

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, FEBRUARY 27,**  
4 **2003, AT 9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND**  
5 **TIMES-DISPATCH ON FEBRUARY 6 AND 13, 2003.**  
6

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

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

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

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

28  
29 Mr. Balfour - Thank you sir. Do we have any requests for withdrawals or  
30 deferrals?

31  
32 **A - 9-2003** **ROY E. CARTER, SR.** requests a variance from Section 24-9 of  
33 Chapter 24 of the County Code to build a one-family dwelling at

34 604 N Ivy Avenue (Parcel 825-728-9280), zoned R-3, One-family  
35 Residence District (Varina). The public street frontage requirement  
36 is not met. The applicant has 0 feet public street frontage, where  
37 the Code requires 50 feet public street frontage. The applicant  
38 requests a variance of 50 feet public street frontage.  
39

40 Mr. Balfour - Anyone here on that case? Anyone else plan to speak on  
41 this matter? Would you raise your right hand and be sworn please?  
42

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

46 Mr. Carter - I do. Roy Ellis Carter. I'm buying a piece of property to build  
47 a single-family dwelling for my son's house. I know I don't have the road frontage.  
48

49 Mr. Nunnally - You say you're going to buy it?  
50

51 Mr. Carter - Yes, I'm going to buy it; I haven't bought anything yet.  
52

53 Mr. Nunnally - Have you got a contract on it subject to getting this  
54 variance?  
55

56 Mr. Carter - Yes, I've got a contract on it. Yes.  
57

58 Mr. Nunnally - What type of house are you going o put in it?  
59

60 Mr. Carter - It's like a 1300 square foot, small rancher.  
61

62 Mr. Nunnally - And it is going to be for a member of your immediate family,  
63 right, your son? Have you read the conditions that are on the application if it's  
64 approved? Do you accept those?  
65

66 Mr. Carter - Yes sir. Yes. Yes sir.  
67

68 Mr. Balfour - Any other questions by Board members? Thank you sir.  
69

70 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
71 Kirkland, the Board **granted** application **A-9-2003** for a variance to build a one-family  
72 dwelling at 604 N Ivy Avenue (Parcel 825-728-9280). The Board granted the variance  
73 subject to the following conditions:  
74

75 1. This variance applies only to the public street frontage requirement. All other  
76 applicable regulations of the County Code shall remain in force.  
77

78 2. At the time of building permit application, the applicant shall submit the  
79 necessary information to the Department of Public Works to ensure compliance with the

80 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
81 water quality standards.

82  
83 3. At the time of building permit application the owner shall demonstrate that the  
84 parcel created by this division has been conveyed to a member of the immediate family,  
85 and the subdivision ordinance has not been circumvented.

86  
87 4. The applicant shall present proof with the building permit application that a legal  
88 access to the property has been obtained.

89  
90 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
91 for maintaining access to the property until such a time as the access is improved to  
92 County standards and accepted into the County road system for maintenance.

93  
94 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
95 Negative: 0  
96 Absent: 0

97  
98 The Board granted this request, as it found from the evidence presented that, due to the  
99 unique circumstances of the subject property, strict application of the County Code  
100 would produce undue hardship not generally shared by other properties in the area, and  
101 authorizing this variance will neither cause a substantial detriment to adjacent property  
102 nor materially impair the purpose of the zoning regulations.

103  
104 **A - 10-2003** **MICHAEL AND OLIVIA ANDERSON** request a variance from  
105 Section 24-94 of Chapter 24 of the County Code to build a one-  
106 family dwelling at 1606 Delma Drive (Middleton) (Parcel 782-759-  
107 1229), zoned R-3, One-family Residence District (Fairfield). The  
108 front yard setback and rear yard setback are not met. The  
109 applicants have 35 feet front yard setback and 25 feet rear yard  
110 setback, where the Code requires 40 feet front yard setback and 40  
111 feet rear yard setback. The applicants request a variance of 5 feet  
112 front yard setback and 15 feet rear yard rear yard setback.

113  
114 Mr. Balfour - Do we have any others who intend to testify in this matter?  
115 Would you raise your right hand and be sworn please?

116  
117 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
118 truth, the whole truth, and nothing but the truth, so help you God?

119  
120 Mr. Anderson - Yes I do. Michael Anderson. I'm requesting a 5-foot  
121 setback in the front and a 15-foot setback in the rear at this address for the size of the  
122 house that I'm planning on building.

123  
124 Mr. Balfour - I see you have sort of a funny-shaped lot a little bit, a  
125 different shape. Have you read the conditions? Agreeable with those?

126  
127 Mr. Anderson - Yes I do. Yes I am.  
128  
129 Mr. Balfour - Any questions by Board members?  
130  
131 Mr. Wright - What's located to the rear of your property?  
132  
133 Mr. Anderson - It's another house right directly behind that piece of property,  
134 that's at 9302 on Wilmecote.  
135  
136 Mr. Wright - Looks like it's sort of at an angle to your house.  
137  
138 Mr. Anderson - Yes it is.  
139  
140 Mr. Balfour - Your problems are down at one end where the lot narrows a  
141 little bit.  
142  
143 Mr. Anderson - Yes sir, it is. On the left side I have 128 feet, and on the  
144 right side I only have 95, and that's where it creates the problem.  
145  
146 Mr. Blankinship - Mr. Chairman, there is one error in the staff report, that the  
147 last condition there, where it says "Curb and gutter" are to be constructed, they're  
148 already there. That was constructed at the same time the street was.  
149  
150 Mr. Balfour - We'll mark that one out then.  
151  
152 Mr. McKinney - Mr. Blankinship, this 9302 Wilmecote meets the setback in  
153 their rear yard at that corner?  
154  
155 Mr. Blankinship - It doesn't look like it from here.  
156  
157 Mr. McKinney - It doesn't look like it to me either.  
158  
159 Mr. Balfour - That's your neighbor, not you.  
160  
161 Mr. Anderson - There's quite a few of them in that area.  
162  
163 Mr. McKinney - Yes, I'm familiar with them.  
164  
165 Mr. Anderson - Also, one other thing that was brought up to my attention,  
166 and I measured it, instead of being 35 in the front, my property line's about 12 feet from  
167 the front of the curb off that piece of property, so actually we're looking at about 47 feet  
168 from the front of the curb on Delma Drive.  
169  
170 Mr. Balfour - Any other questions? Thank you.  
171

172  
173 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
174 Wright, the Board **granted** application **A-10-2003** for a variance to build a one-family  
175 dwelling at 1606 Delma Drive (Middleton) (Parcel 782-759-1229). The Board granted  
176 the variance subject to the following conditions:

177  
178 1. Only the improvements shown on the plan filed with the application may be  
179 constructed pursuant to this approval. No substantial changes or additions to the layout  
180 may be made without the approval of the Board of Zoning Appeals. Any additional  
181 improvements shall comply with the applicable regulations of the County Code.

182  
183 2. The property shall be developed in substantial conformance with the plan filed  
184 with the application. No substantial changes or additions to the layout may be made  
185 without the approval of the Board of Zoning Appeals.

186  
187 3. At the time of building permit application, the applicant shall submit the  
188 necessary information to the Department of Public Works to ensure compliance with the  
189 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
190 water quality standards.

191  
192 4. Approval of this request does not imply that a building permit will be issued.  
193 Building permit approval is contingent on Health Department requirements, including,  
194 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
195 of a well location.

196  
197 5. Connections shall be made to public water and sewer.

198  
199 6. [deleted].

200  
201 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
202 Negative: 0  
203 Absent: 0

204  
205 The Board granted this request, as it found from the evidence presented that, due to the  
206 unique circumstances of the subject property, strict application of the County Code  
207 would produce undue hardship not generally shared by other properties in the area, and  
208 authorizing this variance will neither cause a substantial detriment to adjacent property  
209 nor materially impair the purpose of the zoning regulations.

210  
211 **A - 11-2003**                    **CHRISTOPHER C. GARONE, SR.** requests a variance from  
212 Section 24-9 of Chapter 24 of the County Code to build a one-  
213 family dwelling at 7227 Yahley Mill Road (Parcel 836-695-1768),  
214 zoned A-1, Agricultural District (Varina). The public street frontage  
215 requirement is not met. The applicant has 0 feet public street  
216 frontage, where the Code requires 50 feet public street frontage.  
217 The applicant requests a variance of 50 feet public street frontage.

218  
219 Mr. Balfour - Do we have any others who intend to testify in this matter?  
220 Would you raise your right hand and be sworn please?  
221  
222 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
223 truth, the whole truth, and nothing but the truth, so help you God?  
224  
225 Mr. Garone - Yes I do. Christopher Charles Garone, Sr. I'm requesting a  
226 variance; I'm coming through my father's property. Everybody in the area is family. The  
227 person I bought it from is family. We don't have any problems with it. There are already  
228 about 5 surrounding us who have variances, so I'm not disrupting anything that isn't  
229 already going on in this area.  
230  
231 Mr. Nunnally- Where are you going to come into it?  
232  
233 Mr. Garone - I'm going to come in through 7221.  
234  
235 Mr. Nunnally - You mean 7211?  
236  
237 Mr. Garone - No sir. 7221. 7211 has a road that is theirs, gravel or  
238 something, it goes back to 191 acres behind it.  
239  
240 Mr. Nunnally - So you're coming in beside the house that's already there  
241 then?  
242  
243 Mr. Garone - Anywhere between that driveway and 7221.  
244  
245 Mr. Blankinship - You're going to build a new driveway then?  
246  
247 Mr. Garone - Yes sir.  
248  
249 Mr. Balfour - Any questions by Board members?  
250  
251 Mr. Wright - This is right behind your father's house, is that right?  
252  
253 Mr. Garone - Yes sir, it is.  
254  
255 Mr. Nunnally - You've read the conditions? You agree with them?  
256  
257 Mr. Garone - Yes sir, I have. Yes.  
258  
259 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
260 Wright, the Board **granted** application **A-11-2003** for a variance to build a one-family  
261 dwelling at 7227 Yahley Mill Road (Parcel 836-695-1768). The Board granted the  
262 variance subject to the following conditions:  
263

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

266  
267 2. At the time of building permit application, the applicant shall submit the  
268 necessary information to the Department of Public Works to ensure compliance with the  
269 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
270 water quality standards.

271  
272 3. At the time of building permit application the owner shall demonstrate that the  
273 parcel created by this division has been conveyed to a member of the immediate family,  
274 and the subdivision ordinance has not been circumvented.

275  
276 4. The applicant shall present proof with the building permit application that a legal  
277 access to the property has been obtained.

278  
279 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
280 for maintaining access to the property until such a time as the access is improved to  
281 County standards and accepted into the County road system for maintenance.

282  
283 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
284 Negative: 0  
285 Absent: 0

286  
287 The Board granted this request, as it found from the evidence presented that, due to the  
288 unique circumstances of the subject property, strict application of the County Code  
289 would produce undue hardship not generally shared by other properties in the area, and  
290 authorizing this variance will neither cause a substantial detriment to adjacent property  
291 nor materially impair the purpose of the zoning regulations.

292  
293 **A - 12-2003** **MARK C. STANSBURY** requests a variance from Section 24-  
294 95(c)(4) of Chapter 24 of the County Code to build a porch and  
295 carport at 2711 Irisdale Avenue (Hermitage Park) (Parcel 778-746-  
296 2506), zoned R-4, One-family Residence District (Brookland). The  
297 front yard setback is not met. The applicant has 28.4 feet front yard  
298 setback, where the Code requires 35 feet front yard setback. The  
299 applicant requests a variance of 6.6 feet front yard setback.

300  
301 Mr. Balfour - Do we have any others who intend to testify in this matter?  
302 Would you raise your right hand and be sworn please?

303  
304 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
305 truth, the whole truth, and nothing but the truth, so help you God?

306  
307 Mr. Stansbury - I do. Mark C. Stansbury. I bought my house 4 years ago  
308 and would like to add an attached carport. It's a small house, so there's a limited  
309 number of places where I can attach it. If I put it farther back on the house, it would

310 block the side windows in the dining room or the kitchen, which would not really be  
311 practical, so I'm requesting a variance in the front setback of 6.6 feet. There's no  
312 problem meeting the side setback; I have an extra half a lot.

313  
314 Mr. Kirkland - Mr. Stansbury, how is this carport going to be constructed –  
315 is it going to be solid sides or open sides?

316  
317 Mr. Stansbury - In order to bring it out from the house so it doesn't block the  
318 windows, we're going to build a small, enclosed porch off the living room, which is at the  
319 front left corner of the house, and the carport will be attached to that enclosed porch.

320  
321 Mr. Kirkland - Is it going to be 4 columns with a roof on it?

322  
323 Mr. Stansbury - Yes, it'll be 4 columns and a roof, but then there will be a  
324 solid wall where the porch attaches to it.

325  
326 Mr. Kirkland - I wondered why it was going to block your view; if it was  
327 open, it wouldn't.

328  
329 Mr. Stansbury - Yes, it will be open.

330  
331 Mr. Kirkland - You're going to remove that other thing in your front yard,  
332 aren't you?

333  
334 Mr. Stansbury - Yes. I was out this morning and had to knock the snow off,  
335 so that's going to go.

336  
337 Mr. Wright - The house is actually violating the front yard setback to  
338 begin with, isn't that correct?

339  
340 Mr. Blankinship - It's probably nonconforming, yes.

341  
342 Mr. Wright - So the carport's going to be in the same line as the house;  
343 it's the house that's the problem, right?

344  
345 Mr. Stansbury - Yes.

346  
347 Mr. Balfour - Any other questions? Thank you.

348  
349 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
350 Nunnally, the Board **granted** application **A-12-2003** for a variance to build a porch and  
351 carport at 2711 Irisdale Avenue (Hermitage Park) (Parcel 778-746-2506). The Board  
352 granted the variance subject to the following conditions:

353  
354 1. Only the improvements shown on the plan filed with the application may be  
355 constructed pursuant to this approval. No substantial changes or additions to the layout



356 may be made without the approval of the Board of Zoning Appeals. Any additional  
357 improvements shall comply with the applicable regulations of the County Code.

358  
359 2. The new construction shall match the existing dwelling as nearly as practical.

360  
361 3. The property shall be developed in substantial conformance with the plan filed  
362 with the application. No substantial changes or additions to the layout may be made  
363 without the approval of the Board of Zoning Appeals.

364  
365 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

366 Negative: 0

367 Absent: 0

368

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

374  
375 **A - 13-2003** **PAUL AND SUSAN SCATES** request a variance from Section 24-  
376 95(k) of Chapter 24 of the County Code to enclose an existing  
377 porch at 6401 Millhiser Avenue (Westwood Terrace) (Parcel 769-  
378 741-0615), zoned R-3, One-family Residence District (Brookland).  
379 The minimum side yard setback is not met. The applicants have  
380 4.25 feet minimum side yard setback, where the Code requires 10  
381 feet minimum side yard setback. The applicants request a variance  
382 of 5.75 feet minimum side yard setback.

