

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX ON THURSDAY, NOVEMBER 18,**
4 **1999 AT 9:00 A.M. NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES**
5 **DISPATCH ON OCTOBER 28, 1999, AND NOVEMBER 4, 1999.**
6

Members Present: Richard Kirkland Chairman
Daniel Balfour, Vice-Chairman
Gene L. McKinney, C. P. C., C.B.Z.A.
James W. Nunnally
R. A. Wright

Also Present: Benjamin Blankinship, Secretary
Susan W. Blackburn, County Planner II
Priscilla Parker, Recording Secretary

7 Mr. Kirkland - Welcome to the Board of Zoning Appeals for the month of
8 November. Before we get started, I would like the Secretary, Mr. Blankenship, to
9 explain the rules.

10
11 Mr. Blankenship - Good morning, Mr. Chairman, members of the Board, ladies
12 and gentlemen. The rules for this meeting are as follows: The Secretary, myself, will
13 call the case. Then the applicant will come to the podium to present their case. At that
14 time I'll ask all those who intend to speak, in favor of or in opposition, to stand, and they
15 will be sworn in.

16
17 The applicant will then present testimony. When the applicant is finished, anyone else
18 will be given an opportunity to speak. After everyone has spoken, the applicant, and
19 only the applicant, will be given the opportunity for rebuttal. After hearing the case and
20 asking questions, the Board will take the matter under advisement. They will render a
21 decision at the end of the meeting. If you wish to know what their decision is, you may
22 stay until the end of the meeting, or you may call the Planning Office at the end of the
23 day.

24
25 This meeting is being tape recorded, so we will ask everyone who speaks, to speak
26 directly into the microphones on the podium, and to state your name for the record. In
27 the back of the room on the table, there is a binder, which has the staff report for each
28 case, including the conditions of approval suggested by the staff.

29
30 Mr. Kirkland - Mr. Secretary, do we have any deferrals or withdrawals?

31
32 Mr. Blankenship - Yes sir, we have one of each, on page three of the agenda.
33 Application **A-151-1999, Trinity Baptist Church**, has requested a deferral to your
34 December meeting.

37 **A-151-1999** **Trinity Baptist Church** requests a variance from Sections 24-94
38 and 24-94(g) of Chapter 24 of the County Code to construct a
39 church at 3601 Dill Road (Tax Parcel 128-A-1A), zoned M-2,
40 General Industrial District and R-4, One-family Residence District
41 (Fairfield). The building height and number of stories are not met.
42 The applicant has 65 feet of building height and 4 stories where the
43 Code permits 50 feet building height in M-2 district, 45 feet building
44 height and 2.5 stories in R-4 district. The applicant requests a
45 variance of 15 feet building height in M-2 district, 20 feet building
46 height and 1.5 stories in R-4 district.

47
48 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
49 Wright, the Board granted the request of the applicant to defer this case to the
50 **December 16, 1999 meeting.**

51
52 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
53 Negative: 0
54 Absent: 0

55
56 Mr. Blankenship - And on **Use Permit 43-1999, Media One of Virginia** has
57 withdrawn the application.

58
59 **UP- 43-1999** **Media One of Virginia, Inc.** requests a use permit pursuant to
60 Section 24-12(c) of Chapter 24 of the County Code to construct a
61 switching station at 8511 Jesse Senior Drive (Tax Parcel 90-A-
62 87(part)), zoned R-3, One-family Residence District (Three Chopt).

63
64 **The Board allowed the applicant to withdraw this application without prejudice.**

65
66 Mr. Kirkland - All right, if you would, call the first case.

67
68 **A -146-1999** **James L. Seay, Jr.** requests a variance from
69 Sections 24-94 and 24-9 of Chapter 24 of the County Code to construct a single family
70 dwelling at 2841 Darbytown Road (Tax Parcel 205-A-1 (part)), zoned A-1, Agricultural
71 District (Varina). The lot width and public street frontage are not met. The applicant has
72 20 feet lot width and 20 feet public street frontage where the Code requires 150 feet lot
73 width and 50 feet public street frontage. The applicant requests a variance of 130 feet
74 lot width and 30 feet public street frontage.

75
76 Mr. Kirkland - Anyone else wishing to speak on this case besides the
77 applicant? If not, would you please raise your right hand and be sworn in by the
78 Secretary?

79
80 Mr. Blankenship - Do you swear the testimony you are about to give is the
81 truth, the whole truth, and nothing but the truth, so help you God?
82

83 Mr. Seay - I do.
84
85 Mr. Kirkland - State your name, please.
86
87 Mr. Seay - James Seay, Jr.
88
89 Mr. Kirkland - Have you turned in all your notices, according to the County
90 Code?
91
92 Mr. Seay - Yes, sir.
93
94 Mr. Kirkland - OK, we have them. Proceed with your case.
95
96 Mr. Seay - I just want to build a house on family land in Varina, and I
97 don't have enough road frontage or lot width. We have seven acres there, and I've had
98 it resurveyed to give me four acres with a 20-foot driveway, which I would own going
99 back to the property. I plan on building about a 1700 square foot rancher with detached
100 garage. I applied for the permit back in 1997 and was granted a variance, and my
101 mother became sick with cancer and moved in with me and passed away in 1998, and
102 there was no way I could even think about building a house at the time. It took me a
103 little while to get myself back together, and now I want to go ahead and build a home
104 and live there.
105
106 Mr. Nunnally - So, you're all ready to build now, right?
107
108 Mr. Seay - Yes, sir, and since the last variance, I've also got the Health
109 Department to come out and approve the well and septic, and all that's been done, also.
110
111 Mr. Nunnally - You've read the conditions on this case, Mr. Seay? You've
112 read the conditions that you have to abide by to build?
113
114 Mr. Seay - Yes, sir.
115
116 Mr. Blankinship - On the second page of the staff report that was mailed out to
117 you, there were suggested conditions of approval.
118
119 Mr. Seay - Oh, it was suggested making the entrance bigger?
120
121 Mr. Blankinship - No, the four suggestions that the staff made to the Board,
122 only the improvements shown on the plan may be constructed. At the time of building
123 permit application, you have to submit information to Public Works. Approval of your
124 request does not imply that a building permit will be issued, and the applicant must
125 present proof that you have legal access to the property. Do you remember reading
126 those?
127
128 Mr. Seay - Yes, sir.

129
130 Mr. Blankinship - Mr. Chairman, I would like to just explain one thing that I put
131 in the staff report and then just yesterday discussed with the applicant. If you look at
132 the shape of the parcel there, on sort of the left side of the lot, you have a little leg
133 coming down there that would be attached to Parcel "A." And I had recommended in the
134 report that that be attached to Parcel "B" so that it would meet the 50 foot requirement,
135 although it would still lack the 150 foot lot width requirement. It just didn't make any
136 sense to me to leave that little chunk of land attached to Parcel 'A." The applicant said
137 yesterday that what they intend to do is attach that to the parcel that's labeled "Earnest
138 Seay," the parcel that's cut out there on the road frontage. They want to attach that little
139 leg to that to make it a little larger lot to bring it closer to conformance with the Code,
140 and staff doesn't have any objection to that.
141
142 Mr. Kirkland - Any other questions?
143
144 Mr. McKinney - Is that what he's going to do? Is he going to attach it to
145 Parcel A? Is there any objection to it?
146
147 Mr. Seay - That's what the family has talked about, but we haven't done
148 that yet.
149
150 Mr. Blankinship - He's not the owner.
151
152 Mr. Seay - My grandfather still owns that piece, and we're probably
153 going to buy him out, and he's 80 years old, and he's said he wanted to go ahead and
154 sell it, but we just haven't gone ahead and purchased it and then surveyed it off and
155 made that all one, because we're going to need some land there to work with a new
156 septic system and all, too. So, hopefully, there will be enough land in that whole piece
157 to get one in there and all.
158
159 Mr. McKinney - We can only address what has been presented to us and
160 what was advertised.
161
162 Mr. Blankinship - I just wanted to explain that I sort of expressed an objection
163 in the staff report, and the applicant has made a very good response to my objection.
164
165 Mr. McKinney - So it satisfies you?
166
167 Mr. Blankinship - Yes, sir.
168
169 Mr. McKinney - It could be done later?
170
171 Mr. Blankinship - Yes, sir.
172
173 Mr. Kirkland - Any other questions? Anyone else wish to speak on this
174 case? If no further discussion, that concludes the case. You can wait around this

175 morning, maybe, or get your answer after 2:00 p.m. today at the Planning Office. Thank
176 you, sir.

