

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS**  
2 **OF HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN**  
3 **THE HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, DECEMBER**  
4 **19, 2002, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**  
5 **TIMES-DISPATCH ON NOVEMBER 29 AND DECEMBER 6, 2002.**  
6

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

**Also Present:** Benjamin Blankinship, Secretary  
James F. Lehmann, County Planner  
Priscilla M. Parker, Recording Secretary

7  
8 Mr. Balfour - I call the meeting of the County of Henrico Board of Zoning  
9 Appeals to order. Would you stand for the **Pledge of Allegiance**. Mr. Secretary, would  
10 you read the rules, please.

11  
12 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies  
13 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each  
14 case. Then at that time the applicant should come to the podium. I will ask everyone  
15 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.  
16 The applicants will then present their testimony. After the applicant has spoken, the  
17 Board will ask them questions, and then anyone else who wishes to speak will be given  
18 the opportunity. After everyone has spoken, the applicant, and only the applicant, will  
19 be given the opportunity for rebuttal. After hearing the case, and asking questions, the  
20 Board will take the matter under advisement. They will render all of their decisions at  
21 the end of the meeting. If you wish to know their decision on a specific case, you can  
22 either stay until the end of the meeting, or you can call the Planning Office later this  
23 afternoon. This meeting is being tape recorded, so we will ask everyone who speaks, to  
24 speak directly into the microphone on the podium, and to state your name for the  
25 record. If you wouldn't mind spelling your name, in a lot of cases that's very helpful.  
26 Finally, out in the foyer, there are two binders, containing the staff report for each case,  
27 including the suggested conditions. Mr. Chairman, I don't believe we have any deferrals  
28 or withdrawals today.

29  
30 Mr. Balfour - Would you call the first case that was deferred from the  
31 previous meeting.

32  
33 **A -177-2002** **JOE AND SHELIA FOLLEY** request a variance from Section 24-94

34 of Chapter 24 of the County Code to build an addition at 10915  
35 Newlands Court (Deep Run Manor) (Parcel 747-756-2399), zoned  
36 R-3, One-family Residence District (Three Chopt). The rear yard  
37 setback is not met. The applicants propose 33 feet rear yard  
38 setback, where the Code requires 40 feet rear yard setback. The  
39 applicants request a variance of 7 feet rear yard setback.  
40

41 Mr. Balfour - Do we have any others who intend to testify in this matter?  
42 Would you raise your right hand and be sworn please?  
43

44 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
45 truth, the whole truth, and nothing but the truth, so help you God?  
46

47 Mr. George - Yes I do. I'm Daniel George, President of George  
48 Construction, Inc. We need to change the variance on the rear yard setback. They  
49 have a 40-foot rear yard setback, and because of the topography of the house on the  
50 cul-de-sac, we need to change the rear yard setback to a 33-foot rear yard setback to  
51 allow for the addition that Mr. Folley would like to put on.  
52

53 Mr. Balfour - Looks like you have a trapezoid lot.  
54

55 Mr. Nunnally - What's behind this lot, to the rear of this lot?  
56

57 Mr. George - It is a day care back behind the lot. They have a fence going  
58 all the way along the rear yard now. The other lot behind it, they changed the zoning on  
59 that lot as well to give them less than a 40-foot setback on their property.  
60

61 Mr. Wright - It doesn't appear from our map that there are any houses  
62 behind this lot; it looks like an open area.  
63

64 Mr. George - That big lot is actually a day care now.  
65

66 Mr. Balfour - Any other questions? You want a 20' by 28' addition, and  
67 what is it for?  
68

69 Mr. George - A master bedroom, a master bath, and a closet.  
70

71 Mr. Balfour - And you have read the conditions so that the addition will  
72 match the existing building as nearly as possible?  
73

74 Mr. Blankinship - I don't recall the plans. Is this a 2-story addition?  
75

76 Mr. George - One story. Mr. Blankinship - It's on the 2-story portion  
77 of the house though.  
78

79 Mr. George - It's on the first floor section, yes. Now they have aluminum

80 siding. We'll match it with a vinyl siding that will match the old aluminum siding as close  
81 as we can. We'll use plywood, tyvek, and energy efficient windows that will match the  
82 house. They're using wood windows on the house now, so we'll match the house  
83 existing with new windows.

84  
85 Mr. Balfour - Better windows.

86  
87 Mr. George - Better than they were using back then.

88  
89 Mr. Balfour - Any other questions of Mr. George? Thank you.

90  
91 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
92 McKinney, the Board **granted** application **A-177-2002** for a variance to build an addition  
93 at 10915 Newlands Court (Deep Run Manor) (Parcel 747-756-2399). The Board  
94 granted the variance subject to the following conditions:

95  
96 1. Only the addition shown on the plan filed with the application may be constructed  
97 pursuant to this approval. No substantial changes or additions to the layout may be  
98 made without the approval of the Board of Zoning Appeals. Any additional  
99 improvements shall comply with the applicable regulations of the County Code.

100  
101 2. The new construction shall match the existing dwelling as nearly as practical.

102  
103 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
104 Negative: 0  
105 Absent: 0

106  
107 The Board granted this request, as it found from the evidence presented that, due to the  
108 unique circumstances of the subject property, strict application of the County Code  
109 would produce undue hardship not generally shared by other properties in the area, and  
110 authorizing this variance will neither cause a substantial detriment to adjacent property  
111 nor materially impair the purpose of the zoning regulations.

112  
113 **A -179-2002**      **MICHAEL AND JOAN MORECROFT** request a variance from  
114 Sections 24-95(i)(2) and 24-94 of Chapter 24 of the County Code to  
115 build a screened porch at 5909 New Harvard Place (New Harvard  
116 at Wyndham) (Parcel 742-781-0757), zoned R-3C, One-family  
117 Residence District (Conditional) (Three Chopt). The accessory  
118 structure location requirement and rear yard setback are not met.  
119 The applicants propose 36.14 feet rear yard setback and an  
120 accessory structure in the side yard, where the Code requires 40  
121 feet rear yard setback and allows accessory structures in the rear  
122 yard. The applicants request a variance of 3.86 feet rear yard  
123 setback and to allow an accessory structure in the side yard.

124  
125 Mr. Balfour - Do we have any others who intend to testify in this matter?

126 Would you raise your right hand and be sworn please?  
127  
128 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
129 truth, the whole truth, and nothing but the truth, so help you God?  
130  
131 Ms. Morecroft - I do. My name is Joan Morecroft. I would like your  
132 permission to build a screened porch on the back of my house, and to do that I require  
133 2.5 variance in the setback.  
134  
135 Mr. Balfour - The application says 3.86. Is that different, Mr. Secretary?  
136  
137 Mr. Wright - There's a letter in your packet; it's really 2.5 feet, rather than  
138 3.86.  
139  
140 Mr. Balfour - Any questions? Who took that elongated picture?  
141  
142 Ms. Morecroft - I did, sir, on my new digital camera?  
143  
144 Mr. Wright - What will this be used for?  
145  
146 Ms. Morecroft - To enjoy the outside fresh air, instead of sitting on a deck  
147 and fighting with the mosquitoes.  
148  
149 Mr. Wright - So it's a screened porch?  
150  
151 Ms. Morecroft - It's a screened porch.  
152  
153 Mr. Wright - Mr. Blankinship, I don't understand how this gets into the  
154 side yard.  
155  
156 Mr. Blankinship - Do you see the proposed garage? If the garage is built  
157 there, and the screened porch is built where it's shown, then the garage is in the side  
158 yard relative to the screened porch. The side yard is defined as the area from the rear  
159 property line to the nearest point of the structure, and everything else is the side yard.  
160  
161 Mr. Wright - Can the garage be put back any, further on the lot?  
162  
163 Mr. Blankinship - It could be, since it's a detached accessory structure. It can  
164 go in the rear yard, but then they have to extend the driveway farther back.  
165  
166 Mr. Wright - Is there any problem with, how much is the garage in the  
167 side yard, do you have any idea, Mr. Blankinship?  
168  
169 Mr. Blankinship - It appears that once the porch is built, almost the entire  
170 garage would be in the side yard.  
171

172 Mr. Wright - Once the porch is built, it would have to extend behind the  
173 line from the rear of the porch, wouldn't it?

174  
175 Mr. Blankinship - From the street, it will appear to be in the rear yard, because  
176 it is behind that main wing of the house. So aesthetically I don't think it's going to be an  
177 issue.

178  
179 Mr. Balfour - Any other questions? Thank you ma'am.

180  
181 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
182 McKinney, the Board **granted** application **A-179-2002** for a variance to build a screened  
183 porch at 5909 New Harvard Place (New Harvard at Wyndham) (Parcel 742-781-0757).  
184 The Board granted the variance subject to the following conditions:

185  
186 1. Only the addition shown on the plan filed with the application may be constructed  
187 pursuant to this approval. No substantial changes or additions to the layout may be  
188 made without the approval of the Board of Zoning Appeals. Any additional  
189 improvements shall comply with the applicable regulations of the County Code.

190  
191 2. The new construction shall match the existing dwelling as nearly as  
192 practical.

193  
194 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
195 Negative: 0  
196 Absent: 0

197  
198 The Board granted this request, as it found from the evidence presented that, due to the  
199 unique circumstances of the subject property, strict application of the County Code  
200 would produce undue hardship not generally shared by other properties in the area, and  
201 authorizing this variance will neither cause a substantial detriment to adjacent property  
202 nor materially impair the purpose of the zoning regulations.

203  
204 **UP- 37-2002** **VERIZON** requests a conditional use permit pursuant to Section  
205 24-12(c) of Chapter 24 of the County Code to modify the existing  
206 telephone equipment building at 6102 Hermitage Road (Hermitage  
207 Park) (Parcel 780-748-2919), zoned B-1, Business District and R-4,  
208 One-family Residence District (Brookland).

209  
210 Mr. Balfour - Do we have any others who intend to testify in this matter?  
211 Would you raise your right hand and be sworn please?

212  
213 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
214 truth, the whole truth, and nothing but the truth, so help you God?

215  
216 Ms. Freye - I do. Good morning Mr. Chairman, members of the Board.  
217 My name is Gloria Freye. I'm an attorney here on behalf of Verizon. Also here with me

218 this morning is Jane Harris from Verizon, and their consulting engineer, Dudley Parrish,  
219 from Baskervill and Son. Verizon has operated a telephone exchange switching station  
220 at this location since the 1950's. They were first granted a conditional use permit in  
221 1966. That conditional use permit had a condition that required that any changes to the  
222 site plan be approved by this Board, which brings us to the reason we are here today.  
223 Verizon is asking that you approve a revised site plan, principally that replaces an  
224 underground storage tank with an aboveground tank. This change is being made  
225 because Verizon needs a larger generator. The generator they have now is located in  
226 the southeast corner of the building in the basement. The larger generator that they  
227 need will not fit in that location, so they want to move it from the southeast corner of the  
228 building to the former boiler room that they had in the northeast corner of the building.  
229 They are not making any modifications to the building. Verizon, however, wants to  
230 relocate the fuel tank closer to the relocated generator and plans to place it in the  
231 loading area next to the old boiler room. That loading area is not being used, and it  
232 provides a good location for the aboveground fuel tank, because the building itself will  
233 screen the fuel tank on 2 sides. The other sides can be screened by inserting vinyl slats  
234 in the existing 6-foot high chain link fence that's already there. The tank actually  
235 measures 7 feet high. It's 8 feet long and 10 feet wide, so for additional screening,  
236 Verizon proposes to plant 6-foot Leyland Cyprus trees inside the fence next to the fuel  
237 tank. This is also a good location for that tank, because it doesn't displace any of the  
238 parking on the site. The other couple of changes to the site plan before you, is that  
239 Verizon will be enclosing and screening the dumpster, also adding landscaping to  
240 screen the mechanical equipment along the Kenwood Avenue side, which is the side  
241 that you're looking at now. This request falls within your powers provided in Henrico  
242 County's Zoning Ordinance Section 24-116(c)(2), which permits conditional use permits  
243 for public utilities service and equipment buildings. The picture that's on the screen  
244 right now where you see the van pulled up to the loading area, that is where the fuel  
245 tank would be. This request does meet the criteria of the Zoning Ordinance  
246 requirements because the site changes do not negatively impact the adjacent  
247 properties. On the contrary, the changes actually improve the screening that's being  
248 provided for the surrounding properties. It does not impair and light and air; it doesn't  
249 create any congestion in the streets, and it doesn't create any public danger. As far as  
250 we know, there's no opposition to this request. Verizon has reviewed the conditions  
251 recommended by staff and is in agreement with those. For those reasons and meeting  
252 the jurisdictional requirements, we ask that you approve the revised site plan, and we'll  
253 be glad to respond to any questions that you have.