383  
384 Mr. Balfour - Do we have any others who intend to testify in this matter?  
385 Would you raise your right hand and be sworn please?

386  
387 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
388 truth, the whole truth, and nothing but the truth, so help you God?

389  
390 Ms. Scates - I do. Susan Weiss Scates.

391  
392 Mr. Scates - I do. Paul Bryan Scates.

393  
394 Ms. Scates - We want to enclose an existing porch, but the hang-up is a  
395 garage that was built many years before we obtained the house – it was built too close  
396 to the lot line. That existing porch, as you're looking at it, is to the right of the garage.

397  
398 Mr. Balfour - And I see there's a deck off the back?

399  
400 Ms. Scates - Yes.

401

402 Mr. Kirkland - On this porch, when you say you're going to enclosed it, I  
403 notice it had jalousies on it (I looked at it yesterday). Are you going to brick it in?  
404

405 Ms. Scates - Frame it, it's got to be framed, then put a window in the front  
406 and a door in the back that goes to the deck, and then vinyl siding.  
407

408 Mr. Kirkland - So it'll be kind of like the face of the house.  
409

410 Mr. Balfour - You've got a big bush there.  
411

412 Ms. Scates - That's been for privacy. I think we're going to trim that down.  
413

414 Mr. Wright - When did you purchase this house?  
415

416 Ms. Scates - In 1987. And I understand the garage was built in '67. Right  
417 now it doesn't have a permanent overhang, so if that's what's needed to comply, to  
418 make it "attached," that's fine.  
419

420 Mr. Kirkland - That's just a piece of material?  
421

422 Ms. Scates - That's fiberglass. And there is a breezeway in there; there's  
423 a little metal gate.  
424

425 Mr. McKinney - Do you use that garage? Small car.  
426

427 Mr. Scates - Yes sir.  
428

429 Mr. Balfour - Any other questions? Thank you.  
430

431 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
432 Wright, the Board **granted** application **A-13-2003** for a variance to enclose an existing  
433 porch at 6401 Millhiser Avenue (Westwood Terrace) (Parcel 769-741-0615). The Board  
434 granted the variance subject to the following conditions:  
435

436 1. This variance applies only to the public street frontage requirement. All other  
437 applicable regulations of the County Code shall remain in force.  
438

439 2. The new construction shall match the existing dwelling as nearly as practical.  
440

441 3. At the time of building permit application, the applicant shall submit the  
442 necessary information to the Department of Public Works to ensure compliance with the  
443 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
444 water quality standards.  
445

446 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
447 Negative: 0

448 Absent:

0

449

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

455

456 **A - 14-2003**

**JAMES AND MILDRED BRUCE** request a variance from Section  
457 24-41 of Chapter 24 of the County Code to build a sunroom on  
458 existing deck at 1721 Logwood Circle (Gayton Forest Townhouses)  
459 (Parcel 743-747-2548), zoned RTH, Residential Townhouse District  
460 (Tuckahoe). The minimum side yard setback and rear yard setback  
461 are not met. The applicants have 3.5 feet minimum side yard  
462 setback and 21 feet rear yard setback, where the Code requires 10  
463 feet minimum side yard setback and 30 feet rear yard setback. The  
464 applicants request a variance of 6.5 feet minimum side yard  
465 setback and 9 feet rear yard setback.

466

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

469

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

472

473 Mr. Shaw - Yes sir. Harry Shaw.

474

475 Mr. Bruce - I do. James R. Bruce Sr. We'd like to have a variance of  
476 6.5 feet minimum on the side yard and 9 feet on the rear setback.

477

478 Mr. Balfour - Any questions by Board members?

479

480 Mr. Wright - This sunroom would be built exactly where your deck is now,  
481 right over the deck?

482

483 Mr. Bruce - That is correct sir. The deck would not be completely  
484 covered; we're saving a portion of it.

485

486 Mr. Wright - I guess my concern is that it would not extend any further  
487 back or out than it already is – it's already there.

488

489 Mr. Bruce - That's right. A similar variance, as we propose, was  
490 approved about 2 years ago by the Board at 1832 Fairwind Circle. This would be an  
491 identical one. We have homeowners' approval.

492

493 Mr. Balfour - Any other questions? Apparently not. I think the Board

494 should know that Mr. Bruce is an amateur photographer, so if you want to take a  
495 picture, that's fine.

496  
497 Mr. Bruce - I appreciate very much the thoroughness with which you  
498 have handled this and the business likewise.

499  
500 Mr. Balfour - Thank you sir. Any other questions?

501  
502 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
503 McKinney, the Board **granted** application **A-14-2003** for a variance to build a sunroom  
504 on existing deck at 1721 Logwood Circle (Gayton Forest Townhouses) (Parcel 743-747-  
505 2548). The Board granted the variance subject to the following conditions:

506  
507 1. Only the improvements shown on the plan filed with the application may be  
508 constructed pursuant to this approval. No substantial changes or additions to the layout  
509 may be made without the approval of the Board of Zoning Appeals. Any additional  
510 improvements shall comply with the applicable regulations of the County Code.

511  
512 2. The new construction shall match the existing dwelling as nearly as practical.

513  
514 3. The property shall be developed in substantial conformance with the plan filed  
515 with the application. No substantial changes or additions to the layout may be made  
516 without the approval of the Board of Zoning Appeals.

517  
518 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
519 Negative: 0  
520 Absent: 0

521  
522 The Board granted this request, as it found from the evidence presented that, due to the  
523 unique circumstances of the subject property, strict application of the County Code  
524 would produce undue hardship not generally shared by other properties in the area, and  
525 authorizing this variance will neither cause a substantial detriment to adjacent property  
526 nor materially impair the purpose of the zoning regulations.

527  
528 **A - 15-2003** **KRIS MITCHELL** requests a variance from Section 24-9 of Chapter  
529 24 of the County Code to build a one-family dwelling at 1971  
530 Mountain Road (Parcel 778-763-2650 (part)), zoned R-4, One-  
531 family Residence District (Fairfield). The public street frontage  
532 requirement is not met. The applicant has 0 feet public street  
533 frontage, where the Code requires 50 feet public street frontage.  
534 The applicant requests a variance of 50 feet public street frontage.

535  
536 Mr. Balfour - Do we have any others who intend to testify in this matter?  
537 Would you raise your right hand and be sworn please?

538  
539 Mr. Blankinship - Do you swear that the testimony you are about to give is the

540 truth, the whole truth, and nothing but the truth, so help you God?  
541  
542 Mr. Mitchell - I do. Kris I. Mitchell. I'm requesting a 50-foot variance on  
543 the property. The property is shaped like an "L," and the front of the property is  
544 Mountain Road, and coming off of Mountain Road is Lincoln Ridge Lane, a private road.  
545 That's why I need the 50-foot public road frontage.  
546  
547 Mr. Balfour - Who maintains the road?  
548  
549 Mr. Mitchell - People in the area. I've talked to several of them, and they  
550 just get together and get funds during the year and make necessary repairs on it.  
551  
552 Mr. Balfour - Any questions by Board members.  
553  
554 Mr. McKinney - Do you have a road agreement? Suppose somebody  
555 decides they don't want to pay anything to repair the road? What happens.  
556  
557 Mr. Mitchell - We just talk to the different landowners, they just continue  
558 going on with it. Yes, it is a gravel road. But one thing about this property, it would be  
559 the first house coming in on Lincoln Ridge Lane, so everybody behind me, they've got  
560 to go past my property to get to theirs, so I'm going to at least keep mine maintained on  
561 that private road there.  
562  
563 Mr. Wright - Have you read the conditions proposed for this case?  
564  
565 Mr. Mitchell - Yes, I'm working with Public Utilities right now to see if I can  
566 bring public water, County water to the property, instead of a well, and we're in the  
567 process of working through that now.  
568  
569 Mr. Wright - And you know # 7 says you are responsible for maintaining  
570 the road.  
571  
572 Mr. Mitchell - Yes.  
573  
574 Mr. McKinney - Mr. Mitchell, how far away are public water and sewer?  
575  
576 Mr. Mitchell - We looked at it, and it's about 340 feet away.  
577  
578 Mr. Blankinship - The sewer's closer than that, right?  
579  
580 Mr. Mitchell - Right. The sewer's already there. People in the area are  
581 already using County sewer.  
582  
583 Mr. McKinney - You say this is on Lincoln?  
584  
585 Mr. Mitchell - Yes.

586  
587 Mr. McKinney - Because you're not required to put it in if you're over 300  
588 feet.

589  
590 Mr. Balfour - Any other questions? Thank you.

591  
592 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
593 Wright, the Board **granted** application **A-15-2003** for a variance to build a one-family  
594 dwelling at 1971 Mountain Road (Parcel 778-763-2650 (part)). The Board granted the  
595 variance subject to the following conditions:

596  
597 1. This variance applies only to the public street frontage requirement. All other  
598 applicable regulations of the County Code shall remain in force.

599  
600 2. Only the improvements shown on the plan filed with the application may be  
601 constructed pursuant to this approval. No substantial changes or additions to the layout  
602 may be made without the approval of the Board of Zoning Appeals. Any additional  
603 improvements shall comply with the applicable regulations of the County Code.

604  
605 3. At the time of building permit application, the applicant shall submit the  
606 necessary information to the Department of Public Works to ensure compliance with the  
607 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
608 water quality standards.

609  
610 4. Approval of this request does not imply that a building permit will be issued.  
611 Building permit approval is contingent on Health Department requirements, including,  
612 but not limited to, soil evaluation for a septic drain field and reserve area, and approval  
613 of a well location.

614  
615 5. Connections shall be made to public water and sewer.

616  
617 6. The applicant shall present proof with the building permit application that a legal  
618 access to the property has been obtained.

619  
620 7. The owners of the property, and their heirs or assigns, shall accept responsibility  
621 for maintaining access to the property until such a time as the access is improved to  
622 County standards and accepted into the County road system for maintenance.

623  
624 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

625 Negative: 0

626 Absent: 0

627  
628 The Board granted this request, as it found from the evidence presented that, due to the  
629 unique circumstances of the subject property, strict application of the County Code  
630 would produce undue hardship not generally shared by other properties in the area, and

631 authorizing this variance will neither cause a substantial detriment to adjacent property  
632 nor materially impair the purpose of the zoning regulations.

633  
634 **UP- 1-2003**                    **CANTERBURY RECREATION ASSOCIATION** requests a  
635 conditional use permit pursuant to Section 24-12(b) of Chapter 24  
636 of the County Code to extend swim meet hours at 1300 Pump  
637 Road (Canterbury) (Parcel 741-743-6117), zoned R-1, One-family  
638 Residence District (Tuckahoe).

639  
640 Mr. Balfour -                    Do we have any others who intend to testify in this matter?  
641 Would both of you raise your right hand and be sworn please?

642  
643 Mr. Blankinship -                Do you swear that the testimony you are about to give is the  
644 truth, the whole truth, and nothing but the truth, so help you God?

645  
646 Mr. Balfour -                    I'll remind you of the procedure. The procedure is that the  
647 proponent goes first; you have a chance to respond, and then the proponent has a  
648 chance to respond to you, and that's it.

649  
650 Mr. Keegan -                    I do. Michael Keegan.

651  
652 Mr. Balfour -                    Tell us what you'd like for us to do. What are your hours  
653 now?

654  
655 Mr. Keegan -                    Till 11:00 pm.

656  
657 Mr. Balfour -                    And you want to extend it to 1:00 o'clock?

658  
659 Mr. Keegan -                    No sir, till midnight. What we're requesting is that we amend  
660 the existing conditional use permit, to extend the swim meet hours to midnight.  
661 Canterbury is a member of the Greater Richmond Aquatic League. This includes other  
662 clubs similar to Canterbury, such as Raintree, Colonies, Dominion Club, Church Run in  
663 Wellesley, and our swim meets are against these clubs. We have swim meets 3 times  
664 a year, and our swim meets usually go up right to 11:00, 11:15, and we're requesting  
665 the conditional use permit be extended so that we may complete the swim meet using  
666 the sound equipment and the starting guns.

667  
668 Mr. Wright -                    What's the closest residence to your operation?

669  
670 Mr. Keegan -                    Immediately across the street or beside us; I'm not sure  
671 which is the closest; there's a residence both places.

672  
673 Mr. Wright -                    It doesn't appear that there's anyone adjacent to you west of  
674 Pump Road.

675  
676 Mr. Keegan -                    1306 would be the closest residence I guess.

677  
678 Mr. Balfour - Mr. Secretary, what are the hours at the other places now?  
679  
680 Mr. Blankinship - We have seen quite a few requests to extend them to  
681 midnight; I'm not sure exactly which ones are which, but I know in the time I've been  
682 here, there have been 2 clubs that have gotten midnight 4 times a year.  
683  
684 Mr. Balfour - Is there a limit on the restrictions as to how many times they  
685 could do it till midnight.  
686  
687 Mr. Blankinship - Yes, it would be 4 times a year.  
688  
689 Mr. Wright - You have 4 swim meets, is that correct?  
690  
691 Mr. Keegan - There are 3 swim meets a year at Canterbury; I believe the  
692 original permit requested 4, so that if there's a rainout, and you start one night, you can  
693 finish another night, but there are only actually 3 scheduled a year, and we only have a  
694 4<sup>th</sup> if there's a rain day.  
695  
696 Mr. Balfour - I notice the condition says "...12:00 pm four times each  
697 season ....." You read the 3 conditions on the back?  
698  
699 Mr. Keegan - Yes sir. We are requesting it for 4 because if there's a  
700 rainout, then if we do come back the next day and finish it, then we want to make sure  
701 that's legitimate that day also.  
702  
703 Mr. Balfour - I'm not sure it says that.  
704  
705 Mr. Blankinship - They have 3 scheduled, so they get one rainout.  
706  
707 Mr. Wright - Actually, how long does the swim meet last, right up to the  
708 end when you stop the activities?  
709  
710 Mr. Keegan - It varies because of the size of the clubs. If the club of 100  
711 members are swimming against Canterbury, versus a club of 200 swimmers swimming  
712 against Canterbury, my guess is that it could change by about an hour. Typically, we  
713 finish right at or after 11:00, so I'm guessing 11:00 to 11:15, but if there's a rain delay, it  
714 would push it closer to midnight, and that's what causes our problem, and obviously, we  
715 don't control the weather.  
716  
717 Mr. Balfour - What time do you start?  
718  
719 Mr. Keegan - Six pm.  
720  
721 Mr. Wright - So normally you would not push 12:00 o'clock?  
722



723 Mr. Keegan - Normally we do not, no sir, but also it does rain that time of  
724 year, so I don't want to guarantee it as if that's set in concrete. I'd be misleading you.  
725

726 Mr. Wright - It would only be when you had rain, that you would actually  
727 come right up to 12:00 o'clock?  
728

729 Mr. Keegan - Yes sir, we should be cleaning up and trying to go home by  
730 then.  
731

732 Mr. Nunnally - There are just 3 a year, or 4?  
733

734 Mr. Keegan - There are 6 a year, but only 3 of them are swum at our club,  
735 so 3 times we're at somebody's else's club.  
736