177
178 Mr. Seay - Thank you.

179
180 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
181 Wright, the Board **granted the request**.

182
183 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
184 Negative: 0
185 Absent: 0

186
187 The Board **granted** this request, as it found from the evidence presented that
188 authorizing this variance will not be of substantial detriment to adjacent property and will
189 not materially impair the purpose of the zoning regulations.

- 190
191 1. Only the improvements shown on the plan filed with the application may be
192 constructed pursuant to this approval. Any additional improvements shall comply
193 with the applicable regulations of the County Code.
194
195 2. At the time of building permit application, the applicant shall submit the
196 necessary information to the Department of Public Works to ensure compliance
197 with the requirements of the Chesapeake Bay Preservation Act and the code
198 requirements for water quality standards.
199
200 3. Approval of this request does not imply that a building permit will be issued.
201 Building permit approval is contingent on Health Department requirements,
202 including, but not limited to, soil evaluation for a septic drainfield and reserve
203 area, and approval of a well location.
204
205 4. The applicant must present proof with the building permit application that a legal
206 access to the property has been obtained.

207
208 **A -147-1999** **Barbara Sandvig** requests a variance from Section 24-9 of
209 Chapter 24 of the County Code to construct a single family home at
210 12241 Kain Road (Tax Parcel 26-A-44A (part)), zoned A-1,
211 Agricultural District (Three Chopt). The public street frontage is not
212 met. The applicant has 0 feet public street frontage where the Code
213 requires 50 feet public street frontage. The applicant requests a
214 variance of 50 feet public street frontage.

215
216 Mr. Kirkland - Anyone else wish to speak on this case? If not, raise your
217 right hand and state your name and be sworn in.

218
219 Mr. Blankenship - Do you swear the testimony you are about to give is the
220 truth, the whole truth and nothing but the truth, so help you God?

221
222 Ms. Sandvig - I do. My name is Barbara Sandvig, and I want to build a
223 home on those four acres, and I don't have enough road frontage, so I do have access
224 route to get to it. I did get the letter from the County with the conditions. I do have a
225 question. Is this the time to bring it up – about one of the conditions? The only one I
226 have, because it's out of my control, once someone gives you something, is the one
227 that said, the last one, because when I go to build, it's out of my control what the other
228 people do with their property. Do you understand what I'm saying?

229
230 Mr. Wright - I don't understand what you're saying.

231
232 Ms. Sandvig - You don't understand what I'm saying? OK, it says at the
233 time of my building permit, that I've got to have both parcels in family member's names.
234 Suppose the other family member does something – dies, wills it to John Jones down
235 the street. I mean I've got a year to build. Does that affect me? You know, within a
236 year I intend to build when I sell my house. I had my house on the market this past
237 year, and it didn't sell, so as soon as I sell the house that, I'm in, I will take that money
238 and build, but I only have a year.

239
240 Mr. Wright - Where is the house that you're in located?

241
242 Ms. Sandvig - Godwin Road. As soon as this variance passes today, it's
243 going on the market. But I don't have central air, and that's been a big problem with me
244 trying to sell it to someone.

245
246 Mr. Wright - And you're going to live in the house that you would build on
247 this particular property?

248
249 Ms. Sandvig - Yes, and I can explain about the 17-year-old. It's four acres,
250 and I didn't realize that I couldn't put my house, like in the corner, and then in ten years
251 give her an acre in the corner of that four acres. That was my intent. My daughter's
252 there. My son's already building his house; his house will be finished next month. He's
253 on Kain Road, you know, his house is almost completed, so it will be my son, my
254 daughter, myself, my daughter. And there's another girl in there too, Charlene; she's
255 already built; she got a variance, so it's a group of us back there; and we're all family
256 and friends. It was never my intent to sell to a developer. I've never tried to, what's the
257 word?

258
259 Mr. Blankinship - Circumvent.

260
261 Ms. Sandvig - That was never my intent. When I bought the land, it was
262 strictly for family, and I inquired about what's going up behind me, because there's 39
263 acres behind me, and I'm wondering if it's going to be office buildings, and that's why I
264 want to put my house in the middle, so that if it is office buildings, I'm not affected by
265 their parking and their traffic. So that's why I need to, and because of wetlands. I've had
266 to give my son 2-1/2 acres rather than the original two acres, and now I've got wetlands,

267 and we've done that, and now the Corps of Engineers came out. So what we want to
268 do is honor the wetlands, build where the County tells me I can put my house, and they
269 say the highest point. So the fact that I may not be able to give my 17-year-old
270 daughter an acre of land in 10 years, she's 17 years old. She may not even choose to
271 live in Richmond, you know, but I would like to be able to have had that option to do
272 that, because I gave my son 2½ acres. That was just the plan, so...

273
274 Mr. Wright - Who owns the other parcel? There are two parcels here.

275
276 Ms. Sandvig - My daughter, Kelli Carlo. She has a house with eight acres.

277
278 Mr. Wright - And then you own this particular parcel?

279
280 Ms. Sandvig - She's giving it to me if I get the variance; I don't want it
281 without the variance because it's a tax (unintelligible)

282
283 Mr. Wright - Mr. Blankenship, what's the objection to that?

284
285 Mr. Blankenship - Well, the problem is that earlier this year they did a family
286 subdivision on two other parcels on Kain Road, and as you know, the Code allows
287 family subdivisions, but restricts it to one division per family member.

288
289 Mr. Wright - And this is it? Was that at this location?

290
291 Mr. Blankenship - Just down the road.

292
293 Mr. Wright - But it wasn't here?

294
295 Mr. Blankenship - No sir, it wasn't a part of this parcel.

296
297 Mr. Wright - Won't that apply to the particular parcel in question, the
298 subdivision.

299
300 Mr. Blankenship - The way we read the ordinance is that it allows one division
301 per family member.

302
303 Mr. Wright - In the whole county of Henrico?

304
305 Mr. Blankenship - Right.

306
307 Mr. Wright - You mean if they had something out in Varina, they couldn't
308 subdivide that into separate parcels?

309
310 Mr. Blankenship - Right, because otherwise anyone could buy any number of
311 parcels of land and divide them, and then sell them outside.

312

313 Mr. Wright - As long as it's family members.
314
315 Mr. Blankenship - And then sell them outside. Because we don't have any way
316 of insuring that the property remains in the family.
317
318 Mr. McKinney - Well you can't insure that forever. If they pass away, you
319 sell it off; then it would not be a family member. You can't have it there forever.
320
321 Mr. Blankenship - That's exactly why the Code limits it to one per family.
322
323 Mr. McKinney - I think that's per piece of land.
324
325 Mr. Wright - But right now she would be in compliance with the
326 ordinance. She builds on this particular piece, and it's her home, and her daughter has
327 the other piece. Her daughter has given her this piece. She's complied with the
328 ordinance, is that not right?
329
330 Mr. Blankenship - If you read that restriction as one division per parcel per
331 family, yes, sir. If you read it as one division per family, then there has already been a
332 family division in her name.
333
334 Ms. Sandvig - But I'm the recipient on this one. See, this is what I didn't
335 understand. I gave my son land, so that's me giving it away. Now if someone wants to
336 give it to me, I can't take it?
337
338 Mr. Wright - You can have more divisions than one. We've had four or
339 five where a father's given children different parcels.
340
341 Mr. Blankenship - If it's four or five different children, one per family member.
342
343 Ms. Sandvig - This is a problem I didn't understand either, so we went to
344 Brad Davis, a lawyer, and I talked to him, and he said I was in compliance, and I can
345 only go by, I'm like you, I read it, and I said it looks like to me that Kelli can give away
346 once, and I can give away once. That's the way I read it, and like I say, I'm a social
347 worker; I'm not a lawyer, but I'm just going by what they tell me. And one other thing
348 while I've got you. I'm not sure what this meant. It said, "jeopardize the development of
349 the property," under the background, that the staff feels I may be in violation, and what
350 do they mean by that, that I may "jeopardize the development of the property"?
351
352 Mr. Blankenship - Well, that means that if there were a finding in the future,
353 that this division had circumvented the subdivision ordinance, then we would not allow
354 any further development until the violations were abated.
355
356 Mr. Wright - And what would be further development, the other plan of
357 development, that's what you were talking about. Well if she intended to keep it herself,
358 then she wouldn't have any problem with that.

