

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, AUGUST 25, 2005, AT 9:00 A.M., NOTICE HAVING**  
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON AUGUST 4 AND 11,**  
6 **2005.**  
7

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

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

8  
9 Mr. Wright - Ladies and gentlemen, welcome to the August meeting of  
10 the Board of Zoning Appeals of Henrico County. Would you please stand and join me in  
11 the **Pledge of Allegiance to the Flag of Our Country**. Mr. Secretary, would you read  
12 the rules, please.  
13

14 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies  
15 and gentlemen. The rules for this meeting are as follows. I will announce each case.  
16 Then at that time the applicant should come to the podium. I will ask everyone who  
17 intends to speak on that case, in favor or in opposition, to stand and be sworn in. The  
18 applicants will then present their case. After the applicant has spoken, the Board will  
19 ask them questions, and then anyone else who wishes to speak will be given the  
20 opportunity. After everyone has spoken, the applicant, and only the applicant, will be  
21 given the opportunity for rebuttal. After hearing the case, and asking questions, the  
22 Board will take the matter under advisement. They will render all of their decisions at  
23 the end of the meeting. If you wish to know their decision on a specific case, you can  
24 either stay until the end of the meeting, or you can call the Planning Office later this  
25 afternoon, or you can check the website. The vote on each case will be posted to our  
26 website within an hour of the end of the meeting. This meeting is being tape recorded,  
27 so we will ask everyone who speaks, to speak directly into the microphone on the  
28 podium, to state your name, and to please spell your last name. And finally, out in the  
29 foyer, there are two binders, containing the staff report for each case, including the  
30 conditions that have been recommended by the staff.  
31

32 **Beginning at 9:00**  
33

34 Mr. Wright - Thank you sir. Do we have any requests for withdrawals or  
35 deferrals?

36  
37 Mr. Blankinship - No sir.

38  
39 Mr. Wright - Please call the first case.

40  
41 **UP- 13-2005 WEST END ASSEMBLY OF GOD** requests a temporary  
42 conditional use permit pursuant to Section 24-116(c)(1) to install a  
43 tent and a mobile box office at 401 Parham Road (Parcel 753-736-  
44 0655), zoned R-1, One-family Residence District (Tuckahoe).

45  
46 Mr. Wright - Does anyone else desire to speak with reference to this  
47 case? Would you raise your right hand and be sworn please?

48  
49 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
50 truth, the whole truth, and nothing but the truth, so help you God?

51  
52 Mr. Ruhlen - I do. Terry Ruhlen. At West End we've had a Christmas  
53 program for about twenty years, and right now it probably serves about 25,000 people  
54 over the run of the two-week period we run it. It's the first two weeks of December.  
55 We're looking for two things here, first a portable ticket facility that we had last year. We  
56 found that the church has outgrown its inside space. We needed an area outside. We  
57 found that it made it easier last year also for people to find the ticket booth, because  
58 they didn't have to wander around the inside of the church. We took some suggestions  
59 from the County, and we moved it to a location that made it accessible but out of sight  
60 of the public. It worked really well last year; we put it right next to our gymnasium  
61 facility; there was no need for any sanitary facilities to be hooked up to it. It takes about  
62 three spaces. Any questions?

63  
64 Ms. Dwyer - I notice in the conditions that it states that the trailer shall not  
65 occupy any handicapped parking places. The photo we have shows a handicapped  
66 parking area. I don't believe that's actually where you're going to put it, but I just  
67 wanted some confirmation.

68  
69 Mr. Ruhlen - That's correct. It's not going to be there. It's going to be put  
70 in a more remote area, but it does take three handicapped spaces, but we have  
71 identified six others, which are actually better access for handicapped, because the  
72 sloping area of those handicapped spaces were kind of rough on some of the  
73 wheelchair folks.

74  
75 Mr. Wright - So you've moved those handicapped spaces, so we still  
76 have the same number of handicapped spaces.

77  
78 Mr. Ruhlen - Well, we have three extra. We've moved them, and then  
79 when we remove the trailer, we go back to those old handicapped space.

80  
81 Ms. Dwyer - I'm not clear on – you are actually taking up handicapped  
82 spaces?  
83  
84 Mr. Ruhlen - Well, we are, and it has been moved from where the picture  
85 is, but we have a row of probably fifteen handicap spaces, and we have them in the far  
86 corner; we take the last three of those handicap spaces, but we identify, in the parking  
87 area, six additional handicap spaces, just for the Christmas program.  
88  
89 Ms. Dwyer - Okay, so you have six temporary handicap spaces that you  
90 add to compensate for the ones that you move. Okay, then we would need to amend  
91 the condition.  
92  
93 Mr. Blankinship - We would need to re-word the condition.  
94  
95 Ms. Dwyer - We should re-word Condition # 2 then to say there would be  
96 no net loss of handicap spaces, something to that effect. They'll still have the required  
97 number, because you are actually using them. Talk to me about the tent. There is  
98 nothing in the staff report about the tent.  
99  
100 Mr. Ruhlen - The tent was an add-on. Four or five years ago we felt the  
101 need for a tent to store some of our props, because we are a church, and we're not  
102 really set up like you would a theater. We put that out back, and we found we needed a  
103 permit for that too. We didn't realize that until this year, as we went through some other  
104 activity, and the County just asked what the tent was doing there. We didn't realize we  
105 needed a permit for the tent. That's out in the back area; it's a 30 by 30, takes up 900  
106 square feet. We've got the Code for the set-up of the tent and the setbacks and that  
107 sort of thing. It really is something we needed, helps us to comply with life safety issues  
108 in the church, because we actually had stored some props in some hallways in the back  
109 that really are supposed to be fire corridors, so it really helps us in that regard too.  
110  
111 Ms. Dwyer - When will the tent be erected, and when will it be removed?  
112  
113 Mr. Ruhlen - We plan the middle of October, and then remove it probably  
114 after Christmas, when we get all of our stuff moved from there.  
115  
116 Ms. Dwyer - Could you give me some dates?  
117  
118 Mr. Ruhlen - October 15 till January 15, and it probably would be removed  
119 sooner than that.  
120  
121 Mr. Kirkland - Does this tent have closed sides or electricity running to it?  
122  
123 Mr. Ruhlen - It has portable sides that we can hang on it; they're not solid  
124 sides. We do run some electricity to it during our show time if we have to make a repair  
125 or something that takes electrical work, we'll run a cord out there to run a saw.

126  
127 Mr. Kirkland - So you do physical work in there. If something's broken, you  
128 fix it in there, correct?  
129  
130 Mr. Ruhlen - Right, it's primarily storage, but for weather purposes it  
131 keeps us out of the weather when we have to work.  
132  
133 Ms. Harris - Are these the same positions as last year, the position for  
134 the tent and the mobile unit?  
135  
136 Mr. Ruhlen - That's correct, yes ma'am.  
137  
138 Ms. Harris - Do you have pictures of that from last year?  
139  
140 Mr. Ruhlen - No ma'am, I don't. I could get them to you though.  
141  
142 Mr. Wright - Any further questions of the Board? Is anyone here in  
143 opposition to this request? Hearing none, that concludes the case. UP-13-2005.  
144  
145 Ms. Dwyer - I move we approve. I believe we also need to have some  
146 conditions relating to the tent, however. They said they would erect the tent on October  
147 15 and remove it by January 15, so I'd like to have that in there.  
148  
149 Mr. Wright - I think we need that. They were here last time, and they  
150 came back because they didn't have the tent approved. So we need some conditions  
151 on the tent.  
152  
153 Ms. Dwyer - I'm wracking my brain to think of any other conditions that  
154 might be appropriate for the tent. They're limited in size to a 30 by 30, but I believe  
155 that's part of the application. They mentioned that it would be 30 by 30. I don't know if  
156 that's part of the application.  
157  
158 Mr. Blankinship - They own the tent, so that's going to be the tent that they  
159 use.  
160  
161 Ms. Dwyer - Let's just say that they're allowed to put up a 30 by 30 tent  
162 for that period of time. Do we want to say anything about electrical connections that  
163 might be taken there? I'd hate to have extension cords creating some sort of a safety  
164 hazard, strung out to the tent. Do we typically take a look at that?  
165  
166 Mr. Blankinship - I can't recall where we've addressed it.  
167  
168 Mr. Kirkland - They had it last year, didn't they, Mr. Blankinship?  
169

170 Mr. Blankinship - Yes, that was the problem, they bought the tent, put it up  
171 when they needed it, and then the more they had it up, the more they needed it, and it  
172 got to be a permanent fixture.

173  
174 Mr. Kirkland - Do we have any complaints based on working in it,  
175 construction going on inside of it, or anything?  
176

177 Mr. Blankinship - No, we just happened to notice it when we were doing our  
178 field visit for the other storage unit that they do in the spring.

179  
180 Ms. Dwyer - I think last year they had furniture, and they were just using it  
181 for anything and everything.