737 Mr. Nunnally - I'm close to Kanawha, and I hear the bells and whistles right  
738 late, so I'll have to remember that, that I'm not supposed to hear them more than 3  
739 times?  
740

741 Mr. Kirkland - If you do finish at 12:00 o'clock with the swim meet, how  
742 long does it take you to shut down, clean up, and the last person leave the site?  
743

744 Mr. Keegan - The sound equipment is off immediately, but as far as shut  
745 down and clean up .....  
746

747 Mr. Kirkland - I'm thinking of traffic.  
748

749 Mr. Keegan -- Traffic at that point is usually minimal, because what  
750 happens is, as soon as the younger kids end their last swim, almost nobody but the  
751 older kids stay till the very end. So what happens, I'm guessing about, between 8:00  
752 and 9:00 o'clock, they start to drift out, one by one by one. It's standard that most of the  
753 kids don't know the scores until the next day. What we have in our budget, that we put  
754 together last year for this year, is a plan to hire a police officer to direct traffic for at least  
755 3 hours, from roughly 5:00 o'clock until 8:00 o'clock. We may play with it, say from 5:15  
756 to 8:15, or if there's a minimum of 4 hours for a police officer, we will meet that  
757 minimum, but we plan on having a police officer there to direct traffic this year because  
758 it's become a concern of ours also.  
759

760 Mr. Nunnally - What does "hours of operation mean," what does "operation"  
761 mean?  
762

763 Mr. Blankinship - I would take that to mean "open to members to come and  
764 swim," basically. On a normal day, I would expect them to have the last member out  
765 the door by 10:00 o'clock. At a meet, I would expect them to have the last competitors  
766 out the door at midnight. If they have a couple of people still putting away chairs and so  
767 forth .....  
768

769 Mr. Nunnally - So it's more than when the meet stops; it's getting cleared  
770 and everybody out?  
771

772 Mr. Blankinship - I would say they should be closing the meet down by 11:45  
773 in order to get everyone off the property.  
774

775 Mr. Balfour - Could you live with that kind of restriction if we put that in  
776 there?  
777

778 Mr. Keegan - We could live with that kind of restriction because it is very,  
779 very, very rare when we push midnight. If we put that kind of restriction, we will live with  
780 it; it's certainly better than what we have now.  
781

782 Mr. Balfour - Are there any other questions at this point?  
783

784 Mr. McKinney - Mr. Keegan, what time do these swim meets start?  
785

786 Mr. Keegan - Six pm.  
787

788 Mr. McKinney - Why couldn't they be set back to 5:00 pm?  
789

790 Mr. Keegan - I believe the reason GRAL set the time to that, because  
791 Greater Richmond Aquatics League controls this, is because the swim meets are run by  
792 parents, and most of the parent volunteers work.  
793

794 Mr. McKinney - On Saturdays and Sundays they work?  
795

796 Mr. Keegan - We don't have Saturday and Sunday meets the way it's  
797 currently scheduled, sir.  
798

799 Mr. McKinney - In the conditions, are you saying you don't want to be open  
800 on Saturday and Sunday nights until 12:00 o'clock?  
801

802 Mr. Keegan - We are not currently open at those times, and I don't know if  
803 it would be something I'd want to do. I think it would be something we'd have to bring to  
804 the Greater Richmond Aquatic League. We'd have to bring it up with them. We  
805 currently don't swim on Saturdays and Sundays in swim meets, unless there's a Friday  
806 night. There's one swim meet that's on a Friday night; if it's rained out, then it's made  
807 up on Saturday morning.  
808

809 Mr. Balfour - I note by the way, that you want to extend it to 11:00 o'clock  
810 for parties on weekends and holidays.  
811

812 Mr. Blankinship - That was in 1992.  
813

814 Mr. McKinney - These 4 meets that you want to extend from 11:00 to 12:00,

815 are held on which days?  
816  
817 Mr. Keegan - The first meet is held on a Friday; the next 2 meets are held  
818 on a Wednesday. If the first meet is rained out, it is completed the following Saturday  
819 morning after that Friday night. If the next 2 meets are rained out, it is completed the  
820 next night.  
821  
822 Mr. McKinney - On a Thursday.  
823  
824 Mr. Keegan - Thursdays. I believe one year we had a meet on a Tuesday  
825 because July 4 was a Wednesday, and they moved it off a holiday, but in general it is a  
826 Friday, Wednesday, Wednesday.  
827  
828 Mr. McKinney - So Wednesday is a school night. Or is this strictly in the  
829 summertime?  
830  
831 Mr. Keegan - Yes sir, these are strictly in the summertime. The first meet  
832 is, I believe it's the last day of school.  
833  
834 Mr. McKinney - However, Thursday is a workday, and if you've got your  
835 speakers and all that going, people in the neighborhood can hear these things. If they  
836 don't have their air conditioners going, or they're broken and their windows are open,  
837 they can't go to sleep until after you're finished.  
838  
839 Mr. Keegan - That is a possibility sir.  
840  
841 Mr. McKinney - It's a possibility?  
842  
843 Mr. Keegan - I'm hoping it's not loud enough to keep them awake, but  
844 since another gentleman's here to speak, I'm sure someone disagrees with me.  
845  
846 Mr. Kirkland - Mr. Blankinship, have we had any complaints?  
847  
848 Mr. Blankinship - When this case was advertised, I did get one phone call  
849 expressing several concerns.  
850  
851 Mr. Balfour - Let's hear from the other fellow, and then we'll get back to  
852 you.  
853  
854 Mr. Reyes - My name is Godofredo Reyes III, and I live on Walbrook  
855 Drive, which is the street right in front of the swim club.  
856  
857 Mr. Balfour - What is your house number, Mr. Reyes?  
858  
859 Mr. Reyes - 10511.  
860

861 Mr. Balfour - Where is that?  
862

863 Mr. Blankinship - You're right on the corner of Pump and Walbrook, the  
864 southeast corner.  
865

866 Mr. Reyes - Basically, I think I'm rising up against this thing because of 2  
867 main reasons. One is safety, and the second one is, I believe it infringes on my rights. I  
868 would have brought some more people in the neighborhood, except for the snow today.  
869

870 Mr. Balfour - When you say safety, you're talking about the traffic?  
871

872 Mr. Reyes - Yes, number one, it's the traffic. I've complained to the  
873 Canterbury several times. Once I went to the club there. The cars are parked all over  
874 the place, on Pump Road, left side, right side, on my street. My wife can't even get out  
875 of the driveway. They butt right in there to the driveway. I've called the police several  
876 times, and they say as long as it's not blocking, true, they can't do anything.  
877

878 Mr. Balfour - Two comments. One, you heard him say that they're going  
879 to try to have a policeman to help. Secondly, that's already in existence.  
880

881 Mr. Reyes - I know; that's why. My point is this – if we extend it, it just  
882 means that we extend more those dangerous opportunities. It means that we're  
883 extending the unsafe conditions.  
884

885 Mr. Balfour - Speak to the other concern that you have.  
886

887 Mr. Wright - Let me make a comment on that. It appears to me, they're  
888 already there until 10:00 o'clock. And a lot of them have already left. So it means to me  
889 that if there's a problem, it's already occurred. The extension wouldn't have any bearing  
890 on the safety.  
891

892 Mr. Reyes - Yes, it extends the unsafe conditions; that's my point. True,  
893 it's there already; there's not much I can do about that. Maybe they can do something  
894 about it by controlling more of their people, by telling them, "Hey, make sure you don't  
895 block driveways, and don't park on both sides," because my wife can't get out of my  
896 driveway. I come home from work, and my street, Walbrook Drive, is just a one-lane  
897 street now, and I have to turn into my driveway. It's not much of a problem, but if  
898 there's somebody coming in, it is dangerous. One day I saw maybe 3 accidents there.  
899

900 Mr. Balfour - Well I think they are going to, from what he said, try to have  
901 an off-duty policeman help with that. What was your next concern?  
902

903 Mr. Reyes - Well, the second one, as I've said, it more or less infringes  
904 on our rights. I have the right to have peace and quiet. I do hear them, especially when  
905 the wind's blowing. 11:00 o'clock, I didn't know they had till 11:00 o'clock; it seems like  
906 during the summertime, it's almost like every Wednesday they have that, you know?

907 Number 2, my wife complains to me every time that she has to pick up from our front  
908 yard there, some bottles, some paper, whatever. I don't have to clean up. So it  
909 infringes on our rights there, for peace and quiet and order.

910  
911 Mr. Balfour - Well the first one I think may be taken care of. The second  
912 one – they park in front of my house, and I clean it up the next day too.

913  
914 Mr. Reyes - I agree with that. I'll clean it up, because it's my house, but if  
915 you give them 1 or 2 more hours, that's maybe 1 or 2 more bottles there that I have to  
916 clean up. I understand. My 3 boys were all sportsmen.

917  
918 Mr. Balfour - I don't mean to make light of what you're saying, because it  
919 irritates me sometimes too, but you're weighing rights of one group against the other,  
920 your rights on one hand, because you moved there. I suspect Canterbury was there  
921 when you moved there. And the other side is their right to have swim meets. So we  
922 have to weigh those rights.

923  
924 Mr. Reyes - That's why I'm pointing out the safety conditions and my  
925 rights. You give them an extra hour or two; that means an extra hour or two of those  
926 conditions being present, when maybe we could avoid it.

927  
928 Mr. Balfour - Any other questions by Board members?

929  
930 Mr. Kirkland - Mr. Reyes, how long have you lived in your house?

931  
932 Mr. Reyes - I think 4 years.

933  
934 Mr. Balfour - Any other questions? Thank you sir. Would you like to  
935 make any other comments?

936  
937 Mr. Keegan - Yes sir. I respect Mr. Reyes' position. We are planning on  
938 hiring a police officer to direct traffic for at least the first part of the meet. If we continue  
939 to see problems, we will extend the hours for the police officer, so they're not continual  
940 problems. From experience, I'm very sure that by 11:00 o'clock, over half the crowd is  
941 gone. Maybe even closer to a fourth or a third of the crowd is there at that point, so I  
942 don't know that it would extend dangerous conditions, because at that point, I don't think  
943 it's any busier than any other time that a normal Canterbury pool use hours are in effect,  
944 because we always have people coming in and out of there. I was not aware of paper  
945 trash issues in the neighborhood, but I will be sure to make it known to our Board and to  
946 pass it along to swim team members that we need to be exceptionally careful of our  
947 neighbors and to make sure that we do not leave trash there. I had not heard that  
948 complaint, but I could understand it, don't dispute it at all, and I will make sure that we  
949 let our members know.

950  
951 Mr. Balfour - I think what you might do, if we approve it, is to announce it  
952 at the beginning and the end just as a routine matter, that it might help a little bit if they

953 use the receptacles at the Canterbury Association before they leave, and also at the  
954 beginning and the end, and also to watch where they park, not to block driveways and  
955 things of that nature.

956  
957 Mr. Keegan - We will remind them not to block driveways. I was relieved  
958 to hear that he had not reported a blocked driveway. I would be really embarrassed if  
959 we had done that. I obviously can't control everybody there. We do our best to remind  
960 people to behave well.

961  
962 Mr. Balfour - And the children, when they leave, don't knock down  
963 mailboxes.

964  
965 Mr. Keegan - Not that I'm aware of. I think I'd have heard of that if it had  
966 happened.

967  
968 Mr. McKinney - Mr. Keegan, you don't have a problem with putting the police  
969 as a condition, do you?

970  
971 Mr. Keegan - No sir, I do not. I'm hoping that you will not require for all 5  
972 or 6 hours of the meet, whatever it takes, because I don't believe that there's that many  
973 people there to justify it, but if you do, we will meet it.

974  
975 Mr. Blankinship - The way the condition is drafted is that you have to satisfy  
976 the Division of Police, number 2, "shall provide traffic safety measures satisfactory to  
977 the Department of Public Works and the Division of Police."

978  
979 Mr. Balfour - Does that include that they have to hire an off-duty  
980 policeman?

981  
982 Mr. Blankinship - It would if that's what the Division of Police asks for.

983  
984 Mr. Balfour - I think we're saying whether they ask or not, we might want it  
985 in there since they offer it.

986  
987 Mr. Keegan - We are currently planning on doing it. We currently did not  
988 plan on doing it until 11:00 pm, because we don't think it needs it. Don't want to  
989 mislead you, that's all.

990  
991 Mr. Balfour - I understand that; I agree with that, but I think what Mr.  
992 McKinney's saying that they're required the first 2 hours or something of that nature?

993  
994 Mr. McKinney - You just said you're not going to require them until 11:00  
995 o'clock?

996  
997 Mr. Blankinship - Not to stay until 11:00. What hours were you planning on  
998 having the police there?