359
360 Mr. Kirkland - Any further questions? Anyone else wishing to speak on this
361 case? If not, that concludes this case. Thank you ma'am.

362
363 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
364 Nunnally, the Board **granted the request.**

365
366 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
367 Negative: 0
368 Absent: 0

369
370 The Board **granted** this request, as it found from the evidence presented that
371 authorizing this variance will not be of substantial detriment to adjacent property and will
372 not materially impair the purpose of the zoning regulations.

- 373
374 1. At the time of building permit application, the applicant shall submit the
375 necessary information to the Department of Public Works to ensure compliance
376 with the requirements of the Chesapeake Bay Preservation Act and the code
377 requirements for water quality standards.
378
379 2. Approval of this request does not imply that a building permit will be issued.
380 Building permit approval is contingent on Health Department requirements,
381 including, but not limited to, soil evaluation for a septic drainfield and reserve
382 area, and approval of a well location.
383
384 3. The applicant must present proof with the building permit application that a legal
385 access to the property has been obtained.
386
387 4. The owners of the property, and their heirs or assigns, shall accept responsibility
388 for maintaining access to the property until such a time as the access is improved
389 to County standards and accepted into the County road system for maintenance.
390
391 5. At the time of building permit application, the owner shall demonstrate that the
392 two parcels created by this division have been conveyed to members of the
393 immediate family, and the subdivision ordinance has not been circumvented. If
394 this condition cannot be met, the owner shall submit a subdivision plat for review
395 and approval by the Planning Office.

396 **A-148-1999** **Lowell V. Smith** requests a variance from Section 24-95 (k) of
397 Chapter 24 of the County Code to construct a detached garage at
398 9609 Cragmont Drive (Tuckahoe North) (Tax Parcel 111-4-C-3),
399 zoned R-1, One-family Residence District (Tuckahoe). The
400 minimum side yard setback is not met. The applicant has 36 feet
401 minimum side yard setback where the Code requires 65 feet
402 minimum side yard setback. The applicant requests a variance of

403 29 feet minimum side yard setback.
404
405 Mr. Blankinship - Mr. Chairman, we've had a letter and some photographs
406 submitted by an opponent that I'm going to pass.
407
408 Mr. Kirkland - Does anyone else wish to speak on this case, A-148-1999?
409 OK, If you would, please stand and be sworn in. Also, sir, please raise your right hand
410 and be sworn in.
411
412 Mr. Blankenship - Do you swear that the testimony you are about to give is the
413 truth, the whole truth, and nothing but the truth, so help you God?
414
415 Mr. Smith - I do.
416
417 Mr. Kirkland - All right, sir, if you'd state your name and state your case.
418
419 Mr. Smith - Good morning; my name is Lowell Smith, Jr. I'm here on
420 behalf of my father, Lowell Smith, Sr. My father purchased the lot in 1951 and
421 constructed his home in 1964, and I grew up in this house. At that time, we had no real
422 neighbors to speak of, and in the 1980s a residential subdivision was constructed. At
423 the same time my father's lot was then designated as a reverse corner lot. My father
424 wants to construct a 26 by 28 foot detached garage at the end of his present driveway.
425 He would use the garage to park one of his vehicles and his yard equipment. He's
426 requesting a variance of 29 feet minimum side yard setback. This variance would allow
427 the garage to be located in a fashion that would have minimum impact on the closest
428 neighbor at 301 Cheswick, as well as minimize the number of mature trees that would
429 have to be destroyed. We believe that granting the variance would provide more
430 screening for Mr. Murray's house at 301 Cheswick, than building the garage in
431 accordance with the current zoning ordinance. I'd be happy to answer any questions
432 that you may have.
433
434 Mr. Kirkland - Before we get started, I'd like to state for the record, that we
435 have received the notices. They are in the file. Any questions of the Board members?
436
437 Mr. McKinney - Mr. Smith, the hardboard siding – is that to match what's on
438 the existing home?
439
440 Mr. Smith - Yes, sir.
441
442 Mr. Balfour- You are aware of this letter we have?
443
444 Mr. Smith - No, sir, not until right this moment. There is another letter
445 that we submitted prior to this meeting, from Rev. Dombalis, another neighbor, I'm
446 aware of that letter, but no other ones.
447
448 Mr. Balfour - Mr. Murray's here, is that right?

449
450 Mr. Wright - Mr. Murray's here, so he'll address that. Have we got a – on
451 the screen, can we put the plat?
452
453 Mr. Blankenship - Did you make this drawing?
454
455 Mr. Smith - No, our architect, Calvin Holcombe, made this drawing.
456
457 Mr. Blankinship - Are those plants illustrative, or are they the actual locations
458 of actual plants?
459
460 Mr. Smith - I'm not exactly sure. He made a site visit, but I don't know if
461 each plant is there in the precise location that is shown.
462
463 Mr. Balfour - Explain your comment earlier, that if you were to put it where
464 you had to put it, it would be even worse. I'm not sure what you mean, can you
465 illustrate that?
466
467 Mr. Smith - Well, if you look at the previous drawing that you had on the
468 screen, of the site plan, right now, as you can see, the proposed garage is shown 36
469 feet from the property line. To make it comply with the current zoning ordinance, it
470 would have to be moved to 65 feet, thereby pushing it closer to the house at 301
471 Cheswick.
472
473 Mr. Wright - So the problem is Cheswick Drive, the location within so
474 many feet of Cheswick Drive, that's your problem. It's a reverse corner lot.
475
476 Mr. Smith - Right, it became a reverse corner lot when the other
477 subdivision was built.
478
479 Mr. Wright - Mr. Blankinship, how much distance does he have between
480 the garage and the other line, it would be to the – I don't see an arrow on here?
481
482 Mr. Blankenship - The property line with 301 Cheswick? That would be 22 feet
483 now.
484
485 Mr. Wright - Is that the minimum?
486
487 Mr. Blankenship - For a detached accessory building, it would be...
488
489 Mr. Wright - I just wondered, how much does he have to play with on that
490 side?
491
492 Mr. Blankinship - Twenty feet.
493
494 Mr. Wright - So he only has two feet to play with on that side.