182  
183 Mr. O'Kelly - The tent also requires a permit from the Fire Marshal.

184  
185 Ms. Dwyer - So the Fire Marshal will look into that sort of thing. So just  
186 another condition defining the 30 by 30 tent and the time at which it may be set up, as  
187 October 15 to January 15. That's my motion.

188  
189 Mr. Wright - Okay. Any further discussion?

190  
191 Mr. Blankinship - Is there a second?

192  
193 Mr. Kirkland - I seconded it.

194  
195 Ms. Harris - So you're not going to put any type of stipulation regarding  
196 the Fire Marshal, or is that understood?  
197

198 Mr. Blankinship - I can add that to that same condition, that they'll get the  
199 appropriate permits.

200  
201 Mr. Kirkland - Add that to that.

202  
203 Mr. Wright - Won't hurt to put it in. All in favor, say aye. Opposed, no.  
204 It's approved, with those conditions.

205  
206 After an advertised public hearing and on a motion by Ms. Dyer, seconded by Mr.  
207 Kirkland, the Board **granted** application **UP-13-2005** for a temporary conditional use  
208 permit to install a tent and a mobile box office at 401 Parham Road (Parcel 753-736-  
209 0655). The Board granted the use permit subject to the following conditions:

210  
211 1. [AMENDED] The trailer shall be removed from the site on or before  
212 December 17, 2005.

213  
214 2. [AMENDED] The trailer shall not block any walkways required for  
215 handicapped accessibility. Any required handicapped-accessible parking

216 spaces occupied by the trailer shall be compensated for in the most  
217 accessible location.

218  
219 3. Any sanitary facilities in the trailer shall be connected to a disposal system  
220 approved by the Health Department.

221  
222 4. [ADDED] One 30-foot by 30-foot tent may be erected no earlier than  
223 October 15, 2005. All necessary permits shall be requested from the Fire  
224 Marshall. The tent shall be removed no later than January 15, 2006, at which time  
225 this permit shall expire.

226  
227 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
228 Negative: 0  
229 Absent: 0

230  
231 The Board granted the request because it found the proposed use will be in substantial  
232 accordance with the general purpose and objectives of Chapter 24 of the County Code.

233  
234 New Applications

235  
236 **A - 90-2005** **ROGER ALSTON** appeals a decision of the Director of Planning  
237 pursuant to Section 24-116(a) regarding the property at 1300  
238 Meadowfield Lane (The Meadows Apartments) (Parcel 783-763-  
239 4721), zoned R-6C, General Residence District (Conditional)  
240 (Fairfield).

241  
242 Mr. Wright - Would the applicant please come forward. Not here. We'll  
243 pass it by for a few minutes, but we don't want to hold our esteemed Attorney here too  
244 long. We'll wait just a few minutes. Call the next case.

245  
246 Mr. Blankinship - Shall I call for Mr. Alston again? (**after completion of UP-  
247 18-2005 W. L. Hailey Co., Inc. case hearing**)

248  
249 Mr. Wright - Call for Mr. Alston again.

250  
251 Mr. Blankinship - Mr. Tokarz does have other business to attend to this  
252 morning. Let's take his testimony, and if Mr. Alston comes, give him a chance to speak.

253  
254 Mr. Wright - We could do that. He won't have a chance to rebut it, or we  
255 could defer it to the next meeting. What would be your pleasure?

256  
257 Mr. Tokarz - Mr. Chairman, I'd rather have this case heard right now. If  
258 Mr. Alston wants to come and testify, that would be fine. I don't think there's any real  
259 question about the issues here. If I'm not mistaken, you've got the three photos in your  
260 record?

261

262 Mr. Wright - All right then, let's proceed with the case. Please raise your  
263 right hand.  
264

265 Mr. Blankinship - Aaron, why don't you stand up too, just in case you testify?  
266

267 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
268 truth, the whole truth, and nothing but the truth, so help you God?  
269

270 Mr. Tokarz - I do. Mr. Chairman, my name is Tom Tokarz; I'm in the  
271 Henrico County Attorney's Office. With me is Aaron Graves, who is the inspector who  
272 gave the notice of violation on this case. This is a fairly straightforward case. We have  
273 a commercial vehicle. One of the pictures that you should have, shows on the license  
274 plate that it is identified by the DMV as a tow truck with the license plate, 5783 WT. If  
275 you don't have that in your files, I certainly have that here, and would be glad to provide  
276 that to Mr. Blankinship.  
277

278 Mr. Wright - Pass that on down. I haven't got that.  
279

280 Mr. Kirkland - Me neither.  
281

282 Mr. Tokarz - Under the Code, given the fact that this is R-6 Residential  
283 Zone, we have two sections of the Code which prohibit the parking of a commercial  
284 vehicle in a Residential Zone, except for loading and unloading. One is 24-11; the other  
285 is 24-96, I believe it's "e." The purpose of the provision is simply to have residential  
286 areas reserved for residential activity, and to have business activity take place in  
287 business zones. In other cases we've had in the past, we've told operators of wrecker  
288 companies that they can park their vehicles (wreckers) in business zones, and that has  
289 occurred. There has been one case litigated in the Circuit Court of Henrico County  
290 back in the '90's, and in that case, the Court did enter an injunction to prevent the  
291 wrecker from being in the residential area. We would ask you to deny the appeal here  
292 to find that the inspection, notice of violation was proper, and that Mr. Alston's remedy  
293 really is to go to the Board of Supervisors, rather than to the BZA, that the  
294 Administrative Decision here really should be upheld.  
295

296 Ms. Dwyer - Is the basis of the appeal that notice was improper for some  
297 technical reason?  
298

299 Mr. Tokarz - No, as I understand, and Mr. Blankinship has the actual  
300 Appeal form, my understanding is that Mr. Alston simply would like to be able to live in  
301 the apartments and walk out to go and use his wrecker, and not have to park it  
302 somewhere else. He'd like to park it where he lives; that's my understanding. Mr.  
303 Blankinship can tell you exactly what the Appeal Notice says.  
304

305 Mr. Blankinship - What he submitted in writing is, "I cannot park wrecker with  
306 license # in front of my house or near my house, although I use it 24 hours a day. I tried  
307 to apply for a variance, but your office personnel would not let me, instead told me I

308 could only file an appeal.” It’s a use, of course, so he can’t apply for a variance for a  
309 use.

310  
311 Mr. Tokarz - So really, this is a matter of convenience. Certainly we can  
312 understand wanting to have your wrecker right outside your door, but it is a residential  
313 area, and should be reserved for residential activity, and therefore we ask you to deny  
314 the appeal.

315  
316 Ms. Harris - I notice that you’re keeping up with it quite closely. Is that  
317 because the neighbors are reporting every time he parks?

318  
319 Mr. Tokarz - Mr. Graves is the inspector.

320  
321 Mr. Graves - Yes ma’am, the first inspection was the result of a neighbor  
322 complaint. My understanding is the apartment driveway is basically right behind the  
323 truck in the picture, and it presents a sight line issue when people are coming in and out  
324 of the apartments.

325  
326 Ms. Dwyer - Which is one of the reasons the ordinance exists, to keep  
327 these larger trucks out of the residential areas. Thank you.

328  
329 Mr. Wright - Anything further? All right, we’ll just take that under  
330 advisement and at the end of the docket we’ll decide. If he shows, we’ll have him testify  
331 and make a decision.

332  
333 Mr. Tokarz - That will be fine. I don’t need to be here for his testimony; I  
334 think it’s very straightforward.

335  
336 **(Voice from audience)**

337  
338 Mr. Wright - Yes sir, come to the microphone.

339  
340 Mr. Baughan - Yes, my name is John Baughan, and I’m a resident of  
341 Connecticut Avenue there, and I represent really seven people, opposite the  
342 apartments, and I’m one of the first ones who called in with the complaint.

343  
344 Mr. Blankinship - Mr. Chairman, I don’t think this gentleman was sworn.

345  
346 Mr. Wright - I’m sorry, Mr. Baughan. Would you be sworn? I didn’t have  
347 any idea you wanted to speak, but I’m glad to hear from you.

348  
349 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
350 truth, the whole truth, and nothing but the truth, so help you God?

351  
352 Mr. Baughan - Yes, I do. John Baughan. This is one of many vehicles he’s  
353 brought there; some have his name on it, some are loaded with cars, with a second one



354 in tow, wrecked cars. Myself, leaving there, I've had almost to stop many times  
355 because people will pull out in front of me from behind the wrecker. The apartment  
356 apparently has no place for commercial vehicles; it has no place for large trailers, so  
357 they park them on the street. I'm here today speaking for the seven residents on the  
358 south side of Connecticut Avenue. That also is a corridor that feeds Longdale  
359 Elementary School, so there's a lot of traffic and neighborhoods coming from behind  
360 that area. So I'm definitely, and the people I speak for, are opposed to having these  
361 huge vehicles. There have been dump trucks, tractor-trailers, you name it.

