

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, DECEMBER 16,**
4 **2004, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**
5 **TIMES-DISPATCH ON NOVEMBER 24 AND DECEMBER 1, 2004.**
6

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

Also Present: **David D. O’Kelly, Assistant Director of Planning**
 Benjamin Blankinship, Secretary
 James F. Lehmann, County Planner
 Priscilla M. Parker, Recording Secretary

7
8 Mr. Wright - 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 all those
15 who intend 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 make all of their decisions at the
21 end of the meeting. If you wish to know their decision on a specific case, you can either
22 stay until the end of the meeting, or you can call the Planning Office later this afternoon,
23 or you can check the website. The vote on each case will be posted to our website
24 within an hour of the end of the meeting. This meeting is being tape recorded, so we
25 will ask everyone who speaks, to speak directly into the microphone on the podium, to
26 state your name, and to spell your last name please. And finally, out in the foyer, there
27 are two binders, containing the staff report for each case, including the conditions that
28 have been recommended by the staff.

29
30 Mr. Wright - Thank you sir. Do we have any requests for withdrawals or
31 deferrals?
32

33 Mr. Blankinship - There is one request for a deferral, which is A-151-2004.
34 There is a building line on the subdivision plat, and they have to get that vacated by the
35 Board of Supervisors before they can come before you.

36
37 **A-151-2004** **ROBERT AND DARLENE DERKITS** request a variance from
38 Section 24-95(i)(2) to build a detached garage at 1800 Le-Suer
39 Road (Riohondo Hills) (Parcels 758-746-1659 and 2466), zoned R-
40 2, One-family Residence District (Three Chopt). The accessory
41 structure location requirement is not met. The applicants propose
42 an accessory structure in the front yard, where the Code allows
43 accessory structures in the rear yard. The applicants request a
44 variance to allow an accessory structure in the front yard.

45
46 Mr. Wright - Do I hear a motion?

47
48 Upon a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **deferred**
49 application **A-151-2004** for a variance to build a detached garage at 1800 Le-Suer Road
50 (Riohondo Hills) (Parcels 758-746-1659 and 2466). The case was deferred, from the
51 December 16, 2004, until the January 27, 2005, meeting.

52
53 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
54 Negative: 0
55 Absent: 0

56
57 The Board deferred the request pending the Board of Supervisors review of the
58 application to vacate the building line shown on the subdivision plat.

59
60 **Beginning at 9:00**

61
62 **A-147-2004** **STANLEY J. SCHERMERHORN** requests a variance from Section
63 24-9 to build a one-family dwelling at 11320 Winfrey Road (Parcels
64 779-774-3922 (part) and 779-773-0293 (part)), zoned A-1,
65 Agricultural District (Fairfield). The public street frontage
66 requirement is not met. The applicant has 0 feet public street
67 frontage, where the Code requires 50 feet public street frontage.
68 The applicant requests a variance of 50 feet public street frontage.

69
70 Mr. Wright - Does anyone else desire to speak with reference to this
71 case? Would you raise your right hand and be sworn please?

72
73 Mr. Blankinship - Do you swear that the testimony you are about to give is the
74 truth, the whole truth, and nothing but the truth, so help you God?

75
76 Mr. Schermerhorn - I do. My name is Stan Schermerhorn. We're asking for the
77 variance to build a dwelling on our property for a good friend. The problem is there is
78 no access to a public road. That exists actually for us too. There's been no access for

79 well over a hundred years. There used to be an old trolley line from Richmond to
80 Ashland, which actually cut the family property, and where Winfrey Road comes in, that
81 easement is now owned by another family member. Actually our property, which
82 already exists there, has no road frontage. I know one of the issues is access back to
83 that property. My wife and I own an herb farm, and back where the single-family
84 dwelling would be, is where we have our greenhouses. We put in a road back to that
85 area, which is satisfactory for tractor-trailer traffic. We have a 50-foot turn-around back
86 there, so the actual issue wouldn't be getting access back there; it's just the public road.
87 We've actually had the fire department turn around back there, so that's not a problem.

88
89 Mr. Wright - Does that run off of Winfrey Road?

90
91 Mr. Schermerhorn - It does. The family driveway runs right into Winfrey Road.

92
93 Mr. Wright - I see it now. We didn't have a survey last time, but we have
94 one now. It looks like you have a little over an acre there.

95
96 Mr. Schermerhorn - Yes sir, we had drawn it in and had part of the land the first
97 time we presented it, actually in the flood plain, and we've turned the land now so that
98 all that is out of the flood plain, because we're told you have to have one solid acre out
99 of it, which we have done now. Another thing brought up was whether it would affect
100 any other people, and that area is very secluded back there. It's buffered by the
101 Chickahominy River. The only homes you can actually see back in that area are in
102 Hanover. There's roughly two hundred acres. The only reason we're trying to build
103 this, Doreen, our friend, is going to come work for the company. She's going to be an
104 administrator for us, and actually, another thing she'll do back in that area is kind of be a
105 watch on the greenhouses, because it's two hundred acres, and the only way we can
106 even keep an eye on it is actually going up there. We have a problem in the winter; if
107 heat should go off, there's no way for us to even know, which means we could lose our
108 whole livelihood, so not only would it be beneficial for her working for us, it would
109 actually help our business to have someone up there.

110
111 Mr. Wright - What size house do you propose to build?

112
113 Mr. Schermerhorn - Thirty by forty; I'm not sure of the square footage. It's a
114 relatively small house, three bedroom.

115
116 Ms. Dwyer - Is this property to be conveyed to your friend or sold?

117
118 Mr. Schermerhorn - Sold.

119
120 Ms. Dwyer - And Winfrey Road is a private road?

121
122 Mr. Schermerhorn - It's public

123

124 **(Unidentified female)** but the part we live on is called Winfrey Road
125 Private Drive.
126
127 Mr. Blankinship - It's public to a certain point, and then the road continues, but
128 it becomes private.
129
130 Ms. Dwyer - So you'll grant an easement for access from the public part
131 of Winfrey Road to this home?
132
133 Mr. Schermerhorn - Yes, we had to be granted access to our own property from
134 my relatives, so all that's in place.
135
136 Mr. Kirkland - Mr. Blankinship, should there be something in the conditions
137 concerning the Chesapeake Bay Act? I know we used to do that. Is that not, since
138 we're so close to the Chickahominy this time?
139
140 Mr. Blankinship - We can certainly insert that. They're subject to it, whether
141 the condition's there or not, but we can certainly add the condition.
142
143 Mr. Kirkland - I just want them to understand that.
144
145 Mr. Wright - Have you read the proposed conditions on the case?
146
147 Mr. Schermerhorn - Yes sir.
148
149 Ms. Harris - I have a question about the greenhouses. Have you had
150 any flooding? I notice that your property is located, according to the surveyor's report,
151 in the flood zone. Have you had any problems with flooding the greenhouses?
152
153 Mr. Schermerhorn - No ma'am. The Chickahominy, that area is very steep
154 banked. We'd all be in serious trouble if it ever flooded up there.
155
156 **(Unidentified female)** - Where the greenhouses are, is not floodplain. There's 100-
157 year floodplain; we've no buildings in the floodplain.
158
159 Mr. Wright - You have not been sworn. If you're going to give testimony,
160 you have to raise your right hand and be sworn, please.
161
162 Mr. Blankinship - Do you swear that the testimony you are about to give is the
163 truth, the whole truth, and nothing but the truth, so help you God?
164
165 Ms. Schermerhorn - Yes. I'm Nicole Schermerhorn. There are no buildings in
166 the 100-year flood zone, and the greenhouses are not in the 100-year flood zone.
167
168 Mr. Wright - The plat shows the property is not in the 100-year floodplain.
169

170 Mr. Schermerhorn - We had drawn it in the first time down to the river, to give
171 her river access, but we turned the property to make sure it was totally out of the flood
172 zone. It's up on a high rise. During the hurricanes last year, there was no water
173 anywhere near any of the buildings.

174
175 Mr. Wright - Any further questions of members of the Board? Is anyone
176 here in opposition to this request? Hearing none, that concludes the case.

177
178 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
179 Kirkland, the Board **granted** application **A-147-2004** for a variance to build a one-family
180 dwelling at 11320 Winfrey Road (Parcels 779-774-3922 (part) and 779-773-0293 (part)).
181 The Board granted the variance subject to the following conditions:

182
183 1. This variance applies only to the public street frontage requirement. All other
184 applicable regulations of the County Code shall remain in force.

185
186 2. Approval of this request does not imply that a building permit will be issued.
187 Building permit approval is contingent on Health Department requirements, including,
188 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
189 of a well location.

190
191 3. The applicant shall present proof with the building permit application that a legal
192 access to the property has been obtained.

193
194 4. The owners of the property, and their heirs or assigns, shall accept responsibility
195 for maintaining access to the property until such a time as the access is improved to
196 County standards and accepted into the County road system for maintenance.

197
198 5. [ADDED] At the time of building permit application, the applicant shall submit the
199 necessary information to the Department of Public Works to ensure compliance with the
200 requirements of the Chesapeake Bay Preservation Act and the code requirements for
201 water quality standards.

202
203 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
204 Negative: 0
205 Absent: 0

206
207 The Board granted this request, as it found from the evidence presented that, due to the
208 unique circumstances of the subject property, strict application of the County Code
209 would produce undue hardship not generally shared by other properties in the area, and
210 authorizing this variance will neither cause a substantial detriment to adjacent property
211 nor materially impair the purpose of the zoning regulations.

212
213 **A-149-2004** **CAROL POWERS** requests a variance from Sections 24-95(i)(2)
214 and (2)a. to build a detached garage at 5211 Randall Avenue
215 (Linnhaven Court) (Parcel 805-713-8304), zoned R-4, One-family

216 Residence District (Varina). The accessory structure location
217 requirement and accessory structure size requirement are not met.
218 The applicant proposes 988 square feet of accessory structures in
219 the front yard, where the Code allows 683 square feet of accessory
220 structures in the rear yard. The applicant requests a variance of
221 305 square feet of accessory structures in the front yard.
222

223 Mr. Wright - Does anyone else desire to speak with reference to this
224 case? Would you raise your right hand and be sworn please?
225

226 Mr. Blankinship - Do you swear that the testimony you are about to give is the
227 truth, the whole truth, and nothing but the truth, so help you God?
228

229 Mr. Rhoades - Yes. My name is Richard Rhoades. I'm with Hanover
230 Custom Builders; I'm the General Contractor. We're basically requesting that we be
231 allowed to build a garage. I think the case is pretty well stated in the evaluation. I
232 guess one exception that we would have with that is item # 2 in the evaluation. I feel
233 like it is a little bit of a hardship not to be able to build a garage when you have a house
234 on the property. This house was built in 1910, and the property was subdivided and
235 developed, and just the way the lots were designed, it could be that the developers felt
236 like the house would be torn down at some point, but it's a nice Victorian house. The
237 owners have maintained it very well, and with the present zoning restrictions, there's no
238 place to build a garage, so that virtually all of their personal property has to be stored
239 outside, and I think it is a bit of a hardship.
240

241 Mr. Nunnally - What size garage are you planning on building?
242

243 Mr. Rhoades - It's basically a three-car garage with a loft. The owners have
244 some collector cars and a boat and so they've got a fair amount of personal property
245 that they would like to enclose. We feel like it will look better with the structure than
246 having the property stored outside. Throughout the country, garages are getting bigger;
247 people have more property that they want to store inside.
248

249 Mr. Nunnally - You say it's a three-car garage, but what's the size of it? It's
250 26 by 36, I believe. I've got an updated drawing.
251

252 Ms. Dwyer - It looks like 32.
253

254 Mr. Blankinship - On the plans it's 26 by 32.
255

256 Mr. Nunnally - You say you're going to have a loft upstairs? What is that
257 going to be used for?
258

259 Mr. Rhoades - Basically more storage. The owners renovate old properties,
260 mainly in Richmond, so they have a bit of equipment and tools that they'd like to store
261 as well.

