved?  
2039  
2040 Mr. Wright - Yes. The basis for the recommendation for the motion is that  
2041 it will not adversely affect the health, safety, and welfare, it will not increase congestion  
2042 in the streets, and will not impair the value of the property in surrounding areas  
2043 *[inaudible]* set forth in the ordinance.  
2044  
2045 Ms. Dwyer - One more thing on that condition, that 50-foot, would that  
2046 follow the approximate line of the existing fire road? I don't think we specified where it  
2047 would be.  
2048  
2049 Mr. Wright - No.  
2050  
2051 Ms. Dwyer - So maybe we should say.  
2052  
2053 Mr. Wright - I think we ought to let her.  
2054  
2055 Mr. Kirkland - As long as she knows she's got to do it.  
2056

2057 Mr. Nunnally - Okay. You've got the condition, didn't you Ben?

2058

2059 Mr. Blankinship - Yes sir.

2060

2061 Mr. Nunnally - All in favor say aye. It's been approved.

2062

2063 Ms. Dwyer - No. I vote no on that one.

2064

2065 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
2066 Harris, the Board **granted** application **A-15-2006** for a variance to build a one-family  
2067 dwelling at 7950 Haupts Lane (Parcel 859-688-3726), zoned A-1, Agricultural District  
2068 (Varina). The Board granted the variance subject to the following conditions:

2069

2070 1. This variance applies only to the public street frontage requirement. All other  
2071 applicable regulations of the County Code shall remain in force.

2072

2073 2. Approval of this request does not imply that a building permit will be issued.  
2074 Building permit approval is contingent on Health Department requirements, including,  
2075 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
2076 of a well location.

2077

2078 3. The applicant must present proof with the building permit application that a legal  
2079 access to the property has been obtained.

2080

2081 4. At the time of building permit application, the applicant shall submit the  
2082 necessary information to the Department of Public Works to ensure compliance with the  
2083 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
2084 water quality standards.

2085

2086 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
2087 for maintaining access to the property until such a time as the access is improved to  
2088 County standards and accepted into the County road system for maintenance.

2089

2090 6. [ADDED] The applicant shall reserve a right-of-way 50 feet wide for future  
2091 access to adjoining property.

2092

2093

2094 Affirmative: Harris, Kirkland, Nunnally, Wright 4

2095 Negative: Dwyer 1

2096 Absent: 0

2097

2098

2099 Mr. Nunnally - Mr. Blankinship.

2100

2101 **A-16-2006 ST. MARY'S HOSPITAL** requests a variance from Section  
2102 24-96(a) to allow off-site parking at 6101 Monument Avenue (Westview Manor) (Parcels

2103 768-738-0646, 1142, 1260 (part) and 2447), zoned O-3, Office District and R-3, One-  
2104 family Residence District (Three Chopt). The parking lot location requirement is not met.  
2105 The applicant wishes to locate parking across the street from the hospital. The applicant  
2106 requests a variance to allow off-site parking.

2107  
2108 Mr. Nunnally - Anyone else here interested in this case? If so, please stand  
2109 and raise your right hand and be sworn.

2110  
2111 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
2112 the whole truth, and nothing but the truth so help you God?

2113  
2114 Mr. Theobald - I do.

2115  
2116 Mr. Nunnally - Please state your name for the record, sir, and tell us what  
2117 you're requesting.

2118  
2119 Mr. Theobald - Mr. Chairman, ladies and gentlemen, my name is Jim  
2120 Theobald, and I'm an attorney here on behalf of Bon Secours St. Mary's this morning.  
2121 As Mr. Blankinship has indicated, this is a request for your approval of a parking lot that  
2122 is essentially across Maple Avenue from the existing St. Mary's campus. This is a little  
2123 bit of a different request for you to consider this morning, although you had heard and  
2124 approved requests for technically off-site parking previously for St. Mary's, and have  
2125 approved it, that being the deck that sits across from the main hospital building and  
2126 Bremono Road. This is a case where back in 1973; the hospital obtained unrestricted O-3  
2127 zoning for a large parcel of land. Maple Avenue is now in here. That O-3 piece,  
2128 essentially, if you follow the cursor, included the bulk of the St. Mary's campus. At  
2129 some point since that time, Maple Avenue was cut through, thus severing this O-3  
2130 portion from the balance of the campus. Thus, in the opinion of Mr. [inaudible], created  
2131 a situation where we were desiring to park on a lot that was not part of the same plot or  
2132 parcel on which the use that it benefited was situated, and thus the need for the  
2133 variance. St. Mary's also owns this small portion shown on this map as being zoned R-  
2134 3, and we have spent the last six or eight months in rezoning efforts, working with the  
2135 community, the Planning Commission and the Board of Supervisors to rezone this small  
2136 R-3 to O-3, and also included the existing O-3 portion within that case in order to  
2137 impose additional proffered conditions, thus restricting the use far beyond what would  
2138 currently be permitted.

2139  
2140 So, as we come to you today, what we have is a parcel of land fully zoned O-3 with  
2141 conditions, approved by the Board of Supervisors recently, as well as by the Planning  
2142 Commission. The request was supported by the planning staff, by the Planning  
2143 Commission, and by the Board of Supervisors. Essentially, the plans show as follows  
2144 [see rendering]: This is Maple Avenue; this is Monument Avenue. I should note that  
2145 very importantly, St. Mary's owns the two homes that are adjacent to this site on the  
2146 west. They own the home on Monument Avenue and they also own the home in back  
2147 on West Franklin Street. They are, in fact, the most immediate property owners to the  
2148 proposed surface lot. West Franklin Street in the back, you'll note, does not go through.

2149 It has been closed for some time, it is barricaded and thus no cars can come down  
2150 West Franklin and get to Maple Avenue. As you'll see, part of our proffered conditions  
2151 include that access to this surface lot will only be from Maple Avenue in this location,  
2152 there being no access directly to Monument Avenue or to Maple Avenue.

2153  
2154 I don't think it's a surprise to anybody here that St. Mary's Hospital is tight on parking.  
2155 We've always been tight on parking. They're still tight on parking. They do meet,  
2156 however, their code-required parking; they just don't have enough of it to meet the  
2157 needs of their patients and patients' families. What this lot is designed to do, and  
2158 guaranteed by proffered condition, is to be for our valet parking services and perhaps  
2159 some employee management level parking. Right now, you can pull up to the main door  
2160 of the hospital. A valet attendant will take your car. About 130 of those cars now sit  
2161 directly behind the hospital in that large surface lot in the back corner. The concept  
2162 here is to, essentially, allow that valet parking area to move over here, since this is  
2163 relatively inconvenient for everyday folks to walk from here over to the main hospital  
2164 building. So, our valet attendant would take the car and instead of going into the closer  
2165 area, will now park those cars over here. This lot will be gated after hours. This can only  
2166 be used from 7 a.m. to 7 p.m., and again for valet and employee parking only.

2167  
2168 There's a significant amount of right-of-way between the edge of pavement along all of  
2169 these roads and the property line. There is an additional 20 feet of land along  
2170 Monument Avenue that is treed. It is part of the legal right-of-way, but again, can't be  
2171 touched. There's approximately 20 feet. It's a little bit of a variable width along West  
2172 Franklin and you'll see some photos of some of the significant cedar trees that exist  
2173 along there today. There's about 15 feet of right-of-way that is also planted along Maple  
2174 Avenue. This is a plan that was proffered and made part of the rezoning request. This  
2175 is just a similar view from Monument.

2176  
2177 I'm going to summarize briefly the proffered conditions that were accepted by the  
2178 Planning Commission and the Board of Supervisors, because they were the result of  
2179 some four or five meetings with the community or smaller groups of neighbors and,  
2180 again, was the result of many, many months. Please keep in mind that the zoning  
2181 before we were successful in front of the Board of Supervisors, would have allowed on  
2182 the 1.88 acres, 1.2 of it was already zoned unrestricted O-3 and we could have  
2183 constructed an office building with parking, a branch bank, funeral home, a day care  
2184 without any permission whatsoever. These restrictions reflect our desire to only use it  
2185 for a surface lot and preclude those other uses by written condition. Summarizing those  
2186 conditions, again, it can be for a gated surface parking for valet employees only;  
2187 restriction from 7 a.m. to 7 p.m. use. Our valet parking service actually ends at 5:00  
2188 at night. Sometimes, however, if you show up right before 5 and are visiting a family  
2189 member, your car might still be in that lot, but at 7 when the lot has to be closed to the  
2190 public, the valet parkers would take the keys, move that car back over to the main lot.  
2191 When the person came out for their car, the attendant would retrieve that car. No  
2192 activity after 7, hardly any activity after 5. The master plan you saw has been proffered.  
2193 The restriction on entrance to Maple Avenue only. We've proffered a 15-foot minimum  
2194 buffer along Monument and Maple with evergreens to mitigate the views and headlights,

2195 a similar width along West Franklin and adjacent to the two homes that we own on the  
2196 west. Parking lot lighting was of concern to neighbors further on down the road. We  
2197 have agreed to the zoning process. Those lights came from 20 feet to 16 feet to 12  
2198 feet. They're from a concealed source of light, directed downward. They can only be no  
2199 greater than half-a-foot candle at the property lines, and we have to reduce the security  
2200 level of the lighting to security level, assuming it's not already there. Keep in mind that  
2201 after 7 p.m., the lot's not even being used and we don't have a need for those lights to  
2202 be other than a security level the vast majority of time.

2203  
2204 We've limited the hours of any kind of parking lot cleaning, other than the removal of  
2205 snow. We have that occurrence to weekdays and then between 9 and 5. We also  
2206 agreed to some things in the neighborhood area. We agreed to install speed humps on  
2207 Maple Avenue and Bremo, if those were approved by the County, in as much as a traffic  
2208 *[inaudible]*. We've limited our hours of construction of the lot, again, to weekdays only  
2209 and, again, to between 7 and 7. Perhaps most importantly, we have committed—. The  
2210 neighbors were looking for a commitment that St. Mary's was just not marching  
2211 westwardly down Monument Avenue or West Franklin to expand their campus, so we  
2212 included a proffered condition in this case saying that this would constitute the western  
2213 edge of that campus, which I think is a very significant agreement by St. Mary's.

2214  
2215 We did show the neighbors where St. Mary's might go in the future. The question was  
2216 well, if you're not going to go west, where might you go? This is the County's master  
2217 plan that was shared with the neighbors. What this shows is here's Monument Avenue  
2218 up this way, Libbie being over here on the right side. There are plans to possibly, if  
2219 approved—. This is on already-zoned land that within the next three to five to six years  
2220 build another structure behind the existing emergency room into the surface area, build  
2221 another deck with over 500 spaces. Unfortunately, that will just continue to meet  
2222 existing needs at that point of parking. Like all healthcare providers, we're trying to  
2223 convert from what double rooms are left at St. Mary's to private rooms. That's what  
2224 patients and our consumers require in terms of providing modern healthcare. The  
2225 future expansion would also permit different specialties to be provided on campus.

2226  
2227 Some photographs. This is looking from Monument Avenue on the north side looking  
2228 south. You're looking into the site. You're looking over to the right at the home that St.  
2229 Mary's owns and you can barely see the home that they own in the back. This is  
2230 probably the most open side in terms of screening and here we have committed to plant  
2231 a minimum of a 25-foot, transitional 25 standard landscaping. The idea is to  
2232 significantly plant to mitigate the visual impacts over here. This is the view in the back.  
2233 This is West Franklin Street. This is the barricade at the end. You're looking east.  
2234 These are the cedar trees that are either technically in the right-of-way, or along our  
2235 property line that are required to remain through proffered conditions. This is looking  
2236 back west, the same view along West Franklin.

2237  
2238 We did a number of other things working with the neighborhood. I take you through this  
2239 because I think they're germane, just in asking your permission to allow the parking to  
2240 go on here to show you how much consideration and thought has gone into this. We've

2241 agreed to provide additional sidewalks along the other side of Maple Avenue connecting  
2242 the daycare site. We modified the daycare pickup lanes, as some neighbors had  
2243 concerns about cars stopping to pick up children. We relocated some campus signage  
2244 that was requested by the neighbors. We looked into making sure that the hours of  
2245 cleaning the existing deck were being enforced and we worked with the City of  
2246 Richmond is posting additional hospital directional signs on Patterson Avenue to try to  
2247 direct people to Libbie before cutting through the neighborhoods.  
2248

2249 Those are a number of things. I think they're just important to remember. There's  
2250 another proffered condition, that's proffered condition #1 that's in your packet. This  
2251 was necessary to provide a backdoor escape mechanism, if you will, because St.  
2252 Mary's was being asked to proffer that it would only be used as a surface parking lot  
2253 subject to any number of conditions. To the extent that the Board of Zoning Appeals  
2254 does not grant permission for it to be used for a parking lot, then basically, you could  
2255 use it for nothing. So, the way condition #1 works is if you do not see fit to approve the  
2256 variance to allow us to park, then all the conditions evaporate and, essentially, we're  
2257 back to the unrestricted O-3 situation that does allow a number of other uses, along with  
2258 the commitment to take what we did zone from the ... from R-3 to O-3, and to take that  
2259 back.  
2260

2261 We believe that this request is much less of an intensive use than was permitted by the  
2262 prior zoning, or would be to the extent the proffers evaporate. Parking lots don't create  
2263 traffic in and of themselves; they merely take traffic off the roads that are circling, which  
2264 has been an issue at St. Mary's. This will put a dedicated portion of parking consumers  
2265 in this area. Like any enterprise, be they profit or not for profit, we must be mindful to  
2266 meet the needs of our consumers while responsibly mitigating the impacts on our  
2267 neighbors, and I believe we have met that test.  
2268

2269 A hospital is not just a neighborhood resource, it's a community resource. It's a very  
2270 vital part of our regional healthcare system. St. Mary's gives back to this community on  
2271 a daily basis in many significant ways, particularly in providing first-class patient care  
2272 and charitable support, and in addition, employs over 1700 Henrico County residents.  
2273 We believe that the request offers much better protection than the existing zoning would  
2274 have allowed. Coming to you, as the staff report suggests, this is rather a curious  
2275 provision of the Code. It basically says that you're trying to park on a separate lot or  
2276 parcel, which again, we're not sure that counts with Maple Avenue being extended, but  
2277 we're here anyhow. That the only way we can do that is through a "variance." In  
2278 discussions with the County attorney, as well as Mr. Blankinship, we discussed whether  
2279 this was really a variance because we're all concerned with the Cochran decision these  
2280 days. In our mutual opinion, believe that is was not. It is more closely aligned to a  
2281 conditional use permit in the sense that it's not that I'm allowed to do this now and just  
2282 want to do it more intensely, it's I can't do it all and therefore, we need permission from  
2283 you all in the nature of a conditional use permit, if you will, to allow use that we believe it  
2284 less intense, and thus less of an impact on surrounding neighbors and offers more  
2285 protection.  
2286

2287 You all have seen fit to approve the parking deck for St. Mary's in very similar  
2288 circumstances in the past under the same legal justification, as well as on at least eight  
2289 other occasions, according to your staff report. I respectfully request your continued  
2290 support of St. Mary's Hospital and I'd be happy to answer any questions.  
2291

2292 Mr. Blankinship - I just want to add one thing, Mr. Chairman. When we began  
2293 our review of this case, we pulled the current draft of the proffered conditions from the  
2294 rezoning file. Those proffers have changed somewhat before the approval by the  
2295 Board. When was that, this last week?  
2296

2297 Mr. Theobald - It was earlier this month. What you'll find is what's reflected  
2298 on your staff report is the second amended and restated proffered conditions, there is  
2299 now a fourth amended and restated condition. I believe the proposed BZA condition in  
2300 your staff report would cover the finally accepted proffered by the Board. For your  
2301 information, the only substantive change is from the 2<sup>nd</sup> to the 4<sup>th</sup>, in that we lowered the  
2302 height of the lighting yet again and agreed to reduce them to a security level to the  
2303 extent that they weren't already at that level. So, they're only more restrictive than what  
2304 was reflected in your packet.  
2305

2306 Mr. Kirkland - Mr. Theobald, condition #2 in the proffered conditions here, I  
2307 see that it's 7 p.m. Is that seven days a week? I didn't see it spelled out.  
2308

2309 Mr. Theobald - It is seven days a week. We currently, today, really only  
2310 offer valet parking Monday through Friday. It is possible that an employee could use  
2311 the lot on the weekend, but frankly, the problem is not weekends, the problem is  
2312 really—  
2313

2314 Mr. Kirkland - Weekdays.  
2315

2316 Mr. Theobald - It's 9:30 to 11:30 or 1:00. It would be very little use, if any,  
2317 on the weekends.  
2318

2319 Mr. Kirkland - Okay.  
2320

2321 Ms. Dwyer - Does St. Mary's own the two houses across the street,  
2322 across West Franklin, 6203 and 6201, or are they privately owned? The houses directly  
2323 across the street from the parking lot.  
2324

2325 Mr. Theobald - Across West Franklin they do not own. This is a map  
2326 showing the St. Mary's holdings in the area. If I can get the arrow here. These are the  
2327 two that they own, immediately adjacent on the west. These across the street are not  
2328 owned by St. Mary's. They are, basically, the view looking into the cedar trees. The  
2329 cedar trees get a little thinned down and they will need to be supplemented, and the  
2330 proffer so provides so that we block the views.  
2331

2332 Ms. Dwyer - I notice a statement from the Division of Police that they  
2333 made design and location recommendations for fencing, etc. What did the police  
2334 recommend for fencing? Did they have any?  
2335

2336 Mr. Theobald - I don't recall in the underlying staff report, Ms. Dwyer. I'm  
2337 happy to pull that out. As you know from the Planning Commission experience where  
2338 neighbors want low-level lighting, they wanted the *[inaudible]* lighting and they wanted it  
2339 very visible and very open. We were trying to make sure it was a safe condition, while  
2340 at the same time, for instance, we didn't want to wall off the views along Maple Avenue  
2341 so that you could see in through the entrance, while we do wish to wall off the visual  
2342 aspects with vegetation along the back.  
2343

2344 Ms. Dwyer - I guess my thought when I looked at the site was, what  
2345 about a black vinyl-coated chain link and the plantings would be on other side of it so  
2346 you wouldn't see the fence, but it would prevent any kind of pedestrian traffic into the  
2347 neighborhood from Maple Avenue through the parking lot.  
2348

2349 Mr. Theobald - Well, I guess that's a double-edge sword in that the  
2350 neighbors wanted to make sure the pedestrian access continued for their benefit.  
2351

2352 Ms. Dwyer - But not through the parking lot?  
2353

2354 Mr. Theobald - Not necessarily through the parking area. There is a fence  
2355 along this home from Monument that goes probably half or two-thirds of the way back  
2356 down here, a wooden stockade fence. There is not a fence along this other house here.  
2357

2358 Ms. Dwyer - I just wondered if there had been any discussion with the  
2359 neighbors?  
2360

2361 Mr. Theobald - The neighbors—I'm sure you'll hear the neighbors had  
2362 asked for a 12-foot masonry wall along this interior boundary and frankly, we were trying  
2363 not to create an institutional-looking edge here, but rather solve visual problems through  
2364 landscaping. Keep in mind, St. Mary's had its own security force that continually patrols  
2365 the campus day and night. With the security lighting and the security force, we believe  
2366 that this would be a secure situation. If for some reason it turned out not to be in the  
2367 future, I'm sure that they would take care of that.  
2368

2369 Ms. Dwyer - My thought was before the plantings were installed, if you  
2370 had the fence and you planted on both sides, then the fence would be invisible but it  
2371 would effectively prevent intrusion into the neighborhood from the parking lot. If it were  
2372 done at the same time as the plantings, then—  
2373

2374 Mr. Theobald - Of course, this is only being used for valet parking. It's not  
2375 really a consumer, so I'm not sure who would be cutting through there who isn't walking  
2376 through the vacant lot currently.  
2377

2378 Mr. Nunnally - These things were all considered before the *[inaudible]*.  
2379  
2380 Mr. Theobald - They were. We've had lots of discussions about fences,  
2381 walls, plantings.  
2382  
2383 Mr. Wright - So, these proffers satisfied the Board of Supervisors that it  
2384 protected the neighborhood.  
2385  
2386 Mr. Theobald - Yes sir.  
2387  
2388 Ms. Dwyer - Were the police suggestions incorporated?  
2389  
2390 Mr. Theobald - The police suggestions are in the staff report, but I can't tell  
2391 you that there were any particular—  
2392  
2393 Mr. Wright - *[Inaudible]* stated here.  
2394  
2395 Mr. Blankinship - They will come back to the POD.  
2396  
2397 Mr. Kirkland - Mr. Theobald, what is the construction schedule for this  
2398 facility?  
2399  
2400 Mr. Theobald - The hope is to file for Plan of Development as soon as  
2401 possible and, as you know, that may take 45 days or 60 days to complete plans and be  
2402 filed, considered by the Planning Commission, which is often a three or four month  
2403 process. I'm sorry, it's a six- to eight-week process, and then by the time you amend  
2404 your plans and get a building permit, it can take you up to three or four months to get it.  
2405 I think the likelihood would be that they could possibly start to bring construction in the  
2406 fall. It doesn't take long to build this and the land is very flat. There are no structures  
2407 permitted on it, so it's really going to be grade in, paving, landscaping, and striping.  
2408 There is underground retention here. It's an elaborate system to take care of storm  
2409 water drainage. There is a fair amount of engineering with it.  
2410  
2411 Mr. Kirkland - One reason I asked, I just became aware at the Board  
2412 meeting this past Tuesday night that the County has awarded a contract for replacing  
2413 sanitary sewer in this area, probably right down the middle of Maple Avenue. It's going  
2414 to be a need to coordinate.  
2415  
2416 Mr. Theobald - Okay. The gentlemen from St. Mary's are here taking notes.  
2417  
2418 Mr. Nunnally - Any other questions from the Board or staff? Hearing none,  
2419 we'll hear from the opposition.  
2420  
2421 Mr. Theobald - Thank you.  
2422  
2423 Mr. Nunnally - Please state your name for the record, ma'am.