254  
255 Mr. McKinney - Ms. Freye, did you say you're moving the generator?

256  
257 Ms. Freye - Yes sir, right now it's in the basement, and we need a larger  
258 one. The larger one will not fit in the former space, so they're moving it to the old boiler  
259 room.

260  
261 Mr. McKinney - So it's still going to be inside?

262  
263 Ms. Freye - Yes sir, it will still be inside.

264  
 265 Mr. McKinney - So I guess it has mufflers and things on it.  
 266  
 267 Ms. Freye - Yes sir, we specifically worked with the manufacturer to get  
 268 attenuating louvers installed at the vent on that side of the building, so that at that side  
 269 of the building, the sound level will be 50 decibels at the building vent.  
 270  
 271 Mr. McKinney - Is that diesel or propane?  
 272  
 273 Ms. Freye - Diesel.  
 274  
 275 Mr. McKinney - Thank you.  
 276  
 277 Mr. Balfour - Any other questions by Board members? Apparently not.  
 278 Thank you, Ms. Freye.

279  
 280 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
 281 Nunnally, the Board **granted** application **UP-37-2002** for a conditional use permit to  
 282 modify the existing telephone equipment building at 6102 Hermitage Road (Hermitage  
 283 Park) (Parcel 780-748-2919). The Board granted the variance subject to the following  
 284 conditions:

- 285  
 286 1. The portion of this site zoned R-4 shall be used only to operate and maintain this  
 287 facility. The R-4 property shall not be used as a sales office, training center, a parts or  
 288 supplies storage area, or offices for operations not being conducted on this site. The  
 289 portion of the property zoned B-1 may be used for any use permitted in the B-1 District.  
 290  
 291 2. All existing and proposed utility and mechanical equipment shall be screened  
 292 from general public view from adjoining right-of-way and adjacent property. A detailed  
 293 landscape plan shall be submitted to the Planning Office for review and approval. If the  
 294 applicant acquires the alley on the north side of the property, the landscape plan may  
 295 be altered to include the alley, subject to Planning Office for review and approval.  
 296  
 297 3. All exterior lighting shall be shielded to direct light away from adjacent property  
 298 and streets.

299  
 300 Affirmative: Balfour, Kirkland, McKinney, Nunnally 4  
 301 Negative: 0  
 302 Abstain: Wright 1  
 303

304 The Board granted the request because it found the proposed use will be in substantial  
 305 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
 306

307 **A -183-2002** **BRENDA AND KENNETH WAGNER** request a variance from  
 308 Sections 24-9 and 24-94 of Chapter 24 of the County Code to build  
 309 a one-family dwelling at 1601 Kimbrook Lane (Parcel 830-721-

310 6259), zoned A-1, Agricultural District (Varina). The public street  
311 frontage requirement and rear yard setback are not met. The  
312 applicants have 0 feet public street frontage and 25 feet rear yard  
313 setback, where the Code requires 50 feet public street frontage and  
314 50 feet rear yard setback. The applicants request a variance of 50  
315 feet public street frontage and 25 feet rear yard setback.  
316

317 Mr. Balfour - Do we have any others who intend to testify in this matter?  
318 Would you both raise your right hand and be sworn please?  
319

320 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
321 truth, the whole truth, and nothing but the truth, so help you God?  
322

323 Mr. Harris - I do. My name is Bradley T. Harris, and I'm here  
324 representing Brenda and Kenny Wagner in this matter. I was before this Board last  
325 month, and we're here to request a variance on property that's on Kimbrook Lane,  
326 which is a private road. The reason we need the variance is because there's no public  
327 road frontage, and due to the location of the house, we'd like to maintain green space  
328 between the house and the road, so we'd be able to move the house back a little bit  
329 from the road, and also because of the septic field that will be in front of it, we will need  
330 the variance on the rear of the property. It was requested by the Board that I defer till  
331 this month because there was some question about the road and who owned it. The  
332 Sullivans owned the road, and the property owners on the road wanted to discuss the  
333 possibility of transferring the road to the folks who live there. I've met with Mr. Sullivan,  
334 as well as with individuals who live on the road. We had a meeting, and there seems to  
335 be an agreement to purchase the road, to transfer the ownership from the Sullivans to  
336 the adjacent property owners. That was a request that I volunteer to participate in. At  
337 this time I do not know of any objections to this variance.  
338

339 Mr. Balfour - Questions by Board members?  
340

341 Mr. McKinney - So you have a road maintenance agreement with the owners  
342 on the road now?  
343

344 Mr. Harris - They're negotiating that out with an attorney, and the idea is  
345 they're going to try to put an association together and purchase the property from the  
346 Sullivans.  
347

348 Mr. Balfour - When you said "seem to," it means they're still talking about  
349 it?  
350

351 Mr. Harris - It's in the attorney's hands; it's a gentlemen's agreement at  
352 this time, and a figure has been negotiated.  
353

354 Mr. Nunnally - Who's handling the job?  
355



356 Mr. Harris - Jim Chisholm.  
357  
358 Mr. Balfour - Any other questions by Board members? Thank you sir. I  
359 think there's another fellow who wants to speak, and if he's opposed, you'll have a  
360 chance to respond.  
361  
362 Mr. Leake - Good morning. My name is Bill Leake. I'd like to start off by  
363 saying I'm not opposed to the variance. I would appreciate it if the Board would go  
364 ahead and approve it for Mr. Harris and the Wagners. Last time we spoke in a meeting,  
365 the problems with the road maintenance agreement and the road itself, it was directed  
366 to Mr. Harris, but it really should have been directed to the Sullivans. There are 2 other  
367 variance hearings still in process right now, A-80-2000, and A-81-2000. The Sullivans  
368 own these 2 properties as well as the road. Mr. Harris has been working with the  
369 Sullivans; he opened the line of communications with them about the road. We were  
370 looking at putting it into an association, but now I understand there's a little bit of a  
371 financial problem with the insurance and other legal matters. Jim Chisholm is looking  
372 into trying to divide the road up amongst the landowners themselves. In other words,  
373 the landowner would own the land in front of the house. We're not sure what it's going  
374 to take to do this, but we are working with Jim Chisholm and Brad Harris, who is  
375 representing the Sullivans for us. At this time I'd like to ask, are there any other matters  
376 leading to the road maintenance agreement or the road itself, that need to go through  
377 the other 2 hearings, rather than Mr. Harris. Please go ahead and approve his variance  
378 at this time.  
379  
380 Mr. Balfour - What about the other 2 pending cases?  
381  
382 Mr. Leake - The other 2 pending cases are owned by the Sullivans, so  
383 as far as the road maintenance agreement, we don't have anything in writing about  
384 what we're going to do with the road or the road maintenance. I gave you some  
385 minutes from the previous meeting, that I believe Mr. Blankinship just passed out, and  
386 at that time Mr. Felts, who was representing the Sullivans, has agreed to a more  
387 specified road maintenance agreement, and he also stated that he was willing to deed  
388 the road over to the people. We haven't worked these details out yet. We still do have  
389 a problem with the road maintenance agreement, but it's not with the Wagners or Mr.  
390 Harris; it's with the Sullivans.  
391  
392 Mr. McKinney - Mr. Leake, this condition # 1 that you're proposing, "Maintain  
393 road during and after construction, bring back to the same condition as it was when  
394 construction started." I can understand maintaining it during, but how long after  
395 construction do you want him to maintain this road in this condition?  
396  
397 Mr. Leake - Just immediately.  
398  
399 Mr. McKinney - Just to the conclusion of his job? It doesn't say that here.  
400  
401 Mr. Leake - Correct. It should say that, when all his vehicles have

402 finished coming up and down the road.  
403  
404 Mr. McKinney - When the material trucks and concrete trucks and so forth  
405 have finished, then bring it back to the condition it was in; then his part ceases except  
406 for his part of the road, whoever buys his property with the road maintenance  
407 agreement.  
408  
409 Mr. Leake - As far as the builder, just bring it up to where it was before  
410 he started. When all his construction is completed, then he'll be relieved of all  
411 obligations.  
412  
413 Mr. Balfour - I see you've thrown in "Drill deep wells" too.  
414  
415 Mr. Leake - That's from the last one too. At the 2 previous hearings for  
416 the Sullivans, it was the same way.  
417  
418 Mr. Nunnally - Looks like what we talked about with Mr. Felts in October of  
419 2000, if this date's correct, a couple of years ago.  
420  
421 Mr. Leake - One house is almost completed, and he hasn't started the  
422 other one yet.  
423  
424 Mr. Balfour - And you're saying you want us to kind of finish unfinished  
425 business from 2 years ago that apparently was left kind of open.  
426  
427 Mr. Wright - A variance is only good for a year.  
428  
429 Mr. Blankinship - They're under construction.  
430  
431 Mr. Leake - Yes sir, one house is under construction now; as a matter of  
432 fact, it's almost completed.  
433  
434 Mr. Kirkland - Mr. Blankinship, let me ask you a question. How many more  
435 pieces of land are on this road that can be developed?  
436  
437 Mr. Blankinship - Jim, do you want to show us the site? That kind of gives you  
438 an idea of road end there; it butts into that last lot. You can see where there is some  
439 room where a lot or 2 could still be cut out, but this will come pretty close to building out  
440 what's available.  
441  
442 Mr. Leake - If I may, there can only be a total of 8 houses on the road.  
443  
444 Mr. Kirkland - So here on this drawing we got with our packet, it had 2 or 3  
445 more lots drawn down the line here. I didn't know whether this one here was accessible  
446 to that road or not.  
447

448 Mr. Blankinship - You want to go to the aerial now Jim? Could be that  
449 someone wants to extend that road farther to the southeast. I suppose their  
450 maintenance agreement would wrap that up, would prevent .....

451

452 Mr. Kirkland - They might get one more in there.

453

454 Mr. McKinney - Mr. Leake, how do you intend to enforce that 5 mile per hour  
455 speed limit? I don't think we can do that.

456

457 Mr. Leake - I reckon "enforcement" was a bad choice of words. Mr.  
458 Harris could speak with all his contractors and contractors' employees. I'm not  
459 expecting him to stand out there and flag people down or anything, but at least advise  
460 all the construction people that there is a 5 mph speed limit on the road.

461

462 Mr. McKinney - Wouldn't you like that posted?

463

464 Mr. Leake - We have that posted now sir. And Tommy Day will flag them  
465 down if they go any faster.

466

467 Mr. McKinney - Do they pay any attention to him?

468

469 Mr. Leake - Half the time.

470

471 Mr. Balfour - Are you one of the owners along there now?

472

473 Mr. Leake - Yes I am. I'm right across the street from where this  
474 variance is, this particular place.

475

476 Mr. Balfour - So you're basically asking us to add these restrictions to the  
477 restrictions already applicable, and then you're telling us if that's done, you're  
478 comfortable that you and the other landowners will be able to maintain the road with this  
479 agreement that you're working on?