495
496 Mr. Blankinship - Yes, sir.
497
498 Mr. Wright - So if he moved it back off of Cheswick, he would have to
499 bring it into the asphalt area to comply with the ordinance on both sides.
500
501 Mr. Blankinship - Either into it, or very close to it, yes, sir.
502
503 Mr. Balfour - Mr. Smith, Mr. Murray's statement says in the event of Mr.
504 Smith's petition, include it as a condition of approval, the planting, prior to the beginning
505 of construction, of six-foot evergreens along the property behind the proposed garage,
506 the impact would be significantly reduced. How do you feel about planting 6-foot
507 evergreens along the property line behind the proposed garage?
508
509 Mr. Smith - I don't believe my father would have a problem with that.
510 The only thing I would ask for is a copy of the letter; we sent out the proper notifications
511 with a letter of explanation of what we were doing prior to the meeting like we were
512 supposed to, and this is the first indication that there would be any objections to it or any
513 requested conditions.
514
515 Mr. Balfour - Mr. Smith, what we'll do then, is we'll hear from Mr. Murray,
516 and you can read his letter in the meantime and give it back to us.
517
518 Mr. Smith - That would be very helpful if I could.
519
520 Mr. McKinney - It may be a good idea to hear from Mr. Murray. You get with
521 Mr. Murray, who may have some concerns, I suppose you may be able to address
522 them.
523
524 Mr. Smith - I'll be happy to get with Mr. Murray.
525
526 Mr. McKinney - Go over the letter, then within a reasonable length of time,
527 you can get back with him.
528
529 Mr. Kirkland - Do you have any problem with that, Mr. Murray?
530
531 Mr. McKinney - You can let him explain exactly what he's planning on doing,
532 what can be done, and if he needs some buffering, and so forth, then you can tell him.
533
534 Mr. Balfour - I suggest that rather than hear from you, Mr. Murray, at this
535 point maybe we could save some time and let you talk and resolve it.
536
537 Mr. Kirkland - What we do is let you resolve it first, and if you can't resolve
538 it, then you can come back and still speak; you reserve that right.
539

540 Mr. McKinney - Mr. Smith, we'll need that letter back because it's part of our
541 record.
542
543 Mr. Smith - May I get a copy of it?
544
545 Mr. Blankinship - Yes.
546
547 Mr. McKinney - We can mail you a copy.
548
549 Mr. Kirkland - We'll pass this by. You can go out and discuss this outside;
550 we'll call the next case, and when you come back we'll put you in there. You all want to
551 go outside. All right, sir. **(See discussion after A-149-99)**

552 **A-149-1999** **William Washington** requests a variance from Section 24-
553 95(i)(2)a. of Chapter 24 of the County Code to construct a double
554 car garage at 2210 Westover Avenue (Linnhaven Court) (Tax
555 Parcels 171-6-A-2 and 3), zoned R-4, One-family Residence District
556 (Varina). The accessory structure square footage is not met. The
557 applicant has 856 square feet accessory structure square footage
558 where the Code permits 683 square feet accessory structure
559 square footage. The applicant requests a variance of 173 square
560 feet accessory structure square footage.

561
562 Mr. Kirkland - Does anyone else wish to speak on this case except the
563 applicant? If not, raise your right hand and be sworn in.
564

565 Mr. Blankinship - Do you swear that the testimony you are about to give is the
566 truth, the whole truth, and nothing but the truth, so help you God?
567

568 Mr. Washington - I do.
569

570 Mr. Kirkland - State your name, sir.
571

572 Mr. Washington - My name is William Washington.
573

574 Mr. Kirkland - Have all your notices been turned in according to the County
575 Code? I see them in the file. Everything's fine; thank you.
576

577 Mr. Washington - Yes, they have.
578

579 Mr. Balfour - Excuse me, the note here says we have "all but one....."
580

581 Mr. Washington - That was corrected yesterday; I was in yesterday, and it was
582 signed and they approved it yesterday.
583

584 Mr. Balfour - Well they didn't pull the sticker.

585

586 Mr. Washington - I wanted to construct a 28 by 28 garage; I think you have the
587 pictures of it where it shows I checked with all my neighbors as far as the views and
588 whether it would affect them or whatnot; nobody had any complaints or anything. I
589 stated when I applied.

590

591 Mr. Wright - Mr. Washington, my record shows you want to build a 28 by
592 28 garage, that's 28 by 28, and I thought you said 20 by 20 there.

593

594 Mr. Washington - Yes, it's 28 by 28, I'm sorry. Like I said, I explained to them
595 that what happened. I have three vehicles, then I have lawn equipment, which is in this
596 little house now that I plan to take down, and for me to store all that stuff, to build
597 anything smaller wouldn't be feasible. It's kind of like I don't have enough room to do the
598 things I need to do.

599

600 The house, the one directly behind me has a garage. The only house that would even
601 be affected would be the ones in front of me. That would be two houses, one house,
602 really, in front of me. The other house wouldn't be affected at all. I've checked with
603 everybody, all my neighbors, and in trying to get it I couldn't see where it would be a
604 problem. There are so many things I want to do by being retired, and everybody I
605 spoke to has no problem. I looked at all the suggestions that you all made, and the only
606 thing I see is if it was a problem with me doing it, I could see about getting somebody to
607 construct it if that was a problem. You know, what I wanted to do with the time I had
608 was to work on my sub-basement if that was a help, but if it was a problem, I can get
609 somebody to construct it for me if that would be to Code or whatever.

610

611 Mr. Nunnally - Mr. Washington, why do you need a 28 by 28 garage? What
612 do you use it, do you use it just personally, or do you do any work on other automobiles
613 or anything?

614

615 Mr. Washington - Well, I got an older car I want to restore, and then I have
616 three vehicles that I want to store, and then I have my lawn equipment that I need to put
617 in there, things of that nature. It wouldn't be an eyesore, and it would fit right into where
618 the driveway, where the space for the driveway, would fit right in there, so it wouldn't be
619 an eyesore or anything like that, you know, to nobody, wouldn't be close to the other
620 residents in any way. The people next door, there's nothing there, and it wouldn't affect
621 them, you know. And right there I have three lots there, which would combine right
622 there, you know, which would give enough room.

623

624 Mr. Nunnally - Well your lawn equipment – can't you put that in that 6 by 12
625 – aren't you going to keep a 6 by 12 shed over there?

626

627 Mr. Washington - Well, the 6 by 12 shed, what I have now, I have like a
628 workbench, a small workbench; I have cleaning materials, and that's a brick building,
629 and which I didn't want to take that down because that's a brick building. I can't get a

630 mower or nothing in there, because the door is a small door. The riding mower can't fit
631 in there. Riding mower, and I couldn't get really, I might can walk through the push
632 mower probably, but the riding mower and the equipment that goes with it, I couldn't get
633 in there.

634
635 Mr. McKinney - Mr. Washington, do you have any plans for this garage?
636

637 Mr. Washington - Yeah, you have all the plans. All the plans, when I first
638 applied for it, everything was sent in then.

639
640 Mr. McKinney - Your roof is being built out of – is it a truss roof? Is your roof
641 going to be a truss roof? So you don't have any storage above the ceiling?
642

643 Mr. Washington - No. What I was going to do is, I have a contractor, a guy
644 that was going to come in, you know, digging, and I was going to help him do it, in other
645 words, right? But like I said, if that was a problem, I can get a contractor to come in and
646 build it for me if that's going to be a problem. But by me being, you know, retired, I
647 thought I would take the time, and work with him, you know, as a savings to myself, if I
648 could do it that way.

649
650 Mr. McKinney - We don't have a plan on this. We just have a square shown
651 on the plat where it's going to be on the property.
652

653 Mr. Washington - When I applied for my permit, I turned my plans, I turned in
654 everything when I applied the first time.
655

656 Mr. Kirkland - The building permit?
657

658 Mr. Washington - Right. Then they told me I had to get a variance. Then I
659 came in and the rest of the stuff I put in then, but I sent everything in the first time when
660 I applied for it.
661

662 Mr. McKinney - And they didn't ask you to present your plans when you
663 applied for the variance?
664

665 Mr. Washington - No, I gave them everything they asked for when I came in,
666 because they already had the plans. They already had all that.
667

668 Mr. McKinney - The Planning Office did not have the plans. The Building
669 Inspections Office has the plans.
670

671 Mr. Washington - Well, it was sent to the, well, I'm not sure, but I know it was
672 sent in; everything was sent in. I was on the Eastern Henrico, Nine Mile Road, I sent
673 everything in from the Building Permit there, which I had to give the construction and
674 everything. I sent everything in at the time. I think I have a copy of what I sent in to
675 them, I believe.