2424  
2425 Ms. Clay - I'm Lois Clay. I live at 6206 West Franklin Street.  
2426  
2427 Mr. Nunnally - I couldn't hear you.  
2428  
2429 Ms. Clay - I live at 6206 West Franklin Street. I'm the chair of the West  
2430 View Manor Neighbor's Association. We continue to oppose what St. Mary's Bon  
2431 Secours is doing and feel that the Board of Zoning Appeals should not approve St.  
2432 Mary's Bon Secours request. I'm not going to go into a lot of detail, because that should  
2433 already be in the record from the Planning Commission and the Board of Supervisors  
2434 on why we oppose. I'm just going to do general statements.  
2435  
2436 The authorizing of this variance will be a substantial detriment to adjacent properties  
2437 and to West View Manor and adjoining areas. The value of our property and our quality  
2438 of life will be adversely affected by having a parking lot and commercial development in  
2439 our residential neighborhood. Traffic going to and from the parking lot will increase  
2440 congestion in neighborhood streets. A parking lot will likely draw increased criminal  
2441 activity in our residential neighborhood. The residential character of our district will be  
2442 impaired by bringing a commercial use and residential use too close together. Also, the  
2443 rezoning of lots 76A, 73A, 1142, 768, 738, 0466, and part of 768, 728, 1260, currently  
2444 zoned R-3 to O-3 or O-3C is incompatible with the general plans and objectives of  
2445 Henrico County's own Land Use Plan, as these lots are zoned SR-2 in the 2010 plan.  
2446  
2447 In other words, this plan or proposal conflicts with the conditions required to approve a  
2448 zoning variance. Our property and our quality of live will be adversely affected by the  
2449 noise, lights and pollution of a parking lot. The traffic pattern is being shifted from St.  
2450 Mary's to the neighborhood and this will have a significant detrimental affect. The risk  
2451 of criminal activity in our residential neighborhood will be increased by a parking lot. The  
2452 rezoning is in conflict with Henrico County's own 2010 Land Use Plan. We do not feel  
2453 there is any real hardship for St. Mary's, as St. Mary's created its own hardship by  
2454 previous zoning actions. I'm not a lawyer, so I am not real sure what happened in the  
2455 previous zoning actions. Also, St. Mary's does not need additional parking, per their  
2456 own statement on record that they have adequate parking for their facility. The parking  
2457 lot is a convenience for St. Mary's that will be detrimental to our residential community.  
2458  
2459 Mr. Nunnally - Any questions for Ms. Clay?  
2460  
2461 Ms. Harris - Ms. Clay, I notice that you were concerned about  
2462 undesirables on the parking lot, but with the parking lot being restricted to employees  
2463 and valet parking, which means employees, do you think that that might?  
2464  
2465 Ms. Clay - Well, parking lots typically draw people from outside to break  
2466 into cars. I'm not concerned about the valet parkers or the employees; I'm concerned  
2467 about people that might be attracted to the cars.  
2468

2469 Mr. Wright - Ms. Clay, do you realize that this has already been rezoned  
2470 O-3? We have nothing to do with the zoning; that's already been done.  
2471  
2472 Ms. Clay - Pardon?  
2473  
2474 Mr. Wright - This lot has already been zoned O-3.  
2475  
2476 Ms. Clay - Not the R-3.  
2477  
2478 Mr. Blankinship - The rezoning of the property.  
2479  
2480 Mr. Wright - It's done. If this is not used for a parking lot, they've got a  
2481 number of things under O-3 they could use it for.  
2482  
2483 Mr. Blankinship - A bank or a day care.  
2484  
2485 Mr. Wright - I'm looking at all of these things that are not too good for that  
2486 neighborhood—radio or television broadcasting studio, retail and service facilities, other  
2487 things. We're not here for the rezoning; that's been done. This is a technical thing that  
2488 we have to approve just because it's across the street from the hospital property. That's  
2489 all this is here. We don't have anything to do with the zoning.  
2490  
2491 Ms. Clay - Well, basically, we're still opposed to...  
2492  
2493 Mr. Wright - That was done by the Board of Supervisors. That's already  
2494 been rezoned.  
2495  
2496 Ms. Dwyer - You're opposed to this request as presented to the Board of  
2497 Zoning appeals for special use.  
2498  
2499 Ms. Clay - Yes. We're opposed to the commercial development in a  
2500 residential neighborhood and expansion of St. Mary's period.  
2501  
2502 Mr. Nunnally - Thank you Ms. Clay.  
2503  
2504 Ms. Clay - Mmm-hmm.  
2505  
2506 Mr. Nunnally - Mr. Theobald, you want to rebut for a short period of time?  
2507  
2508 Mr. Theobald - No sir, I think I'm through.  
2509  
2510 Mr. Nunnally - Okay. Thank you. That concludes the case.  
2511  
2512 **DECISION:**  
2513

2514 Mr. Nunnally: A-16-2006, St. Mary's Hospital. Do we have a motion on  
2515 that?  
2516  
2517 Mr. Kirkland - I move we approve it.  
2518  
2519 Mr. Nunnally - Motion by Mr. Kirkland that it be approved. Do I have  
2520 second?  
2521  
2522 Mr. Wright - I second it.  
2523  
2524 Mr. Nunnally - Second by Mr. Wright. Any discussion?  
2525  
2526 Ms. Dwyer - One thing. I still think that the neighbors' concern about  
2527 security, I would agree with that. This is an advisory thing. I would just ask that when  
2528 the Planning Commission or when staff looks at the landscape plan that they consider  
2529 something like a black clad vinyl chain link fence with plantings on both sides. The fence  
2530 would not be visible and intrusive; it would be hidden by the foliage. I think a parking lot  
2531 does draw, perhaps could draw people who might want to break into a car or cut  
2532 through or something, and I just think that neighborhoods deserve that protection. I  
2533 would just recommend that that be considered.  
2534  
2535 Mr. Nunnally - All right. All in favor say aye. It's been approved.  
2536  
2537 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
2538 Wright, the Board **granted** application **A-16-2006** for request a variance to allow off-site  
2539 parking at 6101 Monument Avenue (Parcels 768-738-0646, 1142, 1260 (part) and  
2540 2447), zoned O-3C, Office District (Conditional) (Three Chopt). The Board granted the  
2541 variance subject to the following condition:  
2542  
2543 1. This variance is subject to the conditions proffered with rezoning case C-6C-06  
2544 and any conditions that may be attached to the plan of development by the planning  
2545 commission.  
2546  
2547  
2548 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2549 Negative: 0  
2550 Absent: 0  
2551  
2552  
2553 The Board granted this request, as it found from the evidence presented that, due to the  
2554 unique circumstances of the subject property, strict application of the County Code  
2555 would produce undue hardship not generally shared by other properties in the area, and  
2556 authorizing this variance will neither cause a substantial detriment to adjacent property  
2557 nor materially impair the purpose of the zoning regulations.  
2558  
2559 Mr. Nunnally - Mr. Blankinship.

2560  
2561 **UP-17-2006** **GEORGE S. DAVIS** requests a conditional use permit  
2562 pursuant to Section 24-95(i)(4) to build an accessory structure in the side yard at 912  
2563 Forest Avenue (University Heights) (Parcel 757-739-8286), zoned R-2, One-family  
2564 Residence District (Tuckahoe).

2565  
2566 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
2567 stand and raise your right hand and be sworn in.

2568  
2569 Mr. Blankinship - Would you raise your right hand? Do you swear the  
2570 testimony you're about to give is the truth, the whole truth, and nothing but the truth so  
2571 help you God?

2572  
2573 Mr. Davis - I do.

2574  
2575 Mr. Nunnally - State your name for the record sir, and tell us what you're  
2576 requesting.

2577 Mr. Davis - My name's George Davis. We're requesting a two-story,  
2578 two-car garage, detached, that would be connected to the existing house by a 12-foot  
2579 long, 6-foot wide open breezeway. There were concerns brought out in the staff report  
2580 that I would like to respond to. One was the substantial screening aspect of this garage.  
2581 Today, I've brought in two photographs of the property; I hope you have that in your  
2582 package. In addition to the aerial view of the lot, you'll see on that bottom picture of the  
2583 photograph, that's taken looking directly up the driveway, and the cedar trees on both  
2584 sides of the existing driveway. In addition, the aerial photograph of 912. There's a  
2585 reason that the street is called Forest Avenue; there are a lot of trees there. There is  
2586 quite a bit of screening provided by the trees and shrubs that are in the lot. In addition,  
2587 there's an 8-foot embankment that leads up from Forest Avenue up to the lot and so I  
2588 think people driving by on Forest Avenue would not see a whole lot of the new structure.

2589 Another concern that the staff report brought out was the possibility that the two-story  
2590 garage could be converted into an apartment. The only utility we're running to the  
2591 garage is electricity. There's no water, no sewer going over there. The intent for the  
2592 second story of the garage is strictly for storage and hopefully I'll be able to set up a 50-  
2593 year old train set up there sometime, too. That's the sole purpose of that second story.  
2594 The other concern was the location of the garage, that it possibly be located in the back  
2595 of the lot. It is a deep lot, but that really isn't convenient for bringing in groceries. If you  
2596 attach it directly to the house, then that blocks off the window to the kitchen there, plus it  
2597 would require extensive re-grading of the driveway and the bank, plus the electrical  
2598 service would have to be rerouted to the new south wall of the garage. It would be a  
2599 significant additional cost to the project if we attached it directly to the house.

2600 The last point and the reason for the top photograph in the page I brought today, that  
2601 shows the front of the existing house, which is basically a Cape Cod three-dormer  
2602 house. The design for the garage is a similar style with a same pitch roof, two dormer  
2603 windows. I think it would be in keeping with the rest of the house and I think it would be

2604 an enhancement to the neighborhood.

2605 Mr. Kirkland - The question you addressed, and I may not have picked it  
2606 up, the staff report addresses this question of attaching it to the house, thereby  
2607 eliminating the need for the use permit. Why couldn't that be done?

2608

2609 Mr. Davis - Again, if you attach it directly to the house, let's see if I can.  
2610 Right there, there's about two feet of bank that would have to be excavated away and  
2611 the driveway widen all the way back down. Plus, you can see there's a two- or three-  
2612 foot drop. So, there's a significant change in elevation there. It would be a lot of  
2613 excavating and widening of the driveway to bring the garage right next to the house.  
2614 That window right there is the sole window in our kitchen, so if we attach the garage  
2615 right to the house, that completely blocks that window and we no longer have a window  
2616 from the kitchen outside. Then the other is the power is coming right there to the house.  
2617 If we attached the garage directly to the house and the power has to come over to the  
2618 south side of that garage, and we reroute all our electrical, new panel, new meter, so  
2619 forth, all of that is big dollars.

2620 Ms. Dwyer - What is the required side yard distance, Mr. Blankinship?  
2621 Are there some exception standards that apply to this lot?

2622 Mr. Blankinship - Exception standards would allow a minimum side yard of  
2623 10% of the lot width and some of the side yards would have to be 30% of the lot width.  
2624 Taking the lot width as 130, that would be 13 feet minimum and 39% feet some. Since  
2625 you're down below 7 on the right side, you'd have to have 32 feet on the left side.

2626 Ms. Dwyer - Okay. The total is 39 feet, you said?

2627 Mr. Blankinship - Yes, 30% of the lot width.

2628 Ms. Dwyer - So, they would need 32 and they're proposing 23 feet on the  
2629 south side. You've already obtained a variance on the, what I'm calling the north side.

2630 Mr. Davis - That's correct. When we added on a library addition.

2631 Ms. Dwyer - You've already added on the other end and you have a mere  
2632 7 feet on that side.

2633 Mr. Davis - That's correct.

2634

2635 Ms. Dwyer - I realize this is not a request for a variance, but a request for  
2636 a special use permit. Again, we have to consider the impact of this use on the  
2637 neighborhood and the surrounding properties. Generally, is this zoning, an R-2,  
2638 exception standards do apply because the house is built at an earlier time. So, we're  
2639 looking at a failure to meet the side yard requirements on both sides of the house now,

2640 if this were allowed.  
2641  
2642 Mr. Nunnally - It's 23 feet, isn't it, from the garage to the property line?  
2643  
2644 Ms. Dwyer - It would be 23 feet instead of the required 32 on the south  
2645 side, and then it's 7 instead of the 13 on the north side. Tell me about the roof of the  
2646 garage? How would that align with the roof height on the existing house under your  
2647 plan?  
2648  
2649 Mr. Davis - I think it's roughly 10 feet below the roofline, but it'll have the  
2650 same pitch. Looking at that, it's not a full 10 feet, but it's whatever the difference in the  
2651 elevation from that peak there to there. Looks like it's about 5 feet or so.  
2652  
2653 Ms. Dwyer - Can you show me?  
2654  
2655 Mr. Davis - From the roofline of the proposed garage to the roofline of  
2656 the house, this roofline right here, excuse me. Roughly 5 feet.  
2657  
2658 Ms. Dwyer - It would still be below.  
2659  
2660 Mr. Davis - Oh, yes. This roofline is significantly below this roofline. This  
2661 pitch, the proposed design, the pitch of the roof of the house is the same, 12 12, for  
2662 both the garage and the house.  
2663  
2664 Ms. Dwyer - Does the breezeway need to be 12 feet?  
2665  
2666 Mr. Davis - Well, that gets it out so that we don't have to, again, do  
2667 much excavating along the existing bank. It gets it to a good position for cars to pull into  
2668 the existing driveway rather than bringing it in close. Again, it gives us more space for  
2669 that kitchen window, more light through there.  
2670  
2671 Mr. Nunnally - Any other questions for Mr. Davis?  
2672  
2673 Mr. Davis - Again, the conditions that are suggested by the staff, if we  
2674 could take out the requirement there. We would like to have that second story in the  
2675 garage, if we could, again, just for storage.  
2676  
2677 Ms. Dwyer - So, you do not agree to condition 3, is what you're saying.  
2678  
2679 Mr. Davis - That's correct.  
2680  
2681 Mr. Kirkland - You don't have any problem with it saying it should not be  
2682 used as an accessory apartment.  
2683  
2684 Mr. Davis - Not at all.  
2685

2686 Mr. Kirkland - That part can stay in.  
2687  
2688 Mr. Davis - That's right. It's just the second floor aspect of it.  
2689  
2690 Mr. Kirkland - You want to knock out, "shall not have the second floor."  
2691  
2692 Mr. Davis - Correct.  
2693  
2694 Mr. Kirkland - Make it read, "shall not be used as an accessory apartment."  
2695  
2696 Mr. Davis - That's correct.  
2697  
2698 Mr. Nunnally - Any other questions? Anyone in opposition? Hearing none,  
2699 that concludes the case. Thank you for coming.  
2700  
2701 Mr. Davis - Thank you.  
2702  
2703 **DECISION:**  
2704  
2705 Mr. Nunnally - UP-17-2006, George S. Davis.  
2706  
2707 Ms. Dwyer - Okay. This is a case under our new ordinance that allows  
2708 accessory structures in the side yards and the rear yard. The ones that we voted for in  
2709 the past have had very minimal impact. Well, I move that we deny, then I'll talk. Sorry.  
2710  
2711 Ms. Harris - Second the motion.  
2712  
2713 Ms. Dwyer - Okay. What I just said.  
2714  
2715 Mr. Nunnally - Motion by Ms. Dwyer and second by Ms. Harris.  
2716  
2717 Ms. Dwyer - This is an R-2 zoning. This particular applicant has already  
2718 obtained a variance, which has allowed an addition on the north side of the house to  
2719 come within 6 feet and some odd inches of the lot line on that end. Now he wants to,  
2720 again, breach the development standards for side yards on the other side with this  
2721 garage. While the drawing and the plans appear to be appropriate, I think that intruding  
2722 into the required side yard on both sides of this property will affect the character of the  
2723 zoning district. I think it will affect the property values in an adverse way to the extent  
2724 that those values are maintained by consistent application of the zoning standards.  
2725  
2726 Mr. Nunnally - All right. Motion that is be denied by Ms. Dwyer and Ms.  
2727 Harris. All in favor say aye.  
2728  
2729 Mr. Kirkland - I'd like to discuss one more thing.  
2730  
2731 Ms. Dwyer - Okay.

2732  
2733 Mr. Nunnally - Go ahead.  
2734  
2735 Mr. Kirkland - Ms. Dwyer, I think he had another alternative, too. He could  
2736 eliminate the breezeway.  
2737  
2738 Ms. Dwyer - True.  
2739  
2740 Mr. Kirkland - So he loses a kitchen window. Like you said, he already had  
2741 a variance for the other end. That would not be so close to the other property.  
2742  
2743 Ms. Dwyer - Right.  
2744  
2745 Mr. Kirkland - He could put it right on the side of the house.  
2746  
2747 Ms. Dwyer - He could eliminate the breezeway. Whenever you add on,  
2748 there are often sacrifices. You might have to excavate, you might lose a window.  
2749  
2750 Mr. Kirkland - I think he has other alternatives.  
2751  
2752 Ms. Dwyer - Backyard. Garage in the backyard. Maybe he didn't want  
2753 walk, but anyway. We can't have everything and we can't sacrifice the zoning  
2754 standards to this extent. I think it has a harmful impact on the neighborhood and the  
2755 values.  
2756  
2757 Ms. Harris - I wanted to say, too, though we don't mention Cochran  
2758 anymore, to me this is a good case. We have a reason for our zoning ordinances and if  
2759 we're going to make exceptions so that everybody stretches their boundaries and builds  
2760 large structures, we would have a Henrico County that was not planned nor organized.  
2761 They do have the use of their premises without it. That's my reasons.  
2762  
2763 Mr. Nunnally - All in favor of denial say aye. It's been denied.  
2764  
2765 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
2766 Harris, the Board **denied** application **UP-17-2006** for a conditional use permit to build an  
2767 accessory structure in the side yard at 912 Forest Avenue (University Heights) (Parcel  
2768 757-739-8286), zoned R-2, One-family Residence District (Tuckahoe).  
2769  
2770  
2771 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2772 Negative: 0  
2773 Absent: 0  
2774  
2775  
2776 Mr. Nunnally - The Board will now take a 10-minute recess.  
2777

2778 Mr. Blankinship - The Board will reconvene.  
2779  
2780 Mr. Nunnally - Call the first case. Do we have any deferrals or withdrawals  
2781 on the 10:00 case?  
2782  
2783 Mr. Blankinship - No sir.  
2784  
2785 **A-17-2006** **JOE LAMPORT** requests a variance from Section 24-9 to  
2786 build a one-family dwelling at 1831 W. Chaffin Rd. (Parcel 809-678-3331), zoned R-2A,  
2787 One-family Residence District (Varina). The public street frontage requirement is not  
2788 met. The applicant has 0 feet public street frontage, where the Code requires 50 feet  
2789 public street frontage. The applicant requests a variance of 50 feet public street  
2790 frontage.  
2791  
2792 Mr. Nunnally - Anyone here interested in this case? If so, please stand and  
2793 raise your right hand and be sworn.  
2794  
2795 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
2796 the whole truth, and nothing but the truth, so help you God?  
2797  
2798 Mr. Nunnally - Please state your name for the record, sir, and tell us what  
2799 you're requesting.  
2800  
2801 Mr. Harris - My name is Benjamin Harris and I'm the contract purchaser.  
2802 We're requesting a variance for a single-family dwelling. We don't meet the required  
2803 road frontage.  
2804  
2805 Mr. Nunnally - You say you're Mr. Harris?  
2806  
2807 Mr. Harris - Yes sir.  
2808  
2809 Mr. Wright - Are you the builder?  
2810  
2811 Mr. Harris - The contract purchaser of the home. We would be building  
2812 it.  
2813  
2814 Mr. Wright - You're the contract purchaser of the lot.  
2815  
2816 Mr. Harris - Yes sir.  
2817  
2818 Mr. Nunnally - Are you going to live in it?  
2819  
2820 Mr. Harris - Yes sir.  
2821  
2822 Mr. Nunnally - What type of house do you plan on building?  
2823

2824 Mr. Harris - Single family with an attached garage. Roughly 2900 square  
2825 feet of home with the garage and then bonus space about the garage.  
2826  
2827 Mr. Wright - How do you propose to access this property?  
2828  
2829 Mr. Harris - If you follow the cursor with the roadway here, there was a  
2830 proposed County road off of West Chaffin. We were given right-of-way from the owner  
2831 of this parcel here to come in just like you see. This is the property that we're wanting to  
2832 purchase.  
2833  
2834 Mr. Wright - How wide is that access?  
2835  
2836 Mr. Harris - Fifty foot.  
2837  
2838 Mr. Wright - Fifty feet?  
2839  
2840 Mr. Harris - Yes sir.  
2841  
2842 Mr. Wright - And you're going to construct the road yourself?  
2843  
2844 Mr. Harris - Yes sir.  
2845  
2846 Mr. Blankinship - The plot says a 25-foot easement.  
2847  
2848 Mr. Harris - Is it 25 feet? I might be unclear on that.  
2849  
2850 Mr. Wright - Have you read the conditions for this case?  
2851  
2852 Mr. Harris - No sir, I haven't. We weren't mailed it.  
2853  
2854 Mr. Wright - Mr. Blankinship, you might inform the other folks that the  
2855 conditions—I think you did at the outset. Maybe some of these folks weren't here—  
2856  
2857 Mr. Blankinship - Yes.  
2858  
2859 Mr. Wright - That the conditions are in folders so they'll be prepared.  
2860  
2861 Mr. Blankinship - Anyone who hasn't seen the conditions to your case, you  
2862 may want to step out to the foyer. There are two binders out there that have them all.  
2863  
2864 Mr. Harris - I looked in the slots on the wall and didn't know that's where  
2865 they were.  
2866  
2867 Mr. Blankinship - Okay. Sorry about that.  
2868  
2869 Mr. Wright - Have you read them?