480

481 Mr. Leake - That we're working on, yes.

482

483 Mr. Balfour - Any other questions of Mr. Leake? Mr. Harris? Have you  
484 read his conditions?

485

486 Mr. Harris - I don't know the conditions; I'm looking at last month's notes.

487

488 Mr. Balfour - He has some he just handed out, that he asked us to add.  
489 You don't have those, is that what you're saying? That includes the 5 mph speed limit,  
490 the restrooms, deep wells, trash receptacles, and bringing the road back to the  
491 condition it is now, once they've finished construction.

492

493 Mr. Harris - That's acceptable.

494  
495 Mr. Balfour - All of them?  
496  
497 Mr. Harris - The only thing that I would be glad to inform all our  
498 subcontractors that there are children in the neighborhood, and please respect that. As  
499 far as the road is concerned, if we do any damage to the road, we will take care of it and  
500 make sure it is brought back up.  
501  
502 Mr. McKinney - But change this first condition to "after you've completed."  
503  
504 Mr. Blankinship - "At the time of the CO" is how I'll state it.  
505  
506 Mr. Balfour - Any other questions of Mr. Harris? Okay, if we pass it, we'll  
507 add these 4 with the change in # 1 we talked about.  
508  
509 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
510 Kirkland, the Board **granted** application **A-183-2002** for a variance to build a one-family  
511 dwelling at 1601 Kimbrook Lane (Parcel 830-721-6259). The Board granted the  
512 variance subject to the following conditions:  
513  
514 1. This variance applies only to the public street frontage requirement. All other  
515 applicable regulations of the County Code shall remain in force.  
516  
517 2. Approval of this request does not imply that a building permit will be issued.  
518 Building permit approval is contingent on Health Department requirements, including,  
519 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
520 of a well location.  
521  
522 3. The applicant shall present proof with the building permit application that a legal  
523 access to the property has been obtained.  
524  
525 4. The owners of the property, and their heirs or assigns, shall accept responsibility  
526 for maintaining access to the property until such a time as the access is improved to  
527 County standards and accepted into the County road system for maintenance.  
528  
529 5. At the time of building permit application, the applicant shall submit the  
530 necessary information to the Department of Public Works to ensure compliance with the  
531 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
532 water quality standards.  
533  
534 6. Before a certificate of occupancy is issued, the applicants shall repair Kimbrook  
535 Lane to its condition before the start of construction.  
536  
537 7. During construction the applicants shall do everything in their power to maintain a  
538 speed limit of 5 mph for construction workers and vehicles.  
539

540 8. During construction the applicants shall provide portable bathroom facilities for all  
541 construction workers.

542  
543 9. During construction the applicants shall be responsible for keeping all trash in  
544 appropriate containers and keeping the ditches along Kimbrook Lane clean.

545  
546 10. Any well drilled on the property shall be a deep well.

547  
548 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
549 Negative: 0  
550 Absent: 0

551  
552 The Board granted this request, as it found from the evidence presented that, due to the  
553 unique circumstances of the subject property, strict application of the County Code  
554 would produce undue hardship not generally shared by other properties in the area, and  
555 authorizing this variance will neither cause a substantial detriment to adjacent property  
556 nor materially impair the purpose of the zoning regulations.

557  
558 **A -184-2002** **AMY COLLEEN BASS** requests a variance from Section 24-94 of  
559 Chapter 24 of the County Code to build a screened porch at 6816  
560 Edmonstone Avenue (Duntreath) (Parcel 764-740-3721), zoned R-  
561 3, One-family Residence District (Three Chopt). The rear yard  
562 setback is not met. The applicant proposes 35 feet rear yard  
563 setback, where the Code requires 40 feet rear yard setback. The  
564 applicant requests a variance of 5 feet rear yard setback.

565  
566 Mr. Balfour - Do we have any others who intend to testify in this matter?  
567 Would you raise your right hand and be sworn please?

568  
569 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
570 truth, the whole truth, and nothing but the truth, so help you God?

571  
572 Ms. Bass - I do. I'm Amy Colleen Bass, and I'm the owner of the  
573 property at 6816 Edmonstone Avenue. I have an approve plan to add an addition to the  
574 property, and I would like to add a 10' by 10' screened porch to the rear of that addition.  
575 As far as I know, there's no opposition. I have a sister who's had hip replacement  
576 surgery. She's going to be having knee replacement surgery, and I would like to have  
577 the screened porch the size that she can use during her recuperation and have easy  
578 access to the yard, to do some walking in the yard.

579  
580 Mr. Balfour - Any questions by Board members?

581  
582 Mr. Kirkland - Ms. Bass, what is the addition going to be?

583  
584 Ms. Bass - It's going to be a bedroom and additional bath, and closet  
585 space of course.

586 Mr. Balfour - Where it says screened "deck," I guess that means screened  
587 "porch"?

588  
589 Ms. Bass - It's referred to both ways, but as far as I know, it's the same  
590 thing.

591  
592 Mr. Balfour - As to location anyway?

593  
594 Ms. Bass - Yes.

595  
596 Mr. Balfour - Any other questions by Board members?

597  
598 Mr. Wright - Is there any screening between the rear of your property and  
599 the other property to the rear of you?

600  
601 Ms. Bass - The property to the rear has either a 6- or 7-foot privacy  
602 fence around that property. If they could see any part of the addition, it would be the  
603 roof. And there is also a line of trees across the back of the property.

604  
605 Mr. Blankinship - Jim, would you show photo 2. This is looking across the  
606 alley, trying to get a view of the back of the house. It's really very effectively screened.

607  
608 Ms. Bass - This is sort of the corner going towards Charles Street, and  
609 the trees on the right are how it is going toward the back of the property.

610  
611 Mr. Blankinship - We would consider that the side of the property.

612  
613 Mr. Balfour - Any other questions? Thank you ma'am.

614  
615 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
616 McKinney, the Board **granted** application **A-184-2002** for a variance to build a screened  
617 porch at 6816 Edmonstone Avenue (Duntreath) (Parcel 764-740-3721). The Board  
618 granted the variance subject to the following conditions:

619  
620 1. Only the improvements shown on the plan filed with the application may be  
621 constructed pursuant to this approval. Any additional improvements shall comply with  
622 the applicable regulations of the County Code.

623  
624 2. The new construction shall match the existing dwelling as nearly as practical.

625  
626 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

627 Negative: 0

628 Absent: 0

629  
630 The Board granted this request, as it found from the evidence presented that, due to the  
631 unique circumstances of the subject property, strict application of the County Code

632 would produce undue hardship not generally shared by other properties in the area, and  
633 authorizing this variance will neither cause a substantial detriment to adjacent property  
634 nor materially impair the purpose of the zoning regulations.  
635

636 **A -185-2002**            **THOMAS AND LYNN MEDLEY** request a variance from Section  
637 24-94 of Chapter 24 of the County Code to build a sunroom over  
638 the existing deck at 10201 Meadbrook Court (Raintree North)  
639 (Parcel 743-752-6013), zoned R-3, One-family Residence District  
640 (Tuckahoe). The rear yard setback is not met. The applicants  
641 have 30 feet rear yard setback, where the Code requires 40 feet  
642 rear yard setback. The applicants request a variance of 10 feet  
643 rear yard setback.  
644

645 Mr. Balfour -                            Do we have any others who intend to testify in this matter?  
646 Would you raise your right hand and be sworn please?  
647

648 Mr. Blankinship -                    Do you swear that the testimony you are about to give is the  
649 truth, the whole truth, and nothing but the truth, so help you God?  
650

651 Mr. Medley -                            I do. I am Thomas Medley. The rear setback is not met.  
652 We would like to turn our deck into a sunroom, and we need a 40-foot setback from the  
653 sunroom. As you can see, the right rear corner of the deck only has 30 feet to the rear  
654 property line. The left corner of the deck has more than 40 feet, so it's because the  
655 back property line is at an angle that I need a variance. I do have trees behind the  
656 house. I have a playground behind the house between my neighbor and me. There's  
657 already an existing deck there, that's primarily used for recreation or entertaining, so as  
658 far as my neighbors are concerned, that entertaining would be going on inside, rather  
659 than outside, if I built the sunroom. So we're requesting a variance of 10 feet to turn the  
660 deck into a sunroom.  
661

662 Mr. Wright -                            The sunroom will be the same size as the deck?  
663

664 Mr. Medley -                            Exactly the same size as the deck.  
665

666 Mr. Wright -                            I'd say you have an odd-shaped lot, don't you?  
667

668 Mr. Balfour -                            You're also saying your wild parties, your neighbors can't  
669 see because you'll be inside now, is that right? Any other questions of Mr. Medley?  
670 Thank you sir.  
671

672 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
673 McKinney, the Board **granted** application **A-185-2002** for a variance to build a sunroom  
674 over the existing deck at 10201 Meadbrook Court (Raintree North) (Parcel 743-752-  
675 6013). The Board granted the variance subject to the following conditions:  
676

677 1. Only the addition shown on the plan filed with the application may be constructed  
678 pursuant to this approval. No substantial changes or additions to the layout may be  
679 made without the approval of the Board of Zoning Appeals. Any additional  
680 improvements shall comply with the applicable regulations of the County Code.

681  
682 2. The new construction shall match the existing dwelling as nearly as practical.  
683

684 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
685 Negative:		0
686 Absent:		0

687  
688 The Board granted this request, as it found from the evidence presented that, due to the  
689 unique circumstances of the subject property, strict application of the County Code  
690 would produce undue hardship not generally shared by other properties in the area, and  
691 authorizing this variance will neither cause a substantial detriment to adjacent property  
692 nor materially impair the purpose of the zoning regulations.  
693

694 **A -186-2002**            **MR. AND MRS. WILLIAM L. BARNES** request a variance from  
695 Section 24-94 of Chapter 24 of the County Code to build an  
696 addition at 2312 Raymond Avenue (Rocky Branch Farms) (Parcel  
697 775-757-1711), zoned R-3, One-family Residence District  
698 (Brookland). The front yard setback is not met. The applicants  
699 propose 35.9 feet front yard setback, where the Code requires 40  
700 feet front yard setback. The applicants request a variance of 4.1  
701 feet front yard setback.  
702

703 Mr. Balfour -                            Do we have any others who intend to testify in this matter?  
704 Would you raise your right hand and be sworn please?  
705

706 Mr. Blankinship -                    Do you swear that the testimony you are about to give is the  
707 truth, the whole truth, and nothing but the truth, so help you God?  
708

709 Mr. Rhoades -                            I do. Good morning Mr. Chairman, members of the Board.  
710 My name's Richard Rhoades. I'm with Hanover Custom Builders; we're Class A  
711 general contractors, representing the Barnes. Basically, there is no other space on the  
712 property to add the bedroom for an aging parent. That's what our intention is, to build a  
713 bedroom in, and an extra bath, and I think it's about a 4-foot variance we're requesting.  
714 There's an easement on the back of the property for Vepco, and it takes up the whole  
715 back yard, so basically there's no other place to do the addition that would have less  
716 impact.  
717

718 Mr. Wright -                            Looks like that easement runs right up to the rear of the  
719 house, doesn't it?  
720

721 Mr. Rhoades -                            Yes it does, a bit unusual I think.  
722



723 Mr. Wright - You cannot build in that easement, is that correct?  
724  
725 Mr. Rhoades - That's right.  
726  
727 Mr. Wright - What type of construction would this be?  
728  
729 Mr. Rhoades - It would be brick foundation. There is siding on the wing that  
730 comes out there now, so we will do brick foundation, vinyl siding, to match what's there  
731 now.  
732  
733 Mr. Wright - This is to be a bedroom you say?  
734  
735 Mr. Rhoades - It's a bedroom and bath, and we also have a porch  
736 extending over for an outside entry, but the porch part really is within the restrictions, so  
737 we don't need a variance to build the porch.  
738  
739 Mr. Wright - Would you have access from the inside to this room?  
740  
741 Mr. Rhoades - Yes.  
742  
743 Mr. Balfour - Is the new porch going to extend over into the existing  
744 porch?  
745  
746 Mr. Rhoades - Yes it would.  
747  
748 Mr. Balfour - And there's no entrance to the back of the house now – oh,  
749 there it is, I see it on the left.  
750  
751 Mr. Rhoades - Actually right now there's some question as to whether we  
752 would build the porch right away, for financial reasons.  
753  
754 Mr. McKinney - Are additions better than garages?  
755  
756 Mr. Rhoades - Well, it depends on the need sir. We do a lot of garages.  
757  
758 Mr. Balfour - Any other questions? Thank you sir.  
759  
760 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
761 Nunnally, the Board **granted** application **A-186-2002** for a variance to an addition at  
762 2312 Raymond Avenue (Rocky Branch Farms) (Parcel 775-757-1711). The Board  
763 granted the variance subject to the following conditions:  
764  
765 1. Only the improvements shown on the plan filed with the application may be  
766 constructed pursuant to this approval. No substantial changes or additions to the layout  
767 may be made without the approval of the Board of Zoning Appeals. Any additional  
768 improvements shall comply with the applicable regulations of the County Code.