999  
1000 Mr. Keegan - Our current thoughts were, it would make the most sense  
1001 from 5 to 8 or 5 to 9 pm. I suspect the biggest mess is between 5 and 6:30, and when  
1002 it's rush hour, too, that is when the people are getting there. I think the swimmers are  
1003 required to be there by 5:30, and so the biggest problem is then; after that it tends to  
1004 slow out. People go out very slowly whenever their meets end, so it's not a huge group  
1005 of people at any one time.  
1006  
1007 Mr. Balfour - So you said 5 to 9 I believe.  
1008  
1009 Mr. Blankinship - 8 or 9.  
1010  
1011 Mr. Keegan - We were debating 8 or 9; we had not set a time. We are  
1012 certain we will go to at least 8, and if it requires 9, we'll go to 9.  
1013  
1014 Mr. Balfour - We'll say 8:30.  
1015  
1016 Mr. Kirkland - You're going to say a minimum of 5 to 8:30?  
1017  
1018 Mr. Balfour - And then secondly, you mentioned something about 11:45  
1019 that you could live with for the meet to stop.  
1020  
1021 Mr. Keegan - Yes sir.  
1022  
1023 Mr. Balfour - All right, any other questions by Board members? Thank  
1024 you sir.  
1025  
1026 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1027 McKinney, the Board **granted** application **UP-1-2003** for a conditional use permit to  
1028 extend swim meet hours at 1300 Pump Road (Canterbury) (Parcel 741-743-6117). The  
1029 Board granted the use permit subject to the following conditions:  
1030  
1031 1. [Amended] The hours of operation shall be limited to 8:00 AM to 10:00 PM  
1032 Monday through Saturday and 12:00 noon to 10:00 PM Sunday. The hours of operation  
1033 may be extended to 11:00 PM four times each season, only on weekends or holidays,  
1034 for parties open only to members and their guests. In addition, the hours of operation  
1035 may be extended four times each season for dual swim meets. Meets shall end by  
1036 11:45 PM, and the property shall be closed by 12:00 Midnight.  
1037  
1038 2. [Amended] Up to four times each year, public address systems, starter guns and  
1039 similar equipment may be used at swimming meets, but at no other time except for  
1040 emergency purposes. During swim meets the applicant shall provide traffic safety  
1041 measures satisfactory to the Department of Public Works and the Division of Police.  
1042 This shall include, at a minimum, traffic control on Pump Road from 5:00 PM to 8:30  
1043 PM.  
1044

1045 3. All other conditions of UP-23-98 remain in force.  
1046  
1047 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1048 Negative: 0  
1049 Absent: 0  
1050  
1051 The Board granted the request because it found the proposed use will be in substantial  
1052 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
1053  
1054 **A - 16-2003** **TODD J. FULLER** requests a variance from Section 24-30.1(a) of  
1055 Chapter 24 of the County Code to build an addition at 3709 Milbrier  
1056 Place (Milhaven) (Parcel 729-758-2875), zoned R-5, General  
1057 Residence District (Three Chopt). The rear yard setback is not  
1058 met. The applicant has 29.5 feet rear yard setback, where the  
1059 Code requires 35 feet rear yard setback. The applicant requests a  
1060 variance of 5.5 feet rear yard setback.  
1061  
1062 Mr. Balfour - Do we have any others who intend to speak in this case?  
1063 Would you all raise your right hands and be sworn please?  
1064  
1065 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1066 truth, the whole truth, and nothing but the truth, so help you God?  
1067  
1068 Mr. Lane - I do. Edward A. Lane.  
1069  
1070 Mr. Fuller - I do. Todd J. Fuller. I'm here to request a variance of 5.5  
1071 feet in the rear yard setback. As you've seen in the plans, the property is rather unusual  
1072 in shape. We're looking to add on a sunroom and breakfast nook area to the rear, and  
1073 one corner will exceed the setback.  
1074  
1075 Mr. Wright - Mr. Fuller, how close is the house to the rear of you from  
1076 your rear property line?  
1077  
1078 Mr. Fuller - I would say it's 35 to 40 feet as well.  
1079  
1080 Mr. Wright - It seems to be a good distance between those houses as  
1081 well.  
1082  
1083 Mr. Fuller - Yes sir, and there's a privacy fence between them.  
1084  
1085 Mr. Wright - Have you read the conditions proposed? Are you in accord  
1086 with those?  
1087  
1088 Mr. Balfour - Any other questions relating to this addition? Looks like a  
1089 pretty good-sized addition. Thank you.  
1090



1091 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1092 McKinney, the Board **granted** application **A-16-2003** for a variance to build an addition  
1093 at 3709 Milbrier Place (Milhaven) (Parcel 729-758-2875). The Board granted the  
1094 variance subject to the following conditions:

1095  
1096 1. Only the improvements shown on the plan filed with the application may be  
1097 constructed pursuant to this approval. No substantial changes or additions to the layout  
1098 may be made without the approval of the Board of Zoning Appeals. Any additional  
1099 improvements shall comply with the applicable regulations of the County Code.

1100  
1101 2. The new construction shall match the existing dwelling as nearly as practical.

1102  
1103 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1104 Negative: 0  
1105 Absent: 0

1106  
1107 The Board granted this request, as it found from the evidence presented that, due to the  
1108 unique circumstances of the subject property, strict application of the County Code  
1109 would produce undue hardship not generally shared by other properties in the area, and  
1110 authorizing this variance will neither cause a substantial detriment to adjacent property  
1111 nor materially impair the purpose of the zoning regulations.

1112  
1113 **A - 17-2003** **VINCENT AND SHARLENE LOFTON** request a variance from  
1114 Sections 24-94 and 24-95(t) of Chapter 24 of the County Code to  
1115 build a one-family dwelling at 9180 Thomasville Lane (Parcel 758-  
1116 764-4303), zoned A-1, Agricultural District (Brookland). The front  
1117 yard setback and total lot area out of floodplain are not met. The  
1118 applicants have 35 feet front yard setback and 22,167 square feet  
1119 area out of floodplain, where the Code requires 50 feet front yard  
1120 setback and 43,560 square feet area out of floodplain. The  
1121 applicants request a variance of 15 feet front yard setback and  
1122 21,393 square feet area out of floodplain.

1123  
1124 Mr. Balfour - Do we have any others who intend to testify in this matter?  
1125 Would you raise your right hand and be sworn please?

1126  
1127 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1128 truth, the whole truth, and nothing but the truth, so help you God?

1129  
1130 Ms. Lofton - I do. Sharlene Lofton.

1131  
1132 Mr. Lofton - I do. Vincent Lofton, Sr. We need a 15-foot front yard  
1133 setback and 21,393 square feet out of floodplain variance, due to the FEMA flood line.

1134  
1135 Mr. Balfour - Any questions by Board members? Have you read the  
1136 conditions?

1137  
1138 Mr. Wright - Mr. Secretary, what is the situation on March 28, that we  
1139 granted a variance for this property?  
1140  
1141 Mr. Blankinship - Jim, would you point to the County floodplain line please.  
1142 When they first came in to find out whether the lot was buildable, or whatever, that is  
1143 where the County's comprehensive drainage study shows the floodplain to be. So they  
1144 requested, and the Board granted a variance because the area above that line is less  
1145 than 1 acre. They planned on where they could put their house, based on that. Then a  
1146 surveyor or somebody did some more research and found that the FEMA floodplain  
1147 boundary is quite a bit higher up. It's that second line that runs through where they had  
1148 originally planned to place the house. So that caused them to move the house closer to  
1149 the road and into the front yard setback and also creates much more area of the lot that  
1150 is shown within the floodplain. So they needed to revise the floodplain variance, and  
1151 they also need the variance from the front yard setback, because of the location of that  
1152 FEMA floodplain boundary.  
1153  
1154 Mr. Wright - What is the FEMA floodplain – what year is that, 100-year or  
1155 what? Yes, they would both be 100 years.  
1156  
1157 Mr. Wright - What is the County one?  
1158  
1159 Mr. Blankinship - They would both be 100-year floodplains, but the County  
1160 calculates where that flood would be based on a much smaller drainage area. It's a  
1161 much finer grained study than the FEMA study. The FEMA boundary is generally more  
1162 approximate. The County is generally more accurate, but they are required by the Code  
1163 to meet both.  
1164  
1165 Mr. Wright - The County's is more accurate?  
1166  
1167 Mr. Blankinship - Yes, but they are required by the Code to meet both.  
1168  
1169 Mr. Kirkland - What's the distance between the County and the Fed?  
1170  
1171 Mr. Blankinship - Just by eyeballing, it, I'd call it 100 feet easily. Obviously, it  
1172 varies, but at its widest, it's probably 100 feet.  
1173  
1174 Mr. Kirkland - Elevation difference?  
1175  
1176 Mr. Blankinship - The elevation looks like 10-12 feet. You can see their  
1177 floodplain boundary is running straight up the hill at one point there. You get that sense  
1178 that it's perhaps not as accurate as ours.  
1179  
1180 Mr. Balfour - This house is going to face Thomasville Lane?  
1181  
1182 Mr. Lofton - Yes.

1183  
1184 Mr. Wright - In the March 28 agreement, approval, we varied the total lot  
1185 area. Are we doing that this time too?  
1186  
1187 Mr. Blankinship - Yes sir, the lot area and the front setback.  
1188  
1189 Mr. Wright - It says 15 feet setback and 21,393 feet out of the floodplain,  
1190 but where is the lot area variance in that?  
1191  
1192 Mr. Blankinship - The lot area is measured – the (Section) 24-95(t) requires  
1193 that the lot area has to be outside of the floodplain. You can't count floodplain as part of  
1194 your lot area. The actual area of this lot is 1.122 acres.  
1195  
1196 Mr. McKinney - Mr. Blankinship, if this is granted, and 5 years down the  
1197 road, it comes that the County was wrong, and FEMA was right, and this property  
1198 floods, is the County held harmless?  
1199  
1200 Mr. Blankinship - No, that's why I say that they have to meet both  
1201 requirements. That's why they had to come back.  
1202  
1203 Mr. McKinney - I understand that. What I'm saying is, if this Board grants  
1204 this, and this property floods down the road, can the property owner at that time, take  
1205 action against the County? Is there a way that we can be held harmless from being  
1206 sued on this?  
1207  
1208 Mr. Blankinship - I would say that we would not have any liability because we  
1209 are requiring them to comply with both the FEMA Floodplain and the County Floodplain.  
1210 They're going to meet the FEMA requirements.  
1211  
1212 Mr. McKinney - But I thought if we give them a variance, then they intrude on  
1213 the FEMA.  
1214  
1215 Mr. Blankinship - Only in terms of the lot area; the house itself will still be set  
1216 ten feet (unintelligible); the finished floor area, the lowest floor will still have to be 1 foot  
1217 above the FEMA flood elevation and all those other requirements.  
1218  
1219 Mr. Lofton - That's the reason for moving the house forward, is to get it  
1220 out of that floodplain.  
1221  
1222 Mr. Blankinship - And you are getting FEMA insurance, correct?  
1223  
1224 Mr. Balfour - Any other questions? Thank you, Mr. Lofton.  
1225  
1226 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
1227 Nunnally, the Board **granted** application **A-17-2003** for a variance to build a one-family

1228 dwelling at 9180 Thomasville Lane (Parcel 758-764-4303). The Board granted the  
1229 variance subject to the following conditions:

1230  
1231 1. This variance applies only to the front yard setback, public street frontage and lot  
1232 area requirements. All other applicable regulations of the County Code shall remain in  
1233 force.

1234  
1235 2. At the time of building permit application, the applicant shall submit the  
1236 necessary information to the Department of Public Works to ensure compliance with the  
1237 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1238 water quality standards.

1239  
1240 3. The applicant shall present proof with the building permit application that a legal  
1241 access to the property has been obtained.

1242  
1243 4. The owners of the property, and their heirs or assigns, shall accept responsibility  
1244 for maintaining access to the property until such a time as the access is improved to  
1245 County standards and accepted into the County road system for maintenance.

1246  
1247 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1248 Negative: 0  
1249 Absent: 0

1250  
1251 The Board granted this request, as it found from the evidence presented that, due to the  
1252 unique circumstances of the subject property, strict application of the County Code  
1253 would produce undue hardship not generally shared by other properties in the area, and  
1254 authorizing this variance will neither cause a substantial detriment to adjacent property  
1255 nor materially impair the purpose of the zoning regulations.

1256  
1257 **A - 18-2003** **BURRIS A. WORKMAN** requests a variance from Section 24-  
1258 95(c)(1) of Chapter 24 of the County Code to build an addition at  
1259 7108 Glen Parkway (Westham) (Parcel 758-734-6343), zoned R-1,  
1260 One-family Residence District (Tuckahoe). The minimum side yard  
1261 setback and total side yard setback are not met. The applicant has  
1262 3.25 feet minimum side yard setback and 18.25 feet total side yard  
1263 setback, where the Code requires 9.5 feet minimum side yard  
1264 setback and 28.5 feet total side yard setback. The applicant  
1265 requests a variance of 6.25 feet minimum side yard setback and  
1266 10.25 feet total side yard setback.

1267  
1268 Mr. Balfour - Do we have any others who intend to testify in this matter?  
1269 Would you raise your right hand and be sworn please?

1270  
1271 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1272 truth, the whole truth, and nothing but the truth, so help you God?

1273

1274 Mr. Workman - Yes I do. Burriss A. Workman. We want to build a 12 by 12,  
1275 roughly, library to the east side of the house. That takes us closer to the lot line, so it's  
1276 going to take us to within 3 feet 3 inches of the lot line. That's the only real adjustment  
1277 towards the variance except then the overall variance decreases.

1278  
1279 Mr. Balfour - That's a garage over there on the other side of the property  
1280 line that you'd be up against?

1281  
1282 Mr. Workman - Yes, in fact before I filed the variance, I called Mr. Crump  
1283 next door to tell him what we'd like to do and see if he had any objections, and he said  
1284 no, in fact someday he's thinking about taking the garage down and building something  
1285 that looks better. His son told me he was kind of glad if we do it, take the tree down,  
1286 because it's kind of overhanging the garage a little bit.

1287  
1288 Mr. Balfour - And it's not up against the other house, it looks like, it's  
1289 behind, because it's next to the garage, which sits back from the other house.

1290  
1291 Mr. Workman - I took a picture to show that the front of our house sits back  
1292 probably 30 feet from the front of their house, to see if they have any view problems  
1293 when they look out, actually their family room is on the other side, so they're really  
1294 looking the other way anyway, not our direction.

1295  
1296 Mr. Balfour - Looks like you've got a lot of woods behind you there too.

1297  
1298 Mr. Workman - It's a fairly deep lot, and so is the lot behind us.

1299  
1300 Mr. Wright - Is this a one-story addition?

1301  
1302 Mr. Workman - Yes it is.

1303  
1304 Mr. Wright - Will it match your present house?

1305  
1306 Mr. Workman - Yes, it should look very similar, the brick and everything.

1307  
1308 Mr. Balfour - You're going to paint it? Any other questions? Thank you.

1309  
1310 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1311 McKinney, the Board **granted** application **A-18-2003** for a variance to build an addition  
1312 at 7108 Glen Parkway (Westham) (Parcel 758-734-6343). The Board granted the  
1313 variance subject to the following conditions:

1314  
1315 1. Only the improvements shown on the plan filed with the application may be  
1316 constructed pursuant to this approval. No substantial changes or additions to the layout  
1317 may be made without the approval of the Board of Zoning Appeals. Any additional  
1318 improvements shall comply with the applicable regulations of the County Code.

1319

1320 2. The new construction shall match the existing dwelling as nearly as practical.

1321  
1322 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1323 Negative: 0  
1324 Absent: 0

1325  
1326 The Board granted this request, as it found from the evidence presented that, due to the  
1327 unique circumstances of the subject property, strict application of the County Code  
1328 would produce undue hardship not generally shared by other properties in the area, and  
1329 authorizing this variance will neither cause a substantial detriment to adjacent property  
1330 nor materially impair the purpose of the zoning regulations.

1331  
1332 **A - 19-2003 VIRGINIA BUDDHIST ASSOCIATION** requests a variance from  
1333 Section 24-94 of Chapter 24 of the County Code to build a church  
1334 at 2208 Mountain Road (Parcels 777-766-4768 and 2960), zoned  
1335 A-1, Agricultural District (Fairfield). The lot width requirement is not  
1336 met. The applicant has 182.82 feet lot width, where the Code  
1337 requires 400 feet lot width. The applicant requests a variance of  
1338 217.18 feet lot width.

1339  
1340 Mr. Balfour - Do we have any others who intend to testify in this matter?  
1341 Would you raise your right hand and be sworn please?

1342  
1343 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1344 truth, the whole truth, and nothing but the truth, so help you God?