2870  
2871 Mr. Harris - Yes sir.  
2872  
2873 Mr. Wright - I just want to make sure, because if this is approved,  
2874 approval will be subject to these conditions.  
2875  
2876 Mr. Nunnally - You're in agreement with them?  
2877  
2878 Mr. Harris - Yes sir.  
2879  
2880 Mr. Nunnally - All right. Any other questions for Mr. Harris? Anyone here in  
2881 opposition. Hearing none, that concludes the case. Thank you, sir.  
2882  
2883 Mr. Blankinship - Can I have that back please?  
2884  
2885 **DECISION:**  
2886  
2887 Mr. Nunnally - I think it's 17-2006, Joe Lamport. A-17-2006, Joe Lamport.  
2888  
2889 Ms. Harris - I move that we approve this with the condition of reserving  
2890 the 50 feet for access to the landlocked lots.  
2891  
2892 Ms. Dwyer - I don't think we can do that because the access is not on his  
2893 property. So, he can't reserve it unless you want him to reserve something on his  
2894 property to provide access to other properties.  
2895  
2896 Ms. Harris - I thought we asked him and he said—  
2897  
2898 Ms. Dwyer - Well, he has access from someone else, but I don't think he  
2899 can grant anything that's not on his property.  
2900  
2901 Mr. Blankinship - There's really no one beyond him.  
2902  
2903 Mr. Kirkland - Yes, he's it.  
2904  
2905 Ms. Dwyer - There are people beyond him.  
2906  
2907 Mr. Blankinship - This parcel comes out on Varina, doesn't it?  
2908  
2909 Ms. Dwyer - There's Hoke Brady.  
2910  
2911 Mr. Kirkland - Mr. Blankinship, do they use that fire road as their in and out,  
2912 too? Is this the one that had the fire road on it?  
2913  
2914 Mr. Blankinship - The fire road is another case.  
2915

2916 Mr. Kirkland - Yeah it is. This one has a fire trail on it.  
2917  
2918 Ms. Harris - This is the one that had a 25-foot road.  
2919  
2920 Mr. Wright - What are we going to do?  
2921  
2922 Mr. Nunnally - Ms. Harris made a motion that we approve it. May I have a  
2923 second?  
2924  
2925 Mr. Wright - Second.  
2926  
2927 Mr. Nunnally - Second by Mr. Wright. All in favor say aye.  
2928  
2929 Ms. Dwyer - You didn't call for opposition. I'm opposed. I'm concerned  
2930 about this patchwork of lots that have multiple acres that could be eventually developed  
2931 with lots of houses and we have no plans for access to this essentially undeveloped  
2932 patchwork. Probably, I think we're allowing substandard lots to be developed without  
2933 having any plans for the infrastructure that will serve this area. I can't be a party to it,  
2934 particularly on a case like this where there's so much acreage that is available. Now, if  
2935 it's something like the lot at the end of the street, that's one thing, but here we're  
2936 having—Like the hole in the doughnut. We're allowing a house to be put there and I—  
2937  
2938 Mr. Wright - Since we get about five of these at each hearing, each  
2939 Board meeting, and one of the things that we say is that this is something that's not  
2940 recurring, this, I think, should be called to the attention of the Supervisors. I think this  
2941 needs to be addressed and something ought to be done.  
2942  
2943 Ms. Dwyer - If we deny the cases, I think it will be addressed.  
2944  
2945 Mr. Wright - It's been a big issue over the years and we need to, I think, it  
2946 needs to be suggested to somebody that this needs to be studied by the staff or  
2947 appropriate County officials and brought to the attention of the Supervisors to address it.  
2948 I think there ought to be some ordinance. Something to handle this. It puts a heavy  
2949 burden on us each time to deal with all of these things.  
2950  
2951 Ms. Dwyer - I think we're just creating some real insolvable problems in  
2952 the future.  
2953  
2954 Mr. Wright - Probably are. But by the same token, we've got a lot of  
2955 property out there of people that want to use.  
2956  
2957 Ms. Dwyer - Right.  
2958  
2959 Mr. Wright - There ought to be something that the County could address,  
2960 to come up with to address the issue.  
2961

2962 Ms. Dwyer - Maybe a concept road or they could contribute to a fund to  
2963 use to build a road in future, that kind of thing.  
2964  
2965 Mr. Wright - Something we could hang our hat on.  
2966  
2967 Ms. Dwyer - Yes. I agree with you wholeheartedly.  
2968  
2969 Mr. O'Kelly - *[Inaudible]* compare us to other localities, but we do share  
2970 agendas and in the most recent Chesterfield agenda, 90% of the cases were road  
2971 frontage.  
2972  
2973 Mr. Blankinship - Is that right?  
2974  
2975 Ms. Harris - I need to give a reason for my motion. Okay. After  
2976 reviewing the written record and the evidence presented at the hearing, I find that the  
2977 proposed variance, as restricted by the conditions incorporated in this motion will not  
2978 adversely affect the health, safety, or welfare of the neighbors, and it will not increase  
2979 congestion at this point. It will not impair the character or the district or adjacent district.  
2980 I still want to say at this point that we know we do need to have our Supervisors address  
2981 what we can do about these landlocked lots because there are just so many of them in  
2982 this district.  
2983  
2984 Ms. Dwyer - Should we do something affirmative? What does staff  
2985 suggest? Should we ask staff to look at it or bring this to the attention of the Board and  
2986 ask the Board to look into it? I think we really do need to take some action. We've  
2987 identified a problem.  
2988  
2989 Mr. Blankinship - Do you have *[inaudible]*.  
2990  
2991 Ms. Harris - Either or. Or both.  
2992  
2993 Mr. O'Kelly - I think it would be worth trying to increase the minimum  
2994 acreage to 5- or 10-acre lots, which we tried to do. It was standing room only in this  
2995 boardroom, so.  
2996  
2997 Mr. Wright - I think this is a different issue. I think it's something that's a  
2998 crying need for this to be looked into. I think we need to pass it on to Ben.  
2999  
3000 Ms. Dwyer - Should we pass a resolution to ask the Board? Isn't there a  
3001 provision that says the BZA, if we have a recurring problem, aren't we supposed to  
3002 bring this to the attention of the Board?  
3003  
3004 Mr. Wright - We are. But I think we have to wait until the end of the  
3005 docket to do it.  
3006  
3007 Mr. Blankinship - I don't know mechanically the best way to do that.

3008  
 3009 Ms. Dwyer - Let's do something next week, next month then.  
 3010  
 3011 Mr. Wright - Why don't we ask Ben to bring back something to us next  
 3012 time.  
 3013  
 3014 Ms. Dwyer - Maybe a resolution or something for the Board?  
 3015  
 3016 Mr. Wright - We'll be able to give it some consideration. Did we vote?  
 3017  
 3018 Mr. Nunnally - Yeah, we voted. You voted no, didn't you, Ms. Dwyer?  
 3019  
 3020 Ms. Dwyer - Yes I did.  
 3021  
 3022 Mr. Nunnally - Okay.

3023  
 3024 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
 3025 Wright, the Board **granted** application **A-17-2006** for a variance to build a one-family  
 3026 dwelling at 1831 W. Chaffin Rd. (Parcel 809-678-3331), zoned R-2A, One-family  
 3027 Residence District (Varina). The Board granted the variance subject to the following  
 3028 conditions:

- 3029  
 3030 1. This variance applies only to the public street frontage requirement. All other  
 3031 applicable regulations of the County Code shall remain in force.  
 3032  
 3033 2. Approval of this request does not imply that a building permit will be issued.  
 3034 Building permit approval is contingent on Health Department requirements, including,  
 3035 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
 3036 of a well location.  
 3037  
 3038 3. At the time of building permit application, the applicant shall submit the  
 3039 necessary information to the Department of Public Works to ensure compliance with the  
 3040 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
 3041 water quality standards.  
 3042  
 3043 4. The applicant shall present proof with the building permit application that a legal  
 3044 access to the property has been obtained.  
 3045  
 3046 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
 3047 for maintaining access to the property until such a time as the access is improved to  
 3048 County standards and accepted into the County road system for maintenance.

3049  
 3050 Affirmative: Harris, Kirkland, Nunnally Wright 4  
 3051 Negative: Dwyer 1  
 3052 Absent: 0  
 3053

3054 Mr. Nunnally - All right, Mr. Blankinship.  
3055  
3056 **UP-18-2006 EVENTS MANAGEMENT, LLC** requests a temporary  
3057 conditional use permit pursuant to Section 24-116(c)(1) to hold a special event at 11400  
3058 West Broad Street (Parcel 740-762-9925), zoned B-3C, Business District (Conditional)  
3059 (Three Chopt).  
3060  
3061 Mr. Nunnally - Anyone here interested in this case? If so, please stand and  
3062 raise your right hand and be sworn. No applicant? No one here for UP-18-2006. All  
3063 right, we'll pass that one by, Mr. Blankinship.  
3064  
3065 **UP-19-2006 EVAN OWEN** requests a temporary conditional use permit  
3066 pursuant to Section 24-116(c)(1) to operate a temporary sales stand at 7133 Staples  
3067 Mill Road (Parcel 773-749-4418), zoned B-2C, Business District (Conditional)  
3068 (Brookland).  
3069  
3070 Mr. Nunnally - Anyone here interested in this case? If so, please stand and  
3071 raise your right hand and be sworn.  
3072  
3073 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
3074 the whole truth, and nothing but the truth so help you God?  
3075  
3076 Mr. Owen - I do.  
3077  
3078 Mr. Nunnally - Please state your name, sir, and tell us what you're  
3079 requesting.  
3080  
3081 Mr. Owen - My name is Evan Owen. I'd first like to say aloha.  
3082  
3083 Mr. Owen - I am the founder of Hawaii Shave Ice Cream Company,  
3084 which is a startup company here in Richmond. I guess before we get to the business at  
3085 hand, I'd first like you to know that I brought the fresh Hawaiian flower lei for each of you  
3086 today. Just as a way to introduce the company and what I'm trying to, I guess, create in  
3087 the Richmond market and, hopefully, across the U. S. in the next few years. For the  
3088 women, I've got orchid leis, and for the men, so it's a little bit more masculine, a Ti Leaf  
3089 lei, so you don't have to wear some nice fragrant flowers around your neck. Well, I'll  
3090 just leave them here so you can pick them up after the meeting.  
3091  
3092 Mr. Nunnally - Thank you.  
3093  
3094 Mr. Owen - I guess before we get started, I'll just give you a quick  
3095 introduction to the company. Our goal is to take the sights, the sounds, the smells, and  
3096 especially the tastes of Hawaii to create a unique dessert experience. In your  
3097 information sheet, I'm asking to serve ice cream; however, in today's ultra competitive  
3098 marketplace, opening a store that just serves ice cream probably won't be that  
3099 successful. For example, any of you who have been to a Cold Stone Creamery realize

3100 that when you buy their desserts, a production takes place of making the dessert in front  
3101 of you on cold stone with numerous toppings and fillings. That experience, as well as a  
3102 quality product is what makes them successful. At Hawani Shave Ice Cream, we center  
3103 our product and experience on Hawaii. We greet our guests with, "Aloha," hello, and  
3104 end with, "Mahalo," which is "thank you." Shaved ice is finely shaved ice that's been  
3105 covered with a variety of flavored syrups. In fact, we have 100 flavors. We will also  
3106 serve real Hawaiian ice cream, which is an ultra-premium ice cream. At this moment,  
3107 we'll be the only company on the East Coast that serves this brand of ice cream.  
3108 Flavors include macadamia nut, pineapple coconut, and [inaudible] pie, which is a kona  
3109 coffee ice cream with toasted macadamia nuts and toasted coconut, and swirled fudge.  
3110 So, let me first apologize, as everyone gets hungry for talking about food.

3111  
3112 Mr. Owen - Shave Ice Cream is a combination of ice cream on the  
3113 bottom with various flavors of shave ice on top, as well as a variety of toppings, and  
3114 finally garnished with a sugar cane stick from the big island of Hawaii. Now that you  
3115 have a better idea of what we're trying to create, I'll be glad to answer any questions  
3116 and address the concerns that you have with opening the business.

3117  
3118 First of all, I did bring with me some additional pictures I gave to Mr. Blankinship that I  
3119 hope made it your way. These pictures weren't available until Tuesday of this week  
3120 until I had an actual finished graphics on the trailer, which is one of the concerns that  
3121 were brought up. Let's see, just to give you an idea of where the structure will be  
3122 located here on the map, this is the outparcel here at 7133. I plan to locate the trailer in  
3123 the back quadrant, as far away from any traffic, from a safety concern, and also to make  
3124 it a short walk for parking, as people park within this area to partake of the treats. How  
3125 do you move this thing forward? I guess over here?

3126  
3127 Mr. Nunnally - Have you read the conditions on this case, sir?

3128  
3129 Mr. Owen - Yes I have.

3130  
3131 Mr. Nunnally - Do you have any problem with them?

3132  
3133 Mr. Owen - A couple of questions. In the statement or in the evaluation  
3134 that says, "improve the quality on the Staples Mill corridor," and that this particular  
3135 proposal might not meet those needs. The company that I'm creating is a very high-  
3136 level experience. It's not, for lack of a better word, a shack where you can get  
3137 strawberry, vanilla, and chocolate ice cream. It's quite a bit more than that and because  
3138 of that, it comes with a premium price. Along with that experience and price, which the  
3139 marketplace is so wanting, enables you to have to create much more than just a simple  
3140 business model.

3141  
3142 One of the other questions that was brought up in the evaluation was fold-up chairs. At  
3143 this point, we're not committed to buying any particular type of chair, other than it being  
3144 commercial and safety. The reason I referenced a fold-up chair was for the portability  
3145 standpoint so in the evening, the chairs could be folded up and put into the trailer for

3146 theft-resistance and those types of things, but there are other ideas. For example, picnic  
3147 tables, things that are heavy weight that obviously cannot be moved. I would not have  
3148 any issues with those, as long as they were okay with the property management  
3149 company and with the owner of the actual land.

3150  
3151 The third thing that was raised in the evaluation, before we get to the actual conditions,  
3152 was about reducing risk. One of the options I could consider is leasing space or  
3153 building a building. These are all things that I plan to do in coming years. The plan to  
3154 run the business out of a temporary sales stand is just a first year plan. Ten years from  
3155 now, I hope to have thousands of these things across the U. S. as franchise locations,  
3156 but to reduce the risk for the first year, this is a great way to test the marketplace, find  
3157 out what works, what doesn't work, without having to be committed to a long-term lease,  
3158 fixed capital in a building that you have to way to recoup any of that investment.

3159  
3160 As to the actual specific conditions, condition one, as far as the amount of time, that's a  
3161 perfect amount of test market time. If everything goes well, as I've met with the property  
3162 owner, the next step is to create and go with that leased space, or build a building,  
3163 depending on what is most appropriate from a profitability standpoint. So, no issue with  
3164 condition one.

3165  
3166 With condition #2, "the hours of operation should be 11 a.m. to 10 p.m." The only thing I  
3167 would like to see changed on that is across the street is a Baskin Robins and they do  
3168 have weekend hours of Friday and Saturday night till 11:00. Not that I would say I'm  
3169 staying open till 11, but just so I'm matching anything that's already being consistently  
3170 run in the area.

3171  
3172 The third condition, "the trailer shall be painted beige or off-white that blends with the  
3173 color of the shopping center buildings." I think this is probably the biggest challenge we  
3174 have to overcome. Although I understand the white or beige trailer would better blend  
3175 with the shopping center environment, as it is white, it doesn't really create the  
3176 branding, the experience, the relational information to the product that I've created. A  
3177 white building would look just like any other white utility building that a construction  
3178 company might have or anything along those lines. Also citing a couple of other things.  
3179 Half a block down the road, you've got Bahama Joe's. The have a structure outside  
3180 which is a bus that's three times the size of this trailer, completely wrapped in colorful  
3181 graphics. So, it's not out of the norm of what you see in the area. One way that I've  
3182 looked at the outside walls of the trailer, it's very much like the inside walls of a building.  
3183 Because you don't have a building or a structure that someone walks into, the outside  
3184 walls of the trailer are the best thing or the closest thing to creating or helping to build  
3185 that experience when people come to visit the eatery. We can all pretty much surmise  
3186 that we haven't been to too many restaurants lately that just have plain, white, blank  
3187 walls. It would be a pretty boring atmosphere.

3188  
3189 On number four...

3190  
3191 Mr. Kirkland - Let me ask you before you get off of #3, if the Board

3192 approves this with #3 in there, would that pretty well kill your operation?  
3193  
3194 Mr. Owen - It wouldn't necessarily kill the operation.  
3195  
3196 Mr. Kirkland - Would you still want to proceed, I guess that's the question.  
3197  
3198 Mr. Owen - If I had no other choice, then yes. At this point, I'm at the  
3199 point of no return. In all businesses, you get to a point where you either move forward  
3200 with what you've got or what you can do, or you don't, because at that point, there is no  
3201 recoup from investment if I just close the doors. In the end, I don't think it would make  
3202 the business that successful, to be quite honest with you. Again, in today's competitive  
3203 marketplace—Obviously, I'm dressed with the lei and this is part of the whole  
3204 experience. When someone comes to the eatery, they want to be surrounded by the  
3205 tastes, sights, and sounds of Hawaii. They don't want to be surrounded by a plain white  
3206 building with nothing going on, but here's a scoop of ice cream. It worked 50 years ago,  
3207 but in today's marketplace, we can all attest, I think, to restaurants that we've all been to  
3208 where we're inundated with quite a bit of information as far as those sights, sounds,  
3209 tastes, all those types of things. So, I think it would be a detriment to the business and  
3210 it would make it much more of an uphill climb. Very much the color of the trailer and the  
3211 graphics on the actual trailer, it's all relating to Hawaii. The logo of the company is the  
3212 universal sound of "hang loose," which is the *[inaudible]* universal sign of Hawaii.  
3213 Picture a product and pictures of actually Hawaii itself. If you've got the pictures of the  
3214 trailer, which is this information here, you can see that it is colorful. It does, from a  
3215 branding standpoint, show the product, show the Hawaiian Islands. On the second  
3216 page of the window side, it's got numerous pictures of things in Hawaii like Pearl  
3217 Harbor, a telescope. You can really read it or see it on here, but that's what all the  
3218 pictures underneath the window and to the right of the window are. Those are pictures  
3219 of things in Hawaii, again, to bring those sights and sounds and information and  
3220 education.  
3221  
3222 Ms. Harris - Mr. Owen.  
3223  
3224 Mr. Owen - Yes.  
3225  
3226 Ms. Harris - Is it your desire to make it kid-friendly? Do you think the  
3227 color enhances that?  
3228  
3229 Mr. Owen - Oh, most certainly. If you look at who's the most excited  
3230 about going to get ice cream, it's definitely the kids dragging, and Mr. Blankinship, as he  
3231 told me, he definitely very much enjoys ice cream. So, definitely. If any of you have  
3232 been to Maggie Moos out in the Short Pump area, or a Cold Stone Creamery, it's bright,  
3233 it's colorful; everyone has their different theme. But it's definitely a part of the product  
3234 and part of the experience. Kids are great. They're our best benefactors, I guess, if you  
3235 want to call it. They're dragging their parents kicking and screaming, so.  
3236  
3237 Ms. Dwyer - You'll park the trailer and leave it there from beginning to

3238 end, or will you remove the trailer.  
3239  
3240 Mr. Owen - From a Department of Health standpoint, because it is a  
3241 mobile structure, it does need to be taken away to replenish fresh water and gray water.  
3242 That's a Department of Health issue. Part of running the business is I have to operate  
3243 out of a commissary, which is a fixed location structure. Currently, I have an agreement  
3244 with DeFazio's Catering, which is right off Broad Street, who has allowed me to use his  
3245 space to keep supplies, to pick up water, dispose of gray water. So, it is safety, you're  
3246 meeting all the health concerns that the County does have.  
3247  
3248 Ms. Dwyer - What is the schedule.  
3249  
3250 Mr. Owen - It could be anywhere from daily in the morning before things  
3251 get up and going, to three times a week. It really depends on how much water is being  
3252 used on the trailer and how much gray water is being created for the storage tanks and  
3253 how often it needs to be moved.  
3254  
3255 Ms. Dwyer - The electrical connection will be—You'll be parked next to an  
3256 electrical pole?  
3257  
3258 Mr. Owen - Correct. Dominion Energy has said they can locate a power  
3259 pole directly behind the trailer. That's not currently there, but it would meet all codes  
3260 and, again, with agreement from the property owners. Getting to this point required a  
3261 lot of approvals and a lot of understanding and looks and feels.  
3262  
3263 Mr. Kirkland - How about restroom facilities?  
3264  
3265 Mr. Owen - There's public restrooms that are available in Ukrop's that  
3266 are part of the code in planning for the shopping center. I'm not sure if there's any  
3267 others. I think it's just Ukrop's.  
3268  
3269 Mr. Kirkland - What happens if you stay open till 11 and Ukrop's closes at  
3270 9:30 or 10?  
3271  
3272 Mr. Owen - That would be *[inaudible]* if that is the case.  
3273  
3274 Mr. Kirkland - They go home; they don't buy ice cream.  
3275  
3276 Mr. Owen - If that's a concern the Board has, then that is fine. In the  
3277 end, I need to provide the things that are most necessary.  
3278  
3279 Ms. Dwyer - What kind of exterior lighting will you have?  
3280  
3281 Mr. Owen - In the concept, in the design... I wish I'd known this was  
3282 black and white; the original had color on it.  
3283

3284 Ms. Dwyer - We have color.  
3285  
3286 Mr. Owen - Oh, do you have color? Okay. These posts would be 4-inch  
3287 by 4-inch wooden posts that would be cemented into planters, which would have  
3288 flowers in them. Strung between all of them, all these grids of lights would be like  
3289 Christmas lights. Again, to create some type of ambiance. It also enables me to create  
3290 a border to really lock in the area so kids that are there can't just run out into the out  
3291 parcel and get onto the entrance to the shopping center on Staples Mill Road. So, it  
3292 does two things. It creates a natural boundary and actual space for tables and chairs,  
3293 but it also creates that ambiance with the lighting.  
3294  
3295 Ms. Dwyer - I guess my concern is—Your concern is ambiance; mine is  
3296 you've got children running around and Christmas lights strung and you've got a power  
3297 pole on the opposite side of a movable trailer. I'm concerned about the safety issues.  
3298 I'm assuming, Mr. Blankinship, that if this were approved, that Building Inspections  
3299 would look at the electrical connections and the way he has the wiring, these lights  
3300 strung, and the security of the poles in planters and that kind of thing to make sure that  
3301 they were adequate?  
3302  
3303 Mr. Blankinship - They would regulate the electrical connection at the power  
3304 box going into the trailer. Whether they would deal with the Christmas lights and the  
3305 outdoor seating issues, I don't believe they would. You don't need a building permit for  
3306 picnic tables or a little split-rail fence.  
3307  
3308 Ms. Dwyer - I'm thinking Christmas lights, an extension cord, rain,  
3309 children—  
3310  
3311 Mr. Blankinship - I don't believe Building Inspections would get involved with  
3312 that; I don't know for sure.  
3313  
3314 Mr. Owen - It's my understanding with meeting with Dominion Energy  
3315 and also with an electrician, a couple things have to take place. Dominion comes out  
3316 and installs the power pole, and that is then run from the power pole to a separate pole  
3317 that is then installed by a certified electrician, which then Dominion hooks up to this  
3318 pole. From there, whatever safety concerns that the electrician and building code has, I  
3319 will definitely address. The last thing I want to do, from a liability standpoint, is provide a  
3320 way for a child to get hurt. That's the last thing I would want to do.  
3321  
3322 Mr. Kirkland - I think Mrs. Dwyer was concerned about having extension  
3323 cords running all over the place and wires and stuff like that. This stuff would have to all  
3324 be hardwired underground and come up to your little fence.  
3325  
3326 Mr. Owen - From a conditional standpoint, if that's what needs to be  
3327 done, then that is fine. Again, safety is the utmost concern for me, also.  
3328  
3329 Ms. Dwyer - It doesn't sound like there's anybody in place to check that

3330 or to give advice about how that could be safely done. The electricity's coming from the  
3331 power pole to the trailer; that's one thing. But electricity out—  
3332

3333 Mr. Kirkland - It's almost like he needs a little plan to be approved because  
3334 he's going to have outside dining and everything here. I consider this outside dining on  
3335 a site like this.  
3336

3337 Mr. O'Kelly - I would think Mr. Owen would probably need to apply for an  
3338 electrical permit from the Building Official. All of those things would be addressed at the  
3339 permit application. I've seen a letter from the property owner endorsing this use. I  
3340 didn't see it as part of the packet, but I think we do have the letter.  
3341

3342 Ms. Harris - What other cities have used the business?  
3343

3344 Mr. Owen - This will be the first.  
3345

3346 Ms. Harris - Oh, Henrico will be first.  
3347

3348 Mr. Owen - Richmond will be the first. Hopefully, we will be  
3349 headquartered here.  
3350

3351 Mr. Kirkland - Let's say Henrico County, if you don't mind.  
3352

3353 Mr. Owen - Henrico County.  
3354

3355 Mr. Kirkland - Have you contacted the Division of Police?  
3356

3357 Mr. Owen - No, I have not.  
3358

3359 Mr. Kirkland - You should do that. We've got a comment here from the  
3360 Division that they have not heard from you and that they'd like to know exactly what you  
3361 plan to do.  
3362

3363 Mr. Owen - Okay.  
3364

3365 Ms. Harris - Should we edit the condition, what you said about the permit,  
3366 about the electricity? Should that be a condition?  
3367

3368 Mr. O'Kelly - It could be, yes ma'am.  
3369

3370 Mr. Kirkland - Another question I have is #7 where it says, "there will be no  
3371 outside loudspeaker system." You said you're going to have the sights and sounds of  
3372 Hawaii. What's the sounds?  
3373

3374 Mr. Owen - Correct. If you look at the trailer, the serving side picture.  
3375 Let me apologize for some of your copies. I tried to get real nice quality photo printed

3376 and paper started sticking to paper.  
3377  
3378 Mr. Kirkland - I see the little speaker up there.  
3379  
3380 Mr. Owen - You see the little speakers up in the top corner. That would  
3381 be your sound. I wouldn't necessarily use the term "loudspeaker," because they're  
3382 pretty small speakers. It's there to create ambiance. It's not there to have a karaoke  
3383 night or anything like that. It's right there by the serving window, so you can only get it  
3384 so loud before I can't hear the customer and the customer can't hear us. So again, it's  
3385 there like any background music that you have in an elevator or any other restaurant.  
3386  
3387 Mr. Kirkland - That would be prohibited by condition 7.  
3388  
3389 Mr. Owen - That was one of the questions I had about that. From a  
3390 volume standpoint, the train that runs behind the shopping center and the siren, it  
3391 probably makes more noise than this thing. Cars driving up and down Staples Mill with  
3392 stereos would be louder. Without doing a physical test, I can't imagine why anyone  
3393 would be able to hear these speakers with just the normal environment and actual  
3394 background noise that's in the area. Unless you're within 15, 20 feet of the trailer.  
3395 Again, it doesn't really help business if you're blaring music and you can't hear your  
3396 customer and your customer can't hear you.  
3397  
3398 Mr. Nunnally - Any other questions for Mr. Owen?  
3399  
3400 Mr. Owen - One more comment just real quick. You were asking about  
3401 the sites. Directly to the speaker that you can see in the top corner where it says,  
3402 "authentic Hawaiian shave ice and ice cream," those are actually TV cabinets. Inside  
3403 there are 20-inch flat panel LCD TV's that would be used to show Hawaiian-related  
3404 travel videos, educational videos. Again, part of the whole experience of Hawaii and  
3405 delivering something more than just the actual product, to where they can actually  
3406 watch something while they're having their treat. Very basic videos.  
3407  
3408 Ms. Dwyer - Will that be facing the roadway?  
3409  
3410 Mr. Owen - From a diagonal standpoint, yes. Here on the trailer you  
3411 would have a TV in this corner and one over here. How much of them would be visually  
3412 seen with everything else that's here, if everything else were to be approved and  
3413 everything would be moved forward with all the necessary safety, it would be hard to  
3414 say exactly.  
3415  
3416 Ms. Dwyer - We're in a position of making sure that you agree with  
3417 suggested conditions in order for us to impose them. So, if I could just, for my own  
3418 benefit, summarize what it is you agree to. You would agree to 11 to 10, but you'd like  
3419 to have 11:00 on Friday's and Saturday's for hours. Is that right?  
3420  
3421 Mr. Owen - Correct, unless it's an issue with having public restrooms.