262
263 Ms. Dwyer - Is that why you have this pulley and beam?
264
265 Mr. Rhoades - That's more just to add a little character; it's just with the age
266 of the house, we wanted to do some things. Basically, it was an old farmhouse
267 originally, so we're just trying to keep things in character with that.
268
269 Ms. Dwyer - So that won't be just decorative, or it will be used?
270
271 Mr. Rhoades - It's more decorative, correct.
272
273 Mr. Nunnally - If this is granted, and you build this garage, will that do away
274 with some of that, I see you have a POD thing out there in the driveway. Will it do away
275 with that? How about that camper you've got out there on the street for sale?
276
277 Mr. Rhoades - Correct. And they have a driveway coming in from Lundie,
278 which is basically why we oriented it to having the garage doors oriented towards
279 Lundie. We wanted to use that same access.
280
281 Mr. Nunnally - I think you have a boat and a trailer or something on that
282 driveway on Lundie.
283
284 Mr. Rhoades - In fact I've got a picture of that as well.
285
286 Mr. Nunnally - Will some of this stuff get off the street?
287
288 Mr. Rhoades - Yes sir, that's the intention, to be able to get a lot of this stuff
289 stored inside.
290
291 Ms. Harris - What are the other structures? Could we see the area map
292 please. You have other structures on the property, do you not?
293
294 Ms. Powers - We have a small storage shed.
295
296 Ms. Harris - You only have one other structure, or are there other
297 structures on the property?
298
299 Ms. Powers - The house and a storage shed.
300
301 Ms. Harris - The storage shed will remain?
302
303 Ms. Powers - Yes.
304
305 Mr. Nunnally - Mr. Rhoades, you said that they did some work remodeling,
306 what did you say?
307

308 Ms. Powers - The house was remodeled six years ago.
309
310 Mr. Blankinship - We need you to speak into the microphone.
311
312 Ms. Powers - The house was renovated about six years ago by the prior
313 owner.
314
315 Mr. Nunnally - You're not going to use this garage for any kind of
316 commercial business or anything?
317
318 Ms. Powers - Oh no, just for storage of miscellaneous material recouped
319 from other rehab projects. We try to recycle the material that we pull out of old buildings
320 so that we can reuse them again in the historic structures that we do.
321
322 Mr. Nunnally - Mr. Blankinship, is this 988 square feet of accessory
323 structures permitted, is that what would be permitted on one lot? They have two lots
324 here. We run into this on occasion where people have a large lot, and they're restricted
325 as to what they can put on that because the way the Code reads, that's what would be
326 permitted on one lot, is that correct?
327
328 Mr. Blankinship - Yes sir, we're reviewing this as if it were one large lot, and
329 you're exactly correct; the Code requires us to look at the thirty percent of the minimum
330 required rear yard, not their actual rear yard. If we went by thirty percent of their rear
331 yard, they would probably be okay.
332
333 Mr. Nunnally - That's what my point is, since they've got two lots, it
334 presents a little problem for them.
335
336 Ms. Dwyer - Just another technical point, Mr. Blankinship. It says that
337 they're asking for 305 square foot variance for having an accessory structure in the front
338 yard. Since no accessory structures are technically allowed in the front yard, wouldn't it
339 be a 988 square foot variance, because the whole structure is not permitted in that
340 location?
341
342 Mr. Blankinship - We advertised the two different code sections, the one for
343 having the structure in the front yard, and the other for having more square footage than
344 is allowed. I suppose you could look at it the other way.
345
346 Ms. Dwyer - Basically, they have 305 square feet in excess of what's
347 allowed in the rear yard.
348
349 Mr. Blankinship - Yes.
350
351 Ms. Dwyer - But the whole thing's going in the front yard.
352
353 Mr. Blankinship - Right.

354
355 Ms. Dwyer - I just wanted to ask about the garage doors and how the
356 garage is going to be oriented. Are all the doors going to be, is there just one door?
357
358 Mr. Rhoades - There are two garage doors, one being a double door, and
359 the other one, which is about sixteen feet, and the other one being a nine-foot door.
360
361 Ms. Dwyer - So the metal roof that's shown in this picture, underneath
362 that is another door? I thought maybe that was a shed.
363
364 Mr. Rhoades - It's actually a shed roof structure built off of the main
365 structure, but it's all tied together; it's one structure.
366
367 Ms. Dwyer - It's not a carport-type structure; it's solid.
368
369 Mr. Rhoades - No, it's actually all enclosed.
370
371 Ms. Dwyer - So there are two doors, and they will be oriented toward
372 Lundie?
373
374 Mr. Rhoades - Yes ma'am. There's a driveway there now, and we plan to
375 use that driveway for access.
376
377 Ms. Harris - In this picture here, can you point out the exact placement of
378 the proposed garage?
379
380 Mr. Rhoades - That's the present storage building, so it would be more
381 towards Lundie. It would start in that approximate area and go towards Lundie.
382
383 Ms. Harris - What is the structure at the top of your screen?
384
385 Ms. Powers - That's a parking pad. Those are vehicles in the parking pad.
386
387 Mr. Nunnally - Are you going to pull that shed down, or is that going to
388 stay?
389
390 Ms. Powers - We're planning to keep it.
391
392 Mr. Rhoades - It will be pretty much hidden by the garage structure. Most
393 people believe they just don't ever have enough storage space.
394
395 Ms. Dwyer - How close will this garage be to the property line that you
396 share with the house on Lundie?
397
398 Mr. Rhoades - I believe that the normal restrictions are about three to five
399 feet to the side property line.

400
401 Ms. Powers - We can set back ten; that's no problem.
402
403 Ms. Dwyer - I'm a little concerned, since this is technically a front yard,
404 and this house will have a garage close to the next door neighbor.
405
406 Mr. Rhoades - The owner's saying she could live within ten feet, helps me
407 as far as the construction goes too, because I'd hate to have too tight a space, so we
408 could live with a ten-foot setback off that line.
409
410 Mr. Wright - It's to the rear of the neighbor that's behind this though; that
411 house faces on Lundie Lane.
412
413 Ms. Dwyer - We don't have actual dimensions of where it's going to be on
414 that lot; that's where it's placed in this picture, but we don't have any specifics, do we?
415 This looks like a hand drawing, so we don't know exactly where it's going to be.
416
417 Mr. Wright - We've got to fix the location of this garage. So many feet
418 back off of Lundie Lane.
419
420 Mr. Blankinship - It has to comply with that thirty-five foot building line.
421
422 Mr. Wright - But we don't want it up there.
423
424 Ms. Dwyer - We don't want it close to or in front of that neighbor's house
425 certainly.
426
427 Mr. Kirkland - We want it back as far as possible.
428
429 Mr. Rhoades - I guess if I were to tell a tighter definition, let's say if we have
430 it at the rear line of that house on Lundie.
431
432 Ms. Dwyer - I don't know if it will fit there.
433
434 Mr. Wright - How far is that existing shed from Lundie Lane?
435
436 Mr. Rhoades - It's right behind that house, but I don't know how far it is.
437
438 Mr. Kirkland - That shed is portable; it's built on cinder blocks, right?
439
440 Ms. Powers - It is on cinder blocks.
441
442 Mr. Kirkland - So it could be moved over if it had to be moved back further,
443 correct? I don't know the size of it, other than the sketch we've got here.
444
445 Ms. Powers - It's pretty good size, 12 by 14, something like that.

446
447 Mr. Kirkland - That could be rolled, moved.
448
449 Mr. Rhoades - It could be moved if need be.
450
451 Mr. Wright - We could put a condition that it be back so many feet back
452 behind the house on Lundie.
453
454 Mr. Nunnally - Ms. Powers, could you live with getting rid of that shed?
455 You're building all that big garage.
456
457 Ms. Powers - We have four vehicles, a boat, a utility trailer and a
458 motorcycle.
459
460 Mr. Nunnally - That's not going in that shed.
461
462 Ms. Powers - No, but we need the shed; we've got an ATV in there, a
463 motorcycle, and a riding lawnmower presently in the shed, plus for the garage we have
464 four vehicles, one is my son's, who is overseas in Iraq, and a utility trailer and a boat,
465 and we are trying to hide all that stuff, but we don't have any place to work with it right
466 now, other than the shed, plus we have virtually no attic space in the house itself.
467 That's taken up with heating units, etc., so all of our garage and attic paraphernalia is
468 presently in a 16-foot POD out in the driveway.
469
470 Ms. Dwyer - If we specify the limits of where this garage can be in relation
471 to the neighbor's house and in relation to Lundie, then it would be up to the homeowner
472 to decide whether they need to adjust the dimensions of the garage.
473
474 Mr. Kirkland - I was asking if they could just roll the shed back if it got in
475 the way.
476
477 Mr. Wright - We could work up a certain number of feet behind the
478 house. Any further questions of the Board? Is anyone here in opposition to this
479 request? Hearing none, that concludes the case.
480
481 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
482 Kirkland, the Board **granted** application **A-149-2004** for a variance to build a detached
483 garage at 5211 Randall Avenue (Linnhaven Court) (Parcel 805-713-8304). The Board
484 granted the variance subject to the following conditions:
485
486 1. Only the improvements shown on the plan filed with the application may be
487 constructed pursuant to this approval. Any additional improvements shall comply with
488 the applicable regulations of the County Code.
489
490 2. The new construction shall match the existing dwelling as nearly as practical.
491

492 3. [ADDED] The garage shall be set back at least 73 feet from the right-of-way of
493 Lundie Lane and at least 10 feet from the common lot line with 2205 Lundie Lane.

494
495 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
496 Negative: 0
497 Absent: 0
498

499 The Board granted this request, as it found from the evidence presented that, due to the
500 unique circumstances of the subject property, strict application of the County Code
501 would produce undue hardship not generally shared by other properties in the area, and
502 authorizing this variance will neither cause a substantial detriment to adjacent property
503 nor materially impair the purpose of the zoning regulations.
504

505 **UP-28-2004 GILLIES CREEK INDUSTRIAL RECYCLING, LLC** requests a
506 conditional use permit pursuant to Sections 24-52(d) and 24-103 to
507 extract materials from the earth at 2980 Meadow Road (Parcel 843-
508 720-7272), zoned A-1, Agricultural District (Varina).
509

510 Mr. Wright - Does anyone else desire to speak with reference to this
511 case? We'd like to get everyone sworn at the same time. Would you raise your right
512 hands and be sworn please?
513

514 Mr. Blankinship - Do you swear that the testimony you are about to give is the
515 truth, the whole truth, and nothing but the truth, so help you God?
516

517 Mr. Deal - I do. My name is John Deal. I represent JJ & B Sand and
518 Gravel and Gillies Creek Industrial Recycling, Inc. in this request. The first thing I'd like
519 to do is to draw your attention to the evaluation portion of your report. On the first page,
520 it says, "Overall, Gillies Creek Industrial Recycling has improved the operation on the
521 property. The amount of dust affecting other property, which led to complaints in 2002,
522 has been reduced. The trucks now travel west of the property on Meadow Road, rather
523 than east, resulting in safer conditions on the road." My client has done, in and about
524 this operation, what he was requested by you folks, to do. We have read all of your
525 conditions. The only ones that we have objection to is condition # 8, concerning the
526 hours of operation, from 7:00 to 5:30. That's fine, but the Monday through Friday, which
527 cuts off Saturday, which we now have, and Saturday morning is an integral, I think
528 we've been operating from 7:00 to 1:00 on Saturday. I called he homeowners
529 association that represents the subdivision between this property and Williamsburg
530 Road, told them what we were doing, and they asked me to send them a copy of a
531 letter, which I did, and I never heard back from them. I've not gotten one complaint out
532 of that subdivision or anybody in it, in the last two years, since this permit was issued.
533 The only objection that I've received from anybody to this property or this request was
534 from Mrs. Eggers, whose property would be to the south of it, adjacent to this property.
535 Mrs. Eggers inherited this property from her mom and dad many years ago. Her
536 primary residence is in Florida, but she does come up here and stay at this property
537 about seven months a year. When I called her to talk to her about this, she was very

538 upset that she had received a letter from the County about this before I talked to her,
539 and I said, "Anne, I've known you for 41 years," and she gave me a whole list of
540 complaints. I asked why she'd called me, and she started talking about, "well, you know
541 it's noisy over there, etc.," and I told her that was the nature of this kind of operation. I
542 told her they'd improved it, done what they said they were going to do on this property,
543 and they're doing a good job over there. She said she was going to go talk to Mr.
544 Blankinship about this tomorrow morning.

545
546 The way Mr. Liesfeld functions at this facility is twofold. He has his own jobs outside of
547 the landfill area, that he needs this facility to service his own operations in other
548 locations. All of those other areas work Mon. through Fri. and Sat. morning. Secondly,
549 he has other contractors who haul in to this facility. Those contractors run their crews
550 Monday through Friday and on Saturday morning. With that being the case, if Mr.
551 Liesfeld can't operate on Saturday mornings, then that's going to decrease his ability to
552 have this as a profitable operation, and the reason it's run better is because it's better
553 run and it's profitable, and this Saturday morning is a very critical situation to us.

554
555 As far as the road care is concerned, Ms. Eggers said they'd only been sweeping the
556 road, not using water on the road. I told her I didn't think that was true, and I checked
557 with a gentleman here who is in charge of this operation, and he said they had a water
558 truck that goes down there when it's needed. If it's wet weather, with the speed bumps
559 and the wash rack where you run through, inevitably, some dirt's going to get on
560 Meadow Road. They bring that truck with a pump in it, and the water comes out of the
561 openings fast enough to wash the road off. If it's dry weather, they sweep it. But if it's a
562 concern that the sweeping isn't doing it, they'll increase the use of water. This is a
563 good, profitable operation, has improved the area. Hopefully, in the next two to four
564 years, they'll be finished and out of there. I just cannot emphasize to you how critical
565 Saturday morning is to them, because there's a rhythm that's set up in construction, and
566 if Mr. Liesfeld's company has to call other contractors and tell them he can't take their fill
567 on Saturday any more, then they've either got to shut down on Saturday, or they've got
568 to find two places to go. He's a good operator; he's doing a good job, and I ask you
569 please to consider to give him these Saturday morning hours.

570
571 Mr. Nunnally - Mr. Blankinship, you said that the neighbors had expressed
572 concern on these three issues – is that just one person, or is it several?

573
574 Mr. Blankinship - One person came into the office to speak.

575
576 Mr. Wright - Is that the one to whom we are referring?

577
578 Mr. Blankinship - Yes.

579
580 Ms. Dwyer - We haven't heard from a neighborhood association in the
581 surrounding area, or any other neighbors?

582
583 Mr. Blankinship - No ma'am.