1345  
1346 Mr. Hulcher - I do. My name is Bruce Hulcher. The Buddhist Association  
1347 has asked me to represent them in this matter. I've reviewed the staff report and just  
1348 wanted to make a couple of comments and then answer any questions the Board  
1349 members might have. One of the staff comments is that they should have known that  
1350 they needed 400 feet, and they didn't. Why they didn't, I can't really say. The people  
1351 are primarily Vietnamese, and we do have some language difficulties. I know I've been  
1352 doing the engineering work for them, and just explaining the nuances of our languages,  
1353 the technical details, and the requirements, has been difficult, so I can't really say why  
1354 they didn't know they needed 400 feet, but they were under the impression that a  
1355 church could be in any zoning district, which I think is generally true, but there are  
1356 restrictions beyond that. The other staff comment was about the proximity of a driveway  
1357 to a nearby school. As you can see from the drawing, they actually have 2 driveways  
1358 right now; we'll be reducing it to one, and widening Mountain Road, which should help.  
1359 The other point about that, their traffic is not at the same time as the school's traffic.  
1360 They are primarily a Sunday, and maybe a night meeting during the week, peak use, as  
1361 opposed to the school's peak use. The other point is, the conditions imposed as  
1362 recommended by the staff, are acceptable to the association. And I'd be happy to  
1363 answer any questions.

1364  
1365 Mr. Balfour - Did you say they would use the building on the weekends,

1366 on Sunday, not during the school week?

1367

1368 Mr. Hulcher - Right. They generally don't have meetings during the week;  
1369 they may have an evening meeting. This is a very small congregation, or temple, as  
1370 they call it. They plan to remodel the existing building; it's not a new building going on  
1371 the site; we're just trying to make them conform with the County parking requirements  
1372 and other ordinance conditions, one of which being that they need a variance because  
1373 they don't have a 400-foot frontage. They have the required lot area, but not the  
1374 frontage.

1375

1376 Mr. McKinney - Mr. Hulcher, you spoke of language differences. You know  
1377 the old adage, "When you're in Rome, do as the Romans do." How long have they  
1378 owned this piece of property?

1379

1380 Mr. Hulcher - I'm familiar with that one, yes sir. I don't know. We've only  
1381 been involved with them since the first of the year.

1382

1383 Mr. McKinney - Didn't they move off of Mountain Road to this piece?

1384

1385 Mr. Hulcher - No, this piece is on Mountain Road.

1386

1387 Mr. McKinney - I mean off of Hungary Road. Didn't they move off of  
1388 Hungary Road?

1389

1390 Mr. Kirkland - Mr. McKinney, they built a brand new one, way back up in  
1391 the woods on Hungary.

1392

1393 Mr. McKinney - That's because they sold the property to Wilton  
1394 Development.

1395

1396 Mr. Hulcher - I don't know if that's the same group. I know that there's  
1397 another temple in town that's kind of like a different parish.

1398

1399 Mr. McKinney - Do you know who represented them when they purchased  
1400 the property?

1401

1402 Mr. Hulcher - No sir, I don't.

1403

1404 Mr. McKinney - I just can't imagine not being aware that they needed 400  
1405 feet. If they're in that business, and they closed, they had to have an attorney. They  
1406 purchased it in 2002? If you're a church, I would think before you buy a piece of  
1407 property, you would make sure it's going to conform to what you want to do.

1408

1409 Mr. Hulcher - I would think that, but a church being able to be in any  
1410 zoning district might have led them to believe that they were okay. There are other  
1411 difficulties with this site that they weren't aware of also, so I know they didn't do as

1412 much diligence as they should have.  
1413  
1414 Mr. Balfour - They propose to park along the back, I guess, all that space  
1415 behind the home? What's that blue line represent? Is that the driveway in? We've got  
1416 a blue line on the picture.  
1417  
1418 Mr. Hulcher - That's the existing site plan; that doesn't show the proposed  
1419 driveway there. There is an exhibit that does, however.  
1420  
1421 Mr. Balfour - That's the driveway that's already there that they intend to  
1422 use, then go beside the building and park in the rear and on the right?  
1423  
1424 Mr. Hulcher - No sir. That's a circular drive with 2 entrances there. Their  
1425 driveway's actually going to move down to the right in that photograph.  
1426  
1427 Mr. Kirkland - Mr. Blankinship, this was a single-family dwelling, correct?  
1428 When they bought this property, was the County notified that it was going to be a church  
1429 there?  
1430  
1431 Mr. Blankinship - Notified in what way?  
1432  
1433 Mr. Kirkland - It's kind of like a business; it's a church. It immediately  
1434 would have required some certain requirements.  
1435  
1436 Mr. Blankinship - At some point they must have come in and said they wanted  
1437 to change the use of this building, and that was when we began the POD process, and  
1438 that was when it was raised to them that they did not have the minimum frontage for  
1439 that.  
1440  
1441 Mr. Kirkland - Did anyone have any problems communicating with them  
1442 then?  
1443  
1444 Mr. Blankinship - I don't know. I haven't actually met with them face-to-face.  
1445 That's handled by the members of staff.  
1446  
1447 Mr. McKinney - Mr. Hulcher, it says the Virginia Buddhist Association. Is this  
1448 an ongoing church, or is it a facility that kind of oversees the Virginia Buddhists?  
1449  
1450 Mr. Hulcher - They do have facilities in the dwelling for worship at this  
1451 time. I guess they're not incorporated as the Buddhists right now. The building itself is  
1452 owned by 3 individuals, one of whom is the monk who is actually living there and has  
1453 set it up for worship.  
1454  
1455 Mr. McKinney - Do you know if they charge to use this building for worship?  
1456  
1457 Mr. Hulcher - I'm most certain they don't, but I couldn't swear under oath



1458 that I know that, but knowing the people involved and having gotten to know them, I  
1459 know they're very dedicated to developing this as a place of worship.  
1460  
1461 Mr. McKinney - How many are in that congregation now, how many people?  
1462  
1463 Mr. Hulcher - There are only about 20 right now, and they are looking to  
1464 have as many as 50 seats, which would require something like 13 parking spaces. I  
1465 think we're providing 21 or something like that.  
1466  
1467 Mr. McKinney - How many parking spaces do you have now?  
1468  
1469 Mr. Hulcher - They only have a gravel parking area; there are no  
1470 delineated spaces right now.  
1471  
1472 Mr. McKinney - This is going through a POD process, Mr. Blankinship?  
1473  
1474 Mr. Hulcher - Yes sir, we've had a staff review of a submittal, but they  
1475 can't move forward until the variance is granted actually.  
1476  
1477 Mr. Wright - Do you have wetlands to the rear of this property?  
1478  
1479 Mr. Hulcher - Yes we do.  
1480  
1481 Mr. Wright - Is that going to affect the parking back there?  
1482  
1483 Mr. Hulcher - We have to agree with the County on where that line is; our  
1484 expert says one thing; they say something a little different, but it does restrict future  
1485 development on the site fairly significantly.  
1486  
1487 Mr. Wright - Mr. Hulcher, what's located to the west of this property?  
1488  
1489 Mr. Hulcher - If north is to the rear here, the west is the townhouse  
1490 development, and the school is on the right. This is a long, narrow piece of property  
1491 that evidently was left over between the school and the townhouse development.  
1492  
1493 Mr. Wright - It appears to be a residence directly across the street from  
1494 this property?  
1495  
1496 Mr. Hulcher - Yes sir, it is, set back quite a way from the right-of-way.  
1497  
1498 Mr. Nunnally - What does the blue line represent – I was asking that a  
1499 minute ago?  
1500  
1501 Mr. Blankinship - There's a lot line there; there are actually 2 separate parcels  
1502 here.  
1503

1504 Mr. Nunnally - So the vacant lot to the right has nothing to do with the  
1505 Buddhist temple?  
1506  
1507 Mr. Blankinship - No, they own everything between the yellow lines. The  
1508 application is for both lots.  
1509  
1510 Mr. Nunnally - So the parking, as I said a few minutes ago, would be to the  
1511 right of the blue line, I suspect?  
1512  
1513 Mr. Hulcher - Yes sir.  
1514  
1515 Mr. Wright - So it's only about 182 feet wide.  
1516  
1517 Mr. Blankinship - Both parcels taken together, right.  
1518  
1519 Mr. Nunnally - And about 50 seats they expect to have.  
1520  
1521 Mr. Hulcher - About 50 people is what they would set the building up for if  
1522 granted the variance.  
1523  
1524 Mr. McKinney - But they could have more than that down the road.  
1525  
1526 Mr. Hulcher - They could expand the facility in some fairly limited way;  
1527 you've got 40-foot side yard setbacks, as well as the wetlands to the rear, so there are  
1528 some limitations on what they can do on the site. Yes, I would say that they could  
1529 develop it further. Within the ordinance conditions.  
1530  
1531 Mr. Balfour - Any other questions? Thank you, Mr. Hulcher.  
1532  
1533 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
1534 Kirkland, the Board **denied** application **A-19-2003** for a variance to build a church at  
1535 2208 Mountain Road (Parcels 777-766-4768 and 2960). The Board denied the request  
1536 as it found from the evidence presented that approving the permit would be of  
1537 substantial detriment to adjacent property or would materially impair the purpose of the  
1538 zoning regulations, and that any hardship was self-imposed.  
1539  
1540 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1541 Negative: 0  
1542 Absent: 0  
1543  
1544 **A -189-2002** **DAUNGCHAI DYKE** requests a variance from Section 24-94 of  
1545 Chapter 24 of the County Code to build a sunroom at 9505  
1546 Kennedy Station Terrace (Kennedy Station) (Parcel 781-760-5025),  
1547 zoned R-3AC, One-family Residence District (Conditional)  
1548 (Fairfield). The rear yard setback is not met. The applicant has  
1549 28.5 feet rear yard setback, where the Code requires 35 feet rear

1550 yard setback. The applicant requests a variance of 6.5 feet rear  
1551 yard setback.  
1552  
1553 Mr. Balfour - Do we have any others who intend to testify in this matter?  
1554 Would you raise your right hand and be sworn please?  
1555  
1556 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1557 truth, the whole truth, and nothing but the truth, so help you God?  
1558  
1559 Mr. Rackley - I do. I'm William Rackley, representing Mr. Dyke.  
1560  
1561 Mr. Balfour - Have you read the conditions on this?  
1562  
1563 Mr. Rackley - Yes sir. I've been working with the County for the past 4  
1564 months to try to set this up.  
1565  
1566 Mr. Wright - What's located to the rear of your property, Mr. Rackley?  
1567  
1568 Mr. Rackley - It's a drainage easement of 16 feet.  
1569  
1570 Mr. Wright - Are there any houses to the rear of your property?  
1571  
1572 Mr. Rackley - There's a 10-foot strip, and then in the back, there's Mt.  
1573 Olive Baptist Church.  
1574  
1575 Mr. McKinney - Are you the contractor, Mr. Rackley?  
1576  
1577 Mr. Rackley - Yes sir. When Ms. Dyke bought the house, she felt that she  
1578 had a rather spacious back yard, not realizing it was cut up a little bit.  
1579  
1580 Mr. Blankinship - Does everybody understand the idea behind the vacation of  
1581 the easement on one side and the addition of land on the other side of the easement?  
1582 Public Works was not concerned with exactly where that 2 ½ feet is, but they were  
1583 concerned that the easement be wide enough that they be able to get in there if they  
1584 need to maintain that pipe. There is an 18-inch concrete pipe in there, and they want to  
1585 make sure that they can get to it, and that the owners are not going to plant any trees in  
1586 there or get upset if they see crews back in there working, so they are going to be  
1587 required to dedicate some additional easement on the far side of the house.  
1588  
1589 Mr. Rackley - Which is no problem, and I wish I had taken a picture of this  
1590 location, because it is a lot wider than it appears right here, and in my conversations  
1591 with Public Works, there's really no problem with getting their machinery in there.  
1592  
1593 Mr. Balfour - I notice it says the addition would still leave over 35 feet  
1594 between it and the adjoining parcels.  
1595

1596 Mr. McKinney - It's a 16-foot drainage easement; that's what it is.  
1597  
1598 Mr. Blankinship - Right. And then the 10-foot strip beyond that.  
1599  
1600 Mr. Balfour - Any other questions? Thank you.  
1601  
1602 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
1603 Wright, the Board **granted** application **A-189-2002** for a variance to build a sunroom at  
1604 9505 Kennedy Station Terrace (Kennedy Station) (Parcel 781-760-5025). The Board  
1605 granted the variance subject to the following conditions:  
1606  
1607 1. Only the addition shown on the plan filed with the application may be constructed  
1608 pursuant to this approval. No substantial changes or additions to the layout may be  
1609 made without the approval of the Board of Zoning Appeals. Any additional  
1610 improvements shall comply with the applicable regulations of the County Code.  
1611  
1612 2. The new construction shall match the existing dwelling as nearly as practical.  
1613  
1614 3. The applicant shall request the County vacate the portion of the easement into  
1615 which the addition will encroach. In exchange, the applicant shall extend the opposite  
1616 side of the easement by an area measuring 2.4 feet deep opposite the corner of the  
1617 addition, and tapering back to tie into the existing easement over a distance of 25 feet in  
1618 each direction. No planting shall be allowed in that area.  
1619  
1620 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1621 Negative: 0  
1622 Absent: 0  
1623  
1624 The Board granted this request, as it found from the evidence presented that, due to the  
1625 unique circumstances of the subject property, strict application of the County Code  
1626 would produce undue hardship not generally shared by other properties in the area, and  
1627 authorizing this variance will neither cause a substantial detriment to adjacent property  
1628 nor materially impair the purpose of the zoning regulations.  
1629  
1630 Mr. Balfour - Mr. Secretary, the next 3 we can take together?  
1631  
1632 Mr. Blankinship - Yes, A-80, A-81, and A-82-2000 are not new variances, but  
1633 requests to amend the conditions.  
1634  
1635 **A - 80-2000** **JOHN B. AND MARGARET E. SULLIVAN** request a variance from  
1636 Section 24-9 of Chapter 24 of the County Code to amend a  
1637 previous variance at 1550 Kimbrook Lane (Parcel 149-A-82), zoned  
1638 A-1, Agricultural District (Varina). The public street frontage  
1639 requirement is not met.  
1640  
1641 **A - 81-2000** **JOHN B. AND MARGARET E. SULLIVAN** request a variance from

1642 Section 24-9 of Chapter 24 of the County Code to amend a  
1643 previous variance at 1590 Kimbrook Lane (Parcels 156-A-68, 69B  
1644 (part) and 81 (part)), zoned A-1, Agricultural District (Varina). The  
1645 public street frontage requirement is not met.  
1646

1647 **A - 82-2000** **JOHN B. AND MARGARET E. SULLIVAN** request a variance from  
1648 Section 24-9 of Chapter 24 of the County Code to amend a  
1649 previous variance at 1600 Kimbrook Lane (Parcel 156-A-69B),  
1650 zoned A-1, Agricultural District (Varina). The public street frontage  
1651 requirement is not met.  
1652

1653 Mr. McKinney - Mr. Blankinship, was there a reason we only got A-80-2000?  
1654

1655 Mr. Blankinship - Just because the request is identical on the other 2 cases.  
1656 You've already heard the variances; you've already granted the variances.  
1657