3422  
3423 Ms. Dwyer - Right.  
3424  
3425 Mr. Owen - If I'm limited by that, then that is fine.  
3426  
3427 Ms. Dwyer - But you would agree to 11 to 10, if that's what we decide.  
3428  
3429 Mr. Owen - Correct, yes.  
3430  
3431 Ms. Dwyer - Then as far as color, you would agree to the off-white, but  
3432 you'd rather have color.  
3433  
3434 Mr. Owen - Yeah. I guess there's a disagreement between marketing  
3435 and architecturally speaking.  
3436  
3437 Ms. Dwyer - We've heard your argument; I just want to review quickly  
3438 through here. You agree to applying for an electrical permit and also checking with the  
3439 police and complying with any requirements that they might have.  
3440  
3441 Mr. Owen - Certainly, yes.  
3442  
3443 Ms. Dwyer - Then there's an issue outstanding, I guess, about the  
3444 loudspeaker system. Would you agree to not have a loudspeaker system if that's  
3445 something that we—  
3446  
3447 Mr. Owen - If that's what I have to do, that's what I have to do. In the  
3448 end, I know there are certain things I could or could not do. I would ask that the Board  
3449 look at the whole package and understand what I'm trying to create. Again, one of the  
3450 conditions is that the permit would not be renewed, and I'm totally fine with that. Again,  
3451 this is to get the business and test market it with the least risk possible. If everything  
3452 goes well with this whole total concept, then I'm moving on to that next step of getting  
3453 an actual fixed-lease space.  
3454  
3455 Mr. Nunnally - Mr. Blankinship, couldn't you word that #7 so that it wouldn't  
3456 be any loud noise. A little background music is not something that's going to cause a lot  
3457 of problems. That's what it looks like to me.  
3458  
3459 Mr. Blankinship - Yes sir, you could do that.  
3460  
3461 Mr. Nunnally - Instead of saying, "no," just say—Put it so that if it got to the  
3462 point that it was not proper, then we could shut it down.  
3463  
3464 Mr. Owen - Quite honestly, if I had an employee that did cause that  
3465 problem, it would be cause of concern to let them go. Again, because it would not  
3466 create and provide the experience of a pleasant dining experience with dessert.  
3467

3468 Mr. Nunnally - Any other questions from the Board or staff? Anyone here in  
3469 opposition? Hearing none, that concludes the case. Thank you, sir.  
3470  
3471 Mr. Owen - Thank you.  
3472  
3473 **DECISION:**  
3474  
3475 Mr. Nunnally - UP-19-2006, Evan Owen. Brookland. The ice cream man.  
3476  
3477 Mr. Kirkland - I move we approve it, but I would like to make some  
3478 changes in the conditions. I would like #3 to stay as it is. Excuse me, #3 to be stricken.  
3479 I think since the business owner has no signs, this is the only advertisement he has for  
3480 his product. I think painting it up Hawaiian style with that logo and stuff would be okay.  
3481 I do want him to, in #7, there should be outside noise, excess noise. What I mean by  
3482 that, he can have a speaker on the trailer that plays background music, but I do not  
3483 want a loudspeaker system. I guess I want both of those things in that one condition,  
3484 Mr. Blankinship.  
3485  
3486 Mr. Blankinship - Did you use the word, "excessive"?  
3487  
3488 Mr. Kirkland - "Excessive" would be fine. No excessive noise.  
3489  
3490 Mr. O'Kelly - How about, "not audible beyond the property lines"?  
3491  
3492 Ms. Harris - Of the shopping center?  
3493  
3494 Mr. Kirkland - You mean of the plot he's renting?  
3495  
3496 Mr. O'Kelly - Yes.  
3497  
3498 Mr. Kirkland - That's fine. As long as there are no loudspeakers out there,  
3499 blaring music to interfere with Staples Mill people.  
3500  
3501 Ms. Dwyer - Those are two different things, not audible beyond the  
3502 shopping center property lines and not audible beyond the plot he's renting.  
3503  
3504 Mr. Kirkland - He's not in the shopping center, he's in the out parcel, isn't  
3505 he?  
3506  
3507 Mr. Blankinship - Right. So, she's saying are we measuring that all the way to  
3508 the shopping center boundary or just to his?  
3509  
3510 Mr. Kirkland - Just his boundary. His boundary of his little parcel that he's  
3511 using.  
3512  
3513 Ms. Dwyer - That will be very soft.

3514  
3515 Mr. Kirkland - That would be music playing right out of the trailer right  
3516 there. Like he said, he can't have it but so loud, he couldn't hear—  
3517  
3518 Ms. Dwyer - He's going to be real close to the parking lot. A couple feet  
3519 away being the parking lot, you'd be able to hear it. I think maybe just the shopping  
3520 center.  
3521  
3522 Mr. Kirkland - Okay. The shopping center would be fine with me. Then  
3523 any electrical work done on the site must be inspected by a Henrico County electrical  
3524 inspector, and all additional electric work must meet the County Code. Any exterior  
3525 lighting that might be on the fences, that type thing.  
3526  
3527 Mr. Wright - Also, how about he's got to consult with the police.  
3528  
3529 Mr. Kirkland - Number 9, check with Division of Police for all the proper  
3530 requirements they need. As far as #2 about the 11:00, I'm going to hold on there to  
3531 11:00 A.M. to 10:00 P.M., because Ukrop's, I think, closes maybe at 10:00 P.M. and his  
3532 workers might have to go to the bathroom right at that time. You never know, if any  
3533 people eating there might have to go to the facilities, especially if you have small kids.  
3534  
3535 Mr. Blankinship - You don't sell a lot of ice cream after 10:00 at night.  
3536  
3537 Mr. Kirkland - Have you ever been to Bruster's on Staples Mill Road?  
3538 They're lined up down the road.  
3539  
3540 Mr. Blankinship - At 11:00? Between 10:00 and 11:00?  
3541  
3542 Mr. Kirkland - They stay open till midnight, if they can get away with it.  
3543 They do it especially when it's warm.  
3544  
3545 Mr. Blankinship - Not amending condition two.  
3546  
3547 Mr. Nunnally - Any other? Motion by Mr. Kirkland.  
3548  
3549 Mr. Blankinship - I'm waiting for a second to that motion.  
3550  
3551 Mr. Wright - I'll second it.  
3552  
3553 Mr. Nunnally - Second by Mr. Wright.  
3554  
3555 Mr. Wright - Ms. Harris, you have something to say?  
3556  
3557 Ms. Harris - No. I thought I had seconded it.  
3558  
3559 Mr. Blankinship - Oh, I'm sorry.

3560  
3561 Mr. Nunnally - You had seconded it, then.  
3562  
3563 Mr. Blankinship - I didn't make a note.  
3564  
3565 Mr. Kirkland - I think she did.  
3566  
3567 Mr. Nunnally - I think she did, too.  
3568  
3569 Mr. Blankinship - I'll correct that.  
3570  
3571 Mr. Nunnally - Motion by Mr. Kirkland, second by Ms. Harris with the  
3572 conditions. All in favor say aye.  
3573  
3574 Ms. Dwyer - Just for the record, I think the applicant did agree to all those  
3575 conditions.  
3576  
3577 Mr. Kirkland - Yes he did.  
3578  
3579 After an advertised public hearing and on a motion by Mr. Kirkland. seconded by Ms.  
3580 Harris, the Board **granted** application **UP-19-2006** for a temporary conditional use  
3581 permit to operate a temporary sales stand at 7133 Staples Mill Road (Parcel 773-749-  
3582 4418), zoned B-2C, Business District (Conditional) (Brookland). The Board granted the  
3583 temporary conditional use permit subject to the following conditions:  
3584  
3585 1. This Conditional Use Permit is only for the temporary sale of ice cream and  
3586 items customarily associated with an ice cream stand. The use shall begin no earlier  
3587 than May 1, 2006 and last no later than October 31, 2006.  
3588  
3589 2. The hours of operation shall be from 11:00 AM to 10:00 PM  
3590  
3591 3. [DELETED]  
3592  
3593 4. The trailer and all other items associated with the ice cream stand shall be  
3594 removed from the property on or before November 3, 2006, at which time this permit  
3595 shall expire. This permit shall not be renewed.  
3596  
3597 5. All exterior lighting shall be shielded to direct light away from adjacent property  
3598 and streets.  
3599  
3600 6. All trash shall be in closed containers with regular pickups, the area shall be  
3601 kept clean, and the containers shall be properly screened.  
3602  
3603 7. [AMENDED] The sound system shall not be audible beyond the limits of the  
3604 shopping center.  
3605

3606 8. [ADDED] All electrical connections and equipment shall be installed and  
3607 inspected in conformance with the Uniform Statewide Building Code, and all electrical  
3608 accessories shall be installed and maintained in a safe manner.

3609  
3610 9. [ADDED] The applicant shall comply with all requirements of the Henrico  
3611 Division of Police.

3612  
3613  
3614 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
3615 Negative: 0  
3616 Absent: 0

3617  
3618  
3619 The Board granted the request because it found the proposed use will be in substantial  
3620 accordance with the general purpose and objectives of Chapter 24 of the County Code

3621  
3622 Mr. Nunnally - Mr. Blankinship?

3623  
3624 **A-18-2006** **JAMES L. WHITAKER** requests a variance from Section 24-  
3625 9 to build a one-family dwelling at 2517 Johnson Place (Parcel 802-731-8466), zoned  
3626 R-4, One-family Residence District (Fairfield). The public street frontage requirement is  
3627 not met. The applicant has 0 feet public street frontage, where the Code requires 50  
3628 feet public street frontage. The applicant requests a variance of 50 feet public street  
3629 frontage.

3630  
3631 Mr. Nunnally - Anyone here interested in this case? Please raise your hand  
3632 and be sworn, sir.

3633  
3634 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
3635 the whole truth, and nothing but the truth so help you God?

3636  
3637 Mr. Whitaker - I do.

3638  
3639 Mr. Nunnally - Please state your name and tell us what you're requesting.

3640  
3641 Mr. Whitaker - My name is James Whitaker and I'm here today requesting a  
3642 variance of 50 feet public street frontage in order to build a one-family dwelling.

3643  
3644 Ms. Dwyer - Mr. Whitaker, where will the house be located on the lot?

3645  
3646 Mr. Whitaker - As you see, the picture that I've drawn right there, this is  
3647 exactly where I want it to be located, but facing the cul-de-sac at Johnson's Place. I've  
3648 read the conditions and I know exactly feet-wise how far I'm supposed to be away from  
3649 the line.

3650  
3651 Ms. Dwyer - Why is it to one end, just to one side?

3652  
3653 Mr. Whitaker - I'd hate for that particular lot to consume the whole 1.096  
3654 acres. I'd hate for that one house to consume all of that and I want it to be in  
3655 accordance with the lots that are in the area. Therefore, I decided to start at that  
3656 particular—  
3657  
3658 Ms. Dwyer - This is a one-acre lot, it's zoned R-4. You could get several  
3659 other houses on this lot.  
3660  
3661 Mr. Whitaker - I could possibly, but right now, I'm interested in just getting  
3662 one for my mother-in-law. My son is just finishing college and if he decides in the future  
3663 he wants to do something, then I will leave it there in case he does decide to go that  
3664 route.  
3665  
3666 Mr. Wright - I understand that if you extend that street, Johnson Place,  
3667 that would be permitted, it wouldn't interfere with your house.  
3668  
3669 Mr. Whitaker - No it wouldn't.  
3670  
3671 Ms. Dwyer - I guess there'd be no reason to extend Johnson back  
3672 because—  
3673  
3674 Mr. Kirkland - You can't go anywhere.  
3675  
3676 Ms. Dwyer - It would go into the back of the houses that face Gaulding,  
3677 but there are lots to the south of this lot that appear to be landlocked and could only  
3678 access to a public street through your property. Before granting a variance, that would  
3679 be my concern, that access be provided to these other two lots. There may be more, but  
3680 there are two that are visible on this. Would you be willing to grant say a 50-foot right-  
3681 of-way through your property to the other lots?  
3682  
3683 Mr. Whitaker - Are you referring to the two here?  
3684  
3685 Ms. Dwyer - Yes.  
3686  
3687 Mr. Whitaker - It seems that 2513 is really blocking him in.  
3688  
3689 Ms. Dwyer - Right. That's a subdivision lot. The difference between what  
3690 you're asking and what's happened on Johnson Place, is that Johnson Place was a  
3691 subdivision. It met all the legal requirements for a subdivision and you're not doing that  
3692 here. What happens when we allow development that's not part of a subdivision plan to  
3693 occur is that sometimes we create problems in the future, like blocking other property.  
3694 That would be my concern with your case, that access to these properties appears to  
3695 only be possible through your lot.  
3696

3697 Mr. Whitaker - If that be the condition, then I would very much so want to  
3698 continue with the project. If that's the condition, then I will be willing to meet that  
3699 condition.  
3700  
3701 Ms. Dwyer - Okay. Thank you.  
3702  
3703 Ms. Harris - Is that stated in #3? Look at the third condition. You're  
3704 saying that the condition is, "applicant shall construct his home on the northern part."  
3705 Aren't you covering that in #3?  
3706  
3707 Ms. Dwyer - I don't think so. I think that appears to say if Johnson Place  
3708 would be extended and would go into the front of his lot. In other words, provide  
3709 access—He wanted to put his house, I think it's south of where Johnson Place would be  
3710 extended.  
3711  
3712 Mr. Blankinship - Right. The condition would require him to put it on the  
3713 northern part.  
3714  
3715 Mr. Kirkland - The location he's showing now is the southern part.  
3716  
3717 Mr. Blankinship - Right.  
3718  
3719 Ms. Dwyer - Right.  
3720  
3721 Mr. Nunnally - That condition would require him to build it on the other.  
3722  
3723 Ms. Dwyer - Okay. We also wanted to not only have it be built into his lot  
3724 and maybe have his house built on the north. That might be something you didn't  
3725 realize, because at the beginning of this discussion, you said you were going to put your  
3726 house on the south end.  
3727  
3728 Mr. Whitaker - Well, that was the original plan for me.  
3729  
3730 Ms. Dwyer - Okay.  
3731  
3732 Mr. Whitaker - But I did read the condition and it referred to the northern  
3733 section of the lot.  
3734  
3735 Ms. Dwyer - Okay. That says in the event Johnson Place is extended and  
3736 what I'm saying is that beyond that, asking that you agree to reserve a right-of-way so  
3737 that Johnson Place can be extended not just to your property, but through your property  
3738 to gain access to the other properties to the south.  
3739  
3740 Mr. Whitaker - I do agree.  
3741  
3742 Ms. Dwyer - Okay.

3743  
3744 Ms. Harris - Do you know how wide Johnson Place is now? What's the  
3745 width of that street?  
3746  
3747 Mr. Whitaker - Are you referring to the terminus itself?  
3748  
3749 Ms. Harris - The street. Is it about 30 feet wide or is it 50?  
3750  
3751 Mr. Kirkland - It's a 50.  
3752  
3753 Ms. Harris - It's 50?  
3754  
3755 Mr. Kirkland - You would have to put in a 50-foot easement to get to those  
3756 other two lots. Is that what you're saying?  
3757  
3758 Ms. Harris - The street is already 50 feet. Okay. It's standard, but we've  
3759 seen exceptions.  
3760  
3761 Mr. Blankinship - Older streets are often narrower.  
3762  
3763 Ms. Harris - Yes.  
3764  
3765 Ms. Dwyer - Let me ask staff this question. If Mr. Whitaker reserves a  
3766 right-of-way, that doesn't necessarily guarantee legal access to the properties to the  
3767 south, unless it's a dedicated public right-of-way. Is that right?  
3768  
3769 Mr. Blankinship - Right. It would still have to be negotiated. He would expect  
3770 to be compensated to allow people to pass through his property.  
3771  
3772 Ms. Dwyer - See, that doesn't really help the issue. I'm certainly not  
3773 saying you would do this, but certainly there have been cases in the past in which  
3774 people have not permitted others to cross their property unless they pay some  
3775 exorbitant price. I guess that with all these landlocked parcels that we're creating by  
3776 allowing development, I think we need to make sure that that doesn't happen.  
3777  
3778 Mr. Wright - We can't expect him to give it away.  
3779  
3780 Ms. Dwyer - Developers do that all the time. That's part of why people  
3781 avoid the subdivision ordinance because the County generally requires roadways—If  
3782 you're building and getting the benefit of property, the County generally requires  
3783 dedicated right-of-way. Typically, developers donate that.  
3784  
3785 Mr. Wright - Looks like to me that's a problem with those other two lots. If  
3786 they want to do it, they ought to be willing to do something about it. This is not a big  
3787 development.  
3788

3789 Ms. Dwyer - It's not a big development, but it could be a big problem in  
3790 the future if we allow subdivision of property that doesn't come under the subdivision  
3791 ordinance and that creates landlocked properties. That's my concern.  
3792

3793 Ms. Harris - You have that all over the County of Henrico. Look at the  
3794 Short Pump area. You have that going on. *[Inaudible]* are we crossing into jurisdictions  
3795 when we forbid people to make profits on whatever. Are we crossing our jurisdiction?  
3796

3797 Ms. Dwyer - I guess I don't understand what you just said.  
3798

3799 Ms. Harris - How can you stop someone from earning a profit? What  
3800 authority does this Board have for getting someone to agree not to earn a profit? I don't  
3801 think we have that authority.  
3802

3803 Ms. Dwyer - I don't want to stop anyone from earning a profit. I'm just  
3804 saying that I think if we're going to approve a lot that's going to create an inaccessible  
3805 and landlocked piece of property that we should think twice about that. I think that's  
3806 incumbent upon us as the body that makes these decisions not to create those kinds of  
3807 problems in the future. It's the County's responsibility to make sure that there is access.  
3808 One of the ways we do that is through the subdivision ordinance.  
3809

3810 Mr. Whitaker - If I may say something?  
3811

3812 Ms. Dwyer - Yes.  
3813

3814 Mr. Whitaker - At the very end of Gauling Lane; the two lots that you're  
3815 referring to here have been accessed. I don't know the exact name of the street, but it's  
3816 to the right at the very end of Gauling Lane. He's been coming in through this area  
3817 right in here. That's where he's been having access to his property.  
3818

3819 Ms. Dwyer - But we don't know if he had legal access or what the status  
3820 of that is.  
3821

3822 Mr. Whitaker - He's deceased. His wife and kids are there now. I know  
3823 that's the way he used to get in to his property, other than run out through his backyard.  
3824 Right across his back fence. Like mine is hooked onto mine somewhat.  
3825

3826 Ms. Harris - What parcel were you talking about, Mr. Whitaker? Two  
3827 landlocked lots here.  
3828

3829 Mr. Whitaker - Yes.  
3830

3831 Mr. Nunnally - But you wouldn't have an objection to the 50-foot?  
3832

3833 Mr. Whitaker - If that is a condition set forth in order to get this project done,  
3834 I will agree to it.

3835  
3836 Mr. Nunnally - Any other questions for Mr. Whitaker? Anyone in  
3837 opposition? Hearing none, that completes the case. Thank you for coming, sir.  
3838  
3839 Mr. Whitaker - Thank you.  
3840  
3841 **DECISION:**  
3842  
3843 Mr. Nunnally - A-18-2006, James L. Whitaker.  
3844  
3845 Ms. Harris - I move that we approve this case, but add a condition that 50  
3846 feet will be designated for public road access.  
3847  
3848 Ms. Dwyer - I'm sorry, that would allow access to the property to the  
3849 south?  
3850  
3851 Ms. Harris - That would allow access to the properties that are  
3852 landlocked behind this property.  
3853  
3854 Mr. Nunnally - Motion by Ms. Harris.  
3855  
3856 Mr. Kirkland - I second it.  
3857  
3858 Mr. Nunnally - Seconded by Mr. Kirkland it be approved. All in favor say  
3859 aye.  
3860  
3861 Mr. Wright - Hold on a second. I want a discussion. Is that something  
3862 that he agrees to do when it arrives? He doesn't have to do it now.  
3863  
3864 Ms. Dwyer - He's agreed to reserve it.  
3865  
3866 Mr. Wright - Reserve it.  
3867  
3868 Ms. Dwyer - Reserve it now.  
3869  
3870 Mr. Wright - The way that was stated, he would have to go ahead and do  
3871 something now to set it out and I don't think that was the intent.  
3872  
3873 Ms. Dwyer - What I understood Ms. Harris to say is that for condition #3,  
3874 he's going to have to construct his home on the northern part of the property so that if  
3875 Johnson Place is extended as its currently oriented, that that would be his front yard,  
3876 and that a 50-foot right-of-way has to be reserved so as to allow access to the property.  
3877  
3878 Mr. Wright - If the other property is developed. At that time.  
3879

3880 Mr. O'Kelly - This would be a private right-of-way? Not intended to be a  
3881 public street.  
3882  
3883 Mr. Wright - No, it wouldn't be.  
3884  
3885 Ms. Dwyer - That gets to my general concern, Mr. O'Kelly, that we don't  
3886 have subdivision plats for so much of these developments that we're allowing. We don't  
3887 have public street, but yes.  
3888  
3889 Mr. O'Kelly - Obviously, we required the stub street for a reason, for future  
3890 development of the adjacent property.  
3891  
3892 Ms. Dwyer - Exactly. But if we allow a house to go right in front of it, then  
3893 that's of no value.  
3894  
3895 Mr. Wright - I don't think the County of Henrico is going to build a public  
3896 road that serves three houses.  
3897  
3898 Mr. Blankinship - No, but if they build it, they'll dedicate it to public  
3899 maintenance.  
3900  
3901 Ms. Dwyer - Which is what happens in subdivision.  
3902  
3903 Mr. Kirkland - Just make sure this is in the record so he doesn't go building  
3904 the house on *[inaudible]*.  
3905  
3906 Ms. Dwyer - I don't know what else to do other than to ask these people  
3907 to reserve it, Mr. O'Kelly.  
3908  
3909 Mr. Kirkland - That's the best you can do.  
3910  
3911 Ms. Dwyer - If staff has any other suggestions. I don't feel like that's  
3912 enough, but it's more than nothing.  
3913  
3914 Mr. Kirkland - The best you can do.  
3915  
3916 Ms. Harris - I did say "reserve."  
3917  
3918 Mr. Wright - I just wanted to make sure it wasn't putting a burden on him  
3919 to go forth to do something now, that's all.  
3920  
3921 Ms. Harris - If he's getting ready to build a house, he needs to reserve it  
3922 at this point.  
3923  
3924 Mr. Wright - Good enough.  
3925

3926 Mr. Nunnally - Did we vote on that.

3927

3928 Mr. Blankinship - No sir.

3929

3930 Mr. Nunnally - All right. Motion by Ms. Harris, second by Mr. Kirkland that it  
3931 be approved subject to conditions. All in favor say aye.