676
677 Mr. McKinney - What's the height of this garage, the ridge?
678
679 Mr. Washington - Well, let me show you this.
680
681 Mr. McKinney - If you give us that, we're going to have to hold on to it for
682 thirty days.
683
684 Mr. Washington - What I'm saying, you already have a copy of it.
685
686 Mr. Balfour - We don't. We're two different departments is what we're
687 saying. I don't blame him for not understanding.
688
689 Mr. Washington - You need to hold onto this, you say?
690
691 Mr. Balfour - What we've got are two plats that show the square on it, but
692 we don't have the actual plans for the building that show what the building would look
693 like. All we've got is the footprint.
694
695 Mr. Washington - Well, like I say, I gave it to them.
696
697 Mr. Balfour - Do we understand also, that you're planning to tear down
698 one of the other buildings and put this one up?
699
700 Mr. Washington - Yes, right, the one, I guess the red one back there, right in
701 there.
702
703 Mr. Balfour - You do have a list in the file of what you intend to put in it,
704 which I suppose justifies why you would need it to be 28 by 28, rather than 24 by 24,
705 which is the acceptable size. We probably, you're building one a little bigger than would
706 be ordinarily allowed by four feet each way. I do see you've listed the property you want
707 in there, which is what I assume you're saying is your hardship as to why you need to
708 build it a little larger. You are going to tear down another building to put it in?
709
710 Mr. Washington - Now what I did here, is I've purchased the plans and then
711 had two different, one's a structural, how it'd be done, everything, you know, what I put
712 in it, the whole package of I was going to get to build it. Matter of fact, I got two of them,
713 and I sent them in when I proposed to get the permit. I don't know whether they still
714 have it in the Building Permit.
715
716 Mr. Balfour - You say your neighbors are satisfied with it? That you've
717 talked about it, neighbors so far as you know?
718
719 Mr. Washington - Yeah, well, I spoke to everybody; you know, I got the OK
720 from everybody; nobody had a problem with it at all, you know.
721

722 Mr. McKinney - Is this going to only be a garage, or are you going to have
723 anything else in this 28 by 28?

724
725 Mr. Washington - This is only going to be a garage; the only thing I'm going to
726 have is, like I say, I got this car I'm going to restore. Then I have three vehicles I know I
727 can't get all of them in there.

728
729 Mr. McKinney - I understand about your lawn equipment and automobiles.
730 Are you going to have a separate room in it?

731
732 Mr. Wright - Mr. Chairman, let me ask Mr. Blankenship a question. He
733 owns three lots here. How do you arrive at what is permitted for accessory purposes?
734 Does he get credit for those other lots?

735
736 Mr. McKinney - Or do you just get the minimum yard for that lot?

737
738 Mr. Wright - He doesn't get credit for the fact that he owns three lots?
739 Why?

740
741 Mr. McKinney - That's the way the Code's written. In other words what
742 happened why this came about, was some people took an R-2 or R-3 or R-4, that didn't
743 have it before, and they were building garages that were bigger than their houses, so
744 they had a lot of work sessions.

745
746 Mr. Wright - But that was on one lot.

747
748 Mr. McKinney - No, I mean they could have one lot that had five acres, but
749 the accessory used still came under the standards of what the minimum requirements
750 were for that lot, even though they may have five acres. Is that correct, Ms. Blackburn?

751
752 Mr. Kirkland - It doesn't make a lot of sense to me. What's the size of your
753 home?

754
755 Mr. Washington - I don't know the dimensions; I think you have a, there's a
756 picture of it; I don't have the dimensions in a particular; house was already there, when I
757 bought, the house was already there, so I don't know the correct dimensions.

758
759 Mr. Blankenship - Most of the houses out there look like 24 by 40. It shows on
760 his plot plan that there is an addition going off the back; I'm not sure what the
761 dimensions of that are.

762
763 Mr. McKinney - Mr. Washington, is this the garage you are going to build?

764
765 Mr. Washington - Well, what I'm saying, I was just giving you an example of
766 what I gave in to them. I gave them a, I purchased the 28 by 28 plans garage.

767

768 Mr. McKinney - But you turned this in to the building officials?
769

770 Mr. Washington - Not that one, no. I'm saying, I'll give you an example of what
771 I gave them. I don't know if that's the exact. I had two of them.
772

773 Mr. McKinney - How many overhead doors are you going to have?
774

775 Mr. Washington - Overhead doors? You mean entrance doors?
776

777 Mr. McKinney - Right.
778

779 Mr. Washington - Two
780

781 Mr. McKinney - You're only going to have 2 for a 28 by 28? Are they going
782 to be – what size doors?
783

784 Mr. Wright - I only have one for a 24 foot garage.
785

786 Mr. Washington - Well, 28 by 28, right? Like I say, I purchased the plans,
787 right. Now I'm not really into a contractor; I've retired from Philip Morris, you know, and
788 I really can't give you the dimensions per sé; only thing I can say is I bought the plans,
789 told them what I wanted, and they gave me a diagram what it would be like, what it
790 would cost, and then I went to a contractor. He was going to do the foundation and
791 everything and I was going to work with him on that. I carried the plans and everything
792 over to the County and turned in what they required me to turn in. I did turn in a plan as
793 to how everything would be done, and they accepted it and sent it in for the permit. The
794 permit was denied so then I applied for a variance.
795

796 Mr. McKinney - But you're going to have 2 overhead doors, then you're
797 going to have a service door, a walk-in door.
798

799 Mr. Washington - Right.
800

801 Mr. Nunnally - What is your occupation, Mr. Washington?
802

803 Mr. Washington - I'm retired sir; I'm retired from Philip Morris.
804

805 Mr. Nunnally - You're not going to do any work for other people in this
806 garage?
807

808 Mr. Washington - Oh no, sir; I don't have any other skills like that. If I do any
809 other work, it would be for somebody else, but I doubt it very seriously.
810

811 Mr. Balfour - Mr. Washington, I'm going to stick this in the file; you can get
812 it back in a month if you need it.
813

814 Mr. Washington - OK, all right; like I said, they have some other plans; I
815 assume they have it in the, I guess to the Building Permit or whatever; those were just
816 some plans I had bought, you know, what I wanted to get.

817
818 Mr. Kirkland - Any further questions of the Board members?
819

820 Mr. Blankinship - Let me just clarify in response to Mr. Wright's question a few
821 minutes ago; I finally found that section in the ordinance. In our district, the buildings
822 and structures in the aggregates may not occupy more than 30 percent of the required
823 rear yard for the district, so it doesn't depend on the size of the lot or the number of lots
824 in question.

825
826 Mr. Washington - May I address the Board for one moment about something?
827 Not trying to be indifferent about the situation per sé, but in the last, I've been there now
828 a year and half, in the last two years, which in my district is Montpelier, 5218, a variance
829 was given there to construct a garage which is much bigger than, well big as what I
830 want to do, so I'm just wondering, you know, could consideration be done on the
831 strength of that? Like he said, there's a lot of garages bigger than what I even think of
832 doing, you know. I'm just wondering, you know.