362  
363 Mr. Wright - So you definitely can tell us, you have observed these  
364 vehicles.

365  
366 Mr. Baughan - Yes, I have, and I've been in touch with this gentleman over  
367 here.

368  
369 Mr. Wright - We certainly appreciate your appearing.

370  
371 Ms. Dwyer - Do you know if all these other vehicles you've mentioned,  
372 belong to this applicant, or do they belong to others?

373  
374 Mr. Baughan - I don't know that some of the vehicles belong to him, but  
375 previously some of them have "Alston Towing" written on the side of them in logo, so I  
376 know they were his. As I've claimed, they come in at night. He's not there during the  
377 day when a lot of the County people will come by and check. Before someone gets  
378 hurt, I've talked to the apartment people as well. They've been cooperative, but they  
379 say it's not their problem.

380  
381 Ms. Harris - You say you have quite a problem with trucks coming to that  
382 area?

383  
384 Mr. Baughan - Not a problem with trucks; it's a problem with them parking in  
385 front of the apartments, as well as rather large tow-behind trailers. Apparently the  
386 people who live there have trailers, and the apartments have no place for them to park  
387 anything but automobiles, so they park on the street.

388  
389 Ms. Harris - So this is a problem for the subdivision?

390  
391 Mr. Baughan - Yes, it is. It's a huge traffic corridor through there anyway.  
392 I've been there 35 years, and I've never seen anything like it, because they keep adding  
393 divisions with no outlet except that main street.

394  
395 Ms. Harris - And you do alert the inspector every time you notice this?

396  
397 Mr. Baughan - Not every time, but recently, because of the hearing, I've let  
398 him know when it's there, as have other people on the block. I'm not the only one.

399

400 Ms. Harris - I'm asking you, do you let the inspector know when the other  
401 vehicles are parked unauthorized?

402  
403 Mr. Baughan - Yes, I have.

404  
405 Mr. Wright - Thank you very much for appearing. Any further questions  
406 from the Board?

407  
408 **(Voice from audience)**

409  
410 Mr. Wright - Yes sir. Love to hear from you. Please raise your right hand  
411 and be sworn.

412  
413 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
414 truth, the whole truth, and nothing but the truth, so help you God?

415  
416 Mr. Lloyd - I do. My name is John Lloyd. I live just beyond where this  
417 gentleman parks these tow trucks, and you have to pass through there to get to my  
418 home. I don't know that it's a big issue or anything, but Mr. Alston has parked tow  
419 trucks there numerous times. He had an older one. The picture you have is of his  
420 newer one. The older one is a big diesel truck, and they're dirty and greasy in the back.  
421 That's his newest one there, that I've seen, hasn't even got his name on it yet, but  
422 they're dark, and that roll-back height is windshield height on a car, and when you turn  
423 off Route 1, that's what you see. The big issue with that is that you're driving right at  
424 this thing, basically is you're relying on your car headlights to see it. There's no  
425 reflectors or anything, and the older truck is dirty on the back end from use, and there's  
426 no reflectors, you cannot see it until your headlights actually illuminate it. Right behind  
427 where he parks it, is the entrance to this apartment complex, and when you're coming  
428 down off of Connecticut to come out onto Route 1, the people coming out of the  
429 apartment, they can't see around this truck, so they pull out in front of you. Mr.  
430 Baughan mentioned numerous vehicles. I believe it was night before last, I counted,  
431 there were some people parked pick-up trucks out there with just little tow-behind utility  
432 trailers and that sort of thing, and it's gone from Mr. Alston's truck. Three days ago we  
433 had a Kenworth, no trailer, just a tractor, parked out there. It's like anything else in life –  
434 you get one, then you've got two, then you've got five, and the other evening there were  
435 seven. Some of them were just pick-up trucks, with an empty boat trailer behind it. I  
436 know they all live in the apartment; they were nice-looking stuff; they had licenses on  
437 them; there was nothing wrong. Mr. Alston would sometimes have junked cars on the  
438 trucks, but he's not driving or parking any junk on the street, but you end up with this  
439 row of vehicles down, and you just can't see to come or go from the apartments.

440  
441 Mr. Wright - Thank you very much. Any further questions of the Board?  
442 That concludes the case for the moment. We will wait to see if Mr. Alston appears and  
443 decide the case at the end of the docket.

444  
445 **(A-90-2005 is called again at the end of the docket. There is no response.)**

446  
447 Mr. Wright - A-90-2005.  
448  
449 Ms. Harris - I move that we deny this appeal.  
450  
451 Mr. Wright - Motion's made. Is there a second?  
452  
453 Mr. Kirkland - Second.  
454  
455 Mr. Wright - Motion's made and seconded that we deny the appeal. All in  
456 favor, say aye. Opposed, say no. It's denied.  
457  
458 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
459 Kirkland, the Board **denied** application **A-90-2005**, appealing a decision of the Director  
460 of Planning regarding the property at 1300 Meadowfield Lane (Tax Parcel 783-763-  
461 4721).  
462  
463 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
464 Negative: 0  
465 Absent: 0  
466  
467 The Board sustained the decision of the Planning Director as it found from the evidence  
468 presented that the Director of Planning interpreted and applied the law correctly.  
469  
470 **UP- 18-2005** **W. L. HAILEY CO., INC.** requests a temporary conditional use  
471 permit pursuant to Section 24-116(c)(1) to store materials for a  
472 County utility project at 354 -368 East Williamsburg Road (Battle  
473 Park) (Parcels 829-715-9446, 8847 and 8447), zoned B-1 and B-3,  
474 Business District (Varina).  
475  
476 Mr. Wright - Does anyone else desire to speak with reference to this  
477 case? Would you raise your right hand and be sworn please?  
478  
479 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
480 truth, the whole truth, and nothing but the truth, so help you God?  
481  
482 Mr. Boynton - I do. Tom Boynton. W. L. Hailey Co. has been awarded a  
483 contract to install water and sewer pipelines for Henrico County in the Sandston area.  
484 The temporary staging area provided via the contract documents is quite a ways away  
485 from the site, so what we intend to do is utilize the site adjacent to the work zone,  
486 renting it from a local landowner, for temporary storage of water and sewer related  
487 construction materials, and some equipment, some tool sheds, while the construction  
488 commences, and then upon completion we would rectify it to its pre-existing condition  
489 per our agreement with the landowner.  
490  
491 Mr. Nunnally - Have you read the conditions sir?

492  
493 Mr. Boynton - Yes sir  
494  
495 Mr. Nunnally - Are you agreeable with all of them?  
496  
497 Mr. Boynton - The only thing that I would like to modify is possible a 7:00  
498 am to 5:00 pm, as opposed to the 8:00 am to 5:00 pm, if that's a possibility, for the  
499 hours of operation on the site.  
500  
501 Mr. Nunnally - If you change that to 7:00 am to 5:00 pm, they'll probably be  
502 down there at 6:00 am. That's your problem there.  
503  
504 Mr. Wright - What time do you normally begin your work?  
505  
506 Mr. Boynton - Generally at 7:00 am. Most times the start-up is out on the  
507 site at various locations, but there will be trucks back and forth, getting tools and  
508 equipment and things like that.  
509  
510 Mr. Wright - I take it the reason for the 8:00 am is the noise factor, Mr.  
511 Blankinship?  
512  
513 Mr. Blankinship - Yes sir.  
514  
515 Mr. Wright - Is there a possibility that it could be limited to what they do  
516 beginning at 7:00 am, that would take care of that?  
517  
518 Mr. Blankinship - I don't know that 7:00 am would cause us any great  
519 problems. Now that we're getting back to school and so forth, 7:00 am is probably .....  
520  
521 Mr. Boynton - For what it's worth, the activity that goes on at those early  
522 hours doesn't involved equipment per se; it's usually pick-up trucks backing up to  
523 storage containers and loading up tools for the day, handwork.  
524  
525 Mr. Nunnally - Someone told me that they saw some activity going on down  
526 there last Sun. or Sun. before last, when they were coming back from church. You  
527 realize this says "no operation on Sun. at all"?  
528  
529 Mr. Boynton - That's correct. Our intent is to limit our time out there  
530 anyway. We can't afford to work those Sundays as it is; I think there was come catch-  
531 up activities that they wanted to do, but the intent is to not be out there on Sundays.  
532  
533 Ms. Dwyer - You mentioned something about storage sheds, and this just  
534 talks about equipment, and machinery, and materials, I guess like sand and gravel and  
535 that sort of thing. What kind of sheds are you .....

536  
537 Mr. Boynton - Sheds probably isn't a good descriptive word. They are

538 containers, shipping containers, Con-X boxes; they're lockable steel containers, 20 feet  
539 and 40 feet long, for keeping tools in so we don't lose them.