3932

3933 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
3934 Kirkland, the Board **granted** application **A-18-2006** for variance to build a one-family  
3935 dwelling at 2517 Johnson Place (Parcel 802-731-8466), zoned R-4, One-family  
3936 Residence District (Fairfield). The Board granted the variance subject to the following  
3937 conditions:

3938

3939 1. This variance applies only to the public street frontage requirement. All other  
3940 applicable regulations of the County Code shall remain in force.

3941

3942 2. Only the improvements shown on the plan filed with the application may be  
3943 constructed pursuant to this approval. Any additional improvements shall comply with  
3944 the applicable regulations of the County Code. Any substantial changes or additions  
3945 may require a new variance.

3946

3947 3. The applicant shall construct his home on the northern part of the property in  
3948 such a way that not only current setbacks are met, but also in the event Johnson Place  
3949 is extended and becomes his front yard.

3950

3951 4. The house shall be constructed with a crawl space and have a brick foundation  
3952 on at least the front side.

3953

3954 5. [ADDED] The applicant shall reserve a 50 (fifty) foot wide strip of land starting  
3955 at the end of Johnson Place and extending to the southern boundary of the property in  
3956 the event Johnson Place is extended in the future.

3957

3958

3959 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

3960 Negative: 0

3961 Absent: 0

3962

3963

3964 The Board granted this request, as it found from the evidence presented that, due to the  
3965 unique circumstances of the subject property, strict application of the County Code  
3966 would produce undue hardship not generally shared by other properties in the area, and  
3967 authorizing this variance will neither cause a substantial detriment to adjacent property  
3968 nor materially impair the purpose of the zoning regulations.

3969

3970 Mr. Nunnally - Mr. Blankinship, do you want me to call *[inaudible]*?

3971

3972 **UP-20-2006** **THE EAST END LANDFILL, LLC** requests a conditional use  
3973 permit pursuant to Section 24-116(c)(3) to amend the conditions of UP-29-2005 at 1820  
3974 Darbytown Road (Parcel 809-707-1585), zoned M-2, General Industrial District (Varina).  
3975  
3976 Mr. Nunnally - Anyone else here interested in this case? If so, please stand  
3977 and raise your right hand and be sworn.  
3978  
3979 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
3980 the whole truth, and nothing but the truth so help you God?  
3981  
3982 Mr. Pollard - I do.  
3983  
3984 Mr. Nunnally - Please state your name, sir, for the record and tell us what  
3985 you're requesting.  
3986  
3987 Mr. Pollard - My name is Henry Pollard from the law firm of Christian and  
3988 Barton representing the East End Landfill, LLC, owner of subject property.  
3989  
3990 Mr. Nunnally - Is this the one with Simon?  
3991  
3992 Mr. Pollard - Yes sir. The East End Landfill, LLC, which I'll call "TEEL" for  
3993 short, is the successor owner to the Simons Hauling Landfill property that's been before  
3994 this Board of late.  
3995  
3996 Mr. Kirkland - So you have bought it.  
3997  
3998 Mr. Pollard - Yes sir. We closed and settled on—April 18<sup>th</sup> the recording  
3999 was done.  
4000  
4001 Mr. Nunnally - You're still willing to go along with the conditions that were  
4002 on Simons?  
4003  
4004 Mr. Blankinship - That's why he's here.  
4005  
4006 Mr. Pollard - Yes sir. TEEL has read through the proposed conditions in  
4007 the staff report and is amenable to accepting those as drafted.  
4008  
4009 Mr. Wright - So, you're in accord with the changes that have been made  
4010 in the conditions.  
4011  
4012 Mr. Pollard - Yes sir. The staff report that is shown here for today's case,  
4013 the conditions that are shown there, TEEL is willing to accept them as presented.  
4014  
4015 Mr. Wright - All right.  
4016  
4017 Ms. Harris - Mr. Blankinship, did you notify the subdivisions surrounding

4018 this area? I received calls last time after the meeting and Ms. Roberts said she was  
4019 going to contact you. She's the president of Varina *[inaudible]* Civic Association. They  
4020 were very concerned that their neighborhood didn't know and had no representation  
4021 when we've been discussing these issues. They were talking about going to the  
4022 newspaper, the television, whatever. I'm just wondering if we could get some people on  
4023 both sides of the story.

4024  
4025 Mr. Blankinship - I thought that I did receive one request and, of course, we  
4026 would have honored that request. Information in the file is the standard neighborhood  
4027 list. I don't see any additional notification in the file other than the standard ones that  
4028 are required. I do think I remember receiving one and passing it along.

4029  
4030 Ms. Harris - Did Ms. Roberts contact you?

4031  
4032 Mr. Blankinship - I believe so, but it's not documented in the file.

4033  
4034 Ms. Harris - She said she wanted to be contacted. Okay. I don't know if  
4035 the applicant has discussed any of this with the neighborhood, but we do have about  
4036 three or four established subdivisions here. I think two are coming up now with  
4037 \$280,000 homes, which is about a block, maybe a block and a half from the entrance.

4038  
4039 Mr. Wright - We've been over all this, though, Ms. Harris.

4040  
4041 Ms. Harris - Yes we have and—

4042  
4043 Mr. Pollard - Ma'am, if I may just clarify. This is in existing use and we're  
4044 not asking for any changes that haven't already been approved by this Board for the  
4045 landfill as it exists. The only amendment to the existing CUP, the owner already has a  
4046 CUP that was granted at the end of December for this very use. The only amendment  
4047 we've asked for is the same amendment that was granted to Simons to make sure that  
4048 TEEL as the contract purchaser at that time was getting the same thing that Simons had  
4049 at that point. In all other respects, nothing is changing. In fact, literally, nothing is  
4050 changing from what was there before at this point.

4051  
4052 Ms. Harris - I'm very aware of that because we even set it on the quick  
4053 case. However, the residents are not here and they're claiming they were not notified,  
4054 the subdivisions have not been notified. The president called me very focal and I really  
4055 feel that we need to let them know what's going on. I don't want to hold things up;  
4056 we've *[inaudible]* progress, but I do think it's worth a meeting to have the opportunity for  
4057 you to talk with them or for them to come here before us.

4058  
4059 Mr. Wright - Mr. Blankinship said the legal notifications were made.

4060  
4061 Ms. Harris - Yes, but they don't have this group on their list, evidently.

4062  
4063 Mr. Wright - If they're not required to notify them, if the law, the statute

4064 doesn't require them to be notified.  
4065  
4066 Ms. Harris - I think they are adjacent neighbors.  
4067  
4068 Mr. Nunnally - If they're adjacent then they are notified.  
4069  
4070 Mr. Wright - They've been notified.  
4071  
4072 Mr. Blankinship - All the adjacents were notified.  
4073  
4074 Mr. Wright - He said all the required people were notified. I don't know  
4075 what else we can do.  
4076  
4077 Ms. Dwyer - Can you look at some of the streets in the neighborhood, Mr.  
4078 Blankinship, and determine—  
4079  
4080 Mr. Wright - If they weren't notified—  
4081  
4082 Mr. Blankinship - I have a list of who has been notified.  
4083  
4084 Ms. Harris - May I see it? We have three new subdivisions, so maybe  
4085 this list needs to be updated.  
4086  
4087 Mr. Blankinship - Well will see, none of those would be adjacent.  
4088  
4089 Mr. Wright - They've got to be adjacent.  
4090  
4091 Ms. Harris - When you mean adjacent, you mean across the street?  
4092  
4093 Mr. Blankinship - Right.  
4094  
4095 Mr. Wright - They're adjacent across the street. That's the legal  
4096 notification requirements that must be met.  
4097  
4098 Ms. Harris - Okay.  
4099  
4100 Mr. O'Kelly - Two ads in the paper.  
4101  
4102 Mr. Blankinship - The adjacent owners on the same side as Darbytown Road  
4103 are, I believe, Norfolk Southern, the railway.  
4104  
4105 Mr. Wright - The question is if the properties adjacent or across the  
4106 street, if those property owners have not been notified, we don't have authority to hear  
4107 this.  
4108  
4109 Mr. Blankinship - Oh, no. Everyone that's required to be notified by statute has

4110 been notified.  
4111  
4112 Mr. Wright - We've gotta go forward. That's the way the statue—  
4113  
4114 Ms. Harris - Across the street, they are erecting a new subdivision and  
4115 then a block from there, they have already erected.  
4116  
4117 Mr. Wright - He says they've been notified.  
4118  
4119 Ms. Harris - They're not on this list, though.  
4120  
4121 Mr. Kirkland - Had they built the houses?  
4122  
4123 Mr. Wright - They've got to be notified.  
4124  
4125 Mr. Kirkland - Have they built the houses?  
4126  
4127 Ms. Harris - For one, yes. For two of the subdivisions, they have built the  
4128 homes.  
4129  
4130 Mr. Wright - They've gotta be notified. We don't have authority to listen to  
4131 the case.  
4132  
4133 Mr. Blankinship - This property is what's directly across the street, this and  
4134 this, and that's who we notified, this and that.  
4135  
4136 Ms. Harris - These people here.  
4137  
4138 Mr. Blankinship - Right. See, they don't adjoin. They adjoin the adjoining.  
4139 There's a parcel in between.  
4140  
4141 Ms. Harris - They're two blocks away, so they were not notified.  
4142  
4143 Mr. Wright - They aren't required to be notified.  
4144  
4145 Mr. Nunnally - Okay, any other question.  
4146  
4147 Ms. Dwyer - I had a question about the restoration. Condition two says  
4148 guaranteeing the land would be restored in accordance with the Virginia Department of  
4149 Environmental Quality Regulations. What exactly does that mean? What are the  
4150 restoration requirements?  
4151  
4152 Mr. Pollard - The state regulations for a landfill such as this require certain  
4153 closure requirements by me. Post-closure care be taken after the landfill is closed.  
4154 Again, this is an existing permitted landfill, so those conditions for the areas that have  
4155 already been developed as a landfill are already in place. TEEL has already filed and is

4156 in the process of getting those permits transferred over. That process just takes time  
4157 with the agency, within the administrative process they have in place. The appropriate  
4158 financial responsibility filings with DEQ have already been placed and have been  
4159 approved by DEQ. Those measures have been done. The amount here shown in #2  
4160 has been posted with the County. So, I think as far as TEEL is concerned or  
4161 understands, these issues—

4162  
4163 Mr. Blankinship - You can't speak to the specifics of the DEQ requirements?

4164  
4165 Mr. Pollard - Well, the requirements are such that once the material, the  
4166 air space, if you will, the landfill is filled, then appropriate capping material has to be put  
4167 on top that prevents water from being infiltrated into the material. All this with the  
4168 ultimate protection of making sure that groundwater is not contaminated. The landfill  
4169 has a modern liner. Once the cap is done, then you have an additional layer of material  
4170 on top that's vegetated to ensure you don't have erosion and sedimentation problems.  
4171 Then you have a long-term post-closure care where you have to monitor the landfill,  
4172 ground water and otherwise, to make sure that it is stabilized and nothing further is  
4173 occurring?

4174  
4175 Ms. Dwyer - Will it be mounded? Will it be mounded so that the debris is  
4176 piled into a hill or will it be restored to its original elevation?

4177  
4178 Mr. Pollard - The landfill, as designed and approved by DEQ is a hill. It's  
4179 a 3 to 1 slope by the permit. Do we have any pictures, Ben? I think we do.

4180  
4181 Mr. Blankinship - No.

4182  
4183 Mr. Pollard - The existing material is already there in that fashion. Not  
4184 unlike, frankly, any other commercial and large size landfill.

4185  
4186 Mr. Nunnally - All right. Thank you, Mr. Pollard.

4187  
4188 Mr. Pollard - Yes sir, thank you very much.

4189  
4190 Ms. Harris - I have a question. Mr. Pollard, would you come back  
4191 another month? I'm asking if you would. Ms. Roberts did contact Mr. Blankinship and  
4192 she asked to be notified. She was not notified because she's not required to be notified.  
4193 But she asked to be notified, but she was not. Would you come back another month so  
4194 that we can give the other side a chance to have their day, their voice?

4195  
4196 Mr. Pollard - Our concern with that, frankly, is that TEEL is prepared to  
4197 move forward in taking ownership and operate the landfill as it needs to operate under  
4198 its business model. I think the company is always glad to talk—

4199  
4200 Ms. Harris - The answer is no?

4201

4202 Mr. Pollard - Well, I think the concern we have is the delay that that would  
4203 cause. It causes a problem with going forward with the operation as needed and  
4204 making sure that, financially, things are moving forward as they need to move forward. I  
4205 would say that TEEL is always going to be concerned about talking to landowners in the  
4206 area.

4207

4208 Ms. Harris - Well, maybe they can contact you.

4209

4210 Mr. Pollard - If they have concerns, the company would be happy to talk  
4211 to them directly, but I think we would really like to move forward today if at all possible.

4212

4213 Mr. Blankinship - Ms. Harris, I'm asking staff to check on whether a separate  
4214 notice was sent to Mrs. Roberts, because I believe it was, but it's not documented in the  
4215 file.

4216

4217 Mr. Wright - I think the answer would be for them, for her to get a hold of  
4218 these folks and then talk with them.

4219

4220 Mr. Blankinship - If she contacted me and asked to be notified, then we  
4221 notified. But it's not documented in the file.

4222

4223 Mr. Wright - If they agree to get with these folks and explain what's going  
4224 on, I think that would go a long ways towards taking care of this.

4225

4226 Ms. Harris - Right. This is a massive development and I think that  
4227 anything this large should have some type of, we should have some type of dialogue  
4228 with the neighbors. This is huge. I can see the mound—I'm sure you can too—from  
4229 Shockoe Valley. It's rising. They have tractors on top of it; I can see it.

4230

4231 Mr. Pollard - I don't think that's this particular one.

4232

4233 Ms. Harris - It's not?

4234

4235 Mr. Pollard - There are several landfills right in this area.

4236

4237 Ms. Harris - We know, we know.

4238

4239 Mr. Pollard - I think you're referring to a different one.

4240

4241 Ms. Harris - Each time we mention one, someone says it's the other.  
4242 There are three, right? There are actually three right together.

4243

4244 Mr. Pollard - In the general area.

4245

4246 Ms. Harris - Okay, right.

4247

4248 Mr. Pollard - This one is actually one of the small ones.  
4249  
4250 Ms. Harris - I'll just get your information and let her talk—  
4251  
4252 Mr. Pollard - The company would be glad to talk to them.  
4253  
4254 Ms. Harris - Okay. Thank you.  
4255  
4256 Mr. Nunnally - All right, thank you, sir. That concludes the case.  
4257  
4258 Mr. Pollard - Thank you.  
4259  
4260 **DECISION:**  
4261  
4262 Mr. Nunnally - UP-20-2006.  
4263  
4264 Mr. Kirkland - I move we approve it.  
4265  
4266 Mr. Wright - Second.  
4267  
4268 Mr. Nunnally - Move by Mr. Kirkland and second by Mr. Wright it be  
4269 approved. All in favor say aye.  
4270  
4271 Ms. Harris - I abstain.  
4272  
4273 Mr. Kirkland - The reason for the approval is I find the landfill as restricted  
4274 by the conditions, as amended [*inaudible*] into this motion will not adversely affect the  
4275 health, safety, or welfare of persons residing or working on the premises or in the  
4276 neighborhoods. It will not increase the congestion on the streets and will not adversely  
4277 affect public safety.  
4278  
4279 Ms. Harris - I'd like to go on record for abstaining, although we don't have  
4280 to go on record for abstaining. I would, before I voted, like to have heard both sides of  
4281 the story in a public hearing.  
4282  
4283 Mr. Kirkland - The only reason that we've approved this, I approved this  
4284 motion is we heard this case at Christmas in December. So basically, all that came back  
4285 is an amended two conditions. So, the only thing we were changing is two conditions  
4286 and that would not have stopped the case. It has already been approved. It was just  
4287 because of sale, change of ownership. That's the only thing I see into this.  
4288  
4289 Mr. Nunnally - Okay.  
4290  
4291 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
4292 Wright, the Board **granted** application **UP-20-2006** for a conditional use permit to  
4293 amend the conditions of UP-29-2005 at 1820 Darbytown Road (Parcel 809-707-1585),

4294 zoned M-2, General Industrial District (Varina). The Board granted this use permit  
4295 subject to the following conditions:

4296  
4297 1. This use permit is subject to all requirements of the County Code.

4298  
4299 2. Before beginning any work, the applicant shall provide a financial guaranty in an  
4300 amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$76,021,  
4301 guaranteeing that the land will be restored in accordance with Virginia Department of  
4302 Environmental Quality regulations. This permit does not become valid until the financial  
4303 guaranty has been approved by the County Attorney. The financial guaranty may  
4304 provide for termination after 90 days notice in writing to the County. In the event of  
4305 termination, this permit shall be void, and work incident thereto shall cease, and within  
4306 the next 90 days the applicant shall restore the land as provided for under the  
4307 conditions of this use permit. Termination of such financial guaranty shall not relieve  
4308 the applicant from its obligation to indemnify the County of Henrico for any breach of the  
4309 conditions of this use permit. If this condition is not satisfied within 60 days of approval,  
4310 the use permit shall be void.

4311  
4312 3. Before beginning any work, the applicant shall submit erosion control plans to  
4313 the Department of Public Works for review and approval. Throughout the life of the  
4314 operation, the applicant shall continuously satisfy the Department of Public Works that  
4315 erosion control procedures are properly maintained, and shall furnish plans and bonds  
4316 that the department deems necessary. The applicant shall provide certification from a  
4317 licensed professional engineer that the landfill facilities and sediment control structures  
4318 meet the approved design criteria as set forth by the State. If this condition is not  
4319 satisfied within 60 days of approval, the use permit shall be void.

4320  
4321 4. Before beginning any work, the applicant shall obtain a permit from the Virginia  
4322 Department of Environmental Quality. If this condition is not satisfied within one year of  
4323 approval, the use permit shall be void.

4324  
4325 5. In the event that the approval of this use permit is appealed, all conditions  
4326 requiring action within 60 days will be deemed satisfied if the required actions are taken  
4327 within 60 days of final action on the appeal.

4328  
4329 6. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
4330 state and local regulations administered under such act applicable to the property, and  
4331 shall furnish to the Planning Department copies of all reports required by such act or  
4332 regulations.

4333  
4334 7. Hours of operation shall be from 7:00 a.m. to 6:00 p.m. when Daylight Savings  
4335 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

4336  
4337 8. No operations of any kind are to be conducted at the site on Sundays or national  
4338 holidays.