833
834 Mr. Kirkland - Well Mr. Washington, we judge each case.
835

836 Mr. Washington - Differently.
837

838 Mr. Kirkland - We don't group them all in one big group.
839

840 Mr. Washington - Yeah, I can understand; I was just wondering, yeah, okay.
841

842 Mr. Kirkland - Any further questions? Anyone else wish to speak on this
843 case? If not, that concludes your case.
844

845 Mr. Washington - Thank you.
846

847 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
848 Wright, the Board **denied the request**.
849

850 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

851 Negative: 0

852 Absent: 0

853

854

855 **(Resume discussion of A-148-99)**

856

857 Mr. Kirkland - Any objections from the Board members that we bring up the
858 past case? If you would, go back to case **A-148-1999**.
859

860 Mr. Smith - The Murrays and I have spoken, and we've agreed on a plan
861 that I think will work for both parties here. What we've agreed to is to plant six 6-foot
862 evergreens, and when we say evergreens, something along the lines of the Leyland
863 cypress or a holly, etc., and these are to be planted no more than 15 days after the
864 completion of the garage, and sooner if possible.
865
866 Mr. McKinney - Then we'll make that a condition.
867
868 Mr. Smith - That'd be fine.
869
870 Mr. Balfour - Six 6-foot evergreens within how many days of completion?
871
872 Mr. Smith - Fifteen.
873
874 Mr. McKinney - Let me ask you this now – when did you expect, or when did
875 your dad expect to start this garage?
876
877 Mr. Smith - The first thing we need to do if the variance is granted, is to
878 apply for a building permit, and the application is filled out. It's just a matter of taking it
879 over there; I'm guessing that would take three to four weeks to get, and construction
880 would start soon after that.
881
882 Mr. McKinney - You've thought about planting these trees, if you plant them
883 in the dead of winter?
884
885 Mr. Smith - I'm not a tree guy; you're barking up the wrong tree. My
886 knowledge ends as far as when, I hear the fall and the winter are good months, but I
887 couldn't...
888
889 Mr. McKinney - For the Murrays, though you put these trees in at 15 days
890 after completion, and they die.
891
892 Mr. Smith - Then we'd have to replace them.
893
894 Mr. McKinney - Then you're back where you started. We want to make sure
895 these trees are in there and they stay.
896
897 Mr. Smith - Absolutely. We agree. If we can plant them during
898 construction and in such a way where our contractors don't run over them, which
899 they've been known to do with backhoes and such.
900
901 Mr. McKinney - Who will plant these trees?
902
903 Mr. Smith - Typically when we've planted trees, a guy named Terry Hoy
904 has done it for us.
905

906 Mr. McKinney - Does he have a nursery?
907
908 Mr. Smith - Yes, Hoy's Nursery.
909
910 Mr. McKinney - Well, maybe the Murrays would agree that at the
911 recommendation of a nursery, to make sure these trees survive.
912
913 Mr. Smith - Well, if they don't, we certainly would replace them. I would
914 be happy to make that a condition.
915
916 Mr. McKinney - Or if you're willing to put them in 15 days after and replace
917 them if they don't live, within, how long?
918
919 Mr. Balfour - How about if we just say "replace as needed," or I've written
920 down here, "six 6-foot evergreens within 15 days of completion, or as recommended by
921 the nursery, or replace as needed." I think I could scratch "or as recommended by the
922 nursery" and just use "or replace as needed," if that satisfies.
923
924 Mr. Smith - Either is fine; either language is fine.
925
926 Mr. Wright - I think you could go ahead and plant the trees now, put them
927 in the ground now.
928
929 Mr. Balfour - Yeah, I'll leave the 15-day provision in there; I think for the
930 record we probably ought to have Mr. Murray come up and say grace.
931
932 Mr. Kirkland - Yes sir, would you come forward and state your name.
933
934 Mr. Murray - My name is John Murray. Yes, 15 days after completion of
935 the building would be satisfactory to us, providing that it calls for replacement of
936 anything that dies, and we'd prefer that to the recommendation of the nurseryman, since
937 there's a relationship between the nurseryman and the builder.
938
939 Mr. Balfour - Mr. McKinney said to put "replace as needed within 30
940 days," whereas you could say, "need to be replaced," and you'd never get around to it.
941
942 Mr. Murray - That'd be fine, no objection.
943
944 Mr. Kirkland - Any thing else, any Board Members have any other
945 questions? Anyone else wish to speak on this case? If not, that concludes the case.
946
947 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
948 Wright, the Board **granted the request.**
949
950 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
951 Negative: 0

952 Absent:

0

953

954 The Board **granted** this request as it found from the evidence presented that
955 authorizing this variance will not be of substantial detriment to adjacent property and will
956 not materially impair the purpose of the zoning regulations.

957

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

961 2. Within 15 days of the completion of construction the applicant shall plant a 6-
962 foot-tall evergreen screen along the property line between the garage and the
963 house at 301 Cheswick Drive. At the time of building permit application, a
964 landscape plan shall be submitted to the Planning Office for review and approval.
965 The screen shall be maintained in a healthy condition at all times. Dead plant
966 materials shall be removed within a reasonable time and replaced during the
967 normal planting season.

968 **A-150-1999**

Washington Memorial Park requests a variance from Section 24-
969 52(h) of Chapter 24 of the County Code to construct a mausoleum
970 at 6217 Memorial Drive (Tax Parcels 186-A-11D and 18), zoned A-
971 1, Agricultural District (Varina). The minimum side yard setback is
972 not met. The applicant has 22.4 feet minimum side yard setback
973 where the Code requires 400.0 feet minimum side yard setback.
974 The applicant requests a variance of 377.6 feet minimum side yard
975 setback.

976

977 Mr. Kirkland - Let's hear the use permit application concurrently with this
978 variance request.

979

980 **UP-44-1999**

Washington Memorial Park requests a use permit pursuant to
981 Section 24-52(h) of Chapter 24 of the County Code to construct a
982 mausoleum at 6217 Memorial Drive (Tax Parcels 186-A-11D and
983 18), zoned A-1, Agricultural District (Varina).

984

985 Mr. Kirkland - Any one else wish to speak on these cases besides the
986 applicant? If you would raise your right hand and be sworn in.

987

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

990

991 Mr. Hinson - I do.

992

993 Mr. Kirkland - State your name, sir.

994

995 Mr. Paul Hinson - My name is Paul Hinson with Koontz-Bryant and we
996 represent the applicant.
997
998 Mr. Kirkland - Have all the notices been turned in according to the County
999 Code on both cases?
1000
1001 Mr. Hinson - Yes they have.
1002
1003 Mr. Kirkland - Thank you sir, you may proceed with your case.
1004
1005 Mr. Hinson - We are representing Washington Memorial Park. We are
1006 requesting a variance to construct an additional mausoleum in close proximity to the
1007 existing mausoleum complex that is on the site. The County Code requires that a
1008 mausoleum be constructed twice the required setback from a residence in an
1009 Agriculture zoning. That setback is 400 foot. We are requesting this variance for
1010 several reasons; the main reason is to enable us to site the structure in close proximity
1011 to all the existing structures. Family members that have others in the existing structures
1012 wish to be as close to them as possible. Therefore we are trying to keep the
1013 mausoleums in the same area of the Park to create a complex, so to accommodate
1014 these requests.
1015
1016 We are not able to site the proposed structure in front of the existing buildings due to
1017 existing gravesites in the areas. There are many existing trees along the property line
1018 that would be preserved. There is an existing mausoleum structure that is currently
1019 located approximately 200 feet from the residences and that is closer to the property
1020 line than the proposed structure that we are requesting.
1021
1022 The mausoleum structure that we are requesting is approximately 600 feet from the
1023 nearest residence and is a greater distance from the property line than what is existing.
1024 (Refers to pictures as to screening and architecture). The proposed mausoleum will
1025 look like the existing one. If this variance is granted, then we would like to amend our
1026 conditional use permit to allow for the construction of the structure.
1027
1028 Mr. Wright - How far is that one from the property line?
1029
1030 Mr. Hinson - That particular structure is approximately 50 feet from the
1031 property line. We have sited the proposed structure at the minimum distance from the
1032 existing structure to allow access into the crypt area. You need a certain distance
1033 between there to get the equipment in there that is necessary to install the crypt. In
1034 1998, there was a variance granted for the construction of this proposed facility, since
1035 then we have redesigned the complex to maximize the distance from the residences.
1036
1037 Mr. McKinney - Mr. Hinson, why can't this go beside the other one? Why
1038 does it have to go in the rear?
1039