1658 Mr. Balfour - Do we have any others who intend to testify in this matter?  
1659 Everybody who expects to testify, would you please stand up and raise your right hand  
1660 and be sworn please?  
1661

1662 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1663 truth, the whole truth, and nothing but the truth, so help you God?  
1664

1665 Rev. Harris - I do. Rev. Brad Harris, and I'm here to represent John and  
1666 Margaret Sullivan in this case, an elderly couple who live in eastern Henrico. The case  
1667 is directly related to a variance that was requested in 2000, and in that variance, the  
1668 Sullivans proffered deep wells for concerns that the community had that additional  
1669 homes would deplete their water in their bored wells, as well as improvement on the  
1670 road. At that time, the record shows that the improvement was to be 22 feet. The  
1671 County, Mr. Blankinship, and I have met with the Sullivan's son, looked at the road, and  
1672 if I am correct, Mr. Blankinship, it is correct to say that as far as the County is  
1673 concerned, it conforms to the County's requirements as far as a private road?  
1674

1675 Mr. Blankinship - The general standards for a private road, yes. You can get a  
1676 fire truck up and down it; 2 cars could pass for most of its way.  
1677

1678 Rev. Harris - As far as we know, the state's requirements are being met. I  
1679 have talked to several of the residents about this requirement, and I have a letter from  
1680 one of them who could not attend, Mrs. Wagner. She has a parcel on Kimbrook Lane,  
1681 and her mother lives on Kimbrook Lane. To widen this road would require each owner  
1682 to lose a considerable amount of their front yard. I've talked to 2 other residents who  
1683 live on the road, and it seems to be the consensus that it was never the intent to lose  
1684 part of the road or to expand the road to this extent. I've got some pictures that show  
1685 what would take place if this road was expanded.  
1686

1687 Mr. Blankinship - Jim, can you switch to the document camera down here?

1688  
1689 Mr. McKinney - Rev. Harris, how wide is the road now?  
1690  
1691 Rev. Harris - It varies anywhere from 16 feet to 18 to 20. Mr. Blankinship,  
1692 when you were out there .....  
1693  
1694 Mr. Blankinship - Yes, 16 to 18 feet generally.  
1695  
1696 Mr. Nunnally - Two automobiles couldn't pass on a 16-foot road, could  
1697 they?  
1698  
1699 Mr. Blankinship - Not at 35 miles per hour, but at 5 miles an hour they could.  
1700  
1701 Rev. Harris - The residents have a posted sign, and they try to enforce a  
1702 5-miles-an-hour speed limit. As you can see, it appears that this road is acceptable.  
1703 I've been up and down the road. I do not know of any difficulty passing, as far as the 22  
1704 feet is concerned.  
1705  
1706 Mr. McKinney - Rev. Harris, where is the 5 mile an hour sign for speed limit,  
1707 that is not enforceable, by the way.  
1708  
1709 Rev. Harris - It is up toward the front of the road, close to Hanover Road.  
1710 You can see right here, a little red stake or "For Sale" sign right there – this particular  
1711 owner would lose that much of their property if this was enforced. I've read the minutes  
1712 when this was originally discussed, and I do not see where that was the intent. I think  
1713 the intent was that they wanted to make sure that the road was not going to be  
1714 damaged or further destroyed. The Sullivans have, last year, spent about \$4,000 to  
1715 improve the road, and one of the residents says, "the road is as good as it's ever been."  
1716 There are some current potholes, but I've been on I-64 this morning, and there are a  
1717 few there too.  
1718  
1719 Mr. Kirkland - Where you said the red sign is, is how much land they would  
1720 lose. How wide is the road existing there?  
1721  
1722 Rev. Harris - That part of the road is probably the narrowest spot, and I'm  
1723 guessing it's about 14 feet wide. I've got the minutes from the meeting, and it was kind  
1724 of pulled out of the air, and it's even stated in the minutes that the Board is not sure  
1725 where it came from. I don't think it was thought out. There was no thought about the  
1726 ditches; if this is expanded, that particular site has a culvert under it. That would have  
1727 to be moved back, and ditches would have to be re-done all the way around. There's a  
1728 50-foot variance here, and of course the Sullivans can work within that 50 feet. It just  
1729 appears that the intent was never to see this drastic a change in the road, more of an  
1730 improvement on the road, and there are some other issues that really aren't germane to  
1731 this Board that are playing into this.  
1732  
1733 Mr. McKinney - You say this road right now is at 16 feet, right? The

1734 condition was for 22 feet, so you're talking about 3 feet on each side of the road, for the  
1735 road to be widened.  
1736

1737 Rev. Harris - I would say that's a good estimate on the average, or maybe  
1738 18 feet. That's correct. We're estimating about 4. I did say in the beginning that the  
1739 road varies, and I did say "at this particular point" I believe it's 16 feet.  
1740

1741 Mr. McKinney - Well if it's 16 feet, to 22 feet, that's 6 feet. If it's less than 16  
1742 feet, 2 cars can't pass each other at 5 miles an hour.  
1743

1744 Rev. Harris - Mr. Blankinship, in our conversations, that was not your  
1745 opinion.  
1746

1747 Mr. Blankinship - That depends on the car.  
1748

1749 Mr. McKinney - I've seen this red sign here that you say, and I'm looking at  
1750 the landscape timbers which usually run anywhere from 6 to 8 feet long, and it looks like  
1751 it's about 1 3/4 landscape timbers in that little area there, and it looks like you've got  
1752 another 3 or 4 feet till you get out to the road.  
1753

1754 Rev. Harris - You also have to consider to get in to do the work, you're not  
1755 going to be able to stay on one side of the ditch; you're going to have to work within a  
1756 reasonable area.  
1757

1758 Mr. McKinney - I understand that. You're talking about putting the road in?  
1759

1760 Rev. Harris - As far as the road is concerned, I think that not having  
1761 measured every single lot, we measured a front, a middle and a back, on average,  
1762 you're going to add about 8 feet total, 4 feet on each side.  
1763

1764 Mr. McKinney - Where do John and Margaret Sullivan live?  
1765

1766 Rev. Harris - This was their home place, and I believe, if I'm not mistaken,  
1767 they live in Hanover County now.  
1768

1769 Mr. McKinney - So if this road is widened, who bears the expense of  
1770 widening it?  
1771

1772 Rev. Harris - The Sullivans.  
1773

1774 Mr. McKinney - The Sullivans. Is this a monetary thing?  
1775

1776 Rev. Harris - Partly it's an undue hardship on the Sullivans. To do this,  
1777 and I don't want to pull numbers out of the air, I think that's unwise.  
1778

1779 Mr. McKinney - So you're saying you've come in here unprepared.

1780  
1781 Rev. Harris - No sir. The "Guess-timates" that we have right now are for  
1782 \$20,000 to make the road to the 22-foot requirement.  
1783  
1784 Mr. McKinney - He agreed to do this at the time.  
1785  
1786 Rev. Harris - The attorney who was representing them at the time agreed  
1787 to that, yes sir.  
1788  
1789 Mr. McKinney - He was the spokesman for them.  
1790  
1791 Mr. Balfour - Any other questions? Thank you.  
1792  
1793 Mr. Leake - My name is Bill Leake, and I'm definitely con. Good morning  
1794 Mr. Chairman, members of the Board. I feel like I'm speaking like Paul Harvey here.  
1795 I'm going to give you the rest of the story. First, I'd like to apologize to the Board for  
1796 taking up so much of their time for this case. However, all the time spent here is due to  
1797 the applicants' play on deception, misleading information, and not following the request  
1798 of the Board.  
1799  
1800 I would like to point out a few things that were overlooked in the first two meetings. If I  
1801 can go back to the minutes of the meeting on October 26, 2000, line 140, I did not  
1802 oppose the reducing of the road from 30 feet to 22 feet, since it was my understanding  
1803 that once the road was turned over to the residents on Kimbrook Lane, the road would  
1804 be easier to maintain. On line 152, Rex Sullivan, who is the owner's son, states that he  
1805 has no intentions of turning the road over, that we haven't talked about it, and he has  
1806 been misinformed. I don't know where he got that from. Being new at these hearings, I  
1807 was not aware of the proceedings and did not make myself very clear at that time.  
1808  
1809 I would like to clear up these matters at this meeting. In the meeting on August 24,  
1810 2000, two months earlier, line 921, Mr. Felts states he is representing the Sullivans. On  
1811 line 946 he states that the road maintenance agreement is not very specific, and that it  
1812 will be addressed by the Sullivans. After everyone else who was here who was  
1813 opposed to his variance, finished speaking, Mr. Felts then states, on line 1079, what we  
1814 plan to do, and we did not say this, is that we will condition these parcels of land, we will  
1815 put in deep wells. He continues on line 1082, "As far as the road is concerned,  
1816 whatever these people want to do with the road, the Sullivans are willing to deed the  
1817 road over to them, give them a permanent easement on the road or whatever. A more  
1818 detailed road maintenance agreement can be developed." In addition to these  
1819 statements, I have a letter addressed to the County from Mr. Felts, stating that he would  
1820 like to defer the July meeting in 2000 to the August meeting in 2000, because he was  
1821 working on a better road maintenance agreement. Now I ask this Board, would this  
1822 information tell you exactly where I got my information from, about the road and the  
1823 maintenance agreement.  
1824  
1825 In early September, following the August meeting, I contacted Mr. Felts. He advised me



1826 that the Sullivans would convey the road over to the residents to draw up a better  
1827 agreement. He advised me to contact a lawyer and get things started and get my  
1828 lawyer to contact Mr. Felts. I did so. I contacted Gregory Foreman. He advised me  
1829 and sent a letter to Mr. Felts that it was beneficial for the Sullivans to convey the road  
1830 over, and it should be the responsibility of the Sullivans to prepare such documents.  
1831

1832 Now back at the October meeting, the Sullivans already had their variance, but nothing  
1833 in writing from this Board about the new maintenance agreement or anything about  
1834 turning the road over to the residents. Rex Sullivan then states he does not know  
1835 where I got this information from. Without knowing that I could ask the Board to  
1836 reconsider the outcome and add these conditions to the variance, I contacted Mr. Felts.  
1837 He advised me to call Rex, that he knew nothing about any agreement or anything  
1838 about turning over the road. Again, this is after the Sullivans already have their  
1839 variance. I contacted Rex Sullivan. He advised me he already had a road maintenance  
1840 agreement. I have a copy of that up on the board now. He advised me as far as the  
1841 road was concerned, if the people on the road wanted it, fine. It was for sale, \$10,000.  
1842 I contacted Rex later, and he lowered the price to \$6,000.  
1843

1844 He was still not going to draw up a road maintenance agreement. He also stated at that  
1845 time that the only thing he was going to do to the road was cut the trees down to ground  
1846 level, add a little gravel, and make it appear to be in good shape. He was not going to  
1847 the expense of putting down a base material. That's exactly what he did. There's no  
1848 base, he left the stumps where they were in the ground. Just to make the situation go  
1849 away, I called him back and offered him \$3,000 for the road and a new agreement. He  
1850 never returned my call. With all the new houses coming up on the road, I was getting  
1851 very frustrated, especially since everyone who had lived there had moved away,  
1852 including the lady with the letter he presented to you earlier from the Wagners. She no  
1853 longer lives there either. Mr. Harris is in the process of building a house on that piece of  
1854 property. I was the only one left on the road when this thing originally started. I got very  
1855 frustrated, so I put up a very large sign in front of the new house that was being built.  
1856 Yes, I got someone's attention. I will only go into the details if required.  
1857

1858 This is at the same time that the Wagners requested the variance on the other property,  
1859 at the November 21, 2002, meeting, when the Board realized that we still had a problem  
1860 with the road and the agreement. They deferred the meeting until December 2002, to  
1861 give Brad Harris, the builder, a chance to work out the details. After several attempts to  
1862 purchase the road from the Sullivans so that we residents could have a say-so on the  
1863 road conditions and the agreement, and working through Brad Harris, we could not all  
1864 come to an agreement. Since Rex Sullivan refuses to talk to us directly, Mr. Harris will  
1865 speak in his behalf. That was the wrong person to work this out. He repeatedly told us  
1866 that he was speaking as Rex Sullivan's friend and as a businessman, and all he wanted  
1867 to do was resolve this issue, so Rex could sell his house and he could build the other 2  
1868 houses. Even Mr. Harris stated that Rex should draw up a better agreement and didn't  
1869 understand why Rex wanted to keep the road. But just let him keep the road, and then  
1870 the residents could pay the insurance on the road for him. No, we don't want to pay the  
1871 insurance on a road that he owns.

1872  
1873 Mr. Nunnally - Are you then upset because he has not agreed to convey  
1874 you the road that you think he agreed to do some time ago, and he won't even return  
1875 your phone call to this extent now?  
1876  
1877 Mr. Leake - That was the original agreement on everything. We've tried  
1878 working it out several other ways, and we have not come to do so, so I am asking the  
1879 Board to convey the road over to the residents of the road, like he originally said in the  
1880 first meeting. That's what he originally led me to believe, and everyone who lived there  
1881 at the time to believe.  
1882  
1883 Mr. McKinney - Mr. Leake, let me ask you a question. You say a lot of these  
1884 people have moved out. New people have moved in. Let's go back to when we  
1885 granted the variance, August of 2000. Has anyone moved in since August of 2000?  
1886  
1887 Mr. Leake - Yes.  
1888  
1889 Mr. McKinney - How'd they get a Certificate of Occupancy, because I'm  
1890 reading here in the background that before a Certificate of Occupancy can be issued,  
1891 Kimbrook Lane shall be widened to 22 feet of gravel, over an appropriate base of  
1892 material.  
1893  
1894 Mr. Leake - That's why I'm here today, to try to point that out. They've  
1895 already closed on one house.  
1896  
1897 Mr. McKinney - I don't know how they closed on it if this condition was not  
1898 met.  
1899  
1900 Mr. Leake - Well, it's an oversight. I cannot say where the oversight  
1901 came from, but it was an oversight, and at the first 3 meetings I was not sure as to what  
1902 to do. That's why I'm trying to make myself very clear today. If Rex doesn't want to turn  
1903 the road over to us, we can understand that too. But I think it should be his  
1904 responsibility to draw up a road maintenance agreement at his cost, no cost to us, that  
1905 everyone on the road can agree with. At the same time, if he wants to keep the road,  
1906 then he should be responsible for keeping the insurance on the road too.  
1907  
1908 Mr. McKinney - Mr. Leake, may I point out to you that this Rex, if you buy the  
1909 road from him, for whatever price, that you're going to be obligated to widen the road to  
1910 22 feet.  
1911  
1912 Mr. Leake - The road is 22 feet wide, okay?  
1913  
1914 Mr. McKinney - In gravel, with an appropriate base material?  
1915  
1916 Mr. Blankinship - Only if you include the ditches. The road surface is not 22  
1917 feet wide.