4339

- 4340 9. All means of access to the property shall be from the established entrance onto  
4341 Darbytown Road. Trucks entering or leaving the site shall not travel on Bickerstaff,  
4342 Midview or Oakland Roads.  
4343
- 4344 10. The applicant shall erect and maintain gates at all entrances to the property.  
4345 These gates shall be locked at all times, except when authorized representatives of the  
4346 applicant are on the property.  
4347
- 4348 11. The applicant shall post and maintain a sign at the entrance to the site stating  
4349 the name of the operator, the use permit number, the DEQ license number, and the  
4350 telephone number of the operator. The sign shall be 12 square feet in area and the  
4351 letters shall be three inches high.  
4352
- 4353 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
4354 along the perimeter of the property. The letters shall be three inches high. The  
4355 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to  
4356 enforce the "No Trespassing" regulations, and agreeing to send a representative to  
4357 testify in court as required or requested by the Division of Police.  
4358
- 4359 13. Standard "Trucks Entering Highway" signs shall be erected on Darbytown Road  
4360 on each side of the entrance to the property. These signs will be placed by the County,  
4361 at the applicant's expense.  
4362
- 4363 14. The applicant shall post and maintain a standard stop sign at the entrance to  
4364 Darbytown Road.  
4365
- 4366 15. The applicant shall provide a flagman to control traffic from the site onto the  
4367 public road, with the flagman yielding the right of way to the public road traffic at all  
4368 times. This flagman will be required whenever the Division of Police deems necessary.  
4369
- 4370 16. All roads used in connection with this use permit shall be effectively treated with  
4371 calcium chloride or other wetting agents to eliminate any dust nuisance.  
4372
- 4373 17. The operation shall be scheduled so that trucks will travel at regular intervals  
4374 and not in groups of three or more.  
4375
- 4376 18. The applicant shall maintain the property, fences, and roads in a safe and  
4377 secure condition indefinitely, or convert the property to some other safe use.  
4378
- 4379 19. If, in the course of its preliminary investigation or operations, the applicant  
4380 discovers evidence of cultural or historical resources, or an endangered species, or a  
4381 significant habitat, it shall notify appropriate authorities and provide them with an  
4382 opportunity to investigate the site. The applicant shall report the results of any such  
4383 investigation to the Planning Department.  
4384

4385 20. If water wells located on surrounding properties are adversely affected, and the  
4386 landfill operations on this site are suspected as the cause, the effected property owners  
4387 may present to the Board evidence that the landfill operation is a contributing factor.  
4388 After a hearing by the Board, this use permit may be revoked or suspended, and the  
4389 operator may be required to correct the problem.  
4390

4391 21. The landfill shall only accept construction and demolition debris originating  
4392 within 150 miles of the site, hauled by the applicant and other contract haulers licensed  
4393 by the Commonwealth of Virginia. The material to be deposited shall not include any  
4394 hazardous materials as defined by the Virginia Hazardous Waste Management  
4395 Regulations or any biodegradable material.  
4396

4397 22. A superintendent, who shall be personally familiar with all the terms and  
4398 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms  
4399 and conditions of this use permit, shall be present at the beginning and conclusion of  
4400 operations each work day to see that all the conditions of the Code and this use permit  
4401 are observed.  
4402

4403 23. Each day the applicant shall monitor and clean up any trash, dust or mud along  
4404 Darbytown Road within 2,000 feet of the entrance to the site.  
4405

4406 24. A progress report shall be submitted to the Board on April 30 of each year.  
4407

4408 25. Failure to comply with any of the foregoing conditions shall automatically void  
4409 this permit.  
4410

4411 26. This use permit shall only take effect upon the transfer of title to the subject  
4412 property from Simons Hauling Co., Inc. to The East End Landfill, LLC, provided that  
4413 such transfer occurs within 60 days of the date of the issuance of this use permit. If  
4414 such transfer has not occurred within such 60-day period, this use permit shall become  
4415 void.  
4416

4417 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4

4418 Negative: 0

4419 Abstain: Harris 1

4420 Absent:

4421 Mr. Nunnally - Mr. Blankinship.  
4422

4423 **A-19-2006** **EUGENE M. WASHINGTON II** requests a variance from  
4424 Section 24-95(k) to build a one-family dwelling at 5401 Jefferson Street (E. S. Read)  
4425 (Parcel 815-725-9800 (part)), zoned R-2A, One-family Residence District (Varina). The  
4426 minimum side yard setback is not met. The applicant has 17 feet minimum side yard  
4427 setback, where the Code requires 25 feet side yard setback. The applicant requests a  
4428 variance of 8 feet minimum side yard setback.  
4429

4430 Mr. Nunnally - Anyone else here interested in this case? If so, please stand

4431 and raise your right hand and be sworn.  
4432  
4433 Mr. Blankinship - Do you swear the testimony you're about to give is the truth,  
4434 the whole the truth, and nothing but the truth so help you God?  
4435  
4436 Mr. Nunnally - Please state your name, sir, and tell us what you're  
4437 requesting.  
4438  
4439 Mr. Washington - Eugene M. Washington the second, requesting a variance  
4440 on a one-family dwelling. As of right now, I have 17 feet. I need 25 feet. This right here  
4441 was considered a reverse corner lot.  
4442  
4443 Mr. Kirkland - So, actually what happened is you got a building permit and  
4444 you built the house.  
4445  
4446 Mr. Washington - The County issued me the building permit.  
4447  
4448 Mr. Kirkland - The County made an error.  
4449  
4450 Mr. Washington - Yes. We didn't notice it till I went to get my CO, the final on  
4451 it. Mr. Jones found the problem here. The house has been sitting completed for about  
4452 a month now, people ready to move in.  
4453  
4454 Mr. Nunnally - Any questions for Mr. Washington?  
4455  
4456 Ms. Harris - One question. Mr. Washington, Emerson Street is a public  
4457 road?  
4458  
4459 Mr. Washington - Yes ma'am.  
4460  
4461 Ms. Harris - Maintained by the County of Henrico?  
4462  
4463 Mr. Washington - Yes ma'am.  
4464  
4465 Ms. Harris - How wide is that?  
4466  
4467 Mr. Washington - *[Inaudible.]*  
4468  
4469 Ms. Harris - Okay, thank you. This is a very old subdivision.  
4470  
4471 Mr. Washington - Yes ma'am.  
4472  
4473 Ms. Harris - Okay, thank you.  
4474  
4475 Mr. Nunnally - Any other questions? Hearing none, that completes the  
4476 case. Thank you, Mr. Washington.

4477  
4478 **DECISION:**  
4479  
4480 Mr. Nunnally: A-19-2006, Eugene M. Washington.  
4481  
4482 Mr. Nunnally - Move by Mr. Wright, second by Ms. Harris it be approved.  
4483 All in favor say aye.  
4484  
4485 Ms. Dwyer - Are we going to enter anything into the record?  
4486  
4487 Mr. Wright - We find that the existing house is restricted by the  
4488 conditions. Will not adversely affect the health, safety, and welfare of their neighbors  
4489 and so forth, as forth in the Code.  
4490  
4491 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
4492 Harris, the Board **granted** application **A-19-2006** for a variance to build a one-family  
4493 dwelling at 5401 Jefferson Street (E. S. Read) (Parcel 815-725-9800(part)), zoned R-  
4494 2A, One-family Residence District (Varina). The Board granted the variance subject to  
4495 the following condition:  
4496  
4497 1. This variance applies only to the street side yard setback requirement. All other  
4498 applicable regulations of the County Code shall remain in force.  
4499  
4500  
4501 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
4502 Negative: 0  
4503 Absent: 0  
4504  
4505  
4506 Mr. Nunnally - We passed one over.  
4507  
4508 Mr. Blankinship - You want to go back and call UP-18?  
4509  
4510 Mr. Nunnally - UP-18-2006.  
4511  
4512 Mr. Kirkland - Oh, I see. Okay.  
4513  
4514 **UP-18-2006 EVENTS MANAGEMENT, LLC** requests a temporary  
4515 conditional use permit pursuant to Section 24-116(c)(1) to hold a special event at 11400  
4516 West Broad Street (Parcel 740-762-9925), zoned B-3C, Business District (Conditional)  
4517 (Three Chopt).  
4518  
4519 Mr. Blankinship - Going once, going twice.  
4520  
4521 Mr. Kirkland - That was a NASCAR related event, so I guess this is shot  
4522 down.

4523  
4524 Mr. Blankinship - There's no deferral on it. It's going to be over by the time  
4525 you meet again.  
4526  
4527 Mr. Kirkland - They never showed up.  
4528  
4529 Mr. Nunnally - They didn't show up. Can we continue that, or is it too late?  
4530  
4531 Mr. Blankinship - They're scheduled for May 5<sup>th</sup>. You won't meet again until  
4532 May 25<sup>th</sup>.  
4533  
4534 Mr. Kirkland - This was a NASCAR-related event. What do we do,  
4535 withdraw it?  
4536  
4537 Mr. Blankinship - They're going to do it without permission.  
4538  
4539 Mr. Kirkland - Withdraw it or deny it?  
4540  
4541 Mr. Blankinship - I think denial is more appropriate, if they're not here to  
4542 request it.  
4543  
4544 **DECISION:**  
4545  
4546 Mr. Kirkland - I make a motion that we deny UP-18-2006.  
4547  
4548 Ms. Dwyer - Second.  
4549  
4550 Mr. Nunnally - Was that you, Ms. Dwyer?  
4551  
4552 Ms. Dwyer - Yes.  
4553  
4554 Mr. Nunnally - Motion by Mr. Kirkland, second by Ms. Dwyer.  
4555  
4556 Mr. Wright - What's the basis of your denial?  
4557  
4558 Mr. Kirkland - Absence of applicant to respond to this case.  
4559  
4560 Mr. Nunnally - I don't think that's—  
4561  
4562 Ms. Dwyer - I had a lot of questions about this case, concerns about it  
4563 that were not answered because the person wasn't here. Let me find my notes. I think  
4564 I set that aside because they hadn't come.  
4565  
4566 Mr. Kirkland - This same event was run last year and I don't know what  
4567 happened.  
4568

4569 Ms. Dwyer - The police had not recommended approval and there was no  
4570 indication as to where exactly the site would be. There are a lot of traffic problems in  
4571 this shopping center as the traffic flows into the drive aisles because there's not much of  
4572 a distance between Pouncey Tract and where the Wal-Mart traffic enters in that drive  
4573 aisle. Traffic backs up. So, I was very concerned about the location of these trailers. If  
4574 it's near that, then that would really cause a massive traffic tie up. So, I can't approve it  
4575 unless I can be assured about the location, about whatever concerns the police had.

4576  
4577 Mr. Kirkland - I was going to ask a lot of good questions if he had showed  
4578 up, but he didn't.

4579  
4580 Ms. Dwyer - There was no mention of security, just a statement about  
4581 onsite management. I had grave concerns about the health, safety, and welfare of the  
4582 public.

4583  
4584 Mr. Wright - That's what it is. We have no proof. Basically, since there's  
4585 no positive evidence on that, we think it will adversely affect the health, safety, and  
4586 welfare.

4587  
4588 Mr. Wright - Okay. It will impair the value of the property and surrounding  
4589 area, etcetera, as set forth in the Code.

4590  
4591 Mr. Kirkland - Thank you, Mr. Wright.

4592  
4593 Mr. Nunnally - All in favor say aye. Opposed? Been approved.

4594  
4595 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
4596 Dwyer, the Board **denied** application **UP-18-2006** for a temporary conditional use  
4597 permit to hold a special event at 11400 West Broad Street (Parcel 740-762-9925),  
4598 zoned B-3C, Business District (Conditional) (Three Chopt).

4599  
4600  
4601 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
4602 Negative: 0  
4603 Absent: 0

4604  
4605 Mr. Nunnally - All right, Mr. Blankinship.

4606  
4607 **A-20-2006 GREENLEAF PROPERTIES, INC.** appeals a decision of the  
4608 director of planning pursuant to Section 24-116(a) regarding the property at 4201  
4609 Glenside Drive (Parcel 770-748-7625), zoned R-5, General Residential District  
4610 (Brookland).

4611  
4612 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
4613 please stand and raise your right hand?

4614

4615 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
4616 truth, the whole truth, and nothing but the truth, so help you God?

4617  
4618 Mr. Condlin - I do. My name is Andy Condlin, from Williams Mullen,  
4619 representing the applicant Greenleaf Properties, Inc.

4620  
4621 Mr. Wright - Mr. Chairman, I must disqualify myself.

4622  
4623 Mr. Nunnally - Mr. Wright disqualifies himself.

4624  
4625 Mr. Condlin - And Bill Curnow, who also took the oath, is one of the  
4626 members of Greenleaf LLC, in case you ask any questions I can't answer, for him to  
4627 come up. Very quickly, and I understand you do have the packet that I sent, I will be  
4628 referencing a couple of points by tab number as we go through this. Primarily, just a  
4629 quick background. In 1964, this property was rezoned, and part of the rezoning  
4630 required construction of Glenside Drive. As part of Glenside Drive, what occurred was  
4631 18.02 acres was on the north side of Glenside Drive, and 2.3 acres resulted on the  
4632 south side. The applicant at the time assumed that they were going to be able to use  
4633 the entire property for calculation of density. They applied for their plans and found out  
4634 a different rule in the County, which said that if you had a public road going to the  
4635 property, you couldn't use both parcels to calculate your density. In 1964, they applied  
4636 for a variance, were denied, and filed papers. I don't have any evidence that it ever  
4637 went to suit. Some settlement, some discussion occurred. They presented new  
4638 evidence in 1965; the BZA reheard the case based on the new evidence and they  
4639 granted a variance. Key point here, that the Code at the time and now, under R-5, still  
4640 requires 3,000 square feet of lot area per dwelling unit. That's 3,000 square feet. The  
4641 actual variance was 347 square feet, so that they could calculate the density, based on  
4642 2,653 square feet of lot area. That was what the variance approved. That is under Tab  
4643 E. I think that's extremely important, as to what the variance was, that was actually  
4644 approved. When you do the calculations, the 18 acres allows for, based on the  
4645 variance and the revised number, they were allowed for and built 297 units, on the  
4646 18.02 acres. Nothing was built on the 2.03 acres. In 1974, the owner ended up selling  
4647 the 2.03 acres to a Mr. Rock and Judge Merhige. Judge Merhige ultimately took title;  
4648 he passed; it went through his estate, and in 2005 Greenleaf, the current owner,  
4649 contracted to purchase three parcels of land from the Estate of Judge Merhige,  
4650 including 4201 Glenside Drive. They did the due diligence. I read Mr. Tokarz' letter. I  
4651 take exception with the fact that he feels like we did not act in good faith. As a matter of  
4652 fact, I feel like we very much did. We put together the plan; we met with the staff, and  
4653 only after some delay in trying to find the file, did we find out at that time that it was an  
4654 opinion of the staff that this property was subject to the restrictions that were granted as  
4655 part of the variance. I have for you, and you're welcome to take a look at, and I did the  
4656 research myself, going back on it. The zoning map is important to note that it has a  
4657 separate tax map number on it. As you can see, that's a plot of the property. I'll be  
4658 happy to hand these to you. It's also in your package. There's absolutely no indication  
4659 – usually when you have two separate parcels, separated by a road, you'll have that  
4660 arrow that joins the two together. They're separate tax parcels; they're separate

4661 addresses. There's no reference to the variance at all when you look at the zoning  
4662 map. Further, when I did research, and when you look under the ordinance under the  
4663 file for 4201 Glenside, there's not a file that I could find or that anyone found for me that  
4664 said I needed to go to Hunt Club Apartments and take a look at that. I further contend  
4665 that it's certainly a confusing record, the fact that you have a case that was denied. As  
4666 a matter of fact, when I met with the Planning staff, they didn't have the full record. I  
4667 actually had to give them some of the records that we found otherwise that were in  
4668 other files. They actually thought that it was a denied variance, that the variance wasn't  
4669 permitted. So when you go through all the minutes and all the correspondence—

4670  
4671 Mr. Nunnally - Before we go any further, this is not a variance here.

4672  
4673 Mr. Condlin - I'm not asking for a variance.

4674  
4675 Mr. Nunnally - I know you're not asking, but you're appealing the Director's  
4676 Decision. You're really asking us to rezone something.

4677  
4678 Mr. Condlin - No sir, I'm not asking you to rezone. I'll tell you why. I don't  
4679 think for two reasons, one, I'm asking for permission to rezone the property. One of the  
4680 questions I asked was, can I rezone this property to Office? Am I still subject to the  
4681 variance? The answer came back "yes," you can even apply for a variance. When I  
4682 asked, "If I make application for a variance, will it be heard by the Planning Commission  
4683 and Board?" the staff said, "We can't even allow it to be heard." I was told by the Board  
4684 member that, "I can't hear it until I know what the BZA says as to whether when I rezone  
4685 it to office, does that wipe out the variance?" I would contend that it does, because the  
4686 circumstances that actually gave rise to the variance have now changed. It's a whole  
4687 different zoning. We're no longer subject to it. I'm not asking for the rezoning. I'm  
4688 asking for the right to actually get through the door, and the County has told me they  
4689 won't hear my rezoning case until this body rules on that first question. I've got five  
4690 questions I posed. That's question # 1 – can I apply for rezoning to the Planning  
4691 Commission, to the Board of Supervisors? The answer came back, "no, you may not."  
4692 I feel like we do have that right, because once you rezone the property, it completely  
4693 changes the ordinance and wipes out the variance at that point. There's absolutely no  
4694 case law that I can find on the answer, but I do think that's the answer. Another  
4695 important point, I don't think the 1965 variance even applies to the 2.3 acres. If I could  
4696 hand this out, *[unintelligible, walked away from mike]*.

4697  
4698 Ms. Dwyer - Mr. Condlin, if I may follow up on the Chairman's question, I  
4699 would like to see the specific decision made by the Planning Staff that is being  
4700 appealed. I want to know exactly what that is.

4701  
4702 Mr. Blankinship - Which tab is that under?

4703  
4704 Mr. Condlin - I got it opened up to Tab E; I think it's Tab F is my request;  
4705 and Tab G, Exhibit G, if you look down to the next to last paragraph of the letter dated  
4706 February 3, 2006, it says, "Finally, rezoning of the 2.37-acre parcel would not eliminate

4707 the condition imposed on its use by the 1965 variance, because the variance also  
4708 applies to the 18.09-acre parcel, which would be unaffected by rezoning the 2.37-acre  
4709 parcel.” Based on my request, and that was in my package of appeal, they’ve actually  
4710 said I cannot even rezone the property to get rid of the variance condition. The variance  
4711 condition they’re saying, is I cannot build any homes; I cannot build any structure; on  
4712 the 2.3 acres. My point is, I could zone it to R-2; I should be able to zone it to R-6 to get  
4713 a greater density; I should be able to rezone it to Office; that would wipe out the  
4714 variance. Again, that is one of my five points.

4715  
4716 Ms. Dwyer - In that Exhibit G, the letter to you of February 3, from the  
4717 County, there is a sentence, and you tell me if this encapsulates the decision being  
4718 appealed. It says, “The clear purpose and effect of this condition (that is the condition  
4719 imposed in ’64) is to prohibit any additional use of the 2.37 acre parcel until such time  
4720 as the zoning ordinance is amended to permit 297 units on the 18.09 parcel.” That’s the  
4721 interpretation, as I understand it, of the Planning staff, nothing can be built on this  
4722 parcel, because in 1964 it was included as part of the density calculations for the other  
4723 parcel, and therefore it is—

4724  
4725 Mr. Condlin - I would disagree with that.

4726  
4727 Ms. Dwyer - But I’m saying that is the decision; that is the only issue we  
4728 are dealing with today.

4729  
4730 Mr. Condlin - No, I disagree with that.

4731  
4732 Ms. Dwyer - Then tell me what else you’re appealing.

4733  
4734 Mr. Condlin - Well, the condition that they’re citing was a condition  
4735 imposed by this body 40 years ago, but by the Board of Zoning Appeals. I think it’s a  
4736 fast point to say that I should have the right to use the property for something, if I rezone  
4737 the property, if I’m going backwards, but that was probably the least favorite of my  
4738 appeals, at least we don’t want to have to rezone the property. We want to be able to  
4739 use it for residential purposes allowed by R-5. My second point, with respect to that,  
4740 would be quite frankly, that the condition that you’re referencing, that the Planning staff  
4741 has opined, and Mr. Tokarz has backed it up with his letter, that this body has no right to  
4742 amend the conditions. They cite the conditions and said that condition prohibits you  
4743 from using the property, and furthermore, the BZA can’t amend its very condition. I’ve  
4744 got a case—

4745  
4746 Ms. Dwyer - Before we get into whether we can amend the condition, the  
4747 question is, does this Board agree or disagree with the Planning staff’s determination  
4748 that the condition imposed in ’64 means that nothing can happen on this property? If  
4749 we decide that, then you have other options available to you.

4750  
4751 Mr. Condlin - According to staff, I do not. Let me give you my quick—  
4752

4753 Ms. Dwyer - I'm saying, you're done with the BZA.  
4754

4755 Mr. Condlin - No, actually, my argument would be, 1) that the condition  
4756 does not apply to the 2.3 acres, 2) even if it does apply to the 2.3 acres, that variance  
4757 was granted on a square footage basis, which was never used for the 2.3. I still have  
4758 37 units to use, because the variance went from 3,000, down to 2,653. When they did  
4759 the calculations (if you'll look at my chart), they granted the variance for the 18.09 acres,  
4760 they did the variance based on reduction to 2,653 square feet. They used that.  
4761

4762 Ms. Dwyer - Before we get into the substance of your argument, I just  
4763 want to establish what the issue is. The issue is whether or not it prohibits any further  
4764 development of that property.  
4765

4766 Mr. Condlin - I think the first issue, does it apply to the 2.3; I say "no, it  
4767 doesn't." The second issue—  
4768

4769 Ms. Dwyer - The issue is whether that condition prohibits any  
4770 development on that property. What you're talking about are arguments.  
4771

4772 Mr. Condlin - Right, I'm excited, about this.  
4773

4774 Ms. Dwyer - I want to slow you down a little bit. Everything that you said  
4775 – those are arguments in support of your contention that the Director of Planning was in  
4776 error.  
4777

4778 Mr. Condlin - Correct. There were five errors, I felt. One was, it doesn't  
4779 apply to the 2.3 acres. Number two, if it does apply to the 2.3 acres, the variance does  
4780 not prohibit development, and if you do feel that the variance approval did prohibit  
4781 development, I feel, number one, that the staff said you can't amend the variance. I feel  
4782 that you can amend my variance, that is, grant a further variance. They said, number  
4783 four, you can't amend the condition. I've got a 2004 case that you, yourself, have just  
4784 recently amended the condition to a variance. I think that's an unbelievable position to  
4785 take, that you can't amend a condition that the Board imposes. Number five, if the  
4786 property is rezoned by the Board of Supervisors, does that wipe out the 1964 variance?  
4787 I'm not asking to rezone the property. I'm not asking to amend the condition, yet. I'm  
4788 not asking to amend the variance, yet. I'm just trying to get through the door to be able  
4789 to even ask that, because the staff says you can't ask for that because you're not  
4790 allowed yet.  
4791

4792 Ms. Dwyer - The staff is saying you can't even apply for a rezoning,  
4793 because you can't do anything with the property to begin with.  
4794

4795 Mr. Condlin - I can apply all I want; they won't hear the case, nor will the  
4796 Board hear the case.  
4797

4798 Ms. Dwyer - Because, bottom line, staff has said this property cannot be

4799 developed. All the bundle of sticks. All the rights into this piece of property were given  
4800 away in 1964.

4801  
4802 Mr. Condlin - That would depend. They're saying, not even any  
4803 reasonable use; they're saying any use on the property can't be made of this property.  
4804 We're sitting here with 2.3 acres that can be developed, and I've got a site plan, with no  
4805 right to develop. You can rezone it; you can't develop it. This body can't amend the  
4806 conditions or the variance, and it can't be developed. That, to me, falls squarely in, and  
4807 that's why I said the Cochran case, if any case, falls into it, this one does.

4808  
4809 Ms. Dwyer - Let me ask you a question on that point. If, for some reason,  
4810 we'll say the 18-acre and the 2-acre parcel, just for ease of discussion. If I had a 2-acre  
4811 parcel, and I granted an easement across that parcel to the 18-acre parcel, and that  
4812 easement encompassed the entire 2-acre parcel – in other words, if the roadway took  
4813 up the whole 2-acre parcel, and I granted an easement to the 18-acre parcel, that would  
4814 be an analogous situation in my view, because nothing could be done with that 2-acre  
4815 parcel. Everything has been given to the 18-acre parcel. So, in other words, the 2-acre  
4816 parcel is now a dependent; it is obligated to the 18-acre parcel; the benefit resides with  
4817 the 18-acre parcel; the burden resides with the 2-acre parcel. Isn't that what was done  
4818 here? Isn't that an analogous situation?