769  
770 2. The new construction shall match the existing dwelling as nearly as practical.  
771

772 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
773 Negative: 0  
774 Absent: 0  
775

776 The Board granted this request, as it found from the evidence presented that, due to the  
777 unique circumstances of the subject property, strict application of the County Code  
778 would produce undue hardship not generally shared by other properties in the area, and  
779 authorizing this variance will neither cause a substantial detriment to adjacent property  
780 nor materially impair the purpose of the zoning regulations.  
781

782 **A -187-2002** **RICHARD S. PECK** requests a variance from Section 24-95(i)(2) of  
783 Chapter 24 of the County Code to build a garage at 2921 Battery  
784 Avenue (Parkdale) (Parcel 776-744-5635), zoned R-4, One-family  
785 Residence District (Brookland). The accessory structure size  
786 requirement is not met. The applicant proposes accessory  
787 structures totaling 896 square feet, where the Code allows  
788 accessory structures of 683 square feet. The applicant requests a  
789 variance of 213 square feet.  
790

791 Mr. Balfour - Do we have any others who intend to testify in this matter?  
792 Would you raise your right hand and be sworn please?  
793

794 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
795 truth, the whole truth, and nothing but the truth, so help you God?  
796

797 Mr. Peck - I do. Richard S. Peck.  
798

799 Mr. Balfour - All right, Mr. Peck, I think you just bought this property a few  
800 months ago.  
801

802 Mr. Peck - Yes sir, we closed Labor Day weekend. I would like  
803 permission to build a 2-car, 24' by 24' brick garage, with a 5/12 pitched roof, to maintain  
804 a low profile, (I'm assuming you have been given some plans to this), at the end of my  
805 driveway, so that it can be used as a daily garage for my wife's 2 cars. The house was  
806 sold to me with a 1 1/2-car garage, which I really deem almost unusable as a garage. It's  
807 set well back in the middle of the back yard. There's no driveway going to it. I do have  
808 future plans, if allowed to keep that garage, is to convert it sometime into a seasonal  
809 recreation room or something. Currently, it was never finished; it has no electricity or  
810 anything. But I do want to build one with a brick exterior so that it will match the  
811 architecture of my home and others in the area. I've got a privacy fence that I've  
812 recently built around the entire back yard. I plan on reconfiguring the part of it at the  
813 end of the driveway to run it from the house to the garage, so that I can extend the  
814 driveway directly up to the garage door. I've got a contract with a builder to build the

815 garage; it will be very aesthetic to the neighborhood. Spoke with a few of my neighbors.  
816 As far as I know, there's no opposition from anyone. Several spoke in favor of it;  
817 they've been impressed with everything I've done to the property up to this point. Are  
818 there any questions?

819  
820 Mr. Balfour - Looks like the frame shed, as they call it on your plans, is  
821 what you're talking about as a garage, 16' by 20'? And looks like there's a garage  
822 already in the building behind you, is that right, from the picture? Your neighbor behind  
823 you already has a garage?

824  
825 Mr. Peck - Yes sir. Yes, the neighbor behind me does, on Oakland  
826 Avenue. Most of the lots in the neighborhood are about 66 feet wide. Mine measures  
827 113 feet; it's actually all of lot 28 and 2/3 of lot 29. Therefore, with the variance, I would  
828 still be using less than 5% of my lot for accessory buildings, whereas the Code allows  
829 for up to 9% of that. It would still meet all other zoning requirements. With the garage,  
830 it would still be 10 feet setback from the sideline, 65 setback from the rear line, over 80  
831 feet from the street.

832  
833 Mr. Kirkland - Mr. Peck, when you purchased this dwelling, the frame shed  
834 was there? Is it on skids? I can't tell because I can't see.

835  
836 Mr. Peck - No, it's on a very nice slab that sits about 8-10 inches off the  
837 ground. It was built, to the best of my knowledge, I talked to the person I purchased the  
838 home from, -- I believe it was built in the summer of 2000, by a contractor. It would be  
839 used in the future, eventually converted into a seasonal rec room area with storage  
840 above it.

841  
842 Mr. Kirkland - Were you told at the time you bought it, that if you ever  
843 wanted to add any additional buildings, you would have to get a variance from Henrico  
844 County?

845  
846 Mr. Peck - No, I was not.

847  
848 Mr. Balfour - Any other questions by Board members? Thank you sir.

849  
850 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
851 Nunnally, the Board **granted** application **A-187-2002** for a variance to build a garage at  
852 2921 Battery Avenue (Parkdale) (Parcel 776-744-5635). The Board granted the  
853 variance subject to the following condition:

854  
855 1. Only the improvements shown on the plan filed with the application may be  
856 constructed pursuant to this approval. No substantial changes or additions to the layout  
857 may be made without the approval of the Board of Zoning Appeals. Any additional  
858 improvements shall comply with the applicable regulations of the County Code.

859  
860 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

861 Negative: 0  
862 Absent: 0

863  
864 The Board granted this request, as it found from the evidence presented that, due to the  
865 unique circumstances of the subject property, strict application of the County Code  
866 would produce undue hardship not generally shared by other properties in the area, and  
867 authorizing this variance will neither cause a substantial detriment to adjacent property  
868 nor materially impair the purpose of the zoning regulations.

869  
870 Mr. Blankinship - The next 2 are companion cases, Mr. Chairman.

871  
872 **UP- 38-2002** **GILLIES CREEK INDUSTRIAL RECYCLING, LLC** requests a  
873 conditional use permit pursuant to Sections 24-52(d) and 24-103 of  
874 Chapter 24 of the County Code to extract materials from the earth  
875 at 2980 Meadow Road (Parcel 843-720-7272), zoned A-1,  
876 Agricultural District (Varina).

877  
878 **UP- 39-2002** **GILLIES CREEK INDUSTRIAL RECYCLING, LLC** requests a  
879 temporary conditional use permit pursuant to Section 24-116(c)(1)  
880 of Chapter 24 of the County Code to process and sell topsoil at  
881 2980 Meadow Road (Parcel 843-720-7272), zoned A-1, Agricultural  
882 District (Varina).

883  
884 Mr. Balfour - Anyone besides Mr. Deal expected to testify in this matter?  
885 Would you raise your right hand and be sworn please?

886  
887 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
888 truth, the whole truth, and nothing but the truth, so help you God?

889  
890 Mr. Deal - I do sir. My name is John Deal, and I represent the  
891 landowner, Mr. Leber, who owns JJ&B Sand & Gravel, which is the owner, and I  
892 represent J. E. Liesfeld, Contractor Inc., that owns Gillies Creek Industrial Recycling.  
893 As you gentlemen know, before I get into the site, we've read your conditions on the  
894 mining permit, case UP-38-02. On the time, we would like for the time to be 7:00 to  
895 5:30 at all times, daylight saving time and regular time, we'd like 7:00 to 5:30, Monday  
896 through Friday, on Saturday, 7:00 to 3:30, and of course there will be no activity on the  
897 site on Sunday. So what we're asking for time-wise is 7:00 to 5:30 at all times, daylight  
898 saving time and eastern standard time, and Saturday, 7:00 to 3:30. We would also like  
899 to add three different conditions to your conditions, if you would permit us to. I've talked  
900 to Mrs. Eggers, who lives in Florida, who owns the land next door, a long-term friend of  
901 mine, and I've talked to the homeowners association down there on Meadowbridge  
902 Road, on Meadow Road, and what we would like to add is 3 conditions.

903  
904 First, is there will be 2 speed bumps, between the site to be filled on that long shoot of  
905 the road. If you'll look at your map here, you'll see that the green is the site to be  
906 mined, and it's a site to be applicable to both of these cases. The trucks leave out of

907 the green area to go to the right, I guess that would be to the east here, and then down  
908 a road running adjacent, all the way to Meadow Road. We'd like to locate a couple or  
909 three speed bumps on that road. Mrs. Eggers Estate, that she's the Trust of, owns the  
910 land on the right, and she said that she would like to have that done. I told her we'd  
911 have no problem asking for that.

912  
913 We also suggested that there be a speed limit sign as the truckers leave the property,  
914 as they have to turn to the right; they cannot turn to the left to go towards Williamsburg  
915 Road. That's already prearranged as the entrance is built. Just as they take a right to  
916 go out of the property, we would or the County could, erect a speed limit sign there for  
917 the truckers to see.

918  
919 Thirdly, I had told Mrs. Eggers that I would ask this Board to ask the County to enforce  
920 the speed limit on that road. As a part of that, you come over I-295 when you come into  
921 this site. You have to approach the site from the other side of I-295 and come in this  
922 way. Also put a speed limit sign at the Meadow Road end of the I-295 bridge, so there's  
923 no mistake as to what the speed limit is for vehicles on Meadow Road between I-295  
924 and the site.

925  
926 So a sign going out of the property, a sign for vehicles coming into the property, and 3  
927 speed bumps. So we would like to add those conditions, and that's what we told the  
928 neighbors that we would do.

929  
930 Mr. Nunnally - Mr. Deal, since you're talking about these conditions, I notice  
931 that you're asking for a 4-year permit.

932  
933 Mr. Deal - Yes sir, on the processing of topsoil – might I explain why  
934 sir?

935  
936 Mr. Nunnally - Yes, you can explain why, but let me get through first. I've  
937 been on this Board for 27 years, and we've never issued a 4-year permit, so I don't think  
938 you stand a chance of getting that, as far as I'm concerned, not I don't know about the  
939 other members of the Board.