540

541 Mr. Blankinship - Do we have any photos?

542

543 Ms. Dwyer - There is a photo that shows one of those containers.

544

545 Mr. Kirkland - Is this area secure at all times? Is it locked, gated, fenced?

546

547 Mr. Boynton - It is not fenced, but the containers that we use are locked,  
548 secure.

549

550 Ms. Dwyer - How many containers do you think you'll have on there at  
551 any one time?

552

553 Mr. Boynton - Three.

554

555 Ms. Harris - How long have you been storing materials on this site?

556

557 Mr. Boynton - For a few months.

558

559 Ms. Harris - And you were saying that the storage area is near the area  
560 where you actually are doing the work?

561

562 Mr. Boynton - That's correct; it's quite a broad area. There's some work on  
563 the other side of I-64, down Nine Mile, down Williamsburg Road, over on Defense  
564 Avenue, so it's a pretty broad work zone, but that's quite a central location. It's right at  
565 the corner of West and Williamsburg, but it brings it real close to Nine Mile and  
566 Williamsburg, which is about the center of the project.

567

568 Ms. Harris - The site map that we have, with the two areas blocked off in  
569 yellow, can you identify those sites – which one is the storage, and I assume the  
570 storage is the one near West Street.

571

572 Mr. Blankinship - Let's go back to the, not the photos, the site map.

573

574 Ms. Harris - Can you identify the areas that are blocked off here?

575

576 Mr. Boynton - Yes. Right where the arrow points is the basic area. The  
577 long rectangle that heads up towards the B-3, that encompasses the whole property  
578 that the owner owns that we're renting from, but we're only using the portion from the  
579 structure in the upper right-hand corner of that smaller section there, kind of close to  
580 where the arrow is, from that area back towards Williamsburg Road.

581

582 Mr. Blankinship - So the 368 address is really where you're concentrated?

583

584 Mr. Boynton - That's correct.  
585

586 Ms. Harris - What are those two areas in yellow, across West Street,  
587 between West Street and Nine Mile Road? I was wondering why that was?  
588

589 Mr. Boynton - I think the yellow area there is the auto repair; I can't  
590 remember the name of it, but it's an auto repair shop.  
591

592 Mr. Blankinship - I'm embarrassed to say I don't know.  
593

594 Mr. Boynton - The long, skinny building off of Williamsburg Road, is Opie's  
595 Restaurant; Chuck's Market is at the 390.  
596

597 Ms. Harris - I was just wondering why the highlight; that's why I was  
598 wondering. The other thing – you are located in a residential community, are you not,  
599 the storage area?  
600

601 Mr. Boynton - Yes, residential backs up to the one far upper left corner of  
602 that residential section.  
603

604 Ms. Harris - So you have had no complaints from the residents in the  
605 area?  
606

607 Mr. Boynton - No, we have not.  
608

609 Mr. Wright - Any further questions of the Board? Is anyone here in  
610 opposition to this request? Hearing none, that concludes the case. UP-18-2005.  
611

612 Mr. Nunnally - Move we approve it. Do you say we'll be having a problem  
613 with that 7:00 o'clock, Mr. Blankinship? Kids go to school mighty early nowadays.  
614

615 Mr. Blankinship - It's really in your hands.  
616

617 Mr. Wright - With that change in the condition to 7:00 o'clock. Is there a  
618 second?  
619

620 Ms. Dwyer - Second.  
621

622 Mr. Wright - Seconded. Any discussion?  
623

624 Ms. Harris - My concern here, and I'm wondering if this is a concern of  
625 anyone else, at 7:00 am, with the students catching the school buses and in view of  
626 what's happening, even over the last 24 hours, school buses and students, or vehicular  
627 accidents and children, I'm just wondering if 7:00 is really putting children in harm's way.  
628 I don't know if you've thought about that.  
629

630 Mr. Wright - This is a pick-up spot; I didn't understand there would be  
631 continual trucks coming in and out, would there be? To pick up the stuff and take it  
632 somewhere, they may not even need it at that time of the morning.

633  
634 Ms. Dwyer - It's not a construction site, per se, they might go pick up  
635 some equipment and leave.

636  
637 Mr. Wright - It isn't like they're coming in and out all day long.

638  
639 Ms. Harris - It might be 3:00 o'clock, but it might also might be 7:00 am  
640 that a truck would pull in, that they are boarding. I just feel that the area has its  
641 problems and fatalities. That's my reservation about this problem.

642  
643 Ms. Dwyer - Also, this is a B zone, a business zone along West Street  
644 and along Williamsburg.

645  
646 Ms. Harris - But even on the picture, you could see the residences. You  
647 said that it backs up to a community.

648  
649 Ms. Dwyer - There is a residential area behind it on a side street.

650  
651 Mr. Blankinship - I don't know where the school bus picks up.

652  
653 Mr. Wright - The motion is that it be approved, with changing it to 7:00;  
654 it's been seconded. All in favor, say aye. Opposed, no. It's approved.

655  
656 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
657 Dwyer, the Board **granted** application **UP-18-2005** for a temporary conditional use  
658 permit to store materials for a County utility project at 354 -368 East Williamsburg Road  
659 (Battle Park) (Parcels 829-715-9446, 8847 and 8447). The Board granted the use  
660 permit subject to the following conditions:

661  
662 1. All machinery and equipment stored on the site in conjunction with this use  
663 permit shall be removed no later than March 15, 2006, at which time this permit shall  
664 expire.

665  
666 2. All machinery and equipment stored in conjunction with this Use Permit shall be  
667 set back a minimum of 35 feet from the adjacent residential property and 10 feet from all  
668 other property lines.

669  
670 3. A stop sign shall be placed at each exit from the site onto a public street.

671  
672 4. [AMENDED] Hours of operation on the site shall be limited to between 7:00 AM  
673 and 5:00 PM, Monday-Saturday. There shall be no activity permitted on Sundays.

674  
675 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4

676 Negative: Harris 1  
677 Absent: 0  
678

679 The Board granted the request because it found the proposed use will be in substantial  
680 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
681

682 **UP- 19-2005 HOME DEPOT** requests a temporary conditional use permit  
683 pursuant to Section 24-116(c)(1) to host a car show at 11260 West  
684 Broad Street (Parcel 742-762-4307), zoned M-1C, Light Industrial  
685 District (Conditional) and WBSO, West Broad Street Overlay  
686 District (Three Chopt).  
687

688 Mr. Wright - Does anyone else desire to speak with reference to this  
689 case? Would you raise your right hand and be sworn please?  
690

691 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
692 truth, the whole truth, and nothing but the truth, so help you God?  
693

694 Mr. Kofira - I do. My name is Peter Kofira. For five years now the Mid  
695 Atlantic Jeepers, which is a jeep club, which is a club for enthusiasts about jeeps, has  
696 put on a fundraising event for the "Toys for Tots" organization. We do this by having  
697 jeep and off-highway enthusiasts gather together. Recently it's been in parking lots, as  
698 our coordination of this event has gotten better and better over the years. We collect  
699 toys, we have raffles, etc., and all the donated materials go directly to the Marines'  
700 "Toys for Tots" effort. This is the second year in a row now that we've had it pretty well  
701 organized and been able to attract a decent number of folks out there to come and  
702 donate toys and spend their time and just kind of exchange ideas and things like that  
703 about our hobbies, so we chose this location for this year's event and are applying for  
704 this permit.  
705

706 Mr. Wright - This is just for one day?  
707

708 Mr. Kofira - Absolutely. Correct.  
709

710 Mr. Wright - September 10, 9:00 am to 5:00 pm? Have you read these  
711 conditions that are proposed?  
712

713 Mr. Kofira - We did read the conditions, yes.  
714

715 Ms. Dwyer - In Condition # 7, it mentions vehicles and structures related  
716 to the show – what structures will you be putting in the parking lot?  
717

718 Mr. Kofira - Basically, tent, canopy-type structures, just for a place to set  
719 some pamphlets and keep some folks out of the sun who are all day signing folks up  
720 and working the event.  
721



722 Ms.Dwyer - Will the tents be, for example, over the “Toys for Tots” area,  
723 or I see one main tent identified on the plan. Is the main tent noted toward Broad  
724 Street?  
725

726 Mr. Kofira - Right.  
727

728 Mr. Blankinship - In the kids’ area, there’s a kids’ tent that’s not quite legible to  
729 scale.  
730

731 Ms. Dwyer - So those are the only two tents you’re going to have?  
732

733 Mr. Kofira - Yes, there may be some additional little canopies, like a  
734 backyard canopy type of thing, with a table and chair. Participants are able to go  
735 around and vote for the best of this type of vehicle, that type of vehicle, so we set up a  
736 place to keep somebody taking those applications, out of the sun. We just put them in a  
737 jar and draw from the hat at the end of the day.  
738

739 Ms. Dwyer - I didn’t notice when I was out there, whether any overhead  
740 electrical lines – that just came to mind, I know the Boy Scouts had that tragedy this  
741 year with erecting tents near .....  
742