1918  
1919 Mr. McKinney - It says the lane shall be widened to 22 feet of gravel over an  
1920 appropriate base material. Somebody is supposed to do this. Now if you buy the road,  
1921 you're going to be obligated to do that.  
1922  
1923 Mr. Leake - I hadn't really finished with my speech that I wrote out. I'm  
1924 not a spokesperson, so that's why I had to write it all out, and I apologize for it.  
1925  
1926 Mr. Nunnally - That's all right. You're doing fine. I think I was the one who  
1927 interrupted you, please excuse me.  
1928  
1929 Mr. Leake - Let me see if I can find my place.  
1930  
1931 Mr. Wright - I'm having a problem with what this hearing is all about. I  
1932 thought this was to consider whether or not we would require the road to be widened to  
1933 22 feet. Now we're getting into all kinds of stuff that probably wasn't "noticed" for this  
1934 hearing – is that correct, Mr. Secretary?  
1935  
1936 Mr. Blankinship - I think it all does bear more or less on why the condition was  
1937 put on the variances to begin with.  
1938  
1939 Mr. Wright - But are we in a position to consider anything without  
1940 notifying all the people involved on the road, if the conditions are going to be changed,  
1941 other than widening it to 22 feet. I'm talking about a maintenance agreement and all  
1942 this – where does all this come in?  
1943  
1944 Mr. Leake - They advised everyone on the road when they asked for  
1945 these variances that they would do so. I just presented something to you in writing that  
1946 they said they would do a new maintenance agreement. As far as the road, yes the  
1947 road needs to be fixed. Since they have used deception to mislead everyone who lives  
1948 there. Excuse me, I have some letters here that I'd like to present to the Board.  
1949  
1950 Mr. Wright - Did our condition require a maintenance agreement?  
1951  
1952 Mr. Leake - In the first 2 meetings, no sir, they did not. At that time, I  
1953 was under the understanding that they were turning the road over to us. I thought we  
1954 had this all worked out and a maintenance agreement was going to be drawn up. At  
1955 only the second variance, when they came back to reduce the road from 30 feet to 22  
1956 feet, is when they changed their minds and said no, we're not going to draw up any road  
1957 maintenance agreement, and no, we're not going to turn the road over to you. There  
1958 was nothing in writing about that from you.  
1959  
1960 Mr. Blankinship - Let me amplify that a little bit. The conditions on the original  
1961 variance, I think, did require a maintenance agreement, but they have that one-  
1962 sentence agreement recorded at the Clerk's Office that says "We will all work together  
1963 to maintain the road," and that did satisfy the requirement.

1964  
1965 Mr. Wright - So that's the maintenance agreement?  
1966  
1967 Mr. Blankinship - That did satisfy the requirement.  
1968  
1969 Mr. Nunnally - The Sullivans still own the road, is that right? In either case,  
1970 regardless, it hasn't been widened as it was required to be.  
1971  
1972 Mr. Wright - So the only issue before us today here, is whether or not we  
1973 require the road to be widened to 22 feet of gravel?  
1974  
1975 Mr. Blankinship - Right. You have been asked to remove the condition that is  
1976 now on those variances.  
1977  
1978 Mr. Wright - So why are we getting into all this business about the  
1979 maintenance agreement?  
1980  
1981 Mr. Leake - Because that was part of the original meeting we had sir. It  
1982 was an oversight that was missed in the first meeting. When I say missed, it was said in  
1983 this room that they were going to do this, and we understood it would happen; it did not  
1984 happen.  
1985  
1986 Mr. Balfour - We're not a court of law that we can enforce an agreement.  
1987  
1988 Mr. Leake - I understand that sir. But he did tell you that he would draw  
1989 up another maintenance agreement, and he would widen the road to 22 feet with a  
1990 good base. He has not done either one.  
1991  
1992 Mr. Balfour - The problem of the road is still there. Who's going to do it,  
1993 secondly, I gather there is an agreement of record, even though it's a one-sentence  
1994 agreement, there must not be enough detail apparently. Those issues are not really  
1995 before us. We've got to enforce what's already been passed, or else make an  
1996 exception and not require it any further, which is what we've been asked to do today  
1997 apparently. What is your position on that? To eliminate the requirement that it be 22  
1998 feet?  
1999  
2000 Mr. Leake - No sir, I'm asking that it be 22 feet.  
2001  
2002 Mr. Balfour - Didn't you have a picture up there a minute ago that looked  
2003 like it wasn't?  
2004  
2005 Mr. Leake - Yes sir, that's a good picture right there. He showed you the  
2006 good pictures; I'm showing you the other part of the story. This is the road, and you see  
2007 the ruling right there; the rule is touching a tree on one side of the road, and it's touching  
2008 a tree on the other side of the road. My truck is parked in the middle of it, and you can  
2009 see where the gravel is. The rest of it is mud, ditches, stumps, and it does have a light

2010 coating of gravel. If you get into those leaves, you are going to be down into the mud.  
2011 We understand what he's asking is to be relieved of having to do it to the rule.  
2012  
2013 Mr. Leake - No sir.  
2014  
2015 Mr. Wright - You're opposed to it?  
2016  
2017 Mr. Leake - Correct.  
2018  
2019 Mr. Nunnally - So you're opposed to the requirement that it be widened;  
2020 you'd like it to stay the way it is?  
2021  
2022 **Multiple voices -** No, no, no, no – he wants the condition to remain.  
2023  
2024 Mr. Leake - If the Sullivans do not want to do anything else to the road,  
2025 then we, the neighbors, ask him to convey the road over to us like he originally said,  
2026 and then we'll ask the Board to drop that from the variance, and then we'll take care of  
2027 the road the way we can together. But only drop this variance (condition) if he turns the  
2028 road over to us.  
2029  
2030 Mr. Wright - So you're saying that you would have a road that's less than  
2031 22 feet wide?  
2032  
2033 Mr. Leake - We can take care of it ourselves. The problem is that  
2034 someone else owns the road, who doesn't care about it, and is very deceiving to this  
2035 Board and to the people who live there.  
2036  
2037 Mr. Wright - That's not what I asked you. I said "do you want a road  
2038 that's 22 feet wide or less than 22 feet wide?"  
2039  
2040 Mr. Leake - There again, this is a picture of the road between Virginia  
2041 Mabry and Pam Day's houses.  
2042  
2043 Mr. Wright - You haven't answered my question. The question is "do you  
2044 want a road that's 22 feet wide, or do you want it less than 22 feet wide?"  
2045  
2046 Mr. Leake - I'm getting there. I want it 22 feet, but I have a problem with  
2047 that too. I was advised that if he put a road in there that's 22 feet, that they will tear the  
2048 pipes up, out of the driveways, and they will not put them back.  
2049  
2050 Mr. Blankinship - Twenty-two feet, in the context of this condition, means 22  
2051 feet of travel way, and then about 6 feet of ditch on each side. What you have now is  
2052 about 16 feet of travel way, with 6 feet of ditch. So center of ditch to center of ditch is  
2053 about 22 feet, but that does not comply with the condition. The condition would be 22  
2054 feet of travel way, plus the ditches. There's no way to do that without tearing out the  
2055 existing ditches and moving them 3 to 6 feet out.

2056  
2057 Mr. Leake - If I can finish, right here it's 21 feet from pipe to pipe.  
2058 Twenty-two feet down the road is fine, but if they're going to tear these pipes out and  
2059 not put them back, as I have been told they're not going to put them back, then I request  
2060 that the Board reduce the road, just in from of Pam Day's and Virginia Mabry's houses,  
2061 to 20 feet. That way those pipes can stay in the ground. If they've got to do it 22 feet  
2062 the whole way, then I ask the Board to make sure that they put the pipes back in place  
2063 like they belong. They're telling us that they're not going to put the pipes back.  
2064  
2065 Mr. Balfour - They, being the Sullivans, since they own the road?  
2066  
2067 Mr. Leake - The Sullivans will not speak to us. Brad Harris stated that in  
2068 Rex's behalf.  
2069  
2070 Mr. Nunnally - So you want us, if we could, to put a condition on there, and  
2071 leave everything like it is, but put a condition that upon their widening the road as  
2072 they're required to do, that they replace the pipes as part of the widening, or reinstall the  
2073 pipes.  
2074  
2075 Mr. Leake - And I'd also like to get another road maintenance agreement  
2076 drawn up. That is expensive.  
2077  
2078 Mr. Kirkland - Right now you pay \$50 a year, is that correct?  
2079  
2080 Mr. Leake - Right now I don't pay anything. The letter states that the  
2081 three people who lived there a long time ago, have to pay \$50 toward maintaining the  
2082 road. That's all it states.  
2083  
2084 Mr. Nunnally - You don't like it that he won't sell it to you, but that's  
2085 something that you understand we can't do anything about it.  
2086  
2087 Mr. Leake - I understand that. I have no problem with that.  
2088  
2089 Mr. Balfour - So you're saying, "well, if I take the facts the way they are,  
2090 he's not going to sell it to me at any price, then at least make him do the road and make  
2091 him put the pipes back."  
2092  
2093 Mr. Leake - Mr. Harris just advised you, I think it was at \$20,000 to widen  
2094 this road. I'm telling you that if he turns the road over to us, we'll accept it the way it is  
2095 and ask the Board to drop the condition.  
2096  
2097 Mr. McKinney - To 20 feet?  
2098  
2099 Mr. Leake - No, I'll ask to drop it completely if he turns the road over to  
2100 us, but if he wants to spend \$10,000 or \$20,000, whatever he said ....  
2101

2102 Mr. Kirkland - Blackmail?  
2103  
2104 Mr. Leake - No, it's not blackmail, no sir, it's not, but we want the 22 feet.  
2105 If he wants to spend the money to do it, so be it, or he can do like he originally said, and  
2106 turn the road over to us.  
2107  
2108 Mr. Kirkland - What do you think a reasonable road would be down there?  
2109 We've talked 22, 16, 18, 10, 12, what do you think a reasonable road would be if we  
2110 dropped part of that variance? Right now you're saying, you just want to buy the road,  
2111 and you don't care about what the road looks like after you buy it?  
2112  
2113 Mr. Leake - No, I'm saying if we, the residents, owned the road, we can  
2114 take care of the road amongst ourselves, not having someone own the road who  
2115 doesn't live there, doesn't care about it, and could care less about having a road that  
2116 everyone else has got to take care of. We can take care of the road ourselves, if we  
2117 own it ourselves. The way it is now, we have no say-so on the road at all. We can  
2118 decide what a reasonable road would be at that time.  
2119  
2120 Mr. Kirkland - Have you got some reasonable facts, Mr. Blankinship?  
2121  
2122 Mr. Blankinship - The County's standard for a residential street like that, I'm  
2123 almost positive, is 18 feet. My eye is not falling on it right now. This is (referring to  
2124 Code) more about depth, not width, what is an appropriate base material.  
2125  
2126 Mr. Kirkland - That's 18 feet of travel way, .....

2127  
2128 Mr. Blankinship - ..... 2 nine-foot lanes, and then the ditches beyond that.  
2129  
2130 Mr. McKinney - Then you have emergency vehicles coming in there, fire  
2131 engines and things like that .....

2132  
2133 Mr. Blankinship - They require 16 feet of travel way, plus 6 feet of clearance.  
2134 That's what I view as the minimum acceptable.  
2135  
2136 Mr. McKinney - That's 22 feet.  
2137  
2138 Mr. Blankinship - Sixteen feet of travel way .....

2139  
2140 Mr. McKinney - You said plus 6 feet of ditch – that makes a total of 22 feet.  
2141  
2142 Mr. Blankinship - Actually, it would be more because it's 6 feet on each side  
2143 usually, 3 feet down and 3 feet up.  
2144  
2145 Mr. McKinney - Sixteen and 12 then.  
2146  
2147 Mr. Blankinship - Yes. Twenty-eight feet of easement width. We usually

2148 require a 30-foot easement, with sixteen feet .....

2149

2150 Mr. Leake - That seems that it would be logical if it's going to cost,  
2151 \$10,000 or \$20,000 to fix this road the way the County has requested him to do so. It  
2152 would seem logical to turn the road over to someone else and get out from underneath  
2153 that expense. Let us handle the road; we can take care of it. We'll all chip in; we'll  
2154 widen it to where we want to widen it, rather than have someone else come in there and  
2155 own it and spend \$10,000, and then we'll still have to take care of it ourselves.  
2156

2157 Mr. McKinney - Mr. Leake, we've already put a condition on it of 22 feet, for  
2158 safety purposes and all kinds of things. You can't come in here and say, "sell me the  
2159 road, and we'll take care of it the way we want to take care of it."  
2160

2161 Mr. Leake - I'm not telling you that, no I'm not.  
2162

2163 Mr. McKinney - You just said that.  
2164

2165 Mr. Leake - No, I'm saying "if he would do this, it would seem logical."  
2166 That's totally up to him. No, I'm not asking the Board to do that, no I'm not.  
2167

2168 Mr. McKinney - The logical thing is to have the road 22 feet, we don't care  
2169 who does it.  
2170

2171 Mr. Kirkland - And that he puts the pipes back when he does the 22-foot  
2172 widening.  
2173

2174 Mr. Balfour - Anyone else got any questions for Mr. Leake? I think we  
2175 see what you're saying. That is, make them do what they're supposed to, and put the  
2176 pipes back too. Any other questions for the moment? Thank you sir. Yes sir.  
2177

2178 Mr. McKinney - Mr. Harris, are you a Reverend, or are you the builder, or are  
2179 you both?  
2180

2181 Rev. Harris - Well, at this time, I didn't want to get into all that, and I guess  
2182 we have to. First of all, Mr. Blankinship, the requirement is 16 feet of road surface  
2183 .....