940  
941 Mr. Deal - Now I've got something that might be acceptable to you, and  
942 I'd like to tell you why that we would ask for a 4-year permit. Right now there remains  
943 about thirteen acres of this property that needs to be filled, top soiled and fertilized. We  
944 had a horror story several years ago with one operator who was on the property, who  
945 didn't do anything that he said he would do, occupied the property, and gave nothing  
946 but headaches to the County. Then we finally had him taken off the property, and  
947 another gentleman came, and for the last couple of years, Mr. Anderson has tried to do  
948 what's right. I've got to give Mr. Anderson credit – he ran out of capital, but he his  
949 demeanor with the neighbors was excellent; he just ran out of capital. What we're left  
950 with is about 8 ½ acres of property that was mined by West Sand and Gravel years ago,  
951 that, if you'll look at the plans that were submitted with this, you'll see that the lower end  
952 of that site is a dam that's been built, a reservoir rather, to hold the water before it runs

953 into the Chickahominy River. Given economic conditions, the building business around  
954 here drives the whole thing, the use for this fill. Mr. Liesfeld said he was willing to come  
955 in, fill the property in 4 years and be out in 4 years. If the economy is good, he may be  
956 out in less than 4 years. But to make it profitable for him to come, and to fill here, he  
957 needs to be able to process topsoil too. If he can have the right to process topsoil on  
958 this property for a 4-year period of time, he can fill those holes, given a decent  
959 economy; it would be topsoil seeded, fertilized and gone. That is also Mr. Leber's wish,  
960 the property owner who's here today. Mr. Leber's at that point in his life that he wants  
961 to be finished with having to deal with the County about this property.  
962

963 Mr. Nunnally - How about the property you have on Darbytown Road that's  
964 processing the topsoil now?  
965

966 Mr. Deal - You mean on Masonic Lane? Gillies Creek has a site on  
967 Masonic Lane, by the railroad tracks there. What he wants that for, is for processing  
968 and those things, because it has an industrial zoning on it. This property here,  
969 obviously, does not have industrial zoning, that's why we've applied for this use permit.  
970 If he can handle his topsoil here, this site will allow his Masonic site land a much longer  
971 life, because he's using up his air space, if you will, on the Masonic Lane site. What he  
972 wants to do is to be able to use this to put volume in, and then move forward. I know  
973 this Board doesn't like to grant 4-year temporary conditional use permits. I understand  
974 that; we discussed that with Mr. Blankinship and the other people in the Planning staff.  
975 What I'm suggesting is this. I'm standing before you today telling you that Mr. Liesfeld  
976 is saying "in 4 years if I can get in there and process topsoil, I can finish the entire site,  
977 given anywhere near a decent economy. And he's willing to come back at the end of 2  
978 years. I know you don't like to; I don't know if the law will even allow you to renew a  
979 permit; I don't think it will; I don't think so. What we're saying is, "give us a 4; let us  
980 come back in 2 and stand before you, and if we haven't done, Liesfeld hasn't done what  
981 he said he would do, then that's the end of the permit. And then it's not a blanket 4-year  
982 letting of a temporary use permit. We're saying we will come back and stand here in 2  
983 years and let Mr. Blankinship tell you if they've behaved themselves or haven't behaved  
984 themselves and are making good progress or not. Here's the problem we've got,  
985 gentlemen, under the bonding requirements that the County has, the amount of the  
986 bonds are nowhere near enough to fill and complete that site, nowhere near enough.  
987 And here we have an operator who says he'll come in, has the business to do it in a  
988 decent economy, and he can finish this thing and it's done once and for all forever, and  
989 there's no more use permits of any kind for this property; it's done. That's what we  
990 would like to do. We're not asking - I'm put in the position legally where I have to ask  
991 for 4, because he says it's going to take that long to fill it. However you gentlemen only  
992 like a 2-year, and I understand that. What we're saying is we'll cut the 4 back to 2 if  
993 we're not doing what we said we'll do. And we're not asking for a renewal of it, because  
994 I don't know that we can do that, so the only way I know to ask for it is, to ask for 4. If  
995 we behave ourselves when we come back, the 4 stays in place; if we haven't behaved  
996 ourselves when I come back, then the 4 is 2. And it allows this site to be finished,  
997 because I know this site creates problems, not only with the County, but also with the  
998 state of Virginia, and this site, the run-off goes directly into the Chickahominy River.

999 The goal here is to protect the river, eliminate an environmental problem to the County,  
1000 and to the river, and get out of there in 4 years. Now, the gentleman who's going to  
1001 manage this, Mr. Bryant, sitting by Mr. Leber over here (Mr. Leber's the white-haired  
1002 man; Mr. Bryant's the younger man), Mr. Bryant said is we have a very good economy,  
1003 we might be out of there in 2 years. It depends on the volume, like right now, they have  
1004 the Stony Point job over in south Richmond, that is a humongous earth moving  
1005 situation, and so they do the kind of jobs that can do this, so if they don't, then at the  
1006 end of 2 years, what if we've got 4 acres left, and it's a hole? No contractor's going to  
1007 come in and come before you and spend all it takes in order to fill a 4-acre hole. It's just  
1008 not profitable. You just can't do it. You need to do this over a period. This processing  
1009 of topsoil would not be during all these hours. The way the topsoil would work – it's a  
1010 portable unit, it's 6 feet by about 12 feet, it has a diesel engine, it sounds about like a  
1011 farm tractor, and when the loads are not being brought in of fill that he has to spread on  
1012 the property, then he's just got to sit there on his tractor and look at the moon. This  
1013 would allow him to keep that equipment moving and defray that operator's cost to  
1014 process the topsoil to sell it offsite. It's this kind of thing that these men in the  
1015 contracting business need to be profitable. Otherwise, it's just not a good situation for  
1016 them at all.

1017  
1018 Mr. Balfour - Do we have any questions for Mr. Deal?

1019  
1020 Mr. Kirkland - How many trucks do you think will be added because of the  
1021 topsoil operation?

1022  
1023 Mr. Deal - Mr. Bryant, could you come up, please, sir, and you're going  
1024 to need to raise your right hand

1025  
1026 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1027 truth, the whole truth, and nothing but the truth, so help you God?

1028  
1029 Mr. Bryant - I do. William Bryant. The question of how many trucks will  
1030 be added because of the topsoil operation – that would depend on the volume of the  
1031 operation. Generally, we would anticipate a situation where trucks bringing in material  
1032 would want to take material out as they went, instead of leaving the job empty, to help  
1033 whoever their employer is, defray their trucking costs. So there may not be an increase  
1034 in trucks, just an increase in material passing from the site on the same truck.

1035  
1036 Mr. Kirkland - What do you do on the days there is no fill coming in, and  
1037 you have nothing to do, so you want to get rid of the topsoil. Do trucks take the place of  
1038 the place of the ones coming in?

1039  
1040 Mr. Bryant - If there were no fill coming in, but trucks needed to come  
1041 and pick up topsoil? Yes, they would take the place of the ones coming in. Instead of  
1042 leaving empty, the situation would then be, they would be arriving empty and leaving  
1043 full.

1044

1045 Mr. Kirkland - How many trucks do you figure a day?  
1046  
1047 Mr. Bryant - That all depends on the type of work that's going on in the  
1048 area? It could be no trucks in a day; there could be nothing going on, or it could be  
1049 between 10 to 15 trucks moving in and out throughout the course of the day, depending  
1050 on how large a job is going on, and what kind of work it is.  
1051  
1052 Mr. Kirkland - The topsoil operation now that exists is over on Masonic,  
1053 that you want to move over to there?  
1054  
1055 Mr. Bryant - Yes it is.  
1056  
1057 Mr. Kirkland - What kind of truck volume have you got coming out of there  
1058 now?  
1059  
1060 Mr. Bryant - In the spring it's harder than all other times of the year. In  
1061 the spring we may move as many as 20 loads a day of topsoil. But we wouldn't actually  
1062 be moving the operation that's on Masonic; we have a portable unit that can be placed  
1063 over there that can be pulled behind a truck; it's run by a 40-horsepower diesel engine.  
1064  
1065 Mr. Kirkland - I looked at the staff report; it keeps stating Darbytown Road,  
1066 so I thought there was another one too.  
1067  
1068 Mr. Bryant - No sir, it's Masonic.  
1069  
1070 Mr. Nunnally - What's that Stony Point job you have that Mr. Deal said was  
1071 a big job – how much have you figured on that?  
1072  
1073 Mr. Bryant - Well, actually, most of the dirt there is actually being used on  
1074 site to elevate the site. Certain other basement jobs – there was work done at the  
1075 biotech facility, bringing dirt in from there. It's hard to estimate how much volume there  
1076 would be. I don't know what kind of work there's going to be, next summer or 2 years  
1077 from now. It just depends on the growth around Richmond, and the amount of dirt work  
1078 that's done that needs to be disposed of off site.  
1079  
1080 Mr. Nunnally - I notice you spoke in hours, of changing from 6:00 to 7:00, if  
1081 I understood Mr. Deal, and on Saturday you wanted to go to 3:00 o'clock, and I've  
1082 forgotten what the, so you switched that to 3:30 on Saturdays, and no work on Sundays.  
1083  
1084 Mr. Deal - Gentlemen, I think something might be helpful about how  
1085 this job can be done quickly.  
1086  
1087 Mr. McKinney - Can I ask you a question first, Mr. Deal? You think this bond  
1088 is not enough – what do you think is enough if something happens?  
1089  
1090 Mr. Deal - I don't know, but the standard requirements, like you have in



1091 here, it's not enough to come in and reclaim this site.

1092

1093 Mr. McKinney - These standard requirements are not in Code, so they can  
1094 be changed at any time.

1095

1096 Mr. Deal - I understand that, but I'm trying to be honest with you  
1097 gentlemen, and frank with you, and the requirements of the past wouldn't meet the bill  
1098 to get it done. We've got a permit to mine. There's 5.03 acres of this that still has sand  
1099 and gravel on it; none of that would be processed on the site if it were mined. It's an  
1100 unsightly situation. Quite frankly, when you walk in there, it looks like a dump. That's  
1101 not good, and it drains into the Chickahominy. When the Motorola plant was build, for  
1102 instance, if you could look at the map, you see the pond. Right straight up between the  
1103 green lines from the pond, back towards the Chickahominy River, you'll see an area half  
1104 the width of the property – you see that disturbed area that looks like an "L" shape?  
1105 The part to the right that looks like the toe of a shoe, the Motorola job, in the matter of a  
1106 few months in the first Motorola plant, filled that up. When the Motorola plant was built,  
1107 they were running trucks in there from 6:00 o'clock in the morning till 11:00 o'clock at  
1108 night, filling that up. If there's a large job in the area, Mr. Liesfeld will welcome that to  
1109 get all that fill, and all that money for that fill, and be out of there. If there's small jobs in  
1110 there, it will take longer, but my point to you is, it may take 4 years, it may take 2 years,  
1111 but Mr. Liesfeld being a businessman, has to look at it as a worst case basis and make  
1112 a profit, and what we're saying is, if we don't do what we say we will, if we don't  
1113 maintain it right, then 2 years it is, and he's got to eat the other 4 the best he can, on his  
1114 mining permit.

1115

1116 Mr. McKinney - Excuse me, just a minute, Mr. Blankinship, does the UP-38-  
1117 2002 bond take care of the UP-39-2002?

1118

1119 Mr. Blankinship - Yes, the bonding provision in "38" would be to do the  
1120 reclamation from any mining they do and the fill-in operations.

1121

1122 Mr. McKinney - For both of these cases?

1123

1124 Mr. Blankinship - "39" is just for the topsoil processing, and that's not going to  
1125 have any impact on the site. They're not going to dig any holes or anything like that in  
1126 order to do just "39."

1127

1128 Mr. Kirkland - What happens if you don't make it in 4 years? Because of  
1129 the economy?

1130

1131 Mr. Deal - Well sir, we can't help that?

1132

1133 Mr. Kirkland - Would we have enough bond money to cover the hole?  
1134 Let's say he fills 2/3 of it, 2/3 of it's clean, and we've got a third left – would we have  
1135 enough money to cover it. I don't know how much we're talking about here, dollars and  
1136 cents.