584
585 Mr. Wright - Mr. Deal, you notice that these conditions contain that
586 additional wording in # 17 about washing – you have no problem with that?
587
588 Mr. Deal - No sir.
589
590 Mr. Wright - And also there's something added to # 15 about trying to
591 help the police to enforce the stop sign – no problem with that?
592
593 Mr. Deal - No sir. In # 15, -- we have been and still do post and
594 maintain a standard stop sign at the entrance. What does it mean, "The operator shall
595 cooperate with the Division of Police to enforce this stop sign." If the police come and
596 ask us to do things, we'll be glad to do it.
597
598 Mr. Wright - I guess that's what it means.
599
600 Mr. Blankinship - We understand that once the trucks turn onto Meadow
601 Road, they're out of your jurisdiction.
602
603 Ms. Dwyer - As I read that, it might mean doing some intensive work with
604 your employees to make sure the people who haul material in and out of your facility,
605 make sure they understand how sensitive this topic is.
606
607 Ms. Harris - Are there stop signs already there?
608
609 Mr. Deal - Yes ma'am.
610
611 Ms. Harris - So this condition wants them to place another stop sign?
612
613 Mr. Blankinship - Just to maintain the existing one; it's a standard condition.
614
615 Ms. Dwyer - Although we've added this language to condition # 17, the
616 issue might be when the washing is done, so that when it's dry there's sweeping and no
617 washing, and it may be that the neighbors want water used in the dry months to cut
618 down on the dust.
619
620 Mr. Deal - It's one thing for the road to be soiled; it's something else for
621 the dust to be on it and fly up. I've found these folks to be very good about keeping that
622 road clean. There's no problem about using water during dry weather also, because
623 when you're working in a muddy area and have had rain for two weeks, you're going to
624 carry that mud out to the road, and certainly they would use water in that kind of time.
625
626 Ms. Dwyer - Are you suggesting that what the company's committed to
627 do is to clean the road of mud and dirt, but not to keep the dust down necessarily?
628

629 Mr. Deal - We don't want dust either. It's a discretionary thing as to
630 when my client says if they don't wash this, even though it's dry, it's going to create
631 dust. I wouldn't mind something in the conditions that when there's soil or mud on the
632 road, we're going to get it off. If it sweeps, and that doesn't do it, then we'll wash it.
633 How would that be?

634
635 Mr. Blankinship - It's one of those issues that really needs to be handled day
636 by day, in response to complaints.

637
638 Mr. Deal - We understand the intent. I wouldn't want to live in the area
639 and ride through and get dust all over my car, or in the rainy weather, to ride through
640 and get mud all over my car.

641
642 Ms. Dwyer - Condition # 17 says "eliminate any dust nuisance," so that's
643 the standard.

644
645 Mr. Deal - Not a problem.

646
647 Ms. Harris - I have a question about # 26, is the superintendent a
648 company man who needs to be appointed, who's not currently on staff?

649
650 Mr. Blankinship - Again, that's the standard condition that they've been
651 operating under for years, so they've always been required to have a superintendent on
652 site who's familiar with these requirements.

653
654 Mr. Deal - He's been their employee, and he's their employee now.

655
656 Ms. Harris - Are there any on-site inspections for # 24, other than
657 company inspections or by superintendents?

658
659 Mr. Bryant - My name is Lew Bryant; I'm the business manager for Gillies
660 Creek. Condition # 24, topsoil removal, we generally do not remove any topsoil from
661 the site. Any material that is removed is what we call bank gravel; it's mined from the
662 soil. Topsoil remains on the site or is brought in. Primarily that's what we're bringing
663 into the site, is fill material, to fill the hole and eventually cap it and remediate it.

664
665 Mr. Deal - I've been representing this property for probably twenty
666 years, there hasn't been enough topsoil on it to fill a kid's hand. It was one of those
667 things that was spasmodically mined out for years, and now we're in the process of
668 going back and correcting all that. When this topsoil comes in, they're stockpiling some
669 topsoil to meet the requirements of this permit, that as they reclaim the land, they'll be
670 able to put the proper amount of topsoil on top for seed and fertilizing. They're not
671 removing any at all.

672
673 Ms. Harris - Is there any type of inspection to insure that the land is
674 restored to a reasonably acceptable drainage level?

675
676 Mr. Blankinship - Yes ma'am, we perform a zoning inspection every month
677 and a separate inspection by the environmental inspector, approximately every month.
678 Two monthly inspections.
679
680 Mr. Nunnally - How about 8:00 to 1:00 hours on Saturday?
681
682 Mr. Bryant - 8:00 would be a little problematic, because we try to get
683 started as early as possible, especially in the winter months.
684
685 Mr. Nunnally - I realize that, but I'm thinking about the people who live
686 there. Most of the people work five days a week, and I thought Saturday morning you
687 could give them a little break; maybe they could sleep in another hour or wouldn't have
688 to listen to that while they're reading the paper.
689
690 Mr. Bryant - My truck traffic is prohibited from going east on Meadow
691 Road past my driveway, where the subdivision is, so I think they're far enough away to
692 where my trucks and equipment aren't going to be able to disturb them in the mornings.
693 As far as their civilian traffic on the road during that day, if they proceed east on
694 Meadow Road, I'm assuming their main artery out of the area is I-295. If they proceed
695 east on Meadow Road to Routes 60 and 295, it's 2.8 miles from the entrance to their
696 subdivision. If they turn left and proceed west on Meadow Road, to Drybridge south,
697 and then back to 295, past my facility, where they would encounter my trucks, it's
698 actually further, it's 3.1 miles from their subdivision entrance to 295, going past my
699 facility. I think I'm far enough away to keep from disturbing them early in the morning,
700 and if they are traveling on the roads on Saturday, the way they are not on Monday
701 through Friday when they are at work, they're actually closer to their exit going away
702 from me than they are coming past my driveway.
703
704 Ms. Dwyer - What about the noise on site?
705
706 Mr. Bryant - As I said, it's about .4 to .5 of a mile on the public road, from
707 my entrance to their entrance, and there's nothing in between us but woods. I think
708 that's a sufficient buffer to keep the noise of the machines and the trucks down.
709
710 Mr. Deal - I realize I represent you, but I think what you're referring to is
711 Ms. Eggers', who lives next door to this project, and one thing she was complaining
712 about was the noise, but I told her that was the nature of the operation. While she is the
713 only neighbor within a half a mile, and her home is far back off the road, as is our pit.
714 Our pit is the same distance back as her home.
715
716 Ms. Dwyer - Where is her home?
717
718 Mr. Blankinship - It shows up very clearly on the aerial photograph.
719

720 Mr. Deal - Ms. Eggers owns all, looking at your map there, you can see
721 where the Gillies Creek property is; to the right of that, all the way back, you'll see two
722 fields out and a little home in there. Off to the left is where we're filling. We're not filling
723 on the right-hand side of our property; we're filling on the left-hand side, so there's a
724 pretty good distance through there. Then you see the subdivision that this gentleman
725 was referring to, Candlewood Lane, in that area, so it's not that her home is right up
726 against the property at all. We're on the left side of that property, away from her.

727
728 Ms. Harris - Looking at this area map, is this body of water natural or
729 created?

730
731 Mr. Deal - No ma'am, that was mined out in the 1940's and '50's, and
732 then this property lay dormant for several years, and then it was purchased by Mr.
733 Leber, I would imagine in the '70's, and he started reclamation mining to the south of
734 that lake. Mr. Leber wants to keep that lake; there's geese living all over that place
735 down there, and there are fish in there, and he wants to maintain that for himself and his
736 sons.

737
738 Ms. Dwyer - Your operation is to extract gravel, sand?

739
740 Mr. Bryant - Yes ma'am, we're extracting the sand and gravel. We don't
741 process it as they did before, we just extract it and primarily we bring in excess material
742 to fill the hole and bring it back to grade.

743
744 Ms. Dwyer - So primarily you're receiving construction debris and that
745 kind of thing?

746
747 Mr. Bryant - Correct. Mostly dirt, very little concrete or asphalt or any
748 other material, but primarily excess dirt from projects around town.

749
750 Ms. Dwyer - When you're finished, it says the land will be restored to
751 reasonably level and drainable condition – what will this land be good for when you're
752 finished with it?

753
754 Mr. Bryant - We, as the operator, currently just lease the property, so
755 what we would be required to do, is return it to grade and seed it and insure that the
756 grass is growing again, and then we would more than likely turn it back over to Mr.
757 Leber, for use as he would see fit.

758
759 Ms. Dwyer - Are there regulations that would require your fill to meet a
760 certain standard that is established by engineers to make sure that if a house were built
761 on it, that you wouldn't have problems with this supporting a structure?

762
763 Mr. Bryant - I think that would be dependent upon the end use, or the
764 intended end use. If it's going to be developed, it would have to meet certain

765 compaction standards for building. If it were going to be returned to agricultural use, I
766 don't think similar stringent conditions would apply.

767
768 Ms. Dwyer - So you're not sure if it meets compaction standards that
769 would be required for structures?

770
771 Mr. Bryant - No we're not. At this point, that's not our primary concern as
772 to the end use of the land once we've finished filling the hole in.

773
774 Ms. Dwyer - What standards are you required to meet as you are filling?

775
776 Mr. Bryant - Primarily, our requirements are to insure that no hazardous
777 waste is deposited, or any non-impervious materials go in, specifically brush. We
778 cannot have anything that will decay and cause problems in the future with sinking and
779 collapsing. It's got to either be dirt or impervious material like concrete.

780
781 Ms. Dwyer - And who regulates that?

782
783 Mr. Bryant - We regulate that ourselves through the inspection of the
784 loads as they come in.

785
786 Ms. Dwyer - Is there some standard that you're trying to meet as you're
787 filling these holes, or is there a federal standard for this, or a state standard, or what for
788 your filling operation?

789
790 Mr. Deal - They're not taking in anything like lumber or anything that
791 would rot once it was put in. As the loads come in, the dozers run back and forth over it
792 to smooth it out, and that will be one layer. These layers may be anywhere from one to
793 three feet thick at a time. You've got these heavy dozers running back and forth,
794 compacting it; then they bring it up to the grade; then they put the requisite amount of
795 topsoil on it and seed and fertilize it. Mr. Leber's intention is to use this for farmland.
796 Mr. Leber's older than I am. I don't know how long that's going to be, but my thought is,
797 I couldn't see a developer coming in there and wanting to try to build a home over
798 compacted dirt. Not in my lifetime anyhow.

799
800 Ms. Dwyer - We have people building houses over old mines in the west
801 end, so you never know what's going to happen fifty years out, or a hundred out.

802
803 Mr. Wright - We can't impose that restriction on these people though. All
804 they have to do is fill it by County standards, as they've been doing for years.

805
806 Ms. Dwyer - I guess there really aren't any standards; they've set their
807 own is what I'm hearing.

808

809 Mr. Deal - The standard, ma'am, really is what you put in there,
810 compact it, and don't put anything in there that will rot or decay, so that it would create
811 voids in the soil.

812
813 Ms. Harris - What we're seeing here in this aerial view is the result of two
814 years of mining, so that this condition that you see on your screen, this is the way you
815 leave the land, is what I'm asking?

816
817 Mr. Deal - When you say two years of mining, ma'am?

818
819 Ms. Harris - You've already had this permit granted for two previous
820 years.

821
822 Mr. Deal - This site, ma'am, in the last continuum we're talking about
823 here, runs probably fourteen to sixteen years. Could we go back up to that long shot on
824 the property. Do you see where the pond is? On the south side of the pond, you see a
825 large leveled-out area, looks like an "R." You see some white material in it – do you see
826 what I'm talking about? That's the Seamans Plant; that whole area right there was filled
827 in a matter of a few months by the excess soil from the computer chip factory at White
828 Oak. Then they put the topsoil over it. I've walked that land myself; there's not one
829 depression in it; there's not one hole in it, nor anything like that. Unfortunately, ma'am,
830 like on Darbytown Road, there was a time that the County didn't have the authority, or
831 whatever, to properly regulate mining operations or borrow pits, as they're called, and it
832 created a lot of hazards in the County and a lot of waste land. This property was one of
833 those where that lake is; that lake was probably mined where there was absolutely no
834 permit or anything. As the operation moved south of the lake, permits were gathered for
835 that, and to do filling primarily. That area to the left, that's already been filled. That's
836 already up to the elevation of the property to the right of it. We're going to continue
837 filling it back to the yellow line on the left and take it north to where you see the trees
838 have been removed. We've got a BMP pond up in the southern-most part of this
839 property that's shown on this map. When it's all finished, it'll be solid; it'll be compacted;
840 it'll have the requisite topsoil on it, and seed and fertilizer. Anyone who wants to come
841 and use it for something else after that, ma'am, they will have to make inquiry
842 themselves, but I do know that what these men are putting in is nothing that's going to
843 rot, decay or cause voids in the soil where you'd start getting sinkholes in the property.

844
845 Ms. Dwyer - So to summarize what you've said and the substance of your
846 answers to my questions, there's really nothing to assure us that this won't become a
847 wasteland other than your intentions.

848
849 Mr. Deal - Our intentions and the financial bonds that have been posted
850 by my client to reclaim this, because we have posted many thousands of dollars in
851 bonds per acre to insure that the topsoil and everything is put back in place, because
852 right now what you have is some big holes.

853
854 Ms. Dwyer - The County will inspect that before the bonds are released?