4819  
4820 Mr. Condlin - Similar, but for the fact that if we recorded, and I'm a bonified  
4821 purchaser, the public records give you constructive notice. I don't feel there is any  
4822 constructive notice. If you look on the zoning map, there was nothing recorded. There  
4823 were no restrictions on this property of title, or I would contend, so in that respect, I  
4824 would say yes, because it prohibited all use of the property, but I think that's the only  
4825 analogy. I'll also say that the 18.02-acre piece, when they sold it off, they put  
4826 themselves in violation of the condition; they put themselves into the risk of not  
4827 complying with the condition, because it said that the 18.2 acres shall be obligated to  
4828 the 2.3. It did not say the 2.3 acres shall be obligated to the 18.2.

4829  
4830 Ms. Dwyer - Let me use another analogy. Let's say there are wetlands  
4831 on the 18 acres, and that prevents a certain amount of maximum development, but  
4832 there are wetlands on the 2-acre parcel, and so I know this is done elsewhere. The  
4833 owners say "we'll keep the wetlands on the 2-acre parcel if you allow us to develop to  
4834 the maximum developable number, all the units that we can possibly put on the 18-acre  
4835 parcel." That's another instance in which the 2-acre parcel is burdened; the 18-acre  
4836 parcel is benefited. Now the 2-acre parcel cannot be developed on, because all the  
4837 development rights have been given away. Or another analogy would be development  
4838 rights are sold, so to me those are three analogous situations. The developmental  
4839 rights to the parcel were given away in 1964.

4840  
4841 Mr. Condlin - I would disagree with that though, the reason being that the  
4842 Board of—

4843  
4844 Mr. Blankinship - Now we're going into substance again.

4845  
4846 Mr. Condlin - I can't help myself. I keep going into substance.  
4847  
4848 Mr. Blankinship - I have two points of clarification that I'd like to make for the  
4849 sake of convenience.  
4850  
4851 Mr. O'Kelly - So do I.  
4852  
4853 Mr. Condlin - That's four total, right?  
4854  
4855 Mr. Blankinship - Probably the same two.  
4856  
4857 Ms. Dwyer - I'm just asking you to keep that in mind. You don't have to  
4858 respond to that, because I'm sure you'll get around to it in your five points, so maybe if  
4859 we could just allow staff to say what they have to say, and then if you would go to your  
4860 five points about why you disagree with that decision. I'm just trying to understand  
4861 what's going on.  
4862  
4863 Mr. Condlin - I understand, and I appreciate that.  
4864  
4865 Mr. O'Kelly - One point I'd like to make is that Mr. Condlin indicated there  
4866 was nowhere in the public record that indicated that this property had a condition on it,  
4867 but I would say that the 1960 zoning maps, which were the official public records in  
4868 zoning and land use decisions in the County for 36 years, has this variance case  
4869 number from 1964 clearly written on those maps, and it was done for a reason, to alert  
4870 people to the fact that this property can't be used for anything because of a decision  
4871 that was made in 1965.  
4872  
4873 Mr. Condlin - I don't disagree with that. I might have misspoken; I  
4874 apologize for that. When I look at the existing zoning map, and even the previous  
4875 zoning map, you don't find it, and I guess the question is, you keep digging, and I could  
4876 look at all property in the area and try to find that. And I also contend, while you say it's  
4877 part of the public record, the public record is entirely confusing. There's nothing in there  
4878 that I, we can look at the letter, it's a simple letter, it doesn't say the 2.3 acres cannot be  
4879 developed. It doesn't say, you know, they could have granted a variance, quite frankly.  
4880 This is part of my substance. They could have granted a variance that says "we dismiss  
4881 the public road separating the two parcels; for purposes of density, we'll deem the two  
4882 parcels one." They could have done that. What they did, I'll resort to my chart here.  
4883 What they did, was they reduced the square footage in the Code to allow for 297 units  
4884 on 18.09 acres. That's technically what the variance did.  
4885  
4886 Ms. Dwyer - That's one of your five arguments, right? Mr. Blankinship,  
4887 did you have something to say that would help us?  
4888  
4889 Mr. Blankinship - I wanted to clarify that Mr. Condlin suggested that he was  
4890 told that he could not rezone the property and that the Board could not amend the

4891 conditions of the variance. I think what he was told was that rezoning the 2.3-acre  
4892 parcel won't solve the problem, because it's the 18-acre parcel that needs to be  
4893 rezoned. Rezoning is the appropriate remedy here, but it's rezoning of the 18-acre  
4894 parcel, and that's clearly stated in the 1965 variance. I didn't draft this letter for Mr.  
4895 Emerson, but looking at Mr. Emerson's letter, I don't think he's saying the Board does  
4896 not have any authority to modify a condition of a variance. I think he's saying, under a  
4897 Cochran analysis, the Board would not amend the condition of this variance. He's  
4898 predicting, he's trying to save Mr. Condlin \$300, and five weeks of time, by saying you  
4899 could apply for an amendment of a condition, but it would have to be denied because of  
4900 the Cochran case. I just wanted to clarify this.

4901  
4902 Mr. Condlin - I will point you to the third to last paragraph. It is my  
4903 understanding that the BZA does not have the authority to grant a variance or to amend  
4904 the conditions imposed by the 1965 variance decision.

4905  
4906 Mr. Blankinship - Right, and then it goes straight into the Cochran analysis,  
4907 which is a sentence.

4908  
4909 Mr. Condlin - Which is substance, I know I keep going back to the  
4910 substance issue. We can look at that, but that's what I took away from there, to say of  
4911 the five points that I disagree with this letter, there are two in this one sentence, and  
4912 then the next paragraph has a third point, which is rezoning the 2.3 acres would not  
4913 eliminate the condition imposed.

4914  
4915 Mr. Blankinship - Rezoning the 2.3 would not. It's rezoning the 18 that needs  
4916 to take place, and the very next words after the sentence, "under the Cochran decision."

4917  
4918 Mr. Condlin - I disagree with that; I should be able to rezone the 2.3 acres.

4919  
4920 Mr. Blankinship - Disagreeing with it is fine. I just wanted to clarify that it is  
4921 rezoning that we think is the appropriate venue.

4922  
4923 Mr. Condlin - I didn't read it that way, but the point is, what is my appeal?  
4924 The appeal specifically is, is the 2.3-acres bound by the 1965 variance? I would  
4925 contend that it is not. When you look at the language, and what I talked about was the  
4926 variance could have been granted by the BZA in 1965, could say "treat this property as  
4927 one," but they didn't; they specifically reduced the square footage requirement, which  
4928 was used by the 18.09 acres to do theirs. I would contend as part of my second point,  
4929 why can't the 2.3 acres, if they're going to be burdened by it, couldn't they also receive  
4930 the benefit of it, which they haven't, because if you receive the benefit of the variance,  
4931 you reduce it down to 26.53 square foot of lot area per dwelling unit. They have the  
4932 right to build 37 units that have not yet been built. That was what was approved. If you  
4933 look at the letter granting, in Tab E, by the BZA, that is what the variance is. There is an  
4934 initial letter by Mr. LaVecchia, but the second letter is the actual grant, the January 29,  
4935 1965. The first page is Mr. LaVecchia's letter to the owner, which I'll refer to in a  
4936 second, but the second page is the actual grant in 1965. If you look at the end of the

4937 first paragraph, the Board granted a variance of 347 square feet of area per unit, subject  
4938 to the following conditions. There is no condition in there that says that it can't be  
4939 developed. It says it shall be obligated. I've got to be honest. I don't know what that  
4940 means. When the 18.09 acres owner sold the 2.3 acres, if you flip back one page, they  
4941 received a letter from Mr. LaVecchia, who was the Planning Director at the time of the  
4942 BZA. I'm not sure whether he was Planning Director or Manager at the time in 1974  
4943 when it was sold. There are two points in here that you should look at. He said the  
4944 BZA in 1965 granted a variance permitting 297 apartment units on the northern 18.09  
4945 acres. He doesn't say it's limited to the 2.3. I find it indicative as well, that he only sent  
4946 this letter to the owners of the 18.09. There's nothing that I found in the file that said,  
4947 "Oh, by the way, you're the new owners of the 2.3 – you can't build on it." I would point  
4948 to this letter as a pretty good indication of how it was being interpreted at the time when  
4949 Mr. LaVecchia was part of the original variance case, to say, the 2.3 acres is not bound  
4950 by the 297-unit limitation. You still have 37 units that you can build, based on the exact  
4951 language of the variance, so I don't even get into the interpretation. I disagree with the  
4952 staff to say that I can't build anything on it. I think I can build 37 units.  
4953

4954 Ms. Dwyer - My question is, wasn't that just a device to figure out how  
4955 many units would be allowed if you combined the acreage? You'd figure how many  
4956 units would be allowed for the 2.3 plus the 18, and then they said, "Since we're not  
4957 going to have any development on the 2.3, we'll do the math, and how do we figure this  
4958 per unit, based on the pre-determined number of units that we're going to allow."  
4959

4960 Mr. Condlin - I don't know specifically, but if you go back in the minutes, in  
4961 the denial, the first thing he said is, "I get to 300 and some units because I get to include  
4962 Glenside Drive, which was rejected by the Board," but they ended up getting the 297. In  
4963 the approval, the Board of Zoning Appeals actually said, asking attorney Mr. Byrne I  
4964 believe his name is, "would you agree to no development on the 2.3 acres?" He  
4965 actually said "no, I do not agree to that." They still imposed this condition of obligation.  
4966 I don't know what that means, but that's the only condition. They could have said, "No  
4967 development on the 2.3 acres." If that's what they were trying to do, Ms. Dwyer, then  
4968 they could have said that, but they didn't. They could have granted a different variance  
4969 that said, "For purposes of this development, the public road we deemed, we'll get away  
4970 with that, and we'll deem this one parcel," which would do away with the questions, but  
4971 they didn't. They lowered the square footage requirement, which got 18.09, 297 units—  
4972

4973 Ms. Dwyer - But why did they? Why did they lower the square footage  
4974 requirement?  
4975

4976 Mr. Condlin - I don't know; I guess that's what was applied for, what was  
4977 asked for.  
4978

4979 Ms. Dwyer - It seems clear to me, from reading the minutes, why they did  
4980 it. They added the two together and figured out if the two were connected to the 18, this  
4981 is how many units would be allowed, put that number, applied it to the 18, and said "so  
4982 we will reduce..."

4983  
4984 Mr. Condlin - But why didn't they in the list of two conditions, impose a cap  
4985 or change the way in which the variance was granted, or say that the 2.3 acres shall  
4986 never be developed again?  
4987  
4988 Ms. Dwyer - I don't know why they did that, but it seems clear to me how  
4989 they got the numbers, is what I'm saying.  
4990  
4991 Mr. Condlin - I don't think that's relevant in the fact that the applicant said,  
4992 "I'd love to have 300 and some, but I'll take 297."  
4993  
4994 Ms. Dwyer - Those weren't random numbers though; the first number he  
4995 wanted, he said "Give me all the units I could have if I included acreage for Glenside  
4996 Drive," and they said, "no, we can't do that; that's a road; we're not going to allow that,  
4997 but since we have divided your property, and rendered according to the owners'  
4998 attorney, this 2 acres was undevelopable," although the BZA knew better than that, but  
4999 anyway he said, "It's undevelopable, so we need to be compensated. Look, we've  
5000 cooperated with the County, given them the road, now you've disadvantaged the whole  
5001 property by bisecting it, so please give us the number of units on the 18 that we could  
5002 have if the two were connected."  
5003  
5004 Mr. Condlin - Those are the minutes from the denial, interestingly enough.  
5005 The minutes in the approval, actually they asked him again about the 2 acres. He said,  
5006 "I can develop; I don't want to restrict the development, and they approved it  
5007 accordingly."  
5008  
5009 Ms. Dwyer - I didn't read that.  
5010  
5011 Mr. Condlin - I didn't have the minutes; I had to find the minutes in another  
5012 file. We found them later on.  
5013  
5014 Mr. O'Kelly - I found them the first time I looked for them, Mr. Condlin. I  
5015 have them right here.  
5016  
5017 Mr. Condlin - I'll take exception to that, Mr. O'Kelly, in that I have gone a  
5018 number of times. I actually gave some of the Planning staff some of my copies of  
5019 documents. I did not find them originally. I put that in my original application, I couldn't  
5020 find them.  
5021  
5022 Mr. O'Kelly - I saw that, and I went and looked for them myself and found  
5023 them the first time I looked.  
5024  
5025 Mr. Condlin - I ultimately found them. I went back to the file. I would have  
5026 appreciated getting those; since I said I didn't receive them, I went back and found them  
5027 later on, and they were in the file. That's where they were when I went back a second  
5028 time, a third time at that point, to take a look at it again, to make sure I had all the

5029 complete files in that case. When I looked through those minutes, the end of those  
5030 minutes actually reflects in the approval of the second variance reconsideration was in  
5031 fact that they asked him, and he said, "No, I don't want to restrict the 2.3 acres."  
5032

5033 Ms. Dwyer - Show me where that is.

5034  
5035 Mr. Condlin - I can find that. You have a copy of the approval minutes?  
5036

5037 Ms. Dwyer - Show me what tab that might be.  
5038

5039 Mr. Condlin - It's not in my tab, because at the time I put the application  
5040 together, I did not have those minutes.  
5041

5042 Ms. Dwyer - No, I don't have those minutes.  
5043

5044 Mr. Kirkland - I'm looking at them now. I'll give them to you in just a  
5045 minute.  
5046

5047 Ms. Dwyer - Are you? Did you get them from Mr. O'Kelly? I was thinking  
5048 Mr. Condlin could read it.  
5049

5050 Mr. Condlin - Let me find it here. It's page 7, 3<sup>rd</sup> paragraph, above the  
5051 vote, it said, "Mr. Byrne stated that unless they could get with the adjoining property  
5052 owner, they probably would not use this property, (meaning the 2.3 acres); he would not  
5053 want to restrict his client to use this, but for future use, they would have to purchase  
5054 more land. There are a few houses near this property, stated Mr. Byrne." I took that to  
5055 mean the question became, if you look at the paragraph above that, it said, "that the  
5056 Board, in the summary of the minutes, the Board, granting this, would be granting the  
5057 variance on the 18-acre tract; but the applicant has not said that he would not use the  
5058 smaller tract." A couple of double negatives in there, but the applicant had not said he  
5059 would not use the smaller tract. In the minutes, they said they would be granting the  
5060 variance for the 18-acre tract, and in the minutes, that actually approved the case.  
5061 That's what I took away from that to say, based on that and the following paragraph,  
5062 "Mr. Byrne did not want to restrict the 2 acres, and that based on the minutes, the Board  
5063 if granting this, would be granting a variance on the 18-acre tract." That's why I took  
5064 away when you look at that, plus Mr. LaVecchia's letter, plus the language of the actual  
5065 grant, with the fact that there was no restriction on the use of the two acres, no cap on  
5066 the conditions to 297 units, and the fact that they granted it based on the square footage  
5067 area being reduced, we have the right to use the 2.3 acres for that purpose. I think  
5068 that's why; I know I'm splitting hairs here, but when you look back forty years ago, trying  
5069 to recreate this, I only have the minutes that I have, and good faith does not even enter  
5070 into it. When I look at this and I read this, you cannot tell me that a purchaser that's  
5071 going in and looking at a current zoning map, and albeit, they may have a duty to look  
5072 further back, but to look at the current zoning map, I'll tell you this – it was assessed for  
5073 \$205,000 when they bought it. That would be another indication; I've got the list of  
5074 assessments for thirty years, since the time of zoning. It had been assessed at

5075 \$161,000 in 1992, all the way up to \$207,000, in 2004. If the property was not to be  
5076 used, why was the County assessing it at \$204,000? If the property was not to be used,  
5077 why wasn't it clear on the zoning map that it was a current zoning map? If the property  
5078 was not to be used, the record should be clear, and I don't think it is. That zoning  
5079 approval letter in Tab E is certainly not clear. I don't know what it means to be obligated  
5080 to. If you look at the minutes, I think it's very clear that they were giving the zoning to 18  
5081 acres. If you do an analysis of the zoning letter approval from the BZA, that says we're  
5082 going to lower the square footage requirement, I think it's entirely clear that the 2.3  
5083 acres can be used at that point.

5084  
5085 Ms. Dwyer - Why did the assessment go from \$207,000 to \$2,000?  
5086

5087 Mr. Condlin: My client said, "are you telling me I can't use the property  
5088 (Unintelligible), and he marched right downstairs and said, "Go talk to the Planning  
5089 Office; you're not going to be billing me for paying \$2,000 a year on property I'm not  
5090 even allowed to use." That's when, based on my applicant's request, they took a look at  
5091 it, talked to the Planning staff, and said, "Oh, based on that, we're going to reduce it." I  
5092 think when you add all that up, it's very clear why they thought they could use it, but I'm  
5093 not even sure that matters, when you look at the record, I think it's at worst unclear as to  
5094 whether there's a restriction on the 2.3 acres, and I think at best, that the 2.3 acres  
5095 actually has the right to be used for residential use. Let me just go quickly into the last  
5096 three points of "Does the BZA have the right to amend the variance?" If I come forward  
5097 to you, and I get a 5-foot setback variance, and I go to build it, and I need 5.3 feet, you  
5098 can't tell me I can't come back to this Board and ask you for a .3-foot variance to add to  
5099 my 5-foot variance. You absolutely have that right. It's inherent in your authority. To  
5100 say that I don't have that right, that's completely absurd to me that you can't amend the  
5101 variance itself. The same reason on the condition. I've got the 2003 case if you'd like  
5102 to see it, if you've recently amended a condition on a 2000 case in 2003. Again, it's  
5103 your condition, whether from this Board, or 40 years ago, a previous Board. We can get  
5104 into the substance of it, but that's not really my appeal today. My appeal is specifically,  
5105 let me walk through that door; that's another issue is whether the advertisement, and  
5106 Mr. Tokarz can talk about that, whether that allows this body to rule, and we can use the  
5107 2.3, and if the variance says you can't use it, then we're willing to amend the condition  
5108 to allow you to use if for eight units. All we're looking for is eight townhouse units, which  
5109 I'll have to defer to Mr. O'Kelly on this. I don't even know if the townhouses I'm going to  
5110 build, were allowed in R-5, but they are now. I know that townhouses can be built in R-  
5111 5 now, but I don't know back in 1964.

5112  
5113 Mr. O'Kelly - The only zoning classification at that time for multi-family  
5114 was R-5.  
5115

5116 Mr. Condlin- Technically, I guess they didn't call them townhouses at the  
5117 time. I guess it was just multi-family, but townhouses now are specifically allowed,  
5118 enumerated in R-5, and are regulated. I put that in the tab, I think that was Tab H, that  
5119 showed what they could put on; I think they were just looking for eight units to be able to  
5120 put townhouse units in there, and they can fit. It doesn't violate any wetlands laws, and

5121 they can make it fit. They just want to make good use of the property that they bought  
5122 in good faith, so I'm asking this Board to rule that yes, you can amend the variance, and  
5123 I can come back and ask for, if I need to, an additional square footage variance, I don't  
5124 know what I'd call it, but I'd ask for an additional variance to allow me to build eight  
5125 units. To amend the condition of that 1964 grant to say, regardless of whatever it said,  
5126 whatever it means to be obligated, "we, the Board allow you to build eight units," and  
5127 we'll put that condition nice and neat, because we know how to do it now, because it  
5128 was a little different world back then. Finally, if you say, "no, we don't even want to do  
5129 all that, at the very least, you have the right to rezone it to Office, and if you rezone it to  
5130 Office, you're no longer subject to whatever interpretation it may be that you can rezone  
5131 the property to another residential use, to another office use, to whatever it may be, and  
5132 not be subject to "no building at all." I do not read, referring back to my final point and  
5133 my first point, I do not read again the variance approval letter to say they cannot build  
5134 on the 2.3. The only language the County can hang its hat on at this point, the Planning  
5135 staff and Mr. Tokarz, is to say, "shall be obligated." I don't know what that means, but it  
5136 says that the 2.3 shall be obligated to the 18.09. When the 18-acre piece sold that,  
5137 back in 1974, Mr. LaVecchia said, "You got the variance; what are you going to do now,  
5138 because you sold the 2.3 acres piece?" He didn't write a letter to them saying, "you  
5139 cannot use it at all." I think it's very important to say that the 2.3 acres was not subject  
5140 to the variance, and if it was subject to the variance, then we should be able to get the  
5141 benefit, because the technical terms of the variance say, "we lowered the square  
5142 footage requirement," and when you do that on the entire property, the entire property  
5143 can be developed, based on that variance, which means I get 37 units. That's the only  
5144 way you can read it. If you don't agree with me to say the 2.3 is not subject, if you say  
5145 you are subject to it, then I've got to be able to get it, based on the technical terms of  
5146 the variance, I've got to be able to get the 37 units, based on the calculations that I've  
5147 got here. That's the technical terms of the variance, and there's no condition that  
5148 prohibits the use. It says "it shall be obligated," and I don't know what that means.

5149  
5150 Ms. Harris - You gave us the 2.37 acreage part here on the history of the  
5151 assessment. Do you know if the reason the Assessor's Office has the assessment for  
5152 2005-2006 for \$204,000, is that because they're regarding it as unbuildable?

5153  
5154 Mr. Condlin - The Assessor's Office was notified by my client, that they  
5155 were notified by the Planning staff, that they were not allowed to build or do anything on  
5156 the property, they marched down to the, and I think that's right, I think that's legitimate,  
5157 to say, when they go and say, "oh, by the way, the BZA's changed it so you can build  
5158 eight units," if that's the case, I know that they're going to raise the assessment again. I  
5159 think that's indicative of, did the County really deem this as unbuildable, because they  
5160 were taxing it out at an assessed value of \$200,000, \$190,000? I know it's a different  
5161 department, but for the same reason, if we're going to be holding to pretty good zoning  
5162 maps in 1960, I think all departments should be consistent in how they treat the property  
5163 itself. I know it's very technical, it's very confusing in the argument that we're making,  
5164 but I think that again, I do not think the 2.3 acres is subject to the variance, but if we are,  
5165 we should be able to be granted the same rights under the technical terms of the  
5166 variance as the 18 acres were.