1040 Mr. Hinson - Well, beside the structure are exiting graves all the way
1041 around that area, also there is the existing road network in place.
1042
1043 Mr. McKinney - But you could change the road network.
1044
1045 Mr. Hinson - Yes, sir. We could redo the roadwork, but again there are
1046 many graves in the immediate vicinity and with all the existing infastructure in place.
1047
1048 Mr. McKinney - I don't know what you mean by the immediate vicinity, how
1049 far?
1050
1051 Mr. Hinson - There are graves directly in front of the existing mausoleum
1052 structure and there are graves...
1053
1054 Mr. McKinney - Directly in front?
1055
1056 Mr. Hinson - Yes, sir.
1057
1058 Mr. McKinney - How about to the side?
1059
1060 Mr. Hinson - No, sir. There are no graves between the road and the
1061 existing structure.
1062
1063 Mr. McKinney - So it could go on the side.
1064
1065 Mr. Hinson - There is not sufficient space right there as you can see,
1066 there are graves abutting the road so it is not possible for us to relocate the existing
1067 road.
1068
1069 Mr. McKinney - That is the circular road I see here on the map.
1070
1071 Mr. Hinson - Yes, sir.
1072
1073 Mr. McKinney - What about to the right of the mausoleum?
1074
1075 Mr. Hinson - We were trying to keep the structure as far away from the
1076 existing residence as possible. And that kept the structure another 100 feet from the
1077 residence.
1078
1079 Mr. McKinney - Mr. Blankinship, what is the maximum height of the
1080 mausoleum? Is there any?
1081
1082 Mr. Blankinship - I don't think there is a separate one from the regular A-I.
1083
1084 Mr. McKinney - And what is that height?
1085

1086 Mr. Blankinship - I don't know, Susan do you know? Thirty-five or 40 feet?
 1087
 1088 Mr. McKinney - How tall are your mausoleums?
 1089
 1090 Mr. Hinson - I would have to look at the elevations, I don't believe that we
 1091 are exceeding the height.
 1092
 1093 Mr. Blankinship - Forty-five feet.
 1094
 1095 Mr. McKinney - Thank you.
 1096
 1097 Mr. Kirkland - Anyone else wish to speak on this case? Any further
 1098 questions from Board Members? If not, that concludes the case.
 1099

1100 **A-150-99**

1101
 1102 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
 1103 McKinney, the Board **granted the request.**

1104	Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
1105	Negative:		0
1106	Absent:		0
1107			

1108
 1109 The Board **granted** this request, as it found from the evidence presented that
 1110 authorizing this variance will not be of substantial detriment to adjacent property and will
 1111 not materially impair the purpose of the zoning regulations.

- 1112
 1113 1. The property shall be developed in substantial conformance with the plan filed with
 1114 the application. No changes or additions to the layout may be made without the
 1115 approval of the Board of Zoning Appeals.
 1116
 1117 2. At the time of building permit application, the applicant shall submit the necessary
 1118 information to the Department of Public Works to ensure compliance with the
 1119 requirements of the Chesapeake Bay Preservation Act and the requirements of
 1120 Chapter 10 of the County Code apply. This includes water quality and erosion
 1121 control requirements. The applicant is responsible for contacting the Department of
 1122 Public Works.

1123
 1124 **UP-44-99**

1125
 1126 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
 1127 McKinney, the Board **granted the request.**

1128	Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
1129	Negative:		0
1130	Absent:		0
1131			

1132
1133 The Board **granted** this request, as it found from the evidence presented, that
1134 authorizing the revision of the use permit will not be of substantial detriment to adjacent
1135 property and will not materially impair the purpose of the zoning regulations.

1136
1137 1. The property shall be developed in substantial conformance with the plan filed with
1138 the application. No changes or additions to the layout may be made without the
1139 approval of the Board of Zoning Appeals.

1140
1141 2. At the time of building permit application, the applicant shall submit the necessary
1142 information to the Department of Public Works to ensure compliance with the
1143 requirements of the Chesapeake Bay Preservation Act and the requirements of
1144 Chapter 10 of the County Code apply. This includes water quality and erosion
1145 control requirements. The applicant is responsible for contacting the Department of
1146 Public Works.

1147

1148 **UP-42-1999** **Tarmac America, Inc.** requests a use permit pursuant to Sections
1149 24-52(d) and 24-103 of Chapter 24 of the County Code to renew
1150 extraction permit at Osborne Turnpike (Tax Parcel 213-A-2), zoned
1151 A-1, Agricultural District and M-2, General Industrial District
1152 (Varina).

1153 Mr. Balfour - Mr. Chairman I must abstain from this case.

1154 Mr. Kirkland - Any one wish to speak on this case? If you would, raise
1155 your right hand and be sworn in by the Secretary.

1156
1157 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1158 truth, the whole truth, and nothing but the truth, so help you God?

1159
1160 Mr. Kirkland - Have all notices been turned in according to the County
1161 Code?

1162
1163 Mr. Hinson - Yes, they have.

1164
1165 Mr. Kirkland - We have them. Proceed with the case.

1166
1167 Mr. Hinson - My name is Paul Hinson, I am with Koontz-Bryant we are
1168 representing Tarmac America for a renewal of an application to extract materials from
1169 the earth on a site located off Osborne Turnpike. This particular site has not been
1170 active for some time now. We are currently in the process in performing restoration in
1171 the areas that have been mined. We have an approved E & S controls plan that we are
1172 operating under that has been reviewed and approved by Henrico County. We also
1173 have a restoration plan for the within the mining area that we have submitted and are
1174 being reviewed by County Staff. We have installed a 400 foot paved entrance road with

1175 a washer rack in accordance with the conditions and we also have installed all of our
1176 barber poles.

1177
1178 We would like the Board to renew our permit.

1179
1180 Mr. McKinney - Mr. Blankinship, condition No. 20, have we standardize on
1181 this \$1,000.00 per acre or are we going between \$1,000.00 and \$2,000.00 per acre?

1182
1183 Mr. Blankinship - What we are doing at this point is, if we are counting the
1184 acreage for the whole parcel it is \$1,000.00 per acre, and if we are counting only the
1185 acreage of disturbed area, it is \$2,000.00 per acre.

1186
1187 Mr. Hinson - I believe Tarmac has posted all bonds.

1188
1189 Mr. McKinney - We had one come up before that was \$2,000.00. So you
1190 are saying that this whole area is to be disturbed?

1191
1192 Mr. Blankinship - Yes, sir.

1193
1194 Mr. Hinson - I would like to ask for a clarification of No. 12 in the
1195 conditions, if possible. It states that no topsoil will be removed from areas outside of the
1196 mining area. When this mine was originally opened, we striped the topsoil and placed it
1197 in large screening berms around the perimeter of the property. We would like to ask
1198 that that condition be modified to allow us to utilize the topsoil in these berms for the
1199 restoration of the mine area. They were voluntary screening berms. We are leaving
1200 them in place during the entire mining operations, but we would like to utilize that topsoil
1201 as part of our restoration plan. But it is outside of the permitted area of the mine, so it
1202 would require that that condition be modified to allow us to do that.

1203
1204 Mr. Kirkland - Does anyone else wish to speak? Seeing none, that
1205 concludes the case.

1206
1207 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1208 McKinney, the Board **granted the request**.

1209
1210 Affirmative: Kirkland, McKinney, Nunnally, Wright 5
1211 Negative: 0
1212 Abstained: Balfour 0

1213
1214 The Board **granted** this request, as it found from the evidence presented, that
1215 authorizing the renewal of this use permit will not be of substantial detriment to adjacent
1216 property and will not materially impair the purpose of the zoning regulations.

1217
1218 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the
1219 County Code.