855
856 Mr. Deal - Oh yes ma'am.
857
858 Mr. Wright - Any further questions of the Board? Is anyone here in
859 opposition to this request? Hearing none, that concludes the case. I didn't see you –
860 did you get sworn earlier? Please come forward and be sworn.
861
862 Mr. Blankinship - Do you swear that the testimony you are about to give is the
863 truth, the whole truth, and nothing but the truth, so help you God?
864
865 Mr. Hackett - Yes I do. My name is Mike Hackett. I work for the
866 Environmental Section of Public Works, and my inspectors are responsible for erosion
867 and sediment control on the project. I wanted to speak because of the discussion on
868 the mud tracking onto Meadow Road, and I thought I understood that there may be a
869 condition regarding the cleaning of the mud on Meadow Road. I want to caution that
870 the condition should be stated in a way that does not imply that mud should even occur
871 onto Meadow Road to begin with. I think that the condition should be worded in a way
872 that describes the tracking in a manner that it should never occur onto the roadway to
873 begin with, that the cleaning should only occur as a safeguard should there be some
874 failure regarding the tracking. For one, washing the roadway, you have to be very
875 careful, because if it was to be washed this morning with freezing temperatures, it would
876 create a very slick condition and be very dangerous. What we've tried to do is to
877 enforce no tracking at any time. So far we've been fairly successful with that in the last
878 year and a half. We had some tracking issues when Liesfeld first took over the site for a
879 few months, but to my knowledge, that's been taken care of since then. I just wanted to
880 caution about the wording of the condition with regards to washing of the road, that may
881 imply that they could track to begin with. I know I'm not stating that as clearly as I'd like,
882 but
883
884 Mr. Kirkland - Mr. Hackett, when was the last time you were on the site?
885
886 Mr. Hackett - I personally haven't been on the site for about a year. I
887 spoke to my inspector this morning before I came to the meeting. He inspected it three
888 weeks ago and saw no deficiencies.
889
890 Mr. Kirkland - Thank you.
891
892 Ms. Dwyer - Could you recommend some language then, to staff, to
893 make that clear?
894
895 Mr. Hackett - The mud tracking enforcement is already part of our policy,
896 is part of erosion and sediment control policy, is part of the erosion control plan. The
897 condition that requires an erosion control plan is already in there. If you want to
898 reinforce that, I would suggest that a condition be worded that no tracking should occur,
899 that that's the intention.
900

901 Ms. Dwyer - So not withstanding anything else in this paragraph about
902 cleaning the road, the cleaning provisions are not meant to imply that mud is allowed to
903 begin with.

904
905 Mr. Hackett - Correct.

906
907 Mr. Wright - What are they going do, have a cleaning facility where
908 they've got to clean the tires before they leave the site?

909
910 Mr. Hackett - Yes, they have that now. They have it far enough off of the
911 road so that the water has a chance to come off of the wheels before they even get to
912 the road. The cleaning facility is about a third of a mile from Meadow Road.

913
914 Mr. Wright - I'll ask Mr. Deal to address your question and see what he
915 has to say about it.

916
917 Mr. Deal - As the trucks leave the road, there's a facility there that they
918 drive through, because the trucks are empty then, and it has water in it, and that
919 washes the dirt off of the wheels. Remember what we're doing, is we're hauling dirt. In
920 dry weather, dirt blows around. When they're coming down the road into the property to
921 where the washing facility is, dirt blows. Some of them have covers; some don't, and
922 dirt blows off of there. I've worked with Mr. Hackett on this facility for many years, and I
923 understand what he's saying. I've never thought, myself, that the condition ever implied
924 we could put mud on Meadow Road, and I can state that's not been Mr. Liesfeld's idea
925 either. Sometimes it does happen. The seriousness of this, if this were put in here, is if
926 we did get mud or dirt on the road at some time, according to these conditions, you
927 could shut us down, and we're out of business. If there's a climatic condition that
928 causes some dirt to be out there, my clients, to my knowledge, and I've gotten no
929 complaints from the subdivision people down there, and there's probably 75 homes in
930 that area, that drive up and down this road. Ms. Eggers is the only person who
931 complained to me about this or even said anything about it. Some time ago, the
932 subdivision was up in the air, but that's when the place wasn't run right. We went
933 through a series of about six years on this property that had the worst operators you've
934 ever seen in your life, for whatever reason. Mr. Liesfeld, as your report amply shows,
935 has improved the situation and made it a lot better. My concern for my client is,
936 technically, if a big clump of dirt got on the road and nobody's been behind that truck for
937 15 minutes, and somebody runs over it, and Mr. Hackett comes down the road, we
938 could lose our permit, and we're out of business. We've never interpreted that the
939 wording in this condition does not mean that we can put dirt on Meadow Road. I will be
940 glad to say that. We want a clean Meadow Road because we want a happy
941 neighborhood. We don't want to come down here and have a bunch of neighbors mad
942 because we've got mud all over the road. That's not been the case for two years, and
943 your own report on this shows that. I will be glad to put in there that this does not infer
944 that they can put dirt on Meadow Road. To me, that's implied to start with.

945

946 Mr. Wright - Anything further? That concludes the case. Thank you very
947 much for appearing.

948
949 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
950 Kirkland, the Board **granted** application **UP-28-2004** for a conditional use permit to to
951 extract materials from the earth at 2980 Meadow Road (Parcel 843-720-7272). The
952 Board granted the use permit subject to the following conditions:

953
954 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of
955 the County Code.

956
957 2. Before beginning any work, the applicant shall provide a financial guaranty in an
958 amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$26,800,
959 guaranteeing that the land will be restored to a reasonably level and drainable condition.
960 This permit does not become valid until the financial guaranty has been approved by the
961 County Attorney. The financial guaranty may provide for termination after 90 days
962 notice in writing to the County. In the event of termination, this permit shall be void, and
963 work incident thereto shall cease. Within the next 90 days the applicant shall restore
964 the land as provided for under the conditions of this use permit. Termination of such
965 financial guaranty shall not relieve the applicant from its obligation to indemnify the
966 County of Henrico for any breach of the conditions of this use permit. If this condition is
967 not satisfied within 90 days of approval, the use permit shall be void.

968
969 3. Before beginning any work, the applicant shall submit erosion control plans to the
970 Department of Public Works for review and approval. Throughout the life of the
971 operation, the applicant shall continuously satisfy the Department of Public Works that
972 erosion control procedures are properly maintained, and shall furnish plans and bonds
973 that the department deems necessary. The applicant shall provide certification from a
974 licensed professional engineer that dams, embankments and sediment control
975 structures meet the approved design criteria as set forth by the State. If this condition is
976 not satisfied within 90 days of approval, the use permit shall be void.

977
978 4. Before beginning any work, the applicant shall obtain a mine license from the
979 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied
980 within 90 days of approval, the use permit shall be void.

981
982 5. Before beginning any work, the areas approved for mining under this permit shall
983 be delineated on the ground by five-foot-high metal posts at least five inches in diameter
984 and painted in alternate one foot stripes of red and white. These posts shall be so
985 located as to clearly define the area in which the mining is permitted. They shall be
986 located, and their location certified, by a certified land surveyor. If this condition is not
987 satisfied within 90 days of approval, the use permit shall be void.

988
989 6. In the event that the Board's approval of this use permit is appealed, all
990 conditions requiring action within 90 days will be deemed satisfied if the required actions
991 are taken within 90 days of final action on the appeal.

- 992
993 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
994 state and local regulations administered under such act applicable to the property, and
995 shall furnish to the Planning Office copies of all reports required by such act or
996 regulations.
997
- 998 8. [AMENDED] Hours of operation shall be from 7:00 a.m. to 5:30 p.m. Monday
999 through Friday and 7:00 a.m. to 12:00 noon on Saturday.
1000
- 1001 9. No operations of any kind are to be conducted at the site on Sundays, New
1002 Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day or
1003 Christmas Day.
1004
- 1005 10. All means of access to the property shall be from the established entrance onto
1006 Meadow Road. All truck traffic to the site shall approach from Williamsburg Road north
1007 on Drybridge Road, then east on Meadow Road. All truck traffic leaving the site shall
1008 travel west on Meadow Road, then south on Drybridge Road to Williamsburg Road.
1009
- 1010 11. The applicant shall erect and maintain gates at all entrances to the property.
1011 These gates shall be locked at all times, except when authorized representatives of the
1012 applicant are on the property.
1013
- 1014 12. The applicant shall post and maintain a sign at the entrance to the mining site
1015 stating the name of the operator, the use permit number, the mine license number, and
1016 the telephone number of the operator. The sign shall be 12 square feet in area and the
1017 letters shall be three inches high.
1018
- 1019 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet
1020 along the perimeter of the property. The letters shall be three inches high. The
1021 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to
1022 enforce the "No Trespassing" regulations, and agreeing to send a representative to
1023 testify in court as required or requested by the Division of Police.
1024
- 1025 14. Standard "Truck Entering Highway" signs shall be erected on Meadow Road on
1026 each side of the entrances to the property. These signs will be placed by the County, at
1027 the applicant's expense.
1028
- 1029 15. The applicant shall post and maintain a standard stop sign at the entrance to
1030 Meadow Road. The operator shall cooperate with the Division of Police to enforce this
1031 stop sign.
1032
- 1033 16. The applicant shall provide a flagman to control traffic from the site onto the
1034 public road, with the flagman yielding the right of way to the public road traffic at all
1035 times. This flagman will be required whenever the Division of Police deems necessary.
1036

- 1037 17. [AMENDED] All roads used in connection with this use permit shall be effectively
1038 treated with calcium chloride or other wetting agents to eliminate any dust nuisance.
1039 The operator shall take the necessary steps to prevent mud from being tracked onto
1040 Meadow Road. The road shall be maintained by washing in addition to sweeping.
1041
- 1042 18. The operation shall be so scheduled that trucks will travel at regular intervals and
1043 not in groups of three or more.
1044
- 1045 19. Trucks shall be loaded in a way to prevent overloading or spilling of materials of
1046 any kind on any public road.
1047
- 1048 20. The applicant shall maintain the property, fences, and roads in a safe and secure
1049 condition indefinitely, or convert the property to some other safe use.
1050
- 1051 21. If, in the course of its preliminary investigation or operations, the applicant
1052 discovers evidence of cultural or historical resources, or an endangered species, or a
1053 significant habitat, it shall notify appropriate authorities and provide them with an
1054 opportunity to investigate the site. The applicant shall report the results of any such
1055 investigation to the Planning Office.
1056
- 1057 22. If water wells located on surrounding properties are adversely affected, and the
1058 extraction operations on this site are suspected as the cause, the effected property
1059 owners may present to the Board evidence that the extraction operation is a contributing
1060 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
1061 the operator may be required to correct the problem.
1062
- 1063 23. Open and vertical excavations having a depth of 10 feet or more, for a period of
1064 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the
1065 public safety.
1066
- 1067 24. Topsoil shall not be removed from any part of the property outside of the area in
1068 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
1069 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
1070 within the authorized mining area and provided with adequate erosion control
1071 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
1072 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
1073 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
1074 tests have been provided to the County.
1075
- 1076 25. All offsite-generated materials deposited on the mining site shall be documented
1077 in a monthly report to the Director of Planning. The operator shall submit a report
1078 stating the origin, nature and quantity of material deposited, and certifying that no
1079 contaminated or hazardous material was included. The material deposited on the site
1080 shall be limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil,
1081 asphalt, concrete and like materials, and shall not include any hazardous materials as
1082 defined by the Virginia Hazardous Waste Management Regulations.

1083
1084 26. A superintendent, who shall be personally familiar with all the terms and
1085 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms
1086 and conditions of this use permit, shall be present at the beginning and conclusion of
1087 operations each work day to see that all the conditions of the Code and this use permit
1088 are observed.

1089
1090 27. A progress report shall be submitted to the Board on December 16, 2005. This
1091 progress report must contain information concerning how much property has been
1092 mined to date of the report, the amount of land left to be mined, how much rehabilitation
1093 has been performed, when and how the remaining amount of land will be rehabilitated,
1094 and any other pertinent information about the operation that would be helpful to the
1095 Board.

1096
1097 28. Excavation shall be discontinued by December 16, 2006, and restoration
1098 accomplished by not later than December 16, 2007, unless a new permit is granted by
1099 the Board of Zoning Appeals.

1100
1101 29. The rehabilitation of the property shall take place simultaneously with the mining
1102 process. Rehabilitation shall not be considered completed until the mined area is
1103 covered completely with permanent vegetation.

1104
1105 30. All drainage and erosion and sediment control measures shall conform to the
1106 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
1107 drainage structures in place prior to October 14, 1992 and which do not conform to the
1108 Mineral Mining Manual Drainage Handbook may remain in place until such time as any
1109 reconstruction is required at which time said structures shall be brought into
1110 conformance with the Mineral Mining Manual Drainage Handbook.

1111
1112 31. The applicants shall install two speed bumps on the drive between the mining
1113 site and Meadow Road for the purpose of slowing truck traffic on the property.

1114
1115 32. The applicants shall request the Department of Public Works to install, at the
1116 applicants' expense, a speed limit sign on Meadow Road immediately west of the
1117 entrance to the property.

1118
1119 33. The applicants shall request the Division of Police to increase their enforcement
1120 of the speed limit along Meadow Road.

1121
1122 34. Failure to comply with any of the foregoing conditions shall automatically void this
1123 permit.

1124
1125 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4
1126 Negative: Harris 1
1127 Absent: 0

1128

1129 The Board granted the request because it found the proposed use will be in substantial
1130 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1131
1132 **A-150-2004** **MITCHELL ROSENFELD AND LISA BERMAN** request a variance
1133 from Section 24-94 to build an addition at 12027 Cottage Creek
1134 Court (Chapelwood) (Parcel 740-756-3387), zoned R-4, One-family
1135 Residence District and R-4C, One-family Residence District
1136 (Conditional) (Three Chopt). The rear yard setback is not met. The
1137 applicants propose 33 feet rear yard setback, where the Code
1138 requires 35 feet rear yard setback. The applicants request a
1139 variance of 2 feet rear yard setback.

1140
1141 Mr. Wright - Does anyone else desire to speak with reference to this
1142 case? Would you raise your right hand and be sworn please?

1143
1144 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1145 truth, the whole truth, and nothing but the truth, so help you God?