5167  
5168 Mr. Kirkland - Mr. Condlin, this is part of the Hunt Club Apartments?  
5169  
5170 Mr. Condlin - No, it's separate. It's on the other side of Glenside; it's got  
5171 completely separate ownership, everything is separate.  
5172  
5173 Mr. Blankinship - That's basically the issue right there.  
5174  
5175 Mr. Condlin - No, the Hunt Club Apartments are the 18 acres. The north  
5176 side of Glenside Drive. At one time, they were owned by the same entity. You can read  
5177 through all the minutes, but it was sold off in 1974, when Mr. LaVecchia wrote his letter.  
5178 It was sold to the attorneys who represented the Hunt Club Apartments, which obviously  
5179 you can't go back and ask them; they obviously knew what the rules were at the time,  
5180 yet they still bought the property. I have no idea why, but I think that's another  
5181 indication of, we didn't deem it subject to the variance requirement. We could build it.  
5182 Why would you buy property that you can't build on? Why would it get separated? To  
5183 me, that's another indication of what it was. One final question, what happens when  
5184 one of the units burns down at Hunt Club Apartments? Is it a race to the Planning  
5185 Department to submit plans? Is that what we're down to at this point, to say you've got  
5186 297 units capped, even though it doesn't say so in the variance letter, but if one of those  
5187 burns down, and they lose ten units, we're all going to race there, and we're going to  
5188 have plans ready to go, and we're going to submit them before they do. I don't know  
5189 the answer to that, but that's what it's going to result in, if we're not allowed to use this  
5190 at all. This Board will have to grant a variance to the variance, or a further variance, or  
5191 an amendment to the conditions, if you think the conditions restrict us. At the very least,  
5192 my least favorite, I go to a Board and say "we want to use it for residential; we want to  
5193 put some townhouses on here, and it's appropriate for the area." Thank you.  
5194  
5195 Mr. Nunnally - Thank you. Could we hear from some opposition? I thought  
5196 someone stood up in the back.  
5197  
5198 Mr. Condlin - My client is here in case you have any questions for him.  
5199  
5200 Mr. Blankinship - Mr. Tokarz was going to argue for the County.  
5201  
5202 Mr. Nunnally - OK, Mr. Tokarz.  
5203  
5204 Mr. Tokarz - Mr. Chairman, Tom Tokarz, County Attorney's Office. Andy  
5205 and I have known each other for a long time, and I appreciate the fact that he has now  
5206 succeeded in being more animated in front of you than I have ever been. He has won  
5207 the record, and I think I'd have to go a long way to beat him today, and I appreciate his  
5208 passion and enthusiasm. But frankly, I think, number 1, he's wrong, and number 2, he's  
5209 made it much more complicated than it needs to be. The reason I say that is because  
5210 I'd like to address Ms. Dwyer's opening question, because I think that's really the nub of  
5211 what's before you today. The question she asked is, what is the issue before the BZA,  
5212 because what you have is nothing more than an appeal of the Decision of the Assistant

5213 Director of Planning, which is found in the February 3, 2006, letter, which is Tab G. This  
5214 is what Ms. Dwyer has quite properly pointed out. Let me tell you that I think there is  
5215 only one issue that is before you today. The issue is the issue that Ms. Dwyer  
5216 addressed, and that's at the top of page 2. Let me first say that page 1 is just historical  
5217 background. There's no determination; there's just a recounting of the facts. On page  
5218 2, then there is a recitation of the condition of the BZA from 1965, and then the  
5219 sentence that she read, "the clear purpose and effect of this condition is to prohibit any  
5220 additional use of the 2.37-acre parcel, until such time as the Zoning Ordinance is  
5221 amended to permit 297 units on the 18.09-acre parcel." In the following paragraph, the  
5222 first sentence says, "For this reason, the current owners of the 2.37-acre parcel are not  
5223 entitled to develop the property, based upon its R-5 zoning." That is the only  
5224 determination made in this letter. That is the only determination. The paragraph below  
5225 that, talking about the variances, is simply Mr. Emerson's responding to Mr. Condlin's  
5226 letter requesting a letter on the issue of the variance. He states, "It is my  
5227 understanding," he talks about "under the Cochran Decision," and he says, "Under the  
5228 Cochran Decision," as Mr. Blankinship pointed out, his view was the BZA is without  
5229 authority to either grant a variance or to amend the variance condition. Ladies and  
5230 gentlemen of the BZA, the law regarding the BZA is something you administer. It's not  
5231 subject to interpretation or enforcement by the Assistant Director of Planning. There's  
5232 nothing in this letter that says that Mr. Condlin's clients cannot apply for a variance.  
5233 That's not to say that the County will agree with the request for a variance. There's not  
5234 a determination by the Assistant Director of Planning that the variance conditions can't  
5235 be amended, although the County may indeed say under Cochran they can't be  
5236 amended, because the property has already received the benefit, the parcel taken as a  
5237 whole has already received the benefit of the greater density. Nor is there anything in  
5238 this letter that says they can't apply for rezoning. What Mr. Condlin's only appeal  
5239 properly before you is the question, "Does the 1965 variance condition prohibit  
5240 development of this property, based on the R-5 zoning?" That's the only determination  
5241 that's before you. Mr. Condlin's other arguments about the variance and Cochran and  
5242 good faith – that's all going to come before you later, when it comes time for the  
5243 variance, and we'll have a lot to say about that. I will admit, I probably perpetuated this,  
5244 as I have written my letters to the BZA, and the reason I did it was really to give some  
5245 sort of background as to our thinking about the variance, but really, what is before you  
5246 today, is only the question of whether development is permitted under the current R-5  
5247 zoning, the determination made in the first sentence of the second paragraph, page 2.  
5248 I'm saying to you, we don't need to go to all the issues that Mr. Condlin has addressed.  
5249 The only issue we need to address is the question of what did the 1965 variance case  
5250 say. If we understand that, then did the Assistant Director of Planning properly apply it,  
5251 because if he properly applied it, then you should uphold the decision, and you should  
5252 say to the applicants, "you can come back and apply for a variance; you can go to the  
5253 Board of Supervisors and ask for a rezoning; you can go to the Board of Supervisors  
5254 and ask for a text amendment. The only thing you have to decide is, does the variance  
5255 impose a condition which is improperly understood by the Planning Department. That's  
5256 the only issue that's before you right now. We do disagree significantly with Mr. Condlin  
5257 and his claims about whether that variance applies or not, that variance condition  
5258 applies to the 2.37 acres. I appreciate Mr. Condlin's candor, he is making probably the

5259 most hyper-technical argument I've ever heard. When you read the minutes of this  
5260 case, it is clear that the only reason that the 297 units were permitted on the 18.09  
5261 acres was because Glenside Drive had bisected the entire parcel, and they were giving  
5262 the developers the benefit of the 2.37 acres, instead of saying, you can't get any benefit  
5263 at all. They were trying to give the benefit of that acreage to give higher density in  
5264 accordance with that high density. That's exactly what happened, and Ms. Dwyer is  
5265 exactly correct. To answer Andy's question, he said, "I don't know what the BZA was  
5266 intending to do." I submit the answer is crystal clear when you read the minutes. You  
5267 don't have to go through this magic chart that Andy has done. All you need to do is look  
5268 at the condition. It says that the 2.37 acres are obligated to part of parcel 93 B2 26,  
5269 containing 18.09 acres, as shown on the above-mentioned plat, until such time as the  
5270 zoning regulations relating to the 18.09 acres are changed to permit this parcel to  
5271 support the density of 297 units. The only way you can read that is that the current  
5272 ordinance at the time didn't allow 297 units. We're going to use the permitted density  
5273 on the 2.37 acres to allow you to build 297, and you're limited to 297 until such time as  
5274 the Board of Supervisors changes the ordinance to let you have the 297 on the 18.09  
5275 acres. Until that time, we're considering them as one parcel, because that's the way it  
5276 was originally purchased, and the only reason for the division was the bisection as a  
5277 result of Glenside Drive. I suggest to you that the staff has appropriately and accurately  
5278 applied the condition. Because they have appropriately and accurately applied the  
5279 condition, which the minutes reflect were designed to give them the benefit of the 2.37  
5280 acres, and because the BZA, by putting this condition as a part of the approval, made it  
5281 clear that the 2.37 acres were not to be developed separate and apart from the 18.09  
5282 acres, with greater density. Then the staff has appropriately made their determination,  
5283 and the staff decision should be upheld. I'll be glad to answer any questions.

5284  
5285 Mr. Kirkland - Mr. Tokarz, then you're saying if the Hunt Club Apartments  
5286 went back to apply for R-6 zoning, this property would become usable because the  
5287 density would change? (Unintelligible) Is there an R-5 change in the future?  
5288

5289 Mr. Tokarz - I'm saying that's what this variance condition says that if the  
5290 zoning regulations related to the 18.09 acres are changed, and would permit a higher  
5291 density, then the 2.37 acres would not be subject to obligation as part of the  
5292 development. Just wanted to make sure I understood your question.  
5293

5294 Mr. Kirkland - If Hunt Club went back and got a higher density, then that  
5295 piece of property would become live again.  
5296

5297 Mr. Tokarz - Absolutely. As a condition of the BZA action of 1965. Now  
5298 whether the BZA should amend that condition or reconsider it, that's a different  
5299 question, not for today's hearing.  
5300

5301 Ms. Dwyer - Mr. Tokarz, I was concerned about the quote Mr. Condlin  
5302 raised from the minutes of the BZA when they granted this variance, because there was  
5303 a statement. Mr. Byrne said, "Unless they could get adjoining property, they probably  
5304 would not use the property," and then it says, "Mr. LaVecchia said, 'but the applicant

5305 has not said he would not use the smaller tract,” but when I looked at the whole case, I  
5306 find sort of a complicating, or I guess, opposing statement, from Mr. Byrne, in which he  
5307 says, “About the only thing they could put in the small acreage left,” that is, I’m sure that  
5308 you’ve mentioned the 2 acres, “would be one apartment building.” Because of the  
5309 condition of the final location of the road, they want this extra piece of property to be  
5310 included in the total area of the larger parcel, which would allow them to build the  
5311 additional 33 units. That’s exactly what you said.  
5312

5313 Mr. Tokarz - Right. I have an answer to the second to the first part of  
5314 your point. I think the fact that Mr. Byrne, who of course became a judge of the Circuit  
5315 Court for many years, and who was the subject of a memorable hearing I had with him  
5316 in 1984, which I can recount for you someday in private, much to my embarrassment ....  
5317

5318 Mr. O’Kelly - He didn’t care much for the Planning staff either.  
5319

5320 Mr. Tokarz - Judge Byrne certainly was a man of strong opinions, and  
5321 certainly a fine lawyer, but I think the simple answer is that Judge Byrne, then a private  
5322 attorney, said, “If you want the ability to develop the property, the BZA did what it  
5323 needed to do to make sure that didn’t happen. They imposed a condition. They put the  
5324 obligation on using the 2.37 acres, tied it to the 18.09 acres, and said, “Look, if you want  
5325 to use the 2.37 acres, you’re not going to come in here and promise you won’t use it,  
5326 but if you want to use it, you can do it. What you’ve got to do is, you’ve got to go back  
5327 to the Board of Supervisors and get a higher density authorized in a rezoning decision,  
5328 or amend the Zoning Ordinance. You could do one of two things, and so I submit to you  
5329 that the BZA dealt exactly with the situation and Mr. Byrne saying, “We’re not willing to  
5330 say we’re not going to develop. They imposed a condition that prevented it from being  
5331 redeveloped. So I think that the BZA did exactly what it intended to do, notwithstanding  
5332 Andy’s charts, and notwithstanding his hyper technical argument. When you read the  
5333 record in its entirety, it’s clear they wanted to give the developers who owned that entire  
5334 parcel the benefit of the piece that had been split off when Glenside Drive was  
5335 developed. That’s what they were trying to do, and because the owners of that property  
5336 got the benefit of it, the owners of the original property get the benefit of it, that benefit  
5337 runs with the land; the variance runs with the land; and the benefits and the burden run  
5338 with the land. The people who bought this property in 1974; we can’t speak for what  
5339 they were thinking, and the people who bought this property in 2005; we can’t speak for  
5340 what they were thinking. They took the property with the benefits and the burdens, the  
5341 zoning, tax allocation, zoning map, zoning ordinance requirements, variance conditions,  
5342 and all that. The last thing I’ll say is, if there was any question at all about what was  
5343 going on, on this piece of property, all they had to do was ask for a zoning conformance  
5344 letter. That wasn’t done in this case, and that would have resolved the question before  
5345 they closed on the property. They need to come back to you in a different form, in a  
5346 different context, but on the facts of this case, the decision of the Assistant Director of  
5347 Planning should be upheld. Thank you, Andy, for helping me out.  
5348

5349 Ms. Dwyer - Mr. Tokarz, I have one more question about, could you  
5350 respond to the fact that the County assessed this 2 acres at \$207,000?

5351  
5352 Mr. Blankinship - I'm working on a response to that right now, while I've been  
5353 listening to Mr. Tokarz, I've been looking at the old assessment cards from back in the  
5354 '70's, and I'm not ready to write this down and sign it, but in 1972, the total property, the  
5355 20.39 acres, was assessed at \$118,800. In 1975, when they created a new property  
5356 card for the 2.3-acre parcel, they assigned a value to that parcel of \$13,800, and they  
5357 subtracted \$13,800 from the value of the other parcel, so I believe when they split the  
5358 two properties, they simply split the value pro rata, based on the acreage, and then they  
5359 both just escalated from there. At some point, reassessment probably went back and  
5360 assessed the 18.09-acre parcel at its full value. In other words, they don't just apply  
5361 inflation every year. Sometimes they go back and completely reassess. But it appears  
5362 to me that in 1975 they split 90% of the value to the one parcel and 10% of the value,  
5363 roughly, to the other parcel.

5364  
5365 Ms. Dwyer - Was that because of the fact that it had been sold to a  
5366 separate owner, so then they decided, maybe from an assessment point of view, to give  
5367 a separate assessment to that parcel, and then it just was in the hopper and every year  
5368 was just increased as land values generally increased in the County, and they might  
5369 have kept all the value with the one parcel and assigned the other one the land value of  
5370 "0," since it was not buildable, but they didn't do that. They assigned value to one  
5371 parcel and subtracted that value from the other parcel.

5372  
5373 Mr. Tokarz - The other thing I would add, Ms. Dwyer, is # 1, what the  
5374 assessors office does with respect to your property, does not govern the land use of the  
5375 property, whether it's right or wrong, whether they knew what the facts were or not,  
5376 doesn't really apply to the question of whether the Assistant Director of Planning is  
5377 correct in his application and interpretation of the Ordinance. The other part is, that it  
5378 really is irrelevant to a determination made 40 years ago by this Board, the predecessor  
5379 Board, which really has a force in effective law with respect to the development of  
5380 property. The development of this property is not going to be governed by what the  
5381 assessed value is; it's going to be governed by what the Ordinance says and what the  
5382 BZA said in its condition.

5383  
5384 Mr. Nunnally - Mr. Condlin.

5385  
5386 Mr. Condlin - I'll be very brief. I just was to clarify that I understand that  
5387 there is no issue, despite the clear language of that letter that said this Board is not  
5388 allowed to amend or grant another variance. Mr. Tokarz is saying that the official  
5389 position of the Planning staff is that I need either a determination from you or an official  
5390 statement from you to say that, in fact, this Board can amend the condition, that we can  
5391 make an application for rezoning. If that were the case, it would have been nice to have  
5392 been notified so I wouldn't have to be up here flailing my arms and prepare that part of  
5393 it, and do research on this Board having done previous approvals of amendments of the  
5394 condition. When I looked at the letter, I think it's clear. If that's a moot point, I'm happy  
5395 to make that a moot point; I agree with Mr. Tokarz that is not the application before you.  
5396 I just wanted to get through the door. He's opening the door for me; I'm walking through

5397 the door, and I'm just happy to be making another application immediately before this  
5398 Board. If you want to rule on it, I'd be happy to let you rule on it today as well.

5399  
5400 Mr. Kirkland - We have to advertise it first.

5401  
5402 Mr. Condlin - I understand. After talking to Mr. Blankinship, I think that is  
5403 probably the correct way, and we would make a separate application. I just want to  
5404 make that clear; it wasn't clear to me in the letter; it wasn't clear to me in any  
5405 correspondence from anyone in the County that they had my Appeal. I'm a little set  
5406 aside on that. The other thing is Glenside, and Ms. Dwyer, I think this goes to your  
5407 point of why did they come up with the number. It was clear there was an equity issue  
5408 here. When they rezoned the property, Glenside Drive was not proffered; it was  
5409 separately volunteered. Those are words that I'm paraphrasing, I'm not quoting directly,  
5410 but it's in the minutes, it was voluntarily by separate letter agreed to. Was there an  
5411 obligation, and they said, "by the way, now that you've given Glenside Drive, you can't  
5412 use the 2.3 acres," and that's clear from the minutes and looking over everything from  
5413 the case. There was a surprise effect, and that's why I think they came up with the 297.  
5414 To say that Mr. Tokarz, and I appreciate his candor, and I'm going about this with  
5415 passion, but to say that shall be obligated. What does that mean? If the Board wanted  
5416 to be clear, and the minutes wanted to be clear, the Board could have said, "There shall  
5417 be no more than 297 units on the total of the south side and the north side. They could  
5418 have said, "There shall be no development." I don't know what it means to be "shall be  
5419 obligated." All I know is that when the 18 acres sold the 2 acres, Mr. LaVecchia, who  
5420 was part of it, again if we're going to use the minutes, we should be able to use the  
5421 County records of the conditions and their interpretation following, did not write a letter  
5422 the 2.3 acres saying, "You can't use it. Just want to put you on notice." He wrote a  
5423 letter to the 18 acres and said, "What are you going to do now? What happened to the  
5424 condition that "shall be obligated?" That's where the trail ends. To me, it all indicates  
5425 that there was not a clear cut, and I think it's unfortunate that people who bought the  
5426 property, with a pretty convoluted record, and not clear, and I don't know whether I  
5427 made legitimately good arguments or not – I believe them, that it's very difficult to figure  
5428 out exactly what was approved and what does it mean to be obligated, because the  
5429 answer is that it's no longer obligated, because I'm not even connected to them. The  
5430 last point is, hyper technical, all I know is that's what the letter's for, the technical nature  
5431 of the zoning variance approval was reducing the square footage, and they did not limit  
5432 it to the 2.3, or just the 18 acres, if that's the argument, if they went ahead and applied it  
5433 to the 2.3, either the 2.3 acres is not subject to the variance, or if it is, I get the benefit of  
5434 the reduction in the square footage, and there's no condition on there that says that I  
5435 can't use it. I think that's technically correct, by the terms of the variance that was  
5436 approved. They could have done otherwise, and they didn't, and we do get the benefit  
5437 of that reduction in square footage of area per density unit, and there's no condition that  
5438 says you can't use it for the 297. After the assessment, who knows?

5439  
5440 Mr. Nunnally - That concludes the case.

5441  
5442 Mr. Blankinship - Last call on UP-18-2006, Events Management, LLC?

5443  
5444 Mr. Nunnally - The Board will take a ten-minute break.  
5445  
5446 **DECISION:**  
5447  
5448 Mr. Nunnally - A-20-2006, Greenleaf Properties, Inc.  
5449  
5450 Mr. Kirkland - Mr. Chairman, I move we deny the appeal. After hearing all  
5451 the evidence from Mr. Tokarz and Mr. Condlin, I agree that said property cannot be  
5452 developed.  
5453  
5454 Mr. Nunnally - Motion from Mr. Kirkland that it be denied. Do I have a  
5455 second?  
5456  
5457 Ms. Dwyer - I second.  
5458  
5459 Mr. Nunnally - Second by Ms. Dwyer. All in favor of denial on—  
5460  
5461 Ms. Dwyer - Could we have some discussion about it for the record, Mr.  
5462 Chairman?  
5463  
5464 Mr. Nunnally - Sure.  
5465  
5466 Ms. Dwyer - I just wanted to state that I think the decision of the Director  
5467 of Planning, or the Planning Department, should be upheld, because it seems clear  
5468 from the records, from the minutes, both from the 1964 case in which it was denied, I  
5469 think that serves at least as historical information about what arguments were being  
5470 made by the landowner, and those arguments, as I read them, were, they wanted to  
5471 increase the density on the 18-acre parcel based on what would have been allowed to  
5472 be developed on the 2-acre parcel, and that the 2-acre parcel was obligated to, or  
5473 dependent upon, or burdened by, that particular decision. I agree with Mr. Tokarz that it  
5474 was reflected in the BZA decision itself in the case in which they actually did approve  
5475 the variance. There's also language, which I won't repeat, in which it was clear from the  
5476 attorney of the landowner that the extra piece of property was intended to be considered  
5477 in determining how many units would be allowed on the 18-acre parcel. So even  
5478 though "shall be obligated" may not be the clearest language, I think it's analogous to an  
5479 easement or other kind of device in which one piece of property is burdened by another  
5480 piece of property. It seems clear to me that what that means is the development rights  
5481 were given to the 18-acre parcel and were removed from the 2-acre parcel.  
5482  
5483 Mr. Nunnally - Any other discussion? A motion by Mr. Kirkland, second by  
5484 Ms. Dwyer, that A-20-2006 be denied. All in favor, say aye.  
5485  
5486 Mr. Wright - I disqualify.  
5487  
5488 Mr. Nunnally - Mr. Wright disqualifies. It's been denied.

5489  
 5490 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
 5491 Dwyer, the Board **denied** application **A-20-2006** appealing a decision of the Director of  
 5492 Planning regarding the property at 4201 Glenside Drive. The Board sustained the  
 5493 decision of the Director of Planning that the parcel (4201 Glenside Drive, GPIN 770-  
 5494 748-7625), zoned R-5, General Residence District (Brookland), cannot be developed  
 5495 independently from its parent tract (7006 Hunt Club Lane, GPIN 770-749-9008).

5496  
 5497 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4  
 5498 Negative: 0  
 5499 Abstain: Wright 1

5500  
 5501 During the hearing, the Senior Assistant County Attorney clarified that the owner of the  
 5502 property may apply for an amendment to the conditions of variance A-137-64, which  
 5503 created that obligation.

5504  
 5505 Mr. Nunnally - All right. We have the minutes, don't we? Do we have a  
 5506 motion on the minutes?

5507  
 5508 Mr. Kirkland - On line 282 on Shawn Maxwell, did they both get variances?  
 5509 May 7. For road frontage. "For road frontage," is what it's supposed to say, not or. For  
 5510 road frontage. Okay? That's all I got. Move we approve them.

5511  
 5512 Ms. Dwyer - Second.

5513  
 5514 Mr. Nunnally - Motion by Mr. Kirkland, second by Ms. Dwyer it be approved.  
 5515 All in favor say aye. All in favor of adjournment?

5516  
 5517 On a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **approved as**  
 5518 **corrected**, the Minutes of the **March 23, 2006**, Henrico County Board of Zoning  
 5519 Appeals meeting.

5520  
 5521  
 5522 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 5523 Negative: 0  
 5524 Abstain: 0

5525  
 5526  
 5527 Ms. Harris - Are we going to the Board of Supervisors for our concerns  
 5528 about the many cases we're getting regarding landlocked?

5529  
 5530 Mr. Wright - He already asked Ben to come back with something next  
 5531 month.

5532  
 5533 Ms. Dwyer - Ben was going to talk to us about landfills, too, which maybe  
 5534 we'll do next month?

5535  
5536 Mr. Blankinship - Yes. I've got a report on not landfills, but on reclamation of  
5537 mining sites. I've got the rough draft about halfway finished and a lot of research to  
5538 show to you. With next month's package, we should be *[inaudible]*.

5539  
5540 Ms. Dwyer - Thank you so much.

5541  
5542 There being no further business, the Board adjourned until the May, 25, 2006  
5543 meeting, at 9:00 am.

5544  
5545  
5546  
5547  
5548 James W. Nunnally

5549 Chairman

5550

5551

5552 Benjamin Blankinship, AICP

5553 Secretary

5554