743 Mr. Kofira - I don’t recall any overhead lines over there. Our tents are  
744 nowhere near that size.  
745

746 Mr. Blankinship - Let’s look at the site photos.  
747

748 Ms. Dwyer - I think they’re all underground at this site.  
749

750 Mr. Kofira - If I may, these are all 10 by 10 or 12 by 12 pop-up backyard-  
751 type tents.  
752

753 Mr. Blankinship - It doesn’t show any overheads.  
754

755 Ms. Dwyer - This is a newer development, so I believe they’re all  
756 underground.  
757

758 Mr. Blankinship - Out there in the West Broad Street area, we’ve kept them all  
759 underground. Go to the first photo. That’s parallel to Broad.  
760

761 Ms. Dwyer - Looking at MacDonald’s.  
762

763 Ms. Harris - Mr. Blankinship, do you remember the date that we  
764 approved a variance for Wal-Mart to have the special?  
765

766 Mr. Kirkland - It’s the same day, because it’s NASCAR weekend. That’s  
767 what Wal-Mart’s is based on.

768  
769 Mr. Wright - That's not here; that's farther away.  
770  
771 Ms. Harris - Wal-Mart is up a bit. So you do not foresee any aggravated  
772 problem with traffic for this area with Home Depot being here, and on the other side of  
773 the MacDonal'd's, down a bit, the Wal-Mart event?  
774  
775 Mr. Blankinship - I don't think we're looking at that big of a turnout at either of  
776 these events, that it would really overwhelm Broad Street, given just the routine  
777 Saturday traffic on Broad.  
778  
779 Ms. Dwyer - Will you be advertising this event?  
780  
781 Mr. Kofira - We'll do some limited advertising, mailing lists, something  
782 like that, maybe a couple of tag lines on some radio spots from a local jeep seller.  
783  
784 Ms. Dwyer - But you're not going to have any NASCAR people there?  
785  
786 Mr. Kofira - Absolutely not, fans maybe, but there's always some bleed  
787 over, but no it's jeep enthusiasts. A lot of this is a word of mouth thing, internet clubs  
788 and things like that.  
789  
790 Mr. Wright - Any further questions of the Board? Is anyone here in  
791 opposition to this request? Hearing none, that concludes the case. UP-19-2005.  
792  
793 Mr. Nunnally - Move we approve it.  
794  
795 Mr. Wright - Mr. Nunnally moves we approve. Is there a second?  
796  
797 Ms. Dwyer - Second.  
798  
799 Mr. Wright - Seconded. Any discussion? Hearing none, all in favor, say  
800 aye. Opposed, say no. It's approved.  
801  
802 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
803 Dwyer, the Board **granted** application **UP-19-2005** for a temporary conditional use  
804 permit to host a car show at 11260 West Broad Street (Parcel 742-762-4307). The  
805 Board granted the use permit subject to the following conditions:  
806  
807 1. This approval is only for September 10, 2005. The show shall be conducted in  
808 accordance with the plans and description submitted with the application.  
809  
810 2. The event shall occupy no more than 225 parking spaces.  
811

812 3. An assembly permit is required through the Fire Marshal's Office. A site plan and  
813 interior layout plan must be submitted and approved prior to set up. The event is  
814 subject to all sections of the Statewide Fire Prevention Code.

815  
816 4. The applicant shall satisfy all requirements of the Henrico County Division of  
817 Police. Plans regarding security and traffic control shall be submitted for review and  
818 approval no later than August 29, 2005.

819  
820 5. The applicant shall satisfy all requirements of the Henrico County Department of  
821 Health and the Henrico County Department of Building Inspections. Building permits  
822 shall be obtained as necessary.

823  
824 6. Hours of operation shall be limited to 9:00 AM to 5:00 PM, September 10, 2005.

825  
826 7. All vehicles and structures related to the show shall be removed from the site on  
827 or before September 11, 2005, at which time this permit shall expire.

828  
829 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
830 Negative: 0  
831 Absent: 0

832  
833 The Board granted the request because it found the proposed use will be in substantial  
834 accordance with the general purpose and objectives of Chapter 24 of the County Code.

835  
836 **UP- 20-2005 LAKEWOOD MANOR** requests a temporary conditional use permit  
837 pursuant to Section 24-116(c)(1) to install a temporary office trailer  
838 at 1900 Lauderdale Drive (Parcel 733-745-8147), zoned C-1,  
839 Conservation District and R-6C, General Residence District  
840 (Conditional) (Tuckahoe).

841  
842 Mr. Wright - Does anyone else desire to speak with reference to this  
843 case? Would you raise your right hand and be sworn please?

844  
845 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
846 truth, the whole truth, and nothing but the truth, so help you God?

847  
848 Mr. Sibold - I do. My name is Chris Sibold; I'm with Timmons Group, and  
849 accompanying me today is Jeff McGinnis, the Administrator for Lakewood Manor. The  
850 retirement community known as Lakewood Manor, is in the midst of a substantial  
851 construction project. Basically, there are three components to the project, the first being  
852 known as the "cottages," which consists of fourteen single-family dwellings. The second  
853 main component, known as the "villas," consists of three three-story, 10-unit multi-family  
854 dwellings. Both of these components are under construction presently, which began  
855 earlier this year, and pretty much stand alone on the site. The third main component,  
856 which is the reason why we're here today, is the health services center, which houses  
857 the assisted living residents at Lakewood Manor. The health services building is going

858 to be a three-story, 128-bed building, and it's going to serve to upgrade and replace the  
859 existing 100-bed facility at this time.

860  
861 The problem arises with the health services building, because it ties into the existing  
862 building at Lakewood Manor, in the area that is presently the new main entrance to the  
863 facility. In that area, there's a certain amount of office space that's going to need to be  
864 temporarily relocated in order to facilitate the construction process. It truly is a  
865 temporary condition, because once that building is end-lined, and construction is slated  
866 to end late next year, the existing beds will be moved into that building, and the area  
867 where the existing beds are now, will be renovated and turned into office space.  
868 There's an additional need for temporary office space in the form of marketing office  
869 space during the construction process. Those are the main two reasons we're here  
870 today, to request a temporary conditional use permit. The trailer is approximately 2800  
871 square feet, 60 by 48. It's aluminum clad, skirted, off-white color with slightly pitched  
872 roof. It will need power, water, sanitary connections, and that's about it.

873  
874 Mr. Wright - Have you read the conditions proposed for this case?

875  
876 Mr. Sibold - Yes I have.

877  
878 Mr. Wright - You're in accord with those?

879  
880 Mr. Sibold - Yes sir, we are.

881  
882 Mr. Kirkland - Mr. Blankinship, may I ask you a question? In the  
883 conditions, we didn't have anything about connecting to the sanitary conditions, the  
884 water, sewer, restrooms, whatever. Do we need to put that condition in there?

885  
886 Ms. Dwyer - Similar to the one that was in the West End Assembly of  
887 God conditions.

888  
889 Mr. Sibold - If I remember correctly, one of the conditions states that the  
890 layout shall not change.

891  
892 Mr. Kirkland - I think we need to add this, because the layout could have to  
893 do with plants, shrubs, lights, fencing, parking spaces. We like to include the facilities in  
894 there.

895  
896 Ms. Dwyer - Let me read the one that was in the previous case today. I  
897 assume that's the one you would use, Mr. Blankinship, and I don't think you'll have a  
898 problem with it, but if you do, let us know. It says, "Any sanitary facilities in the trailer  
899 shall be connected to a disposal system approved by the Health Department."

900  
901 Mr. Sibold - Okay.

902  
903 Mr. Kirkland - That's it.

904  
905 Mr. Sibold - That's fine.  
906  
907 Ms. Dwyer - So it just requires County approval. This is a fairly large  
908 trailer with a number of offices. I think that's an important one.  
909  
910 Mr. Blankinship - I think that should have been included.  
911  
912 Ms. Dwyer - So this is going to be replacement office space for workers in  
913 Lakewood Manor, as well as a construction trailer, as well as a marketing trailer?  
914  
915 Mr. Sibold - No, no, it's not a construction trailer. It's just going to be to  
916 temporarily house the offices which need to be relocated, to facilitate the tying into the  
917 existing building during the construction process. That's one. So some of the existing  
918 employees, and it's also going to be temporarily used as office space for the marketing  
919 purposes of the new units being built, during the construction.  
920  
921 Ms. Dwyer - But it's not going to be a construction trailer, where you have  
922 people in and out with plans and muddy boots and that kind of thing?  
923  
924 Mr. Sibold - No ma'am.  
925  
926 Ms. Dwyer - Do you have a construction trailer?  
927  
928 Mr. Sibold - Yes ma'am, they're already on site. The construction began  
929 earlier this year.  
930  
931 Mr. Blankinship - As long as it's on site and it's only pertinent to the  
932 construction on site, that's handled under the building permit.  
933  
934 Mr. Wright - Any further questions of the Board? Is anyone here in  
935 opposition to this request? Hearing none, that concludes the case. UP-20-2005.  
936  
937 Ms. Dwyer - I move we approve, with the additional condition relating to  
938 sanitary facilities that was read into the record.  
939  
940 Mr. Wright - Is there a second?  
941  
942 Ms. Harris - Second.  
943  
944 Mr. Wright - Motion's made and seconded that we approve it with an  
945 additional condition pertaining to the sanitary facilities. Any discussion? Hearing none,  
946 all in favor, say aye. Opposed, no. It's approved.  
947  
948 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
949 Harris, the Board **granted** application **UP-20-2005** for a temporary conditional use

950 permit to install a temporary office trailer at 1900 Lauderdale Drive (Parcel 733-745-  
951 8147). The Board granted the use permit subject to the following conditions:

952  
953 1. Only the improvements shown on the plan filed with the application may be  
954 constructed pursuant to this approval. No substantial changes or additions to the layout  
955 may be made without the approval of the Board of Zoning Appeals. Any additional  
956 improvements shall comply with the applicable regulations of the County Code.