1146
1147 Mr. Rosenfeld - I do. It's Mitch Rosenfeld, and what we are asking for is a
1148 variance to build a 14- by 16-foot addition. Right now we have 47.11 feet from the end
1149 of our house to the property line. Fourteen feet will give us a setback of 33.11 feet, and
1150 the requirement is 35 feet, so we're asking for essentially a two-foot variance. It's an
1151 addition that we have been thinking about doing for many years. The house is a fairly
1152 small house. Our children have gotten larger, and we have for years now, thought that
1153 sometime we wanted to put in an addition. The fourteen by sixteen is the size that we
1154 feel is big enough, that will meet our needs, and the right configuration for a family
1155 room, but small enough that we'll still have a nice back yard. The report stated that one
1156 alternative would be a twelve by eighteen room, which would give us almost the same
1157 square footage, and that is true. The two issues with that are that we didn't want a long
1158 narrow room. We wanted a wider room so it would look better as a family room, and the
1159 other issue is, essentially the addition is just going to replace the deck. That deck is
1160 twelve by twelve, so it will be two feet further out and four feet wider. The four feet
1161 wider is going to actually be on the left-hand side, facing the rear of the house, which
1162 actually will put it in line with our garage. If we were to do twelve by eighteen, we would
1163 come very close to that window, and that's the kitchen window, and it lets in some light.
1164 The main disadvantage is, if we were two feet further for a twelve by eighteen room,
1165 which we had actually thought about, when we look out the window, the wall would
1166 come fairly close to the house. You would actually be seeing the wall. You're still going
1167 to be seeing the wall a little bit, but it won't be quite as bad. We actually talked to my
1168 neighbor who lives behind the house, and if you can see, the addition will actually be
1169 symmetrical; it will be right in line with the garage. There's quite a bit of space between
1170 our house and the neighbor behind us, and I've talked to him for a while, and he has no
1171 problem with it. He actually told us we could use his back yard to access our yard if we
1172 needed to during construction. It will essentially just replace that deck, just be a little bit
1173 bigger, and then we're going to build a new deck that will be off of it, that will come this
1174 way.

1175
1176 Mr. Wright - Any further questions of the Board? Is anyone here in
1177 opposition to this request? Hearing none, that concludes the case.

1178
1179 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
1180 Dwyer, the Board **granted** application **A-150-2004** for a variance to build an addition at
1181 12027 Cottage Creek Court (Chapelwood) (Parcel 740-756-3387). The Board granted
1182 the variance subject to the following conditions:

- 1183
1184 1. Only the improvements shown on the plan filed with the application may be
1185 constructed pursuant to this approval. Any additional improvements shall comply with
1186 the applicable regulations of the County Code.
1187
1188 2. The new construction shall match the existing dwelling as nearly as practical.

1189
1190 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1191 Negative: 0
1192 Absent: 0

1193
1194 The Board granted this request, as it found from the evidence presented that, due to the
1195 unique circumstances of the subject property, strict application of the County Code
1196 would produce undue hardship not generally shared by other properties in the area, and
1197 authorizing this variance will neither cause a substantial detriment to adjacent property
1198 nor materially impair the purpose of the zoning regulations.

1199
1200 Mr. Blankinship - A-151-2004 has been deferred.

1201
1202 **A-152-2004** **MANN KIDWELL SHADE CORP.** requests a variance from Section
1203 24-94 to build a loading dock and canopy at 6011 W Broad Street
1204 (Westwood) (Parcel 770-741-2406), zoned B-3, Business District
1205 (Brookland). The rear yard setback is not met. The applicant
1206 proposes 29 feet rear yard setback, where the Code requires 40
1207 feet rear yard setback. The applicant requests a variance of 11 feet
1208 rear yard setback.

1209
1210 Mr. Wright - Does anyone else desire to speak with reference to this
1211 case? Would you raise your right hand and be sworn please?

1212
1213 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1214 truth, the whole truth, and nothing but the truth, so help you God?

1215
1216 Mr. Shirley - I do. My name is Bruce Shirley; I'm the architect for Mann
1217 Kidwell.

1218
1219 Mr. Kidwell - I do. I'm Andrew Kidwell.

1220

1221 Mr. Shirley - What we're proposing is for a variance on the rear setback to
1222 build a loading structure, where there were some existing freezers and storage sheds
1223 that were actually further back, so we're going to be decreasing that setback some, but
1224 based on the function of the building, we'd like to build a new canopy to create a
1225 protective outside area for loading trucks for the new use of the space. It used to be a
1226 restaurant; it's now going to be a retail space for blinds and plantation shutters, so it's
1227 nice to keep the materials out of the rain while they are being transferred to trucks to go
1228 for deliveries and installations. Currently, Mann Kidwell leases the adjacent building,
1229 and from a traffic standpoint, nothing should increase; it's just going to split to what
1230 they've no purchased, their new building. They need large trucks that come for
1231 deliveries, typically like a loading dock, or else have someone there to take care of
1232 deliveries. If no one is there at Mann Kidwell, they simply won't deliver the materials.
1233 They'll have to call and re-establish a time to do so. By having a loading dock facility
1234 that can quickly just drop things off, if no one's available and the materials are delivered,
1235 it will make their business work a little more efficiently.

1236
1237 Mr. Wright - What's going to happen to that frame shed? Is that going to
1238 be removed?

1239
1240 Mr. Shirley - It already has been. The picture you're looking at right now
1241 shows all of the structures have already been removed.

1242
1243 Mr. Wright - The metal shed also?

1244
1245 Mr. Shirley - Yes sir.

1246
1247 Mr. Kirkland - Which way will you drive in through this loading dock, right
1248 through it? I was trying to get a picture yesterday when I was out there, because I'm
1249 trying to see which way the truck would be.

1250
1251 Mr. Shirley - If we can look at the side view on the loading dock, the
1252 actual drawing, elevation west, you can see there where the trucks are going to pull into
1253 the parking lot and back right up to the fence where you see the gates. What we're
1254 doing is eliminating the trucks getting behind the building. I've got over 100 feet of
1255 parking lot there for them to come in and turn and back to that.

1256
1257 Mr. Kirkland - Will you still lease the other building at the same time?

1258
1259 Mr. Kidwell - No sir.

1260
1261 Mr. Kirkland - It's a big improvement from what was there before.

1262
1263 Ms. Dwyer - The backing up maneuvers to back up to this loading dock –
1264 that affect the parking spaces. It looks kind of tight there.

1265

1266 Mr. Kidwell - No, the parking lot, I believe, has got around fifty parking
1267 places in it now, and with the change of use, we have very little amount of parking
1268 spaces actually needed for the location.

1269
1270 Ms. Dwyer - So will you close off some of those parking spaces, so you
1271 won't have conflicts with parked cars?
1272

1273 Mr. Kidwell - I believe we'll lose one space. The way the trucks come in
1274 will actually just be mirrored from what they do now, and the shot you're looking at now,
1275 the trucks load to the adjacent building to the right, so the trucks will just do the opposite
1276 of what they do now.
1277

1278 Ms. Harris - I have a question about the surveyor's report. If we return to
1279 this map, Mr. Blankinship, do you see the note that's on the page that says "Broad
1280 Street Road (U.S. Route No. 250)"? The notes "This lot appears" is not clear on my
1281 copy.
1282

1283 Mr. Wright - It says "This lot appears to be in HUD Flood Zone C"
1284

1285 Ms. Harris - That's my question. This parcel is in the Flood Zone?
1286

1287 Mr. Blankinship - "Flood Zone C" indicates that there is no hazard of flooding.
1288

1289 Ms. Harris - Even though it's a flood zone, there's no hazard?
1290

1291 Mr. Blankinship - "Flood Zone A" is subject to the 100-year flood plain. I don't
1292 know what "B" is; it might be undetermined; you'd have to do a site analysis, and "C" is
1293 that it's outside the flood plain.
1294

1295 Mr. Kirkland - This structure's in the Enterprise Zone, the new one, isn't it?
1296

1297 Mr. Shirley - Yes sir.
1298

1299 Mr. Wright - Any further questions of the Board? Is anyone here in
1300 opposition to this request? Hearing none, that concludes the case.
1301

1302 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
1303 Harris, the Board **granted** application **A-152-2004** for a variance to build a loading dock
1304 and canopy at 6011 W Broad Street (Westwood) (Parcel 770-741-2406). The Board
1305 granted the variance subject to the following conditions:
1306

1307 1. This variance applies only to the rear yard setback. All other applicable
1308 regulations of the County Code shall remain in force.
1309

1310 2. The parking lot, driveways, and loading areas shall be subject to the
1311 requirements of Section 24-98 of Chapter 24 of the County Code.

1312
1313 3. This approval is subject to all conditions that may be placed on the approval of
1314 the building permit.

1315
1316 4. [DELETED]

1317
1318 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1319 Negative: 0
1320 Absent: 0

1321
1322 The Board granted this request, as it found from the evidence presented that, due to the
1323 unique circumstances of the subject property, strict application of the County Code
1324 would produce undue hardship not generally shared by other properties in the area, and
1325 authorizing this variance will neither cause a substantial detriment to adjacent property
1326 nor materially impair the purpose of the zoning regulations.

1327
1328 **A-153-2004** **LAURIE A. VONG** requests a variance from Section 24-95(i)(2)c. to
1329 allow a tool shed to remain at 2509 Skeet Street (West Wistar)
1330 (Parcel 764-749-3758), zoned R-3, One-family Residence District
1331 (Three Chopt). The distance from accessory structure to principal
1332 building is not met. The applicant proposes 4 feet between an
1333 accessory structure and the principal building, where the Code
1334 requires 10 feet between an accessory structure and the principal
1335 building. The applicant requests a variance of 6 feet distance
1336 between an accessory structure and the principal building.

1337
1338 Mr. Wright - Does anyone else desire to speak with reference to this
1339 case? Would you raise your right hand and be sworn please?

1340
1341 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1342 truth, the whole truth, and nothing but the truth, so help you God?

1343
1344 Ms. Vong - Yes. My name is Laurie Vong.

1345
1346 Mr. Ellis - I do. J. G. Ellis.

1347
1348 Ms. Vong - Basically, I'm a person who made a mistake in planning the
1349 shed of mine that I built. I've been in my house eleven years. It's less than 1,000 feet;
1350 it's just me and my daughter, but I've wanted and dreamed of more storage space since
1351 I've been in the house. I have a tiny shed way in the back yard, which once you stick
1352 the lawn mower in there, you can't even turn around. I don't know how much of this is
1353 relevant, but I'm on a fixed income; I'm on disability; I haven't had any disposable
1354 income to do anything to my house these eleven years. I even qualified for a federal
1355 housing rehabilitation program when my roof was leaking and my bathroom ceiling fell
1356 in. Anyway, I refinanced my house this year, so with that cash-out money, I bought a
1357 vehicle, and I planned this shed. Because I hold onto my dollars so tightly, I've done all

1358 the planning and labor myself. Since I don't tend to trust people very well, I, looking
1359 back on how I made this mistake of having the thing too close to the house, my plan
1360 evolved all year, since I got my money, cutting down some trees. I excavated the
1361 foundation myself and got estimates from people at that point, but I can see, looking
1362 back, what went wrong was, at first I was looking at pre-built units, and then I was
1363 looking at pouring a foundation, but I thought it was going to be twelve by twelve or
1364 thirteen by thirteen.

1365
1366 Where it sits is on the end of what's always been a driveway, so it was flat, and it was
1367 the logical place to put it. When I excavated, I found that I could squeeze out a couple
1368 more feet. I actually, ironically, always planned to have it as close to the house as it
1369 was, because I had several people who came out, who said it wouldn't matter, so I don't
1370 know if that was because of the size I had planned and then changed or what, but as I
1371 dug the foundation, I discovered that I had a good solid couple feet more as I was
1372 moving that way, where there'd been concrete abutments to that driveway, and there'd
1373 been no soil erosion. Past that point, the land slopes dramatically, so I wouldn't have
1374 wanted to go any further anyway. I excavated in the spring, my neighbor helped me
1375 pour the foundation this summer, I had a bunch of friends help me frame it, and then
1376 realized that I goofed, because I was supposed to have a permit.

1377
1378 I guess I went over the square footage limit, and I didn't realize that. Anyway, when I
1379 went to get the permit, I realized it was too close to the house, and I'm really sorry. I
1380 didn't do that in defiance or on purpose, but it's there now. I'm hoping the pictures show
1381 it's not as bad as it sounds. It's four feet rather than the ten feet, but it's behind; it's not
1382 up beside. It's behind that little section at the back of my house that is my furnace
1383 room. I guess there's another picture that shows that – it feels like my back yard to me
1384 because, yes, you can see where that last window is at my house. That whole part is
1385 just a furnace room with just a boiler and a washer and drier, so it felt like it was in my
1386 back yard, and it looks, I think, from the street, like it's in my back yard, and I'm sorry it's
1387 too close to the house; it's a mistake on my part.