1137  
1138 Mr. McKinney - We've got a total of \$10,000.  
1139  
1140 Mr. Blankinship - Well. We have \$10,000 now. One thing we need to report to  
1141 you is when we did the application, they were looking only at the 5-acre portion of the  
1142 site, and actually, they're applying on 13 acres of the site, so we need to amend that  
1143 figure up to about \$26,600, so it's going to be a lot more than what's up there now.  
1144 Exactly what happens when you bid a job like that, I can't tell you exactly what \$26,000  
1145 will buy. I can tell you that we didn't pick this \$2,000 figure out of the air; we contacted  
1146 Mines, Minerals and Energy; we contacted Public Works; we discussed with several  
1147 people what it takes to reclaim these sites. The assumption there is that they begin a  
1148 mining operation by scraping the topsoil and storing it on site; then they do their  
1149 excavating. Then all you have to do is take that original topsoil and put it back in the  
1150 hole and re-seed it. That's what the \$2,000 is intended to cover. It's not intended to  
1151 cover a situation where somebody like the previous, previous operator had really made  
1152 a mess of the site, and it's not the standard condition.  
1153  
1154 Mr. Kirkland - It's not covering bringing it in to fill the place.  
1155  
1156 Mr. Deal - What we're trying to do is to restore that part of the site to its  
1157 original or a bit higher contours to blend with the land to the left of the left green line. So  
1158 that when this site is finished, you won't be able to ride into it and say, "all this was a  
1159 mined out area." It will be slightly in there. Of course you won't be able to build homes  
1160 on it because it's fill, but I wanted to point out to you gentlemen that, of all that disturbed  
1161 area, 25% of it was filled in about 90 days, from the Motorola job. If we get another  
1162 Motorola plant, everybody's concerns are over; if we don't, Mr. Liesfeld has to figure out  
1163 a way to stay in there for 4 years. Now of course, we've got to come back in 2 on the  
1164 mining permit, and what I'm saying is, if you gentlemen would please give us the 4, and  
1165 with a call-back in 2, and you have the unilateral right to revoke it in 2 if we haven't done  
1166 what we said we were going to do and are not making progress, then revoke it. He's  
1167 willing to live with that.  
1168  
1169 Mr. McKinney - This is a total of 13 acres?  
1170  
1171 Mr. Deal - Yes sir, all together.  
1172  
1173 Mr. McKinney - Mr. Blankinship, don't we have some of these guys come in  
1174 here with 50 and 60 acres who complete it in 2 years?  
1175  
1176 Mr. Blankinship - Normally the big sites like that carry on for several years.  
1177 They do the 2-year mining permit, which you know is under a different section of the  
1178 Code. That can be renewed every 2 years; that's no problem. So we have sites like the  
1179 one down there on Kingsland Road where you've renewed the same permit every 2  
1180 years for 20 years. It's almost a hobby; they just haul out of there on rare occasions.  
1181  
1182 Mr. Deal - Mr. Nunnally, I understand your comment that you haven't

1183 done this in the time you've been on the Board. What I'm saying is, I know the meaning  
1184 of precedent, as a lawyer. I understand that. We're not asking for a blanket 4-years.  
1185 We're asking for 4, but only if we do what we said we were going to do in the first 2.  
1186 And if we don't, it's not a 4-year you've granted; it's a 2.

1187  
1188 Mr. Kirkland - What kind of guidelines would we see in 2 to tell us that you  
1189 can do it in 4? Is that a percentage that you would have done?

1190  
1191 Mr. Dear - I would suggest, I know Mr. Blankinship; I've dealt with him  
1192 for years in the Planning Office. If your Planning Office was to say, because if I gave  
1193 you a percentage, I'm going to be shooting in the dark, and it isn't going to mean a bean  
1194 what I say. I will rely on your Planning Office to tell this Board, "they're either making  
1195 substantial progress on a timely basis to complete this, and they've been doing what  
1196 they're supposed to, and leave it with your Planning Office, and we will follow their  
1197 recommendations.

1198  
1199 Mr. Blankinship - My problem is not so much the precedent, as it is just the  
1200 black letter law. It says "24-month period" in the Code. That's what disturbs me about  
1201 it.

1202  
1203 Mr. McKinney - We can't deviate from that, can we? Can we deviate from  
1204 that legally?

1205  
1206 Mr. Deal - I'm sorry; I didn't hear you.

1207  
1208 Mr. McKinney - I'm asking the Secretary if we can deviate from what's in the  
1209 Code, and I don't think we can.

1210  
1211 Mr. Deal - That's the reason for the variance.

1212  
1213 Mr. McKinney - No, it allows a variance, but it also has a 2-year limit.

1214  
1215 Mr. Wright - This is not a variance; it's a use permit.

1216  
1217 Mr. McKinney - Do you have a limit in the Code on a use permit, Ben?

1218  
1219 Mr. Blankinship - Yes sir, on a temporary use permit, the one that applies to  
1220 UP-39. UP-38, everybody understands it's a 2-year permit that can be renewed. UP-  
1221 39, the Code states, I think I actually quoted it in the staff report. At the bottom of page  
1222 1 of your staff report, "the application requests a temporary conditional use permit for  
1223 four years, until December 19, 2006. The County Code authorizes the Board to issue 'a  
1224 temporary and revocable permit for not more than a 24-month period ...'"

1225  
1226 Mr. McKinney - That's Section 24-116(c)(1). We can't do anything about  
1227 that.

1228

1229 Mr. Kirkland - We can't break the law.  
1230  
1231 Mr. Deal - Well obviously, we're not asking you to break the law, but we  
1232 are asking for cooperation some way that you gentlemen can to allow for 4 years for this  
1233 if it has to be for this thing to be profitable for Mr. Liesfeld. What we're going to be left  
1234 with is if after 2 years, it's not profitable to do without processing topsoil, then we've got  
1235 just a very few acre hole there. To get somebody else to come in and fill that, is going  
1236 to leave us all with a problem. I'm not here today just promoting a client's interest.  
1237 Obviously, I'm doggone well trying to do that, but I'm also trying to alleviate something  
1238 that's existed for years that everybody's wanted to get rid of, and we're asking for some  
1239 help as to how we do it.  
1240  
1241 Mr. Wright - Could you defer this for 30 days so that we could get a ruling  
1242 from the County Attorney on it?  
1243  
1244 Mr. Deal - Yes sir, and I'd be glad to work with him on that.  
1245  
1246 Mr. Wright - We've had this come up before .....

1247  
1248 Mr. Blankinship - Oddly enough, on topsoil processing .....

1249  
1250 Mr. Kirkland - On Greenwood Road.  
1251  
1252 Mr. Wright - And didn't we extend that?  
1253  
1254 Mr. Blankinship - It was kind of left in a state of uncertainty.  
1255  
1256 Mr. Wright - This says you can't grant one for more than 24. The  
1257 question is whether you can grant another one.  
1258  
1259 Mr. Blankinship - That was one question. The other question on that particular  
1260 site was that the staff took the position that we would not even accept the application,  
1261 and the applicant appealed that decision. You overruled staff on that matter and said  
1262 no, it's the Board's decision to hear or not to hear the case.  
1263  
1264 Mr. Wright - There was a lot of law produced on that.  
1265  
1266 Mr. Deal - I have no problem; I'll be glad to work with the County  
1267 Attorney. We'll go ahead with the mining permit.  
1268  
1269 Mr. Wright - I think we need some guidance from the County Attorney  
1270 before we do something that's .....

1271  
1272 Mr. Deal - I have no problem. I do want to go ahead with UP-38-2002  
1273 today, but let's defer UP-39 for a month, and I'll be glad to come back, and I'll work with  
1274 the County Attorney in the meantime.

1275  
1276 Mr. Wright - See if we can get some assistance.  
1277  
1278 Mr. McKinney - Is that agreeable with you, Mr. Nunnally? Will you make a  
1279 motion to defer.  
1280  
1281 Upon a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **deferred**  
1282 application **UP-39-2002** for a conditional use permit to process and sell topsoil at 2980  
1283 Meadow Road (Parcel 843-720-7272). The case was deferred for 30 days, to allow time  
1284 for review by the County Attorney's Office, from the December 19, 2002, until the  
1285 January 23, 2003, meeting.  
1286  
1287 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1288 Negative: 0  
1289 Absent: 0  
1290  
1291 Mr. Nunnally - Mr. Deal, could I ask you a question before you leave  
1292 please? On these Saturday hours you've moved to 3:30, how about if we say it's noon.  
1293 I'm thinking about those people who live down there.  
1294  
1295 Mr. Deal - Sir, we'll do whatever you say. We prefer 3:30, that's your  
1296 prerogative, that's fine.  
1297  
1298 Mr. Balfour - So we switched it to 7:00, and then we'll say noon on  
1299 Saturday.  
1300  
1301 Mr. Deal - That sounds fine.  
1302  
1303 Mr. Wright - Where's Saturday mentioned in that condition?  
1304  
1305 Mr. McKinney - It's not.  
1306  
1307 Mr. Blankinship - We didn't separate them; he has requested that we should.  
1308  
1309 Mr. Wright - The way that this reads, Saturday would be the same hours  
1310 as a weekday. He could do it all day Saturday.  
1311  
1312 Mr. McKinney - No, we changed that.  
1313  
1314 Mr. Balfour - Okay, we've deferred UP-39, and we'll consider UP-38 in a  
1315 few minutes with conditions as suggested, and now we'll move to the next case.  
1316  
1317 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1318 Kirkland, the Board **granted** application **UP-38-2002** for a conditional use permit to  
1319 extract materials from the earth at 2980 Meadow Road (Parcel 843-720-7272). The  
1320 Board granted the use permit subject to the following conditions:

- 1321  
1322 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of  
1323 the County Code.  
1324
- 1325 2. Before beginning any work, the applicant shall provide a financial guaranty in an  
1326 amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$26,800,  
1327 guaranteeing that the land will be restored to a reasonably level and drainable condition.  
1328 This permit does not become valid until the financial guaranty has been approved by the  
1329 County Attorney. The financial guaranty may provide for termination after 90 days  
1330 notice in writing to the County. In the event of termination, this permit shall be void, and  
1331 work incident thereto shall cease. Within the next 90 days the applicant shall restore  
1332 the land as provided for under the conditions of this use permit. Termination of such  
1333 financial guaranty shall not relieve the applicant from its obligation to indemnify the  
1334 County of Henrico for any breach of the conditions of this use permit. If this condition is  
1335 not satisfied within 90 days of approval, the use permit shall be void.  
1336
- 1337 3. Before beginning any work, the applicant shall submit erosion control plans to the  
1338 Department of Public Works for review and approval. Throughout the life of the  
1339 operation, the applicant shall continuously satisfy the Department of Public Works that  
1340 erosion control procedures are properly maintained, and shall furnish plans and bonds  
1341 that the department deems necessary. The applicant shall provide certification from a  
1342 licensed professional engineer that dams, embankments and sediment control  
1343 structures meet the approved design criteria as set forth by the State. If this condition is  
1344 not satisfied within 90 days of approval, the use permit shall be void.  
1345
- 1346 4. Before beginning any work, the applicant shall obtain a mine license from the  
1347 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied  
1348 within 90 days of approval, the use permit shall be void.  
1349
- 1350 5. Before beginning any work, the areas approved for mining under this permit shall  
1351 be delineated on the ground by five-foot-high metal posts at least five inches in diameter  
1352 and painted in alternate one foot stripes of red and white. These posts shall be so  
1353 located as to clearly define the area in which the mining is permitted. They shall be  
1354 located, and their location certified, by a certified land surveyor. If this condition is not  
1355 satisfied within 90 days of approval, the use permit shall be void.  
1356
- 1357 6. In the event that the Board's approval of this use permit is appealed, all  
1358 conditions requiring action within 90 days will be deemed satisfied if the required actions  
1359 are taken within 90 days of final action on the appeal.  
1360
- 1361 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
1362 state and local regulations administered under such act applicable to the property, and  
1363 shall furnish to the Planning Office copies of all reports required by such act or  
1364 regulations.  
1365