957  
958 2. A detailed landscaping and lighting plan shall be submitted to the Planning  
959 Department with the building permit for review and approval. Approved landscaping  
960 shall be installed during the spring planting season. All landscaping shall be maintained  
961 in a healthy condition at all times. Dead plant materials shall be removed within a  
962 reasonable time and replaced during the normal planting season.

963  
964 3. The trailer shall be skirted on all sides with a durable material as required by the  
965 building code for a permanent installation.

966  
967 4. On or before August 30, 2006 the applicant shall submit a report to the Planning  
968 Department describing their plans for permanent office space.

969  
970 5. The trailer shall be removed from the property on or before August 30, 2007 at  
971 which time this permit shall expire. This permit shall not be renewed.

972  
973 6. [ADDED] Any sanitary facilities in the trailer shall be connected to a disposal  
974 system approved by the health department.

975  
976 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
977 Negative: 0  
978 Absent: 0

979  
980 The Board granted the request because it found the proposed use will be in substantial  
981 accordance with the general purpose and objectives of Chapter 24 of the County Code.

982  
983 **A - 91-2005**                    **ALBERT J. ANDERSON** requests a variance from Sections 24-94  
984 and 24-9 to build a one-family dwelling at 1116 Oakland Road  
985 (Parcel 801-706-9799), zoned R-3, One-family Residence District  
986 (Varina). The lot width requirement and public street frontage  
987 requirement are not met. The applicant has 30 feet lot width and  
988 30 feet public street frontage, where the Code requires 80 feet lot  
989 width and 50 feet public street frontage. The applicant requests a  
990 variance of 50 feet lot width and 20 feet public street frontage.

991  
992 Mr. Wright -                    Does anyone else desire to speak with reference to this  
993 case? Would you raise your right hand and be sworn please?

994  
995 Mr. Blankinship -                Do you swear that the testimony you are about to give is the

996 truth, the whole truth, and nothing but the truth, so help you God?  
997  
998 Mr. Anderson - I do. Albert J. Anderson. Basically, I just want to put up a  
999 single-family dwelling on 4.7 acres, just for my family.  
1000  
1001 Mr. Wright - There is no structure on the property at this time?  
1002  
1003 Mr. Anderson - There is one particular structure in an old barn .....

1004  
1005 Mr. Wright - Not a residence of any kind?  
1006  
1007 Mr. Anderson - No.  
1008  
1009 Mr. Nunnally - You say this is going to be for you and your family?  
1010  
1011 Mr. Anderson - Yes.  
1012  
1013 Mr. Nunnally - That's going to be the only house that's built on this 4.7  
1014 acres?  
1015  
1016 Mr. Anderson - Yes.  
1017  
1018 Mr. Nunnally - Now or in the future?  
1019  
1020 Mr. Anderson - I don't know about the future, but considering now, this is  
1021 going to be my dwelling. I might have family, additional family, that I have around in the  
1022 country, which might want to come back in and settle down on the property, and I don't  
1023 think there would be any problem there.  
1024  
1025 Ms. Dwyer - Was this property split from a larger parcel recently?  
1026  
1027 Mr. Anderson - Yes. It's not recently; I think that was done in 2002.  
1028 Originally I bought the property from a prior owner, and I think she had about eight  
1029 acres for sale. I didn't want eight; I just wanted five, so she actually divided it in 4.7  
1030 acres and 5.5.  
1031  
1032 Ms. Dwyer - Where is the other parcel? Is that along Oakland Road?  
1033  
1034 Mr. Anderson - The other parcel is pretty much adjacent to mine.  
1035  
1036 Ms. Dwyer - Could we put up the site map?  
1037  
1038 Mr. Anderson - The adjacent property, if you notice, they call it a pond on  
1039 the right-hand side. To the right-hand side of that pond is the other adjacent property  
1040 that the prior owner still owns. That's the 4.7 acres that's actually highlighted in red. My  
1041 house is pretty much going to be in that specific area where the arrow points. The barn

1042 is in the lower right-hand corner. We're going to get rid of the barn.  
1043  
1044 Ms. Dwyer - So the red dotted area is your parcel, and to the right of that,  
1045 where it shows sort of a blue dashed line in the shape of an amoeba, that's the lake  
1046 you're referring to?  
1047  
1048 Mr. Anderson - That's going to be the lake that we actually hook up with the  
1049 sewage. I think that's sewer line.  
1050  
1051 Ms. Dwyer - I guess my ultimate question is, did the total parcel have  
1052 more road frontage before you?  
1053  
1054 Mr. Anderson - Not to my knowledge. I applied for a variance in 2002, and it  
1055 was approved, but I was in school at that time. I was back in school as a computer  
1056 technician.  
1057  
1058 Ms. Harris - Mr. Anderson, I noticed that we have proposed Osborne  
1059 Subdivision – how far is that project?  
1060  
1061 Mr. Anderson - A proposed Osborne Subdivision? I'm really not familiar with  
1062 that.  
1063  
1064 Mr. Blankinship - I have the file here, if you'd like to look at it, Ms. Harris.  
1065  
1066 Ms. Dwyer - I'm wondering, since Mr. Blankinship just showed us the  
1067 parcel that this was split from does not have any road frontage, so that parcel is  
1068 separately owned.  
1069  
1070 Mr. Anderson - Which parcel were you pertaining to?  
1071  
1072 Ms. Dwyer - The one that has the lake or pond on it.  
1073  
1074 Mr. Anderson - That probably doesn't have any road frontage at all.  
1075 Basically, its enclosed property.  
1076  
1077 Ms. Dwyer - That property is now landlocked, being separated from this  
1078 parcel.  
1079  
1080 Mr. Anderson - I'm sorry, there is, on the other side of the property, to where  
1081 it has road frontage, but that's completely different from the property that I'm actually  
1082 getting ready to build on. I think where you see 1151 or 1154, that's actually the  
1083 entrance to the other side of the property.  
1084  
1085 Ms. Dwyer - Looks like it's on a third parcel, that particular access.  
1086  
1087 Mr. Anderson - It's been split probably about three times. The last time that



1088 it was actually split was in 2002, when I built the 4.7 acres.

1089

1090 Mr. Wright - Have you read the conditions proposed for this case? You  
1091 understand that you will be responsible for the access road. The County would have no  
1092 responsibility for that.

1093

1094 Mr. Anderson - Yes, as a matter of fact, there's an agreement between  
1095 myself, Mr. Tyler, and the property in front of Mr. Tyler, which is on the left-hand side, to  
1096 where we actually have a road agreement among the three of us. As a matter of fact,  
1097 there's another 20-foot variance on the left-hand side of the property, which would make  
1098 it a 50-foot – I have thirty feet going in, and some additional 20- feet, so I think we're  
1099 going to be okay there.

1100

1101 Mr. Wright - Any further questions of the Board? Is anyone here in  
1102 opposition to this request? Hearing none, that concludes the case. A-91-2005.

1103

1104 Mr. Nunnally - I move we approve it, with one dwelling only.

1105

1106 Mr. Wright - Mr. Nunnally moves that we approve it with one dwelling  
1107 only on the property. Is there a second?

1108

1109 Mr. Kirkland - Second.

1110

1111 Mr. Wright - Any discussion? All in favor, say aye. Opposed, no. It's  
1112 approved, with that new addition to the conditions.

1113

1114 Mr. Blankinship - Yes sir.

1115

1116 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1117 Kirkland, the Board **granted** application **A-91-2005** for a variance build a one-family  
1118 dwelling at 1116 Oakland Road (Parcel 801-706-9799). The Board granted the  
1119 variance subject to the following conditions:

1120

1121 1. This variance applies only to the public road frontage and minimum lot width  
1122 requirements. All other applicable regulations of the County Code shall remain in force.

1123

1124 2. Any dwelling on the property shall be served by public water and sewer.

1125

1126 3. At the time of building permit application, the applicant shall submit the  
1127 necessary information to the Department of Public Works to ensure compliance with the  
1128 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1129 water quality standards.