1388
1389 Mr. Wright - Did you get a building permit to put this up?
1390
1391 Ms. Vong - They said I needed to do this variance procedure before I
1392 can get it.
1393
1394 Mr. Wright - But you built it without a building permit?
1395
1396 Ms. Vong - Yes sir, I goofed.
1397
1398 Mr. Wright - You didn't understand that you had to have a building permit
1399 to build this shed?
1400
1401 Ms. Vong - Oh, I do now.
1402

1403 Mr. Blankinship - She started out with a twelve by twelve, which would not
1404 require a permit. One hundred and forty-four square feet did not require a permit, but
1405 when she expanded it to fifteen by fifteen, she went over the requirements.
1406

1407 Ms. Vong - Exactly. It's all my fault because the plan was evolving, and
1408 I was trying to get information, but because the thing was evolving, I was then operating
1409 on outdated information, and I'm sorry.
1410

1411 Mr. Kirkland - Mr. Blankinship, how did we become aware of this situation?
1412

1413 Mr. Blankinship - You went to apply for a building permit, and you were
1414 notified that you needed a building permit?
1415

1416 Ms. Vong - No, a man came and stopped in my driveway and said, "did
1417 you know that you needed a building permit?"
1418

1419 Mr. Kirkland - So a complaint was made, I assume.
1420

1421 Mr. Blankinship - Sometimes the building inspectors, if they see a building
1422 project that they know is not under permit, they will do that on their own initiative.
1423

1424 Ms. Vong - I don't know which it was. The neighbor of mine who helped
1425 me pour the foundation, that didn't go that well, and so actually he's not a neighbor; he's
1426 the guy who moved in with the lady across the street, but I wonder if he called. I have
1427 no idea how it happened, but I needed the permit anyway.
1428

1429 Mr. Wright - Is this gentleman a next-door neighbor?
1430

1431 Ms. Vong - No, he lives across the street and catty-corner. He got one
1432 of the notices though.
1433

1434 Mr. Wright - Let's hear from him.
1435

1436 Mr. Ellis - I got the notice and thought I was supposed to be here, so
1437 I'm here. My wife and I have lived there for 49 years, and we've seen a lot of people go
1438 and a lot of people come, and there's only one person left in the neighborhood who was
1439 there before we were. We live across the street from her. I have no qualms about it at
1440 all, no objections whatsoever. The lady works hard and does everything. She made a
1441 mistake; I have no problem with it.
1442

1443 Mr. Blankinship - Are you at 2500 sir?
1444

1445 Mr. Ellis - 2508.
1446

1447 Mr. Wright - We certainly appreciate your coming. Is there anything
1448 further you wish to state?

1449
1450 Ms. Vong - Just that several neighbors had talked to me and
1451 volunteered to come here today, and I said "no thanks," because I wasn't thinking it
1452 would be necessary. Now I'm terribly nervous, and I'm wondering if I should have done
1453 that, but I just wanted to mention that, because I think it can do nothing but improve the
1454 appearance of my property. I won't have lawnmowers sitting out; it will definitely help
1455 me beautify the yard and the neighborhood, and I think everybody I know feels like that.

1456
1457 Ms. Harris - Could the shed have been built beside or next to that frame
1458 shed that you have in back yard?

1459
1460 Ms. Vong - The one in the very back that you can barely see? That's
1461 one reason, the erosion, that's one reason I'm really glad my neighbor's here, in case
1462 you had questions about the topography. I know that I could have built it elsewhere, but
1463 I tell you I could not have put a fifteen by fifteen foot shed elsewhere, because the slope
1464 of the property that I'm on. I don't know how to give calculations for that, but it is so
1465 extreme, and the erosion is so extreme that the shed in the very background is almost
1466 starting to slide down the hill. It's actually on a thick slab; that was the pre-existing shed
1467 when I moved in, but it's actually on about a foot and a half slab that sits under the
1468 lower half of that shed, and that whole slab is starting to slide down that hill. It's a
1469 tremendous slope. The reason that this one flat area that I put this new one on hasn't
1470 been compromised in it's substrata soil, is because it has these big concrete slabs, like
1471 horizontally along the back and the side, so my whole yard, all the topsoil washes down
1472 in any kind of heavy rain, except that area has always held firm because of these, well I
1473 had about six inches of gravel on top of the clay, and then these concrete things on all
1474 sides, which have held it tight.

1475
1476 Mr. Wright - Any further questions of the Board? Is anyone here in
1477 opposition to this request? Hearing none, that concludes the case.

1478
1479 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
1480 Harris, the Board **granted** application **A-153-2004** for a variance to to allow a tool shed
1481 to remain at 2509 Skeet Street (West Wistar) (Parcel 764-749-3758). The Board
1482 granted the variance subject to the following conditions:

- 1483
1484 1. This variance applies only to the 10-foot setback from an accessory structure to
1485 the principal building. All other applicable regulations of the County Code shall remain
1486 in force.
1487
1488 2. When finished, the storage building shall be compatible with the existing dwelling
1489 in color and materials.
1490
1491 3. The storage building shall not be used to store inflammable or explosive
1492 materials such as gasoline or paint thinner.

1493
1494 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1495 Negative: 0
1496 Absent: 0

1497
1498 The Board granted this request, as it found from the evidence presented that, due to the
1499 unique circumstances of the subject property, strict application of the County Code
1500 would produce undue hardship not generally shared by other properties in the area, and
1501 authorizing this variance will neither cause a substantial detriment to adjacent property
1502 nor materially impair the purpose of the zoning regulations.

1503
1504 **UP-29-2004** **GASKINS & PATTERSON, INC.** requests a temporary conditional
1505 use permit pursuant to Section 24-116(c)(1) to install a temporary
1506 sales trailer at 9601 Patterson Avenue (Grayson Hill) (Parcel 745-
1507 741-0907), zoned RTHC, Residential Townhouse District
1508 (Conditional) (Tuckahoe).

1509
1510 Mr. Wright - Does anyone else desire to speak with reference to this
1511 case? Would you raise your right hand and be sworn please?

1512
1513 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1514 truth, the whole truth, and nothing but the truth, so help you God?

1515
1516 Mr. Lewis - I do. My name is Monte Lewis; I'm with Lewis and
1517 Associates; we're representing the Gumenicks with this project. Just to bring you up to
1518 speed, we recently obtained rezoning of this property for a townhouse development.
1519 Yesterday we received tentative approval for the townhouse development, and we
1520 submitted our first POD for the site plan for the first section. We're here today before
1521 you to ask for a temporary sales trailer, which will be located on the property at one of
1522 the proposed entrances. We are not clearing additional land that would not have to be
1523 cleared for the entrance itself. That was very important to us, because in the conditions
1524 of the case, during zoning, we proffered that we would save as many trees as practical.
1525 This is a temporary sales trailer, 24 by 60. We will be submitting a landscape and
1526 lighting plan within the next two days for the County staff to review. The trailer will be
1527 on site and operational until we get our model finished, which is in the first section.
1528 Then all the sales will be moved to that model. We have submitted the POD for that
1529 model, and it's under review as we speak.

1530
1531 Mr. Wright - Have you read the proposed conditions?

1532
1533 Mr. Lewis - Yes sir. We have read the conditions; we have no problems
1534 with the conditions as they are stated. I met with Mike Jennings with Henrico
1535 Transportation yesterday and Sam Amos with Public Works. They are okay with the
1536 access as we have proposed. As it states, the access is at the same location as the
1537 permanent road. When we do put in the permanent road, we will be putting in a right-
1538 turn lane, but at this time, Mike Jennings said that it is not needed for this small sales
1539 trailer.

1540

1541 Ms. Dwyer - Will this be a finished road up to the trailer, or will it be
1542 gravel?
1543
1544 Mr. Lewis - It will be asphalt. We will have bumper blocks for the
1545 parking area. Edge of pavement will not have curb and gutter; what we'll do is cut out
1546 that asphalt and add curb and gutter, and then top-coat it with two inches of asphalt, so
1547 it looks like a finished product when the road is finished. The permanent entrance will
1548 be a concrete entrance, what Works would call a CG9D, which is a concrete entrance,
1549 which is required everywhere in Henrico where you have access to a public road.
1550
1551 Mr. Wright - The only entrance to this project would be off of Gaskins
1552 Road, I see – is that correct?
1553
1554 Mr. Lewis - For this temporary sales trailer, yes sir.
1555
1556 Mr. Wright - How about for the development?
1557
1558 Mr. Lewis - The development is coming off of Patterson with the first
1559 section, it's up there at Patterson across from the Ukrop's entrance. That's with their
1560 first POD. Our first POD does not go all the way to the temporary sales trailer with the
1561 road. With the second section of the POD, which we plan on filing probably next month,
1562 it will go up to the trailer area.
1563
1564 Ms. Dwyer - Where is the first section that will be built? Can you describe
1565 that?
1566
1567 Mr. Lewis - It is along Patterson; it's fifty lots, with 50 homes right in
1568 there.
1569
1570 Ms. Dwyer - What is the estimated amount of time you're going to need
1571 the temporary trailer to be?
1572
1573 Mr. Lewis - We're expecting we're going to need it for about eighteen
1574 months. Our hours of operation right now look like they're going to be Monday through
1575 Friday, probably 11:00 to 5:00, and then Saturday and Sunday, 10:00 to 5:00.
1576
1577 Ms. Harris - At the conclusion of the eighteen-month period, when you no
1578 longer have a use for the sales trailer, will that become a part of your entrance? I'm
1579 looking at the map. What is that area?
1580
1581 Mr. Lewis - The trailer will be removed, the shaded area to the left of the
1582 trailer on your plan is the road. The parking lot area, which is to the left of the road, that
1583 will be removed and turned into a landscaped area. We are grading the site so that the
1584 trailer does not sit up above the road. We're digging it out and putting a small retaining
1585 wall under the trailer so the trailer will be flush with the road, so it doesn't sit up.
1586

1587 Ms. Dwyer - The staff report says that you didn't submit elevations of the
1588 trailer. I assume it's the deluxe model. When I got the report, I brought over some
1589 colored photos of the trailer, and Ben has those.

1590
1591 Mr. Blankinship - I believe those were passed out this morning.

1592
1593 Mr. Lewis - It's a color brochure, and one side shows the floor plan, and
1594 the other side shows what it looks like. Other than the asphalt drive, the walkway that
1595 will come up to the trailer is going to be brick pavers.

1596
1597 Ms. Dwyer - It's a fairly upscale development, so I'm assuming the trailer
1598 will be as attractive as possible, with landscaping.

1599
1600 Mr. Blankinship - I must have left those upstairs – do we need to ask
1601 somebody to bring them down?

1602
1603 Mr. Wright - We could put a condition in, Ms. Dwyer, if you wanted to say
1604 that it would be consistent.

1605
1606 Ms. Harris - The exterior of the trailer would be made out of metal?

1607
1608 Mr. Lewis - You'll notice on this trailer, it has the wooden platform and
1609 handicap ramp. We will not have that, because we're lowering the entire trailer down, to
1610 meet the ADA and Handicap Requirements.

1611
1612 Ms. Dwyer - So you won't have any stairs?

1613
1614 Mr. Lewis - Correct.

1615
1616 Mr. Wright - Any further questions of the Board? Is anyone here in
1617 opposition to this request? Hearing none, that concludes the case.

1618
1619 After an advertised public hearing and on a motion by Mr. Dwyer, seconded by Mr.
1620 Kirkland, the Board **granted** application **UP-29-2004** for a temporary conditional use
1621 permit to install a temporary sales trailer at 9601 Patterson Avenue (Grayson Hill)
1622 (Parcel 745-741-0907). The Board granted the use permit subject to the following
1623 conditions:

1624
1625 1. Only the improvements shown on the plan filed with the application may be
1626 constructed pursuant to this approval. No substantial changes or additions to the layout
1627 may be made without the approval of the Board of Zoning Appeals. Any additional
1628 improvements shall comply with the applicable regulations of the County Code.

1629
1630 2. A detailed landscaping and lighting plan shall be submitted to the Planning
1631 Department with the building permit for review and approval. Approved landscaping
1632 shall be installed during the spring planting season. All landscaping shall be maintained

1633 in a healthy condition at all times. Dead plant materials shall be removed within a
1634 reasonable time and replaced during the normal planting season.

1635
1636 3. The trailer shall be skirted on all sides with a durable material as required by the
1637 building code for a permanent installation.

1638
1639 4. The trailer shall be removed from the property on or before June 30, 2006, at
1640 which time this permit shall expire.

1641
1642 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1643 Negative: 0

1644 Absent: 0

1645
1646 The Board granted the request because it found the proposed use will be in substantial
1647 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1648
1649 **UP-30-2004 COUNTRY CLUB OF VIRGINIA** requests a conditional use permit
1650 pursuant to Section 24-12(b) to build a maintenance building at 710
1651 S Gaskins Road (Parcel 735-733-6834), zoned R-0, One-family
1652 Residence District (Tuckahoe).

1653
1654 Mr. Wright - I'll have to disqualify myself on this case.

1655
1656 Mr. Nunnally - Is anyone else here with reference to this case? Would you
1657 raise your right hand and be sworn please?

1658
1659 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1660 truth, the whole truth, and nothing but the truth, so help you God?

1661
1662 Mr. Condlin - I do. My name is Andy Condlin. I'm with Williams Mullin,
1663 representing the applicant at this time. I also have with us, Monte Lewis, and Richard
1664 Cromwell and Mark Silva from the Country Club. If you have any questions, I wanted to
1665 have them available to answer any particular questions you might have. This is, of
1666 course, with the Country Club of Virginia towards the end of Gaskins Road. You can
1667 see that along Daniels Road, which is a private road; there are few residences, and at
1668 the end of Daniels Road, as it goes through, this is where the existing site would be.
1669 You can see that originally, and there's the last home that was owned by Mr.
1670 Thompson, and there's a major water line that's coming through this area that's going
1671 through, that's a lot of the construction that's going on right now. We had originally
1672 proposed for the facility to be at this location with a different elevation and a different
1673 facility. Because of the concerns from the neighbors, and the look, and the traffic, we've
1674 decided to move it back towards this area where it is at this time, with a different look as
1675 it goes in.