- 1366 8. Hours of operation shall be from 7:00 a.m. to 5:30 p.m. Monday through Friday,  
1367 and 7:00 a.m. to 12:00 noon Saturday.  
1368
- 1369 9. No operations of any kind are to be conducted at the site on Sundays, New  
1370 Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving or Christmas.  
1371
- 1372 10. All means of access to the property shall be from the established entrance onto  
1373 Meadow Road. All truck traffic to the site shall approach from Williamsburg Road north  
1374 on Drybridge Road, then east on Meadow Road. All truck traffic leaving the site shall  
1375 travel west on Meadow Road, then south on Drybridge Road to Williamsburg Road.  
1376
- 1377 11. The applicant shall erect and maintain gates at all entrances to the property.  
1378 These gates shall be locked at all times, except when authorized representatives of the  
1379 applicant are on the property.  
1380
- 1381 12. The applicant shall post and maintain a sign at the entrance to the mining site  
1382 stating the name of the operator, the use permit number, the mine license number, and  
1383 the telephone number of the operator. The sign shall be 12 square feet in area and the  
1384 letters shall be three inches high.  
1385
- 1386 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
1387 along the perimeter of the property. The letters shall be three inches high. The  
1388 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to  
1389 enforce the "No Trespassing" regulations, and agreeing to send a representative to  
1390 testify in court as required or requested by the Division of Police.  
1391
- 1392 14. Standard "Truck Entering Highway" signs shall be erected on Meadow Road on  
1393 each side of the entrances to the property. These signs will be placed by the County, at  
1394 the applicant's expense.  
1395
- 1396 15. The applicant shall post and maintain a standard stop sign at the entrance to  
1397 Meadow Road.  
1398
- 1399 16. The applicant shall provide a flagman to control traffic from the site onto the  
1400 public road, with the flagman yielding the right of way to the public road traffic at all  
1401 times. This flagman will be required whenever the Division of Police deems necessary.  
1402
- 1403 17. All roads used in connection with this use permit shall be effectively treated with  
1404 calcium chloride or other wetting agents to eliminate any dust nuisance.  
1405
- 1406 18. The operation shall be so scheduled that trucks will travel at regular intervals and  
1407 not in groups of three or more.  
1408
- 1409 19. Trucks shall be loaded in a way to prevent overloading or spilling of materials of  
1410 any kind on any public road.  
1411

- 1412 20. The applicant shall maintain the property, fences, and roads in a safe and secure  
1413 condition indefinitely, or convert the property to some other safe use.  
1414
- 1415 21. If, in the course of its preliminary investigation or operations, the applicant  
1416 discovers evidence of cultural or historical resources, or an endangered species, or a  
1417 significant habitat, it shall notify appropriate authorities and provide them with an  
1418 opportunity to investigate the site. The applicant shall report the results of any such  
1419 investigation to the Planning Office.  
1420
- 1421 22. If water wells located on surrounding properties are adversely affected, and the  
1422 extraction operations on this site are suspected as the cause, the effected property  
1423 owners may present to the Board evidence that the extraction operation is a contributing  
1424 factor. After a hearing by the Board, this use permit may be revoked or suspended, and  
1425 the operator may be required to correct the problem.  
1426
- 1427 23. Open and vertical excavations having a depth of 10 feet or more, for a period of  
1428 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the  
1429 public safety.  
1430
- 1431 24. Topsoil shall not be removed from any part of the property outside of the area in  
1432 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for  
1433 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled  
1434 within the authorized mining area and provided with adequate erosion control  
1435 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought  
1436 to the site to provide the required five-inch layer of cover. All topsoil shall be treated  
1437 with a mixture of seed, fertilizer, and lime as recommended by the County after soil  
1438 tests have been provided to the County.  
1439
- 1440 25. All offsite-generated materials deposited on the mining site shall be documented  
1441 in a monthly report to the Director of Planning. The operator shall submit a report  
1442 stating the origin, nature and quantity of material deposited, and certifying that no  
1443 contaminated or hazardous material was included. The material deposited on the site  
1444 shall be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil,  
1445 asphalt, concrete and like materials, and shall not include any hazardous materials as  
1446 defined by the Virginia Hazardous Waste Management Regulations.  
1447
- 1448 26. A superintendent, who shall be personally familiar with all the terms and  
1449 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms  
1450 and conditions of this use permit, shall be present at the beginning and conclusion of  
1451 operations each work day to see that all the conditions of the Code and this use permit  
1452 are observed.  
1453
- 1454 27. A progress report shall be submitted to the Board on December 19, 2003. This  
1455 progress report must contain information concerning how much property has been  
1456 mined to date of the report, the amount of land left to be mined, how much rehabilitation  
1457 has been performed, when and how the remaining amount of land will be rehabilitated,



1458 and any other pertinent information about the operation that would be helpful to the  
1459 Board.

1460  
1461 28. Excavation shall be discontinued by December 19, 2004, and restoration  
1462 accomplished by not later than December 19, 2005, unless a new permit is granted by  
1463 the Board of Zoning Appeals.

1464  
1465 29. The rehabilitation of the property shall take place simultaneously with the mining  
1466 process. Rehabilitation shall not be considered completed until the mined area is  
1467 covered completely with permanent vegetation.

1468  
1469 30. All drainage and erosion and sediment control measures shall conform to the  
1470 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any  
1471 drainage structures in place prior to October 14, 1992 and which do not conform to the  
1472 Mineral Mining Manual Drainage Handbook may remain in place until such time as any  
1473 reconstruction is required at which time said structures shall be brought into  
1474 conformance with the Mineral Mining Manual Drainage Handbook.

1475  
1476 31. The applicants shall install two speed bumps on the drive between the mining  
1477 site and Meadow Road for the purpose of slowing truck traffic on the property.

1478  
1479 32. The applicants shall request the Department of Public Works to install, at the  
1480 applicants' expense, a speed limit sign on Meadow Road immediately west of the  
1481 entrance to the property.

1482  
1483 33. The applicants shall request the Division of Police to increase their enforcement  
1484 of the speed limit along Meadow Road.

1485  
1486 34. Failure to comply with any of the foregoing conditions shall automatically void this  
1487 permit.

1488  
1489 Affirmative:           Balfour, Kirkland, McKinney, Nunnally, Wright                 5  
1490 Negative:   0  
1491 Absent:   0

1492  
1493 The Board granted the request because it found the proposed use will be in substantial  
1494 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1495  
1496 **A -188-2002            SURESH AND VEENA GOWDA** request a variance from Section  
1497 24-94 of Chapter 24 of the County Code to build a front porch at  
1498 5105 Windy Hollow Court (Hickory Woods) (Parcel 741-766-3148),  
1499 zoned R-4C, One-family Residence District (Conditional) (Three  
1500 Chopt). The front yard setback is not met. The applicants propose  
1501 33.6 feet front yard setback, where the Code requires 35 feet front  
1502 yard setback. The applicants request a variance of 1.4 feet front  
1503 yard setback.

1504  
1505 Mr. Balfour - Do we have any others who intend to testify in this matter?  
1506 Would you raise your right hand and be sworn please?  
1507  
1508 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1509 truth, the whole truth, and nothing but the truth, so help you God?  
1510  
1511 Mr. Gowda - I do. My name is Suresh Gowda. Good morning, Mr.  
1512 Chairman, and members of the Board. I'm here to request a variance. We are currently  
1513 building a house on Windy Hollow Court in Hickory Woods. Plans have been approved  
1514 for a front stoop and steps with a slight extension outside of the buildable area. We're  
1515 requesting a variance to put a cover on the front stoop. As the Planning staff report  
1516 indicates, that does create a slight problem with respect to the County Code. We're  
1517 here to ask for the variance. We would like to put the cover on the front stoop so that  
1518 we have some protection from the elements as we enter into the house, and it also adds  
1519 to the appeal of the property. We are requesting the variance now because the house  
1520 is under construction right now, and we would like the original builder to add that cover  
1521 so that we do not create any additional problems later to add this. It's a matter of  
1522 urgency to us, since the house is under construction right now.  
1523  
1524 Mr. Wright - I would say you have an odd-shaped lot.  
1525  
1526 Mr. Gowda - Yes sir, it is, and we chose the lot because it has quite a lot  
1527 of buffer around it, protected wetlands area, and it is a wonderful lot, and we really did  
1528 like the lot very much, and we did everything we could to place the house on the lot, and  
1529 we just have a slight extension outside of that area.  
1530  
1531 Mr. Wright - Also, you're on a cul-de-sac, which adds to the problem.  
1532  
1533 Mr. Gowda - Yes sir, we are.  
1534  
1535 Mr. Kirkland - What kind of geometric shape would you call that lot?  
1536  
1537 Mr. Blankinship - That's a polygon, a many-sided figure.  
1538  
1539 Mr. Balfour - Any other questions?  
1540  
1541 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1542 Nunnally, the Board **granted** application **A-188-2002** for a variance to build a front  
1543 porch at 5105 Windy Hollow Court (Hickory Woods) (Parcel 741-766-3148). The Board  
1544 granted the variance subject to the following conditions:  
1545  
1546 1. Only the improvements shown on the plan filed with the application may be  
1547 constructed pursuant to this approval. Any additional improvements shall comply with  
1548 the applicable regulations of the County Code.  
1549

1550 2. The new construction shall match the dwelling as nearly as practical.  
 1551  
 1552 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
 1553 Negative: 0  
 1554 Absent: 0  
 1555

1556 The Board granted this request, as it found from the evidence presented that, due to the  
 1557 unique circumstances of the subject property, strict application of the County Code  
 1558 would produce undue hardship not generally shared by other properties in the area, and  
 1559 authorizing this variance will neither cause a substantial detriment to adjacent property  
 1560 nor materially impair the purpose of the zoning regulations.  
 1561

1562 **UP- 40-2002 GUMENICK MANAGEMENT COMPANY** requests a temporary  
 1563 conditional use permit pursuant to Section 24-116(c)(1) of Chapter  
 1564 24 of the County Code to allow a temporary sales trailer at 6700  
 1565 Dartmouth Road (Parcel 766-742-8033), zoned R-5, General  
 1566 Residence District and R-5C, General Residence District  
 1567 (Conditional) (Three Chopt).  
 1568

1569 *(Mr. Balfour and Mr. Wright disqualified themselves, and Mr. McKinney conducted*  
 1570 *this case hearing.)*  
 1571

1572 Mr. McKinney - Is anyone else going to speak on this case?  
 1573

1574 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
 1575 truth, the whole truth, and nothing but the truth, so help you God?  
 1576

1577 Mr. Clower - I do. My name is Gary Clower, and I represent Gumenick  
 1578 Management Co., in this request for a variance for a temporary trailer for sales and  
 1579 leasing of the Horsepen Apartments. We are in agreement with all the conditions the  
 1580 staff has put on, and I have some photos here that show you the project. It is for one  
 1581 year.  
 1582

1583 Mr. Kirkland - How long is it going to take you to build all these  
 1584 apartments?  
 1585

1586 Mr. Clower - They're under construction right now, and it's in several  
 1587 phases, so in all actuality, I think the game plan is landscaping will start probably in  
 1588 March for the first phases, and will probably be a 2-year process.  
 1589

1590 Mr. Blankinship - You're starting from Horsepen and working back?  
 1591

1592 Mr. Clower - Right. Phase I became Phase II, and Phase II became  
 1593 Phase I. It was a management decision that they made. This is also located where the  
 1594 clubhouse is going to be, to the right of this, and there's going to be a swimming pool in  
 1595 that location also, and the area above it, we're going to turn that into a park for the

1596 neighborhood.  
1597  
1598 Mr. McKinney - Are you with McKinney and Company, Mr. Clower?  
1599  
1600 Mr. Clower - Yes sir, I should have stated that. I'm the land planner and  
1601 landscape architect on the project.  
1602  
1603 Mr. Kirkland - What are you going to do to Betty Lane? Are you going to  
1604 cul-de-sac it where it comes out the back end of the apartments? I see you've put some  
1605 road cones, and you've dug the road partially up, and I just wondered.  
1606  
1607 Mr. Clower - In all honesty, I'm not sure. Monte Lewis is handling some  
1608 of that.  
1609  
1610 Mr. McKinney - Any other questions of Mr. Clower by Board members?  
1611 Anyone else have anything else to add? Thank you Mr. Clower.  
1612  
1613 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1614 Nunnally, the Board **granted** application **UP-40-2002** for a temporary conditional use  
1615 permit to allow a temporary sales trailer at 6700 Dartmouth Road (Parcel 766-742-  
1616 8033). The Board granted the variance subject to the following conditions:  
1617  
1618 1. Only the improvements shown on the plan filed with the application may be  
1619 constructed pursuant to this approval. No substantial changes or additions to the layout  
1620 may be made without the approval of the Board of Zoning Appeals. Any additional  
1621 improvements shall comply with the applicable regulations of the County Code.  
1622  
1623 2. The applicant shall submit a landscape plan for Planning Office review with the  
1624 building permit.  
1625  
1626 3. The off-street parking spaces shown on the plan shall be provided before the  
1627 trailer is occupied.  
1628  
1629 4. The trailer shall be served by a sanitary system approved by the Health  
1630 Department.  
1631  
1632 5. The hours of operation for the sales trailer shall be from 9 am to 5 pm.  
1633  
1634 6. The office trailer shall be removed from the site by March 31, 2004, at which time  
1635 this approval shall expire.  
1636  
1637 Affirmative: Kirkland, McKinney, Nunnally 3  
1638 Negative: 0  
1639 Abstain: Balfour, Wright 2  
1640

1641 The Board granted the request because it found the proposed use will be in substantial  
1642 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1643  
1644

1645 **A -190-2002**            **DENNIS WEST** requests a variance from Section 24-96(a) of  
1646 Chapter 24 of the County Code to provide off-site parking for a  
1647 restaurant at 5516 Lakeside Avenue (Lakeside) (Parcel 781-745-  
1648 8345), zoned B-2, Business District (Fairfield). The parking lot  
1649 location requirement is not met. The applicant has 9 off-site  
1650 parking spaces, where the Code requires on-site parking.