1130

1131 4. The owners of the property, and their heirs or assigns, shall accept responsibility  
1132 for maintaining access to the property until such a time as the access is improved to  
1133 County standards and accepted into the County road system for maintenance.

1134  
1135 5. [ADDED] Only one dwelling may be constructed pursuant to this variance.  
1136

1137 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1138 Negative: 0  
1139 Absent: 0

1140  
1141 The Board granted this request, as it found from the evidence presented that, due to the  
1142 unique circumstances of the subject property, strict application of the County Code  
1143 would produce undue hardship not generally shared by other properties in the area, and  
1144 authorizing this variance will neither cause a substantial detriment to adjacent property  
1145 nor materially impair the purpose of the zoning regulations.

1146  
1147 **A - 92-2005**                    **MICHAEL AND MAURA BISCEGLIA** request a variance from  
1148 Section 24-95(i)(2) to build an in-ground swimming pool at 9701  
1149 Old Club Trace (Country Club Colony) (Parcel 741-734-1298),  
1150 zoned R-0, One-family Residence District (Tuckahoe). The  
1151 accessory structure location requirement is not met. The applicants  
1152 propose a swimming pool in the side yard, where the Code allows  
1153 accessory structures in the rear yard.

1154  
1155 Mr. Wright -                    Does anyone else desire to speak with reference to this  
1156 case? Would you raise your right hand and be sworn please?

1157  
1158 Mr. Blankinship -            Do you swear that the testimony you are about to give is the  
1159 truth, the whole truth, and nothing but the truth, so help you God?

1160  
1161 Mr. Bisceglia -                I do. Michael Bisceglia.

1162  
1163 Ms. Bisceglia -                And Maura Bisceglia.

1164  
1165 Mr. Bisceglia -                We have an odd-shaped, triangular lot at the corner of Old  
1166 Club Trace and Gaskins Road. Our house clearly faces Old Club Trace, and I've got a  
1167 pretty severe back problem, and my doctor has recommended that I start swimming  
1168 regularly and also use the jet therapy in the pools. We wanted to build a pool, and  
1169 according to what we applied for the zoning permit, because the shorter property on the  
1170 triangle faces Gaskins, they say that's actually the front of the house. The problem with  
1171 that is if we really put the pool in the back of the house, it's really going to be a very bad  
1172 location, both for the street and for the neighbors, so all of the neighbors have signed  
1173 and supported that this is the right place to go. The pool in this location is totally  
1174 wooded and really has no visibility from any of the streets or neighbors whatsoever.

1175  
1176 Ms. Bisceglia -                We had a landscape designer actually draw a design for the  
1177 yard, and you have a copy of it in black and white, but I brought in the original design so  
1178 you could see. I think a picture's worth a thousand words.

1179

1180 Mr. Wright - We have a copy of that in our materials.  
1181  
1182 Ms. Bisceglia - This is all heavily wooded, blocking back Gaskins Road,  
1183 woods behind and woods on the sides as well.  
1184  
1185 Mr. Wright - Your house faces on Old Club Trace, I take it?  
1186  
1187 Mr. and Ms. Bisceglia - Yes.  
1188  
1189 Ms. Bisceglia - Country Club Colony is three cul-de-sacs or traces, and all of  
1190 the homes are built facing .....  
1191  
1192 Mr. Bisceglia - All the corner lots are built facing the traces.  
1193  
1194 Ms. Harris - I have a question about the lot, this diagram that shows the  
1195 lot size. Do you notice that you're saying the length is 271.50 feet, and that's fronting  
1196 Old Club Trace, and on Gaskins Road, the length is 192.25 feet, and the house is facing  
1197 Old Club Trace.  
1198  
1199 Ms. Bisceglia - Yes.  
1200  
1201 Ms. Harris - And the rule is that the shorter of the two length constitutes  
1202 the frontage?  
1203  
1204 Mr. Blankinship - Right. The front of the house faces the side of the lot in this  
1205 case.  
1206  
1207 Mr. Harris - Do we often have many cases, Mr. Blankinship, where  
1208 people are allowed to build their homes like this, facing, for example, Old Club Trace,  
1209 and they're saying that this is not your frontage. Your frontage is Gaskins Road.  
1210  
1211 Mr. Blankinship - The Code does not regulate the design of the house or  
1212 where the doors on the house are; you can put the front door of the house on any part  
1213 of the house, but the house does regulate the location of accessory structures.  
1214  
1215 Ms. Dwyer - The problem is, if the house is built and oriented differently  
1216 than the way the Code defines front and back yard, this is the kind of problem that we  
1217 run against. I'd like to just make a comment; you've made a wonderful presentation;  
1218 you have a beautiful landscape plan, and it makes imminent sense for you to have your  
1219 pool where you want to have it. The problem is, the law does say that your front yard –  
1220 it defines where your front yard and side yard are, and then we are further limited in  
1221 circumstances in which we can grant variances. As best I can describe it, we grant  
1222 variances to prevent unconstitutional results. An unconstitutional result would be, if we  
1223 don't grant this variance, you can't use the property in any reasonable way. If you can  
1224 use the property in a reasonable way without the variance, then we, according to the  
1225 Supreme Court, don't have the authority to grant the variance. So the law's very limited

1226 and very strict in terms of how and when we can grant variances. I wanted to let you  
1227 know that. Secondly, this has been something of a recurring problem, and I know that  
1228 Pat O'Bannon, who's the Supervisor for the Tuckahoe District, is looking into amending  
1229 the County Code, so that we can look at these cases, not as variances, but as special  
1230 exceptions, which probably doesn't matter to you, but does matter as a matter of law  
1231 what we have the authority to do. I will tell you that that is in the works at this point.  
1232 That is being looked at very seriously, and I believe a draft to amend the County  
1233 Ordinance is being considered at this time, is that correct, Mr. Blankinship?

1234  
1235 Mr. Blankinship - It's under consideration.

1236  
1237 Ms. Bisceglia - Do you have any idea how long that process takes? The  
1238 amendment process?

1239  
1240 Ms. Dwyer - It's a political process, so it's very difficult to predict. Would  
1241 you hazard a guess, Mr. Blankinship? I would say several months, certainly, maybe six  
1242 months.

1243  
1244 Mr. Blankinship - Can't be done in less than three months, just because of the  
1245 legal requirements, but it just depends on the Board.

1246  
1247 Ms. Bisceglia - I just want to point one thing out that maybe would help in  
1248 support of that, because the way the law is written now, it actually would allow us to put  
1249 a pool in the spot that the law is trying to prevent and protect from it going in. The  
1250 County told us that they would give us a permit to put the pool right here. It actually  
1251 would allow us to put it in a side yard, right on top of the street, which would be an  
1252 eyesore for all of our neighbors. It's a funny shaped lot.

1253  
1254 Mr. Bisceglia - And practically in the front yard of the house next to us,  
1255 because of the shape of the lot.

1256  
1257 Ms. Dwyer - The problem really starts when the house is not oriented in  
1258 the way the law defines front yard.

1259  
1260 Ms. Bisceglia - No one knew this. The landscape designer we used is the  
1261 head of the organization for landscape designers for the state of Virginia, and our pool  
1262 builder, very reputable, has built a large percentage of the pools in the area, and neither  
1263 one had any idea there was a problem.

1264  
1265 Mr. Bisceglia - The pool guy also started clearing the yard before we got the  
1266 permit, unfortunately, he thought there was no issue here, so we've got now .....

1267  
1268 Ms. Bisceglia - .....yes, we've been sitting now for a month and a half  
1269 with a yard that's completely dirt .....

1270  
1271 Mr. Bisceglia - .....and fallen under a bunch of large trees, so it's a

1272 difficult situation, I understand, but the place where we have it is by nature and also for  
1273 physical therapy reasons, it's by far the best place we could put it in the yard.

1274  
1275 Ms. Bisceglia - And actually, the logic of where they faced the house, too, if  
1276 you look at it, the house, if it had been faced towards Gaskins Road, the entire back  
1277 yard of the lot would have been open to everyone who lived on the cul-de-sac, and it  
1278 wouldn't have been in their best interests to have your back yard sitting in their front  
1279 yard.

1280  
1281 Mr. Blankinship - 9700 and 9701 Old Dell Trace, and also at 9700 Old Club  
1282 Trace, across the street from you, it looks like they were careful to make those street  
1283 frontages slightly shorter than the Gaskins Road frontage, and on yours, because of the  
1284 way the lots were designed at the end of the subdivision, it didn't work.

1285  
1286 Mr. Bisceglia - The problem with the lot actually, it doesn't really show it too  
1287 well on the map, but the lot is really more like a house shape, where there's two sides,  
1288 and then it shoots in, in the back, so yes, it's along Old Club Trace, but it turns so  
1289 basically the front – it depends where you want to define the end of the front yard. If the  
1290 road continues and makes a hard left, is that still considered one frontage? Old Club is  
1291 much more of a turned road than it shows on this map, so you end up literally like it's a  
1292 box, and then the back of it shoots, so you end up with a turned right-hand side on Old  
1293 Club. It all depends on how you define that – is that really frontage on that road or not?