1676
1677 We already have a maintenance facility to serve the Tuckahoe Creek Golf Course at the
1678 end of Daniels Road. That facility, which is both a storage and offices and shops and

1679 meeting rooms, are in this area in an old farm house and barn in this location. We've
1680 moved the facility further back again for the neighbors, so that this location, it can
1681 technically only be seen by the golfers and the employees of the Country Club of
1682 Virginia. It's almost 1700 feet from the closest resident, so that there would be no view
1683 that anyone could have of this facility. As I said, it will replace an existing facility, from
1684 an old farm and an open barn, so there is no additional traffic. It's not as if we were
1685 introducing anything new to this area. The building, we feel, is better suited for its use,
1686 and it's a more efficient operation, and quite frankly, it looks better than what we had
1687 proposed before. Again, it cannot be seen by the neighbors.

1688
1689 It will also allow CCV to renovate the existing old house that's being used; they're going
1690 to take off the old addition that's been put on that house some years back and renovate
1691 the house for maybe some specialty uses; they haven't quite figured out what they want
1692 to, if anything at all, but currently it's being used as part of the maintenance facility.
1693 Same number of employees, same amount of equipment; it's just going to be moved
1694 from one place to a better, more efficient location. One of the special exception
1695 standards that you have to look at is to give due regard to the nature and condition of all
1696 the adjacent uses and structures. I think clearly the adjacent area, this is well called for,
1697 we're only disturbing golfers and the employees. There should be no homes that will be
1698 able to see this location. Also, you need to take into account the special characteristics
1699 of the area and the design and location. Our architectural are meant to, and I think
1700 those have been presented, as well, as part of the file. The intent was to make it look
1701 like an old barn. This was part of an old farmhouse. It's got the barn already existing
1702 with the silo across the road at Daniels Road, and the intent is to make it look like an old
1703 barn or stable, with a white building with a reddish roof. It also allows for, I think an
1704 advantage in this area, is to allow for the renovation of the old homesite that's on the
1705 property, and most importantly that this is not introducing any more traffic. Ultimately, it
1706 will not affect the health, safety and welfare of the residents in the area, nor will it impair
1707 the character of the area.

1708
1709 I do have a letter that I would like to introduce to you, or an e-mail written to me from
1710 Tommy Thompson, who is the closest resident, who does write that "I am sending this
1711 e-mail to confirm our support for the Country Club of Virginia's maintenance project that
1712 will come before the BZA on December 16, 2004. My wife and I are very appreciative of
1713 the Country Club's efforts to be sensitive to our needs as property owners that are
1714 affected by the proposal. Please feel free to use this as confirmation of our support of
1715 the project." We also had a neighborhood meeting, which Mr. Thompson and Mr.
1716 Tashjian showed up. They were the two closest neighbors. They were in support of
1717 this project, and no one else, I've received one other phone call inquiring about the
1718 construction project that Henrico is doing with respect to the water line, so we have not
1719 received any complaints. I don't believe Mr. Blankinship has either.

1720
1721 Finally, with respect to the conditions, I believe that Mr. Blankinship has written to me
1722 that condition # 5 has been revised with respect to the fire protection. The concern is
1723 that we want to be about to work with the Department of Public Utilities, the existing
1724 condition really specified exactly what had to be put in there. We think there's some

1725 leeway in there that we want to work with the Department of Public Utilities, so we're
1726 requesting to have it changed to fire protection shall be provided as required by the
1727 Director of Public Utilities.

1728
1729 Mr. Blankinship - That was passed out to you this morning; the original
1730 condition was taken directly from DPU's memo and DPU has signed off on this
1731 amended condition as well.

1732
1733 Mr. Condlin - We just thought it was a little too specific because there are
1734 a lot of different ways you can accomplish it.

1735
1736 Mr. Nunnally - You're in agreement with all the other conditions?

1737
1738 Mr. Condlin - I'm in agreement with one; I would like to clarify # 1, and the
1739 concern here again has to do with the Department of Public Utilities, in that depending
1740 on the amount of office space, and depending on some other factors, depending on the
1741 specific types of uses that are made of the building, they may require different
1742 standards of fire safety, sprinklers, a fire hydrant, the water line, the size of the water
1743 line coming in. While we will continue to have the same elevation, the same footprint,
1744 we do want to make sure and clarify, and I think that this condition allows us to be a little
1745 flexible with what goes on inside; in other words, it could be a shop, and a tool storage
1746 area, and we might make the office into an additional tool storage area, so that we don't
1747 have to put in the same water line. I just want to clarify for the record that I think that's
1748 the intent of that condition, that within the interior of the building, we can mix the uses a
1749 little bit, as long again as it's going to be reviewed by the Planning staff and Department
1750 of Public Utilities, and from that, the necessary fire protection safety services will be
1751 required.

1752
1753 Ms. Dwyer - So the interior floor plan may change, and the uses won't.

1754
1755 Mr. Condlin - That's the intent right now, but the uses won't. It's going to
1756 be used for a maintenance facility, and it might be for tool storage for hand tools as
1757 opposed to an office. It will have vending machines and a lunch room there; they might
1758 make that smaller, make it a more open area for the shop area.

1759
1760 Ms. Dwyer - Could we go back to the elevations that Mr. Condlin just
1761 gave us. I hadn't seen those before.

1762
1763 Mr. Condlin - That's an end elevation that you're looking at, at the end.
1764 There's a side elevation, as you're coming down from Daniels Road from the side, and
1765 the other one from the end.

1766
1767 Ms. Dwyer - The long part of the building will be along the roadway, and
1768 will there be a garage door on both ends or just one end?

1769

1770 Mr. Condlin - Just one end, and you can't really see it, it's kind of hard to
1771 see, but on my right side on the screen, that's where the overhead door is, and you can
1772 also see the windows, and there's overhead doors to go into the shop areas.

1773
1774 Ms. Dwyer - There's a structure that looks sort of like a trailer, a
1775 temporary building

1776
1777 Mr. Condlin - Right at the end of Daniels Road?

1778
1779 Ms. Dwyer - If you're facing the silo barn, it's to your right. It's between
1780 the barn and the old house – will that be removed, or will that stay.

1781
1782 Mr. Silva - That's an old office trailer that was used as an office facility
1783 during the construction of the James River Club House. We're basically temporarily
1784 storing at that location now; the footprint of the building – we'll wind up having to get rid
1785 of the trailer.

1786
1787 Mr. Nunnally - Your name sir?

1788
1789 Mr. Silva - Mark Silva.

1790
1791 Ms. Harris - The exterior of the building, what will that be?

1792
1793 Mr. Silva - It's a metal building, it's a white building with a roof of red, to
1794 make it look like a barn. It matches the existing barn and silo structures; that's why we
1795 chose those colors.

1796
1797 Mr. Wright - Any further questions of the Board or staff? Is anyone here
1798 in opposition to this request? Hearing none, that concludes the case.

1799
1800 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.
1801 Kirkland, the Board **granted** application **UP-30-2004** for a conditional use permit to build
1802 a maintenance building at 710 S Gaskins Road (Parcel 735-733-6834). The Board
1803 granted the use permit subject to the following conditions:

1804
1805 1. The property shall be developed in substantial conformance with the plan filed
1806 with the application. No changes or additions to the layout may be made without the
1807 approval of the Board of Zoning Appeals.

1808
1809 2. The parking lot, driveways, and loading areas shall be subject to the
1810 requirements of Section 24-98 of Chapter 24 of the County Code.

1811
1812 3. A detailed site lighting plan shall be included with the landscaping plans for
1813 Planning Office review and approval at time of building permit submission for the
1814 temporary structures as well as the permanent structures.

1815

1816 4. All landscaping shall be maintained in a healthy condition at all times. Dead
1817 plant materials shall be removed within a reasonable time and replaced during the
1818 normal planting season.

1819
1820 5. [AMENDED] Fire protection shall be provided as required by the Division of Fire
1821 and the Director of the Department of Public Utilities.

1822
1823 6. [ADDED] The existing trailer shall be removed from the site within 30 days of
1824 occupancy of the proposed building.

1825
1826 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4
1827 Negative: 0
1828 Abstain: Wright 1

1829
1830 The Board granted the request because it found the proposed use will be in substantial
1831 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1832
1833 **A-154-2004** **LEASE FLORIDA LLC** requests a variance from Section 24-94 to
1834 build a store at 421 E Laburnum Avenue (New Providence Park)
1835 (Parcel 794-738-0040), zoned B-1, Business District (Fairfield).
1836 The rear yard setback is not met. The applicant proposes 15 feet
1837 rear yard setback, where the Code requires 40 feet rear yard
1838 setback. The applicant requests a variance of 25 feet rear yard
1839 setback.

1840
1841 Mr. Wright - Does anyone else desire to speak with reference to this
1842 case? Would you raise your right hand and be sworn please?

1843
1844 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1845 truth, the whole truth, and nothing but the truth, so help you God?

1846
1847 Ms. Greer - Jennifer Greer. We have proposed an 8,000 square foot
1848 retail store for this property. The variance that we're requesting today has somewhat
1849 progressed since our first submittal to the Henrico County Planning. In September we
1850 requested the setbacks in which were quoted from Waddey Street, which would make
1851 the setback in question now the rear setback; it would have made it the side setback of
1852 fifteen feet. We submitted the site plan on September 7 for preliminary site plan review,
1853 received comments from that, the setbacks were approved as shown on the plan. We
1854 were advised to go ahead and submit for the plan of development, which we did
1855 October 28. On November 8, we received a written notification that the setbacks were
1856 originally quoted incorrectly by the Planning Department. In this case, now making East
1857 Laburnum be the frontage and Waddey being the side street, and now making that a
1858 40-foot setback in the rear, which brings us to now requesting the 15-foot setback and
1859 the 25-foot variance on the forty foot.

1860

1861 Ms. Dwyer - So you originally designed this site plan based on the
1862 assumption that you only had to have a fifteen-foot side yard setback from what is now
1863 determined the rear of the property. Is it impossible to get more rear setback, or do you
1864 just not want to do it because you've already done the engineering?
1865

1866 Ms. Greer - We had done all the engineering when we submitted the
1867 plan of development based on, I got a stack of ten pages of comments from the
1868 preliminary review. We did proceed with all of the engineering. If we move the building
1869 forward, we would not be able to meet the parking requirements. I also feel like in my
1870 experience with this, and that there is residential to the rear, when you have the
1871 building, it would force us to put a driveway behind the building, and I think that's of
1872 more detriment to residential in the rear to have people and parking back there, and
1873 parking lot behind the building. The building's going to be visible whether it's at fifteen
1874 feet or forty feet. With proper screening on the fifteen-foot setback, it's going to be
1875 visible either way.
1876

1877 Ms. Dwyer - Will you have a drive aisle back there at all?
1878

1879 Ms. Greer - Not now. If we move it to forty-foot setback, we would have
1880 to put a drive aisle for delivery back there.
1881

1882 Ms. Dwyer - But as it's now designed, what would be there, landscaping?
1883

1884 Ms. Greer - Landscaping. There's a fifteen-foot landscaping and a
1885 fence, probably a six-foot wood-screen fence.
1886

1887 Ms. Harris - How would the landscaping be in proportion to the fence?
1888 Would you have landscaping to make attractive the fence, or would we be able to see it
1889 just like it is in this drawing?
1890

1891 Ms. Greer - We would have an area between the fence and the building
1892 that would be landscaped with grass and shrubbery as shown.
1893

1894 Ms. Harris - So the landscaping would be closer to the building. It seems
1895 as though the landscaping is going around the perimeter near the fence – is that true, or
1896 am I perceiving that incorrectly? These circles here?
1897

1898 Mr. Blankinship - The fence is indicated by the line broken by the X's there, so
1899 all the landscaping that's shown there is on the store side of that fence.
1900

1901 Ms. Harris - We're not seeing any landscaping in the rear of the building?
1902

1903 Mr. Blankinship - There's some going around what looks like mechanical
1904 equipment there, and then the fence is behind that.
1905

1906 Ms. Greer - That's correct.

1907
1908 Ms. Harris - You run into this fairly often though, Family Dollar Stores run
1909 into being next to a residential community. What do you do to appease the community
1910 normally?
1911
1912 Ms. Greer - Typically, we just had a very similar case to this, and usually
1913 a nice screening put up across the property and landscaping is usually what's required.
1914
1915 Ms. Dwyer - Has this been submitted to the folks who are involved in
1916 crime prevention but also landscape design and building design?
1917
1918 Mr. Blankinship - Yes. They're on our routing list, and they send us back a
1919 memo each month. They didn't have any specific comments about this case.
1920
1921 Ms. Dwyer - I'm just wondering about the fencing. Would it be better to
1922 have the wood fence or a higher chain link fence or something. I'd be interested in their
1923 input.
1924
1925 Ms. Greer - I believe we did receive comments from all the departments
1926 when we did the preliminary site plan.
1927
1928 Mr. Blankinship - They would have review the POD as well as the variance
1929 request.
1930
1931 Mr. Kirkland - Mr. Blankinship, I see as part of their setback is part of the
1932 old vacated alley. Eight feet went to them, and I assume the other eight feet went to the
1933 landowners that adjoin this property. So basically they can't build anything on that, can't
1934 put any permanent structure on that, it would have to be landscaped, right. There's no
1935 utilities running under there, are there?
1936
1937 Mr. Blankinship - Not that I'm aware of.
1938
1939 Mr. Kirkland - When something's vacated, you get it, but you can't really do
1940 anything with it but plant trees and bushes on it. You really can't build any thing on it,
1941 because it's vacated, I don't know if it's part of the deed or whatever in this situation.
1942
1943 Mr. Blankinship - I think it would become part of their property, but it's within
1944 the setback either way.
1945
1946 Mr. Kirkland - Yes, so it could never be built on; it's always a green area
1947 there, and the same on the other side of that chain link fence, correct?
1948
1949 Mr. Blankinship - The owners on the other side can use the property up to the
1950 center line, yes; however, they're using it residentially. I think it's all in grass right now.
1951