1651  
1652 Mr. Balfour -                            Do we have any others who intend to testify in this matter?  
1653 Would you raise your right hand and be sworn please?

1654  
1655 Mr. Blankinship -                    Do you swear that the testimony you are about to give is the  
1656 truth, the whole truth, and nothing but the truth, so help you God?

1657  
1658 Mr. West -                                I do. My name is Dennis West, and I'm asking for an off-site  
1659 parking variance. Basically, as you can see, my restaurant is located at 5516 Lakeside  
1660 Avenue. Right now I'm operating under a retail to-go business, and the property next  
1661 door to me, which is in the same building, became available, and he's moving out. I  
1662 have an opportunity to take the building over and add seating to my restaurant. The  
1663 bad thing about it is my parking doesn't meet the requirements. I have 11 spaces, and I  
1664 believe I need 20. The parking lot across the street has room for numerous parking  
1665 spaces, has room for more than what I need. I'm just asking for what I need in there.  
1666 There are numerous places over there to park. I have some dimensions of the lots if  
1667 you need to know that. As you can see in the picture on Clarke Street, where those  
1668 cars are parked, they don't count. All those cars lined down the street; they don't even  
1669 count as parking, which is used by everyone in the area.

1670  
1671 Mr. McKinney -                        That's about 20 feet wide, isn't it? Beside you. In the  
1672 proposal of the Lakeside enhancement, wasn't that eventually supposed to go to 45  
1673 degree parking?

1674  
1675 Mr. West -                                That whole area right there was supposed to be developed,  
1676 with shrubbery. They were talking about cul-de-sac-ing Clarke Street and making that a  
1677 whole parking area, with parking coming in off the street at an angle on both sides.  
1678 That was one of the plans that they had, and they didn't go with any of them. That  
1679 whole area there that I have is 135 to 140 feet long and 60 feet wide. From the  
1680 telephone pole to the street, Lakeside Avenue, is 135 feet, by 60 to the building, and I'm  
1681 asking for 9 parking spaces in that area. There's also an area back to the right of this  
1682 that has another 8 parking spaces available at this time also. Right under the  
1683 "proposed," all in that area right there, that is 84 feet by 60 feet wide, with 8 parking  
1684 spaces in it already, that is available.

1685  
1686 Mr. Kirkland -                        Have you read all the conditions that are here in the staff

1687 report? Do you have any problem with any of those?  
1688  
1689 Mr. West - These are conditions that I have to abide by?  
1690  
1691 Mr. Kirkland - That's what the rule is. These are suggested conditions –  
1692 have you read all those.  
1693  
1694 Mr. Blankinship - Let me mention that on # 4, the one that refers to the  
1695 Department of Public Works, I did finally, just day before yesterday, meet with the traffic  
1696 engineers, and they said they really are not concerned with any curb and gutter or any  
1697 improvements like that, that the spaces should be striped.  
1698  
1699 Mr. Kirkland - Can we strike that? Take # 4 out?  
1700  
1701 Mr. Blankinship - That would probably be appropriate.  
1702  
1703 Mr. Nunnally - Otherwise I guess you'll just lease the spaces and have a  
1704 sign there directing your patrons to the spaces?  
1705  
1706 Mr. West - Yes sir. I've spoken to Mr. Francisco, who owns the  
1707 property, Mr. Guthrie just leasing it, and we're working out an arrangement on one of  
1708 the areas there. I've spoken to everybody else on the list, and I've even got some of  
1709 them to sign an agreement to it. There's nobody opposing it whatsoever.  
1710  
1711 Mr. McKinney - Mr. West, what's your hours of operation?  
1712  
1713 Mr. West - My hours of operation right now are 11:00 to 3:30 Monday  
1714 through Friday, strictly lunch. I attempted to do a night business there, and with the to-  
1715 go business, it didn't seem to jell in the area.  
1716  
1717 Mr. McKinney - How about with the new addition?  
1718  
1719 Mr. West - I'm hoping to go from 11:00 to 10:00 or 11:00 o'clock at night  
1720 and provide that service for the customers. A lot of them spoke that they needed or  
1721 preferred to sit down and eat, rather than get it and go and take home. Hoping to do  
1722 something like a breakfast on weekends.  
1723  
1724 Mr. McKinney - That building next to you that you lease, does that have  
1725 2280 square feet?  
1726  
1727 Mr. West - I don't believe it does. I believe it's much smaller than that. I  
1728 believe it's closer to 2,000.  
1729  
1730 Mr. McKinney - How many square feet are in your building now?  
1731  
1732 Mr. West - Around 1,000, from what I have measured.

1733  
1734 Mr. McKinney - Aren't you just doubling the size of what you've got? So all  
1735 you had was 1,000 square feet?

1736  
1737 Mr. Blankinship - When you go from retail to restaurant .....

1738 Mr. West - That's where it jumps from 100 to 250 on that situation. And  
1739 basically, this seems to be the only stickler in any of the other things, the building  
1740 permits and the health permits, and all that. I'm in good standing with the Health  
1741 Department; my Health Inspector has eaten in my restaurant, my Fire Inspector eats at  
1742 my restaurant now, so I'm in good standing with all those people. I don't see any  
1743 problem with that. This seems to be the only problem, because I can't change it to  
1744 make it any better. I can change the building permit by changing my plans or anything  
1745 else they want me to do, but this is kind of the way I had to go to get it started.

1746  
1747 M. Balfour - Any other questions?

1748  
1749 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1750 McKinney, the Board **granted** application **A-190-2002** for a variance to provide off-site  
1751 parking for a restaurant at 5516 Lakeside Avenue (Lakeside) (Parcel 781-745-8345).  
1752 The Board granted the variance subject to the following conditions:

- 1753
- 1754 1. This variance applies only to the parking requirement. All other applicable  
1755 regulations of the County Code shall remain in force.
  - 1756
  - 1757 2. The parking lot, driveways, and loading areas shall be subject to the  
1758 requirements of Section 24-98 of Chapter 24 of the County Code.
  - 1759
  - 1760 3. Parking spaces shall be marked on the pavement surface with four inch wide  
1761 painted lines. All lane lines shall be white in color with the exception that those dividing  
1762 traffic shall be yellow.

1763

1764 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
1765 Negative:		0
1766 Absent:		0

1767  
1768 The Board granted this request, as it found from the evidence presented that, due to the  
1769 unique circumstances of the subject property, strict application of the County Code  
1770 would produce undue hardship not generally shared by other properties in the area, and  
1771 authorizing this variance will neither cause a substantial detriment to adjacent property  
1772 nor materially impair the purpose of the zoning regulations.

1773  
1774 **A -191-2002** **EAGLE CONSTRUCTION OF VIRGINIA, INC.** requests a variance  
1775 from Section 24-94 of Chapter 24 of the County Code to build a  
1776 one-family dwelling at 5144 Topping Lane (The Oaks at Cross  
1777 Ridge) (Parcel 763-766-7068), zoned R-2C, One-family Residence  
1778 District (Conditional) (Brookland). The lot width requirement is not

1779 met. The applicant has 91.89 feet lot width, where the Code  
1780 requires 100 feet lot width. The applicant requests a variance of  
1781 8.11 feet lot width.  
1782

1783 Mr. Balfour - I assume by the audience that she's the only one to speak.  
1784 Would you raise your right hand and be sworn please?  
1785

1786 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1787 truth, the whole truth, and nothing but the truth, so help you God?  
1788

1789 Ms. Wolfe - My name is Joyce Wolfe, representing Eagle Construction.  
1790 We purchased this lot from the developer about 2 months ago and applied for a building  
1791 permit. We got a call from Mr. Overmann in the Permit Center that our permit had been  
1792 denied because we were not meeting the required lot width of 100 feet. In discussions  
1793 with Mr. Kennedy in the Planning Office, we determined that the lot line was shifted  
1794 when the subdivision plot was under review, and that in turn caused this lot to become  
1795 shorter. It was not caught by the Planning staff nor by the engineer prior to recordation,  
1796 and then of course we purchased the lot and the mistake was never caught until the  
1797 building permit application, so we are requesting a variance of the lot width of 8.11 feet  
1798 to be able to build a single-family dwelling on this lot.  
1799

1800 Mr. Blankinship - Do you recall what required the lot lines to move?  
1801

1802 Ms. Wolfe - I do not. That was the engineer, Jordan Engineering was  
1803 involved. Something was going on up the street, and maybe that irregularly-shaped  
1804 5136, something to do with that, to get it's public road frontage, I'm not sure. And  
1805 because we're on the corner, the variance of the 8 feet will not be an visible or as  
1806 noticeable, but this is a corner lot that's right at one of the main entrances, so it's very  
1807 important to us that we have something that looks nice there, and can build something  
1808 that will enhance the subdivision.  
1809

1810 Mr. Kirkland - Mr. Blankinship, we don't have any more of those in there,  
1811 do we?  
1812

1813 Mr. Blankinship - Not that we know of.  
1814

1815 Mr. Balfour - Any other questions?  
1816

1817 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1818 McKinney, the Board **granted** application **A-191-2002** for a variance to build a one-  
1819 family dwelling at 5144 Topping Lane (The Oaks at Cross Ridge) (Parcel 763-766-  
1820 7068). The Board granted the variance subject to the following condition:  
1821

1822 1. This variance applies only to the lot width requirement. All other applicable  
1823 regulations of the County Code shall remain in force.  
1824



1825 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1826 Negative: 0  
1827 Absent: 0

1828

1829 The Board granted this request, as it found from the evidence presented that, due to the  
1830 unique circumstances of the subject property, strict application of the County Code  
1831 would produce undue hardship not generally shared by other properties in the area, and  
1832 authorizing this variance will neither cause a substantial detriment to adjacent property  
1833 nor materially impair the purpose of the zoning regulations.

1834

1835 Mr. Balfour - That's it. Thank you. Let's start at the rear.

1836

1837 On a motion by Mr. McKinney, seconded by Mr. Kirkland, the Board **approved**  
1838 **as corrected**, the Minutes of the **October 24, 2002**, Henrico County Board of  
1839 Zoning Appeals meeting.

1840

1841 Minutes of the November 21, 2002, meeting of the Henrico County Board of Zoning  
1842 Appeals were distributed for consideration.

1843

1844 There being no further business, and on a motion by Mr. Kirkland, seconded by  
1845 Mr. McKinney, the Board adjourned until **January 23, 2003**, at 9:00 am.

1846

1847

1848 Daniel T. Balfour,

1849 Chairman

1850

1851 Benjamin Blankinship, AICP

1852 Secretary

1853