1220

- 1221 2. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
1222 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
1223
- 1224 3. No operations of any kind are to be conducted at the site on Saturdays, Sundays,
1225 nor on national holidays.
1226
- 1227 4. All roads used in connection with this use permit shall be effectively treated by
1228 sprinkling or otherwise treated with water, calcium chloride, or other wetting
1229 agents to eliminate any dust nuisance.
1230
- 1231 5. Open and vertical excavations having a depth of 10 feet or more, for a period of
1232 more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to
1233 protect the public safety.
1234
- 1235 6. Trucks shall be loaded in a way to prevent overloading or spilling of materials of
1236 any kind on any public road.
1237
- 1238 7. All means of access to the property shall be from the established entrance onto
1239 Osborne Turnpike and over the applicant's roads and rights of way to the loading
1240 area at the James River as outlined on the map filed with the application.
1241
- 1242 8. The operation shall be so scheduled that trucks will travel at regular intervals and
1243 not in groups of three or more.
1244
- 1245 9. A standard stop sign (R-1-B) shall be installed and maintained at the Osborne
1246 Turnpike entrance.
1247
- 1248 10. Standard "Truck Entering Highway" signs shall be erected on Osborne Turnpike
1249 on each side of the entrances to the property. These signs will be placed by the
1250 County, at the applicant's expense.
1251
- 1252 11. A superintendent who shall be personally familiar with all the terms and
1253 conditions of Section 24-103 of Chapter 24 of the County Code as well as the
1254 terms and conditions of UP-42-99, shall be present at the beginning and
1255 conclusion of operations each work day to see that all the conditions of said
1256 Code and said Use Permit are carefully observed.
1257
- 1258 12. Topsoil shall not be removed from any part of the property outside of the area in
1259 which mining is authorized. Sufficient topsoil shall be stockpiled on the property
1260 for respreading in a layer with five (5) inches of minimum depth. If the site does
1261 not yield sufficient topsoil, additional topsoil shall be brought to the site to provide
1262 the required five-inch layer of cover. All topsoil shall be treated with a mixture of
1263 seed, fertilizer, and lime as recommended by the County of Henrico after soil
1264 tests have been provided to the County of Henrico. All topsoil shall be stockpiled
1265 within the authorized extraction area and provided with adequate erosion control
1266 protection.

- 1267
1268 13. The rehabilitation of the property shall take place simultaneously with the
1269 extraction process. Rehabilitation shall not be considered completed until the
1270 extraction area is covered completely with permanent vegetation.
1271
1272 14. Responsibility for maintaining the property, fences, and roads in a safe and
1273 secure condition indefinitely, or of converting the property to some other safe
1274 use, shall rest with the applicant.
1275
1276 15. Entrance gates shall be erected and maintained at all entrances to the property.
1277 These gates shall be locked at all times, except when authorized representatives
1278 of the applicant are on the property.
1279
1280 16. Erosion Control Plans shall be submitted to the Department of Public Works for
1281 review and approval within 30 days of the approval of the Use Permit.
1282 Throughout the life of this mining operation, the applicant shall continuously
1283 satisfy the Department of Public Works that erosion control procedures are
1284 properly handled and furnish plans and bonds that the department deems
1285 necessary. Applicant shall provide certification from a licensed professional
1286 engineer that dams, embankments and sediment control structure meet standard
1287 and approved design criteria as set forth by the State.
1288
1289 17. The areas approved for extraction under this permit shall be delineated on the
1290 ground by the erection of five (5) foot high metal posts at least five (5) inches in
1291 diameter and painted in alternate one (1) foot stripes of red and white. These
1292 posts shall be so located as to clearly define the area in which the mining is
1293 permitted. They shall be located, and the location certified by a certified
1294 surveyor, within ninety (90) days of the date of approval of this use permit by the
1295 Board of Zoning Appeals, or this use permit shall become void.
1296
1297 18. "No Trespassing" signs shall be posted and maintained on the property to warn
1298 against use of the property by unauthorized persons. The minimum letter height
1299 shall be three inches and signs are to be posted every 250 feet along the
1300 perimeter of the property. The applicant shall furnish the Chief of Police a letter
1301 authorizing enforcement by the County Police Officers of the "No Trespassing"
1302 regulations, and agreeing to send a representative to court for purposes of
1303 testimony whenever required or requested by the Division of Police.
1304
1305 19. Excavation operations shall be discontinued on said site by **December 31, 2001**,
1306 and restoration accomplished by not later than **December 31, 2002**, unless a
1307 new permit is applied for by not later than 60 days before the expiration of the
1308 permit, and is subsequently granted by the Board of Zoning Appeals.
1309
1310 20. Before beginning any work, the applicant shall provide a financial guaranty in an
1311 amount of **\$1,000.00** per acre for each acre of land to be disturbed, for a total of
1312 **\$77,000.00**, guaranteeing that the land will be restored to a reasonably level and

1313 drainable condition. This permit does not become valid until the financial
1314 guaranty has been approved by the County Attorney. The financial guaranty may
1315 provide for termination after 90 days notice in writing to the County. In the event
1316 of termination, this permit shall be void, and work incident thereto shall cease.
1317 Within the next 90 days the applicant shall restore the land as provided for under
1318 the conditions of this use permit. Termination of such financial guaranty shall not
1319 relieve the applicant from its obligation to indemnify the County of Henrico for any
1320 breach of the conditions of this use permit. If this condition is not satisfied within
1321 90 days of approval, the use permit shall be void.

1322
1323 21. The applicant shall furnish a certification from his bonding company each year,
1324 verifying that the bond is in effect, premiums have been paid, and the bonding
1325 company reaffirms its responsibility under the use permit conditions. This
1326 certification shall be submitted to the Board on December 31st, of each year.

1327
1328 22. This permit does not become valid until the bond, required in **condition No. 20**
1329 has been posted with the County, and necessary approval received. This must
1330 be accomplished within 90 days of the Board's action or the action becomes
1331 invalid.

1332
1333 23. A progress report shall be submitted to the Board on December 31st. This
1334 progress report must contain information concerning how much property has
1335 been mined to date of the report, the amount of land left to be mined, and how
1336 much rehabilitation has been performed, when and how the remaining amount of
1337 land will be rehabilitated, and any and all pertinent information about the
1338 operation that would be helpful to the Board.

1339
1340 24. If, in the course of its preliminary investigation or operations, applicant discovers
1341 evidence of the existence of cultural or historical material or the presence on the
1342 site of significant habitat or an endangered species, it will notify appropriate
1343 professional or governmental authorities and provide them with an opportunity to
1344 investigate the site and applicant will report the results of such investigation to
1345 the Planning Office.

1346
1347 25. The applicant shall comply with the Chesapeake Bay Preservation Act and all
1348 state and local regulations administered under such act applicable to the property
1349 and shall furnish to the Planning Office copies of all reports required by such act
1350 or regulations.

1351
1352 26. In the event that an appeal of the Board's approval action is filed, all conditions
1353 requiring action on the part of the applicant within 90 days are considered
1354 satisfied if the required actions take place within 90 days of final action on the
1355 appeal process by the courts.

1356

- 1357 27. The applicant must obtain a mine license from the Division of Mineral Mining,
1358 Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90
1359 days of the approval of this use permit or the use permit is void.
1360
- 1361 28. No offsite-generated materials shall be deposited on the mining site unless the
1362 materials and the plans for their placement have been approved by the Planning
1363 Office.
1364
- 1365 29. A sign shall be posted at the entrance to the mining site stating the name of the
1366 operator, the Henrico use permit number, the Division of Mineral Mining mine
1367 license number, and the phone number of the operator. The sign shall be 12
1368 square feet in area and shall be properly maintained.
1369
- 1370 30. All drainage and erosion and sediment control measures shall conform to the
1371 standards and specifications of the Mineral Mining Manual Drainage Handbook
1372 and/or the Erosion and Sedimentation controls as regulated by the Department of
1373 Public Works whichever is more stringent. Any drainage structures in place prior
1374 to October 14, 1992, and which do not conform to the Mineral Mining Manual
1375 Drainage Handbook, said structures shall be brought into compliance with the
1376 appropriate regulations.
1377
- 1378 31. The haul road shall be paved for a distance of 400 feet of Osborne Turnpike and
1379 the road may remain in place until such time as any reconstruction is required, at
1380 which time pavement shall be kept in good repair.
1381

1382 On a motion by Mr. Balfour, seconded by Mr. Wright, the June 24, 1999 minutes were
1383 approved as corrected.
1384

1385 There being no further business and on a motion by Mr. McKinney, seconded by Mr.
1386 Nunnally, the Board adjourned until December 16, 1999.
1387
1388

1389 Richard Kirkland, Chairman

1390

1391 Benjamin Blankinship, AICP, Secretary