1952 Ms. Harris - Are there tanks in the ground? This was a former gas
1953 station, right. Do you know if there are tanks in the ground below the surface?
1954
1955 Mr. Hungate - Scott Hungate with Family Dollar Stores, and from what we
1956 understand, they have been cleared. That's through Crown Petroleum.
1957
1958 Ms. Harris - Do you know how long this site has been vacant?
1959
1960 Mr. Hungate - No, not exactly, but we estimate a good five years.
1961
1962 Mr. Wright - Any further questions of the Board? Are these persons for
1963 or against the proposal? You are against it. You have been sworn. Please state your
1964 name.
1965
1966 Mr. Jones - I'm Bryan Jones.
1967
1968 Ms. Jones - Gwen Jones.
1969
1970 Mr. Jones - I'm the owner of the house that the store's about to be
1971
1972 Mr. Wright - You're the owner of the house that's behind the property?
1973 There's one house behind the property.
1974
1975 Mr. Jones - It's the only house on that lot. I was wondering about that
1976 rear yard setback – is that going to make my yard smaller in the back?
1977
1978 Mr. Wright - It's not going to have anything to do with your yard. It's on
1979 their side. They're asking to build a building back further from the road than the original
1980 what's there now; that's what they're doing. They're required to have a 40-foot rear
1981 yard setback, and they're requesting to build fifteen feet from that line, on their side. It
1982 doesn't affect you at all except it's closer to your property than the other one.
1983
1984 Mr. Jones - Because I prefer to have a wooden privacy fence put up
1985 instead of a chain link fence, so that I would have some kind of privacy.
1986
1987 Mr. Wright - They will have to have some screening, and I notice in this
1988 thing, that they will have to submit a detailed landscaping and lighting plan to the
1989 Planning Office for review and approval, so that the Planning Office will see that they
1990 have the necessary screening there to protect your property as best it can be.
1991
1992 Ms. Dwyer - Their plans presently call for a six-foot board-on-board
1993 fence, so it would be a six-foot wooden board fence.
1994
1995 Mr. Wright - A six-foot board fence, which would remove that old fence
1996 that's there now. The chain link fence would be gone; it would be a board fence. Is
1997 there anything else? You were just concerned about how that would work? Do you

1998 have any opposition to their building that close on their side of the line if they put the
1999 board fence up?
2000
2001 Mr. Jones - No, I just thought they might have needed a little piece of my
2002 land.
2003
2004 Mr. Wright - No sir.
2005
2006 Ms. Jones - No, as long as it's neat, and I know they're going to have
2007 dumpsters to make sure all these things are taken care of, because sometimes we may
2008 have rats. We don't want any of that interfering, so I assume that would be in the plan
2009 and everything, because so far it's been real neat, but we don't want it to come back
2010 and say the rats did this and the rats did that, but if we have all those things secured
2011 and taken care of, we don't have any problem.
2012
2013 Mr. Wright - Looks like to me it will be a lot neater than it is now.
2014
2015 Ms. Jones - Where he lives it's neat, but as long as you have us in
2016 concern about the neatness in the place, we don't have any problem.
2017
2018 Ms. Harris - Mr. Jones, have you observed some other Family Dollar
2019 Store locations that are in residential communities?
2020
2021 Mr. Jones - Yes, one on Mechanicsville Turnpike, across from, near the
2022 Hollywood Video Store.
2023
2024 Ms. Harris - Do you feel that they would make good neighbors?
2025
2026 Mr. Jones - I feel it would be okay. When is the project supposed to
2027 start?
2028
2029 Mr. Blankinship - I don't know that; it's still under review for the site plan
2030 review.
2031
2032 Mr. Wright - Thank you very much for appearing. Do you have anything
2033 else to say on behalf of the application?
2034
2035 Mr. Hungate - Just getting back to his point on the dumpsters, yes we will
2036 have dumpsters; we will keep the place neat. We feel like we're a convenient place to
2037 shop, everyday low pricing, and we plan to employ five to ten people from the
2038 community.
2039
2040 Mr. Wright - Any further questions of the Board? Is anyone here in
2041 opposition to this request? Hearing none, that concludes the case.
2042

2043 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
2044 Kirkland, the Board **granted** application **A-154-2004** for a variance to build a store at
2045 421 E Laburnum Avenue (New Providence Park) (Parcel 794-738-0040). The Board
2046 granted the variance subject to the following conditions:

2047
2048 1. This variance applies only to the rear yard setback. All other applicable
2049 regulations of the County Code shall remain in force.

2050
2051 2. The parking lot, driveways, and loading areas shall be subject to the
2052 requirements of Section 24-98 of Chapter 24 of the County Code.

2053
2054 3. This approval is subject to all conditions that may be placed on the approval of a
2055 Plan of Development.

2056
2057 4. A detailed landscaping and lighting plan shall be submitted to the Planning Office
2058 with the building permit for review and approval.

2059
2060 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2061 Negative: 0
2062 Absent: 0

2063
2064 The Board granted this request, as it found from the evidence presented that, due to the
2065 unique circumstances of the subject property, strict application of the County Code
2066 would produce undue hardship not generally shared by other properties in the area, and
2067 authorizing this variance will neither cause a substantial detriment to adjacent property
2068 nor materially impair the purpose of the zoning regulations.

2069
2070 On a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **approved** the
2071 Minutes as corrected of the **September 23, 2004**, Henrico County Board of
2072 Zoning Appeals meeting.

2073
2074 Mr. Blankinship - Mr. Chairman, I have a letter here from an applicant
2075 for a variance that was approved back in June. You may remember the name is
2076 Rappold. The address is 10307 Gayton Road, and it was an application that
2077 came before you in April to build a two-story garage on a one-story house. That
2078 variance was denied. They came back two months later to build a one-story
2079 garage on the one-story house, and that application was approved, with the
2080 condition that they had to build it with the plans that they had submitted to you
2081 and any changes to those plans had to be approved by you. Unfortunately, their
2082 original building permit used the approved plans, but then they came back a
2083 couple months later with a resubmission of the building permit to make the
2084 garage quite a bit taller than what you had approved, not quite two stories. That
2085 building permit resubmission was approved and probably should not have been.
2086 We probably should not have approved that, but they went ahead and built the
2087 garage, and you see it on your screen, several feet taller than what you
2088 approved.

2089
2090 Ms. Dwyer - This was an important issue. The first two-story
2091 garage was denied by this Board, and then the second one that was a single
2092 story was approved, and part of the discussion was that the roof line of this
2093 addition would not be taller than the existing roof line of the single-story home.
2094
2095 Mr. Blankinship - The condition was that they had to follow the plans
2096 that were approved by the Board or get any changes approved by the Board.
2097 They would now like to ask this Board to approve a change to allow a higher roof
2098 on the garage, and I'm going to pass down a sketch that's not the clearest sketch
2099 in the world.
2100
2101 Mr. Kirkland - How far along are they on this project?
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2103 Mr. Blankinship - You see it in front of you.
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2105 Mr. Kirkland - That's plywood or particle board on the side; there's
2106 no brick work done, is there?
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2108 Mr. O'Kelly - And the building official has stopped work on it.
2109
2110 Mr. Wright - Why in the world would we approve a change?
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2112 Mr. Blankinship - An error was made in the Permit Center. When they
2113 reviewed the original building permit, they were careful; they came and pulled the
2114 variance file and came and spoke to me, but when they came in with the
2115 resubmission, the Permit Center did review it without checking the variance file.
2116 They just signed off on it.
2117
2118 Mr. Wright - So the building permit came in, and it's been
2119 approved?
2120
2121 Mr. Blankinship - One thing that the applicant has suggested and
2122 what's shown in that drawing there, the original house had a slightly higher roof
2123 in the center, and then lower on both sides. Then the garage is taller than even
2124 the center of the house, so you have really a kind of an odd staggered up and
2125 down sort of effect, and he has suggested that it might make the whole thing
2126 more attractive if he extended the higher roof of the new garage over the left-
2127 hand side of the house to the point where the roof line changes already, so that
2128 rather than going high, low, medium, low, it would just go high, medium, low.
2129 That still leaves you with a one-and-a-half story garage closer to the property
2130 line than would otherwise have been allowed, but it's one way of addressing it.
2131
2132 Ms. Dwyer - I guess my concern is that the applicant was denied
2133 the first time, and then part of this discussion that this Board had made it quite
2134 clear that this was only being approved because the roof line was not going to

2135 exceed the existing roof line of the house, so I have to wonder about the good
2136 faith of the applicant coming in, getting a building permit approved and then
2137 coming back later for an amendment.

2138
2139 Mr. Wright - It's putting the burden on the staff.

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2141 Mr. Nunnally - Did we have opposition to any of this?

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2143 Ms. Dwyer - No. But you can see how this is part of the concern,
2144 is they're quite close to the side property line, and this is a much more massive
2145 structure.

2146
2147 Mr. Kirkland - We had some rather lengthy discussion on this case.
2148 So what do you want from us, Mr. Blankinship?

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2150 Mr. Blankinship - The applicant has submitted a letter requesting that I
2151 bring the matter before you, "Mr. Blankinship – as we have discussed, I hereby
2152 request that the Board of Zoning Appeals consider for the Board's approval, a
2153 change to the approved variance for condition # 2 of the stated conditions." The
2154 condition on that variance was that they could not build anything other than what
2155 was shown without the Board's approval.

2156
2157 Mr. Wright - On the original application?

2158
2159 Mr. Blankinship - Right. I figured if you were going to make such a
2160 change, you should put this on your January Agenda, so that we can notify the
2161 neighbors and have a hearing on it, or if you are averse to that, you can just
2162 decide that you are not going to take this back up, and I would relay that back to
2163 him, and he's already under instruction to lower the roof by four feet, essentially
2164 to reconstruct it consistent with the approved plans, so that would be the
2165 County's direction to him if you were not willing to put this on your January
2166 Agenda. So I guess the question to you is, will you hear his request in January
2167 or not?

2168
2169 Ms. Dwyer - Procedurally, what would that be? It's not a new
2170 application; it's an application to amend his earlier application?

2171
2172 Mr. Blankinship - I'm not really sure.

2173
2174 Mr. Wright - If the Planning (Permit) Office had checked it like they
2175 should have, I guess we wouldn't be here. That's the little thing that causes the
2176 problem. I know he's not in good faith, because he says he shouldn't have even
2177 submitted something to the Planning Office. He knew.

2178

2179 Mr. Blankinship - The Permit Center. I'll give them credit that they
2180 caught it the first time; they did review the file the first time, but he came back
2181 with a re-submission, and it was not caught by a different staff member.
2182
2183 Mr. Wright - He was advised that he could not have that.
2184
2185 Mr. Blankinship - He came back two or three months later, and it was
2186 not reviewed correctly.
2187
2188 Mr. Wright - Looks like to me the man's in bad faith. If we do
2189 nothing, what's the situation?
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2191 Mr. Blankinship - He is under notice now that he has to bring it down
2192 four feet, roughly.
2193
2194 Mr. Wright - What would his next step be if he disagreed with that,
2195 appeal it to the circuit court?
2196
2197 Mr. Blankinship - I think he could appeal it to you. He could appeal the
2198 letter that I sent him, and then it would come before you as an appeal, so he may
2199 still have recourse.
2200
2201 Mr. Kirkland - So he could appeal the decision of the zoning
2202 enforcement officer.
2203
2204 Mr. Blankinship - There is also a building code issue involved, so he
2205 could also appeal through the building code.
2206
2207 Ms. Dwyer - That might be a better way to go procedurally
2208 anyway. It seems to me there's no procedure for having us reconsider a decision
2209 we've already made.
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2211 Mr. Wright - I just don't like the idea that we grant him anything.
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2213 Mr. Kirkland - I make a motion that we don't hear it, that we take no
2214 action, and that basically leaves it in his court.
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2216 Ms. Dwyer - And the process would be that you issue a letter to
2217 him, saying

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2219 Mr. Blankinship - We have already.
2220
2221 Mr. Wright -that he could appeal that. If he does, then I
2222 guess we've got to hear him, if he appeals that. But he's appealing, I guess, a
2223 decision of the Planning Office.
2224

2225 Mr. Kirkland - And then the County could bring in evidence on their
2226 end too.

2227
2228 Mr. Wright - What's the pleasure of the Board?

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2230 Ms. Dwyer - I think that we should not take any action and let the
2231 Planning Office issue their decision, and then he can appeal that to us, and that's
2232 the proper procedure.

2233
2234 Mr. Kirkland - I'll second that.

2235
2236 Mr. Wright - Is that a motion? Any further discussion?

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2238 On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **denied** the **request of**
2239 **Robert J. Rappold, III** to consider for the Board's approval, a change to the approved
2240 variance for condition # 2 of the stated conditions of his variance approved in June
2241 2004."

2242
2243 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2244 Negative: 0
2245 Absent: 0
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2247 There being no further business, and on a motion by Mr. Kirkland, seconded by
2248 Ms. Dwyer, the Board adjourned until **January 27, 2005**, at 9:00 am.

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2253 Russell A. Wright, Esq.

2254 Chairman

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2257 Benjamin Blankinship, AICP

2258 Secretary

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