1294  
1295 Ms. Dwyer - On the aerial photograph, it shows what you're talking about.

1296  
1297 Mr. Wright - We're hoping that the County or the State legislature will do  
1298 something shortly to give us some authority to do something on these cases.

1299  
1300 Ms. Bisceglia - If they do the amendment, and I assume then we'd have to  
1301 go through this process again in order to get a variance?

1302  
1303 Ms. Dwyer - It would be a special exception.

1304  
1305 Mr. Blankinship - A very similar process.

1306  
1307 Ms. Bisceglia - So we'd have to come for another hearing and pay another  
1308 \$300 fee?

1309  
1310 Mr. Wright - We're sorry about that, but that's what we understand. Let's  
1311 start with A-92-2005. Do I hear a motion?

1312  
1313 Ms. Dwyer - I move that we deny the case because they requested a  
1314 variance, and they have reasonable use of the property without the swimming pool. I  
1315 appreciate that looking at the lay of the land and the way the lot is shaped, that this  
1316 would be, as a practical matter, a logical place to put the pool. Unfortunately, as I read  
1317 the Supreme Court case, and our legal authority, it is limited in this case and does not

1318 grant us the authority to consider this variance.  
1319  
1320 Mr. Wright - Is there a second to that motion?  
1321  
1322 Mr. Kirkland - Second.  
1323  
1324 Mr. Wright - Any discussion? Hearing none, all in favor of denial, say  
1325 aye. Opposed, no. It's denied.  
1326  
1327 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
1328 Kirkland, the Board **denied** application **A-92-2005** for a variance to build an in-ground  
1329 swimming pool at 9701 Old Club Trace (Country Club Colony) (Parcel 741-734-1298).  
1330  
1331 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1332 Negative: 0  
1333 Absent: 0  
1334  
1335 The Board denied your request as it found from the evidence presented that there was  
1336 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
1337 Virginia to justify a variance.  
1338  
1339 Mr. Wright - Do we want to go ahead and start from the back and go  
1340 forward.  
1341  
1342 Mr. Blankinship - Go ahead and call Mr. Alston one more time.  
1343  
1344 Mr. Wright - Now Mr. Blankinship, you take over, don't you, for the  
1345 election of officers?  
1346  
1347 Mr. Blankinship - Yes sir. And the floor is open for nominations for the office  
1348 of Chairman.  
1349  
1350 Mr. Wright - I nominate Mr. Jim Nunnally.  
1351  
1352 Ms. Dwyer - Second.  
1353  
1354 Mr. Blankinship - Are there any further nominations?  
1355  
1356 Mr. Kirkland - I move the nominations be closed for that office.  
1357  
1358 Mr. Blankinship - Is there a second to that motion?  
1359  
1360 Mr. Wright - Second.  
1361  
1362 Mr. Blankinship - All right, nominations are closed, and Mr. Nunnally is elected  
1363 by acclamation. The floor is now open for nominations for the office of Vice Chairman.

1364  
1365 Mr. Nunnally - I nominate Mr. Kirkland.  
1366  
1367 Mr. Wright - Second.  
1368  
1369 Mr. Blankinship - All right, we have a nomination for Mr. Kirkland. Are there  
1370 any further nominations?  
1371  
1372 Mr. Nunnally - I move the nominations be closed.  
1373  
1374 Mr. Blankinship - Is there a second to that motion?  
1375  
1376 Ms. Harris - Second.  
1377  
1378 Mr. Blankinship - All right. Nominations are closed, and Mr. Kirkland is elected  
1379 by acclamation. Congratulations.  
1380  
1381 Ms. Harris - Mr. Chairman, I don't know if this is open agenda period, but  
1382 did anyone attend the meeting .....

1383  
1384 Mr. Wright - Yes, Mr. Nunnally and Mr. Kirkland attended the meeting.  
1385 They were not entitled to participate; they were members of the audience, as I  
1386 understood. I've got a copy of the presentation. I understand from what Mr. Nunnally  
1387 says, that it went along the lines of our meeting, and we're all in accord. I think the  
1388 Supervisors are fully in accord with the interpretation of the case and what we're doing.  
1389 I'm interested, Ms. Dwyer, you say Ms. O'Bannon is proposing an amendment to the  
1390 County Ordinance?  
1391  
1392 Ms. Dwyer - It's my understanding, relating to swimming pools in  
1393 particular.  
1394  
1395 Mr. O'Kelly - I think it's the location of accessory structures in general.  
1396  
1397 Mr. Wright - How can the County Ordinance do something that the  
1398 Virginia Statute won't allow?  
1399  
1400 Mr. Blankinship - The Supervisors have the authority to empower the BZA to  
1401 grant conditional use permits or special exceptions, and if it's written in the Code that  
1402 you have the authority to approve, then you have the authority to approve it. The  
1403 problem with the variance, is that you're almost conflicting with the Code. You're taking  
1404 authority that's stated in the State Code, but is specifically not allowed. The way it looks  
1405 in court, is that they have made the decision in advance, that they will allow accessory  
1406 structures in the side yard, subject to your discretion.  
1407  
1408 Mr. Wright - But that's just for pools?  
1409

1410 Mr. Blankinship - What we have on the table right now would be any  
1411 accessory structure. Any accessory structure would come before this Board, and you  
1412 would look at them, case by case.  
1413  
1414 Mr. Wright - I'm talking about variances in general, one foot, two feet.  
1415 We need State legislation to do that.  
1416  
1417 Mr. Blankinship - At this time there's nothing on the table for that.  
1418  
1419 Mr. Wright - Is the County pushing on its legislative agenda to try to get  
1420 some legislation enacted along that line?  
1421  
1422 Mr. Blankinship - I think that process is a few months down the road, and I  
1423 don't know.  
1424  
1425 Mr. Wright - I hope they will. A person can't add on a foot or two feet,  
1426 and it has no impact on their neighbors, their neighbors are all in accord, it looks like to  
1427 me that something ought to be done to give us a little authority, to use our discretion in  
1428 those cases, which we don't have.  
1429  
1430 Mr. Kirkland - So Mr. Blankinship, you're saying that they would add in the  
1431 Code that the duty of the BZA would be special exceptions?  
1432  
1433 Mr. Blankinship - Just as you have the authority to grant the use permit for the  
1434 temporary office, so you would have the authority to grant a conditional use permit or a  
1435 special exception to allow an accessory structure in the side yard.  
1436  
1437 Mr. Wright - That would give us some discretion, like this case.  
1438  
1439 Mr. Blankinship - But we still won't allow it just by right. It needs to be  
1440 reviewed, case by case.  
1441  
1442 Mr. Kirkland - Mr. Wright, I think another thing that they discussed, and Mr.  
1443 O'Kelly was there, is that what we have done is all right so far, and that they're basically  
1444 going to study what we do to the end of the year, and see how the patterns are in the  
1445 cases that we hear.  
1446  
1447 Mr. Wright - We won't have any. You're not going to have any cases.  
1448  
1449 Mr. Kirkland - Mr. O'Kelly can comment on that. I think that was his  
1450 comment.  
1451  
1452 Mr. O'Kelly - I think we also need to look at how other localities are  
1453 dealing with this very issue too. It affects every Board of Zoning Appeals, state-wide.  
1454  
1455 Mr. Wright - I don't care what the others are doing. You can't read the



1456 Cochran case and come up with, I mean that is so clear. That's the first time the  
1457 Supreme Court has interpreted that statute as it is, that if you've got a reasonable use,  
1458 bang, you're dead. That's the first time that's ever come to light. It really does work a  
1459 hardship on people who need additions for their families, or whatever, that don't seem  
1460 to cause any problem with the neighboring property.

1461  
1462 Ms. Dwyer - I think you have to look at the problem, the problem begins  
1463 earlier when we were putting houses that were too big on small lots. There does have  
1464 to be a limit.

1465  
1466 Mr. Wright - That's our problem too. Contractors are doing that,  
1467 cramming more houses on small lots.

1468  
1469 Mr. Blankinship - Mr. Chairman, we did have a set of minutes on the Agenda  
1470 for approval. Okay, they were not distributed.

1471  
1472 Mr. Wright - Do I hear a motion that we adjourn?

1473  
1474 Ms. Dwyer - So moved.

1475  
1476 Mr. Wright - Is there a second?

1477  
1478 Mr. Kirkland - Second.

1479  
1480 There being no further business, and on a motion by Ms. Dwyer, seconded by  
1481 Mr. Kirkland, the Board adjourned until **September 22, 2005**, at 9:00 am.

1482  
1483

1484

1485 Russell A. Wright, Esq.

1486 Chairman

1487

1488

1489 Benjamin Blankinship, AICP

1490 Secretary

1491

1492

1493