2184

2185 Mr. McKinney - Excuse me, sir, I asked you a question. Are you a  
2186 Reverend, or are you a builder?  
2187

2188 Rev. Harris - I am a Reverend; I am the builder. I wanted to clarify one  
2189 point though. Is the County's requirement 16 feet of road surface plus 3 feet of  
2190 clearance, which could be considered a ditch, on each side, is that correct, for fire?  
2191

2192 Mr. Blankinship - That's the minimum fire access.  
2193



2194 Rev. Harris - It doesn't require 22 feet; it requires 16 feet?  
2195  
2196 Mr. Blankinship - That's the minimum requirement for fire.  
2197  
2198 Rev. Harris - But the road is only 16 feet.  
2199  
2200 Mr. Blankinship - That's not really relevant to this case.  
2201  
2202 Rev. Harris - I just want to make sure I understand, because it could be  
2203 perceived that the County requires 22 feet.  
2204  
2205 **(Unintelligible)**  
2206  
2207 Mr. Blankinship - In this case the County has required 22 feet.  
2208  
2209 Mr. McKinney - It's a condition on the variance.  
2210  
2211 Rev. Harris - It's a condition on the variance; I'm asking for the fire  
2212 department requirement.  
2213  
2214 Mr. Balfour - What we're saying is, it's already a condition that says 22  
2215 feet of gravel.  
2216  
2217 Rev. Harris - The variance is at 22 feet. I was asking about the fire  
2218 department. I just wanted to clarify that point, that it's not a requirement of the fire  
2219 department.  
2220  
2221 Mr. Balfour - Right. We made it a requirement at 22 feet of gravel over an  
2222 appropriate base material. What do you guys say about putting the pipes back?  
2223  
2224 Rev. Harris - We'll put the pipes back if you require it. If you require the  
2225 22 feet, and that's your judgment, the pipes will be put back. The issue is the road. The  
2226 road was offered for sale. I came to a variance request representing the Wagners, and  
2227 at that time, this is where the issue came to everyone's knowledge. At that time, it was  
2228 agreed by the Board that I would go and try to mediate this. I am a minister, and that's  
2229 part of my calling, and I'm also a builder who will be building on this property and want  
2230 to see this settled before I get there. I asked everyone on the road, through Mr. Leake,  
2231 to have a meeting in his home to see if we could settle this. We met in early December.  
2232 At that time, we discussed many options of what could be done, and we agreed,  
2233 unanimously, and I hope Mr. Leake will agree to this, that the road will be purchased by  
2234 all the residents for \$4,000. They have attempted to form an association, and as I  
2235 understand it, because of the additional cost of forming an association, they have not  
2236 presented another proposal to the Sullivans or to me. It's just been up in the air ever  
2237 since. Agreement was made, so it would not be proper, at least from our perspective, to  
2238 say that the Sullivans have not offered to sell the road. I do not believe that the issue  
2239 here is about the 22 feet; I think it's about the road and who owns it and who maintains

2240 it. As I understand it, the Sullivans are willing to sell the road to the residents on the  
2241 road, and it has been agreed on a figure of \$4,000.

2242  
2243 Mr. Balfour - In any respect, you're still asking us to relieve you of this 22-  
2244 foot gravel .....

2245  
2246 Rev. Harris - I would request, and if the Board agrees, it appears that we  
2247 could settle this. In between, make a deferral, and settle this with the residents finally.  
2248 In my opinion, this is about the road and who owns it; it's not about the 22 feet. Ms. Day  
2249 and her neighbor across the street, Ms. Wagner and her mother, 4 people who live on  
2250 the road, have either written or told me verbally, they do not want this road expanded.  
2251 They do not want to lose their front yard. Whatever that figure will work out to be, they  
2252 like to keep what they have. This was driven by who owns the road and who's  
2253 maintaining the road.

2254  
2255 Mr. Balfour - You're asking us to defer it for a month?

2256  
2257 Rev. Harris - Yes sir.

2258  
2259 Mr. McKinney - I'd like to say one thing. Like Mr. Wright said, what's before  
2260 us is, you wanted a variance from the public street frontage, to build your 2 houses, is  
2261 that correct?

2262  
2263 Mr. Blankinship - Three, but yes.

2264  
2265 Rev. Harris - One has already been built, two have been built, and one is  
2266 waiting for a building permit.

2267  
2268 Mr. McKinney - So if we gave you this, do you understand that before you  
2269 get a CO, that now the flag has been raised, that this road has got to be taken care of?  
2270 Do you understand that?

2271  
2272 Rev. Harris - I understand that somebody needs to take care of the road,  
2273 yes.

2274  
2275 Mr. McKinney - Before you can get a CO on these houses you intend to  
2276 build. In other words, you can go ahead a build these houses, but you've got to meet  
2277 this condition that was put on this road.

2278  
2279 Rev. Harris - The variance that I have does not have that condition on it.

2280  
2281 Mr. Blankinship - He's talking about the 3 that are before him this morning.

2282  
2283 Rev. Harris - The house that I'm building, this requirement is only if I do  
2284 any damage to the road, that I fix the road.

2285

2286 Mr. McKinney - No, no, no, it states that before a Certificate of Occupancy is  
2287 issued, Kimbrook Lane shall be widened to 22 feet of gravel over an appropriate base  
2288 material. So you build the houses, but you can't get a CO till this condition is met,  
2289 unless we remove it.

2290  
2291 Rev. Harris - Unless you remove it. Correct. I understand that.  
2292

2293 Mr. Balfour - Do I hear a motion that we defer it for 30 days?  
2294

2295 After an advertised public hearing and upon a motion by Mr. Wright, seconded by Mr.  
2296 Kirkland, the Board **deferred** applications **A-80-2003, A-81-2003, and A-82-2003** for a  
2297 variance to amend a previous variance at 1550, 1590, and 1600 Kimbrook Lane (Tax  
2298 Parcels 149-A-82, 156-A-68, and 156-A-69B). The case was deferred, at the request of  
2299 the applicant, from the February 27, 2003, until the March 27, 2003, meeting.  
2300

2301 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
2302 Negative:		0
2303 Absent:		0

2304  
2305 **A - 21-2003 COLONIAL FIRST PROPERTIES, LLC D/B/A GOLD CITY**  
2306 appeals a decision of the Planning Director pursuant to Section 24-  
2307 117 of Chapter 24 of the County Code to adult business at 7103  
2308 Brook Road (Club Court) (Parcel 784-751-9627), zoned B-3,  
2309 Business District (Fairfield). The appeal is not met. Colonial First  
2310 Properties, LLC d/b/a Gold City appeals a decision of the Director  
2311 of Planning pursuant to Section 24-117 of the County Code  
2312 concerning four notices of violation at 7103 Brook Road (Club  
2313 Court) (Parcel 784-751-9627), zoned B-3, Business District  
2314 (Fairfield).  
2315

2316 Mr. Blankinship - Of those four notices, I have been informed this morning,  
2317 that the County is going to withdraw one of the four, which had to do with the hours of  
2318 operation, so we're still going forward with the appeal of three of the notices, and the  
2319 County has withdrawn the fourth notice.  
2320

2321 Mr. Balfour - All who expect to testify in this matter, would you stand and  
2322 raise your right hand and be sworn please?  
2323

2324 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2325 truth, the whole truth, and nothing but the truth, so help you God?  
2326

2327 Mr. Dawson - I do. My name is Wayne Dawson; I'm the attorney for Gold  
2328 City, as of late yesterday afternoon in this matter. I know that the County Attorney is  
2329 going to object to it. I came this morning, partly prepared to go forward if I had to, ask  
2330 for continuances of this matter to another day to allow me to get prepared. I met with  
2331 Mr. White yesterday evening about 4:30, reviewed some of the papers he had. He

2332 didn't have all of the ordinances. I've been talking with the County Attorney some this  
2333 morning, who showed me other ordinances. I'm in the unenviable position of an  
2334 attorney going in to argue something when he doesn't feel like he's got it all together.  
2335 He hasn't reviewed everything that needs to be reviewed, and I don't have the familiarity  
2336 with the County ordinances that the County Attorney has, because I haven't had the  
2337 time to prepare for this matter this morning.  
2338  
2339 Mr. Balfour - Are you asking us to defer it to next month.  
2340  
2341 Mr. Dawson - I would like to defer it if at all possible.  
2342  
2343 Mr. Balfour - Your client's acceptable with that?  
2344  
2345 Mr. Dawson - My client's acceptable with that, but I think the County is  
2346 opposed to it.  
2347  
2348 Mr. Balfour - It would give you a chance to talk to Mr. Tokarz some. He's  
2349 got an awful lot of cases sitting over there. Do I hear a motion?  
2350  
2351 Mr. McKinney - I want to ask Mr. Tokarz a question first. Mr. Tokarz, can  
2352 you define adult business for this Board, from the ordinance?  
2353  
2354 Mr. Tokarz - Yes sir.  
2355  
2356 Mr. McKinney - From the ordinance?  
2357  
2358 Mr. Tokarz - Yes sir.  
2359  
2360 Mr. McKinney - And the Chapter and the Section?  
2361  
2362 Mr. Tokarz - Yes sir.  
2363  
2364 Mr. McKinney - Actually you don't have to define it if you could just give it to  
2365 us, where it is in the Code, what an adult business is.  
2366  
2367 Mr. Tokarz - It's defined in 2 different places. It's defined in 24-3, which is  
2368 the Zoning Ordinance provision. Of course, that is the ordinance provision that is before  
2369 the Board within your purview. It's also defined in Section 15-158, Henrico County  
2370 Code. Both of those references are to the County Code.  
2371  
2372 Mr. McKinney - The 15 is not State?  
2373  
2374 Mr. Tokarz - No sir. That is a County Ordinance that was enacted to  
2375 require a permit for all adult businesses and to provide certain developmental  
2376 standards. That was enacted pursuant to the County's police powers under 15.2-1200  
2377 of the Code of Virginia. So we have 2 different regulations for adult businesses. We

2378 have Police Power regulations under Chapter 15; we have Zoning regulations under  
2379 Chapter 24. The definitions are identical.

2380  
2381 Mr. McKinney - Are you in objection to deferring this for 30 days?  
2382

2383 Mr. Tokarz - Yes sir, we are. The reason we are opposed to this, Mr.  
2384 McKinney, .....

2385  
2386 Mr. Balfour - Opposed to the continuance or opposed to the request?  
2387

2388 Mr. Tokarz - Opposed to the deferral, request for the continuance. The  
2389 reason is that this notice of violation was served on January 10. It's been almost 2  
2390 months. They've had an opportunity to obtain council. For Gold City to come and  
2391 obtain council on the day before a hearing and then ask for a continuance, in our view,  
2392 is nothing more than a stall to prevent this Board from hearing a violation, which is of  
2393 serious concern to a residential neighborhood. What we have is an adult business  
2394 operating adjacent to a residential neighborhood. It's on the other side of the fence.  
2395 There's been a murder at that facility. There's been a serious wounding in that parking  
2396 lot. They're now selling adult merchandise from that store, and we are extremely  
2397 concerned about the continued operation in violation of the County Ordinance. So we  
2398 are opposed to the motion for continuance. It's just too late to come in the day before  
2399 and ask for a continuance, when they've had almost 2 months to get ready for this  
2400 hearing.

2401  
2402 Mr. Balfour - Have you asked for an injunction in court or anything?  
2403

2404 Mr. Tokarz - Yes sir, we have a bill of complaint in the court. There has  
2405 been a preliminary injunction obtained with respect to lap dancing. We are going to, at  
2406 some point, amend our bill of complaint to enjoin all of the other violations of the  
2407 ordinance. That's not filed yet with the court. Part of what we're doing is going through  
2408 this process in front of the Board of Zoning Appeals, and so a deferral by this Board will  
2409 prevent us from going forward on the zoning violations in the circuit court. And so  
2410 there's another detriment by not going on to hear this case, which has been properly  
2411 advertised and noticed for public hearing. My suggestion to the Board is this. If we,  
2412 once there is an application for an appeal by Gold City, if we advertise and expect  
2413 citizens to be ready to present to the Board of Zoning Appeals on a day like today, then  
2414 we should also expect Gold City to be ready to prepare. They've had more than 30  
2415 days notice, more than any citizens have, of any desire to adjust this, and we have  
2416 citizens here ready to address this. We have Mr. Dawson here. Gold City could have  
2417 obtained their council long before yesterday. Therefore, we do oppose the request for  
2418 deferral.

2419  
2420 Mr. McKinney - Let's turn the flip side of that coin, Mr. Tokarz. When I  
2421 looked at the citations that were written by Mr. Short, they stated that they were in  
2422 violation of this and this and that on all 4 of them. I called Mr. Short, and he would not  
2423 speak with me about this. He said he was instructed that he couldn't talk with me about

2424 it, so I talked with John Marlles, who's the Planning Director. Mr. Blankinship faxed me  
2425 these codes. None of the other Board members have these; I just got them day before  
2426 yesterday. I think that they need to read these and interpret what they think the  
2427 ordinance says, to be able to vote on it properly in their own minds. I see where you're  
2428 coming from, and I agree with you; I also agree with Mr. Dawson, but as far as the other  
2429 Board members; they don't know anything about this. I'm the only one who got it. I  
2430 didn't have a chance to send it to them. In fact, I've told them, and a couple of them  
2431 have looked at it and don't quite understand it. It would be my wish to defer this for 30  
2432 days.

2433  
2434 Mr. Blankinship - I was under the impression that the County distributed  
2435 amendments to the Zoning Ordinance to you. We don't do that? You're not on the list  
2436 of people who get amendments whenever the Code is amended?

2437  
2438 Mr. McKinney - Sure.

2439  
2440 Mr. Kirkland - I get some of them, not all of them.

2441  
2442 Mr. McKinney - Yes, some of them we get.

2443  
2444 Mr. Kirkland - We get some of them when we get our packets. You'll slip  
2445 one or two in there.

2446  
2447 Mr. Blankinship - When this was amended, last February, you should have  
2448 been provided copies at that time. I'm appalled to hear that we're not doing that. I'll  
2449 correct that today.

2450  
2451 Mr. McKinney - Well, that's beside the point. It's not beside the point, and I  
2452 understand that, but there's no other Board member sitting here who has this in their  
2453 hands. They may have it on their shelf at home somewhere, and have not looked it up.  
2454 Have any of you guys looked it up?

2455  
2456 Mr. Wright - The way I look at this thing, and I'm sitting here in a quasi-  
2457 position .....

2458  
2459 Mr. McKinney - Excuse me, Mr. Wright, I've got a motion. If we get a  
2460 second, maybe we can discuss it.

2461  
2462 Mr. Balfour - I think it was seconded by Mr. Kirkland. Did I hear a  
2463 second? Is there any second to the motion?

2464  
2465 Mr. Nunnally - I'll second so they will be some discussion.

2466  
2467 Mr. Kirkland - Mr. McKinney, I just looked in my briefcase, and I believe I  
2468 got a copy of the ordinances, looks like dated February 12, 2002 – is that the date you  
2469 have on yours? I guess we got it at the March meeting of last year.

2470  
2471 Mr. Blankinship - So we do provide you with addenda to the zoning ordinance  
2472 when they're adopted. You had me worried.  
2473  
2474 Mr. Wright - I for one, Mr. Blankinship, do not sit down and read all that  
2475 stuff. I've got plenty of other things to do.  
2476  
2477 Mr. Kirkland - Me neither.  
2478  
2479 Mr. Blankinship - Oh, no, certainly.  
2480  
2481 Mr. Wright - My position on this motion is this; if we hear the case, and I  
2482 don't feel like I'm adequately informed to make a decision today, we'll defer our decision  
2483 till the next meeting, so you'll get the same result. I want to be fully prepared, and I say  
2484 this is a quasi-judicial board. We come here for the case to be presented; I'm not  
2485 supposed to go and check and read all that stuff ahead of time, check with people  
2486 ahead of time. That's against what we're supposed to do. We're supposed to listen to  
2487 the arguments and then make a decision. And whether I can make a decision after I  
2488 hear what I hear today, or whether I need to do some more research on my own, as  
2489 many judges do, that would have to be determined.  
2490  
2491 Mr. Balfour - Any comments by Board members? I gather there was a  
2492 comment from people in the audience here today; I know of one – is that right. Are  
2493 there 2? That cuts both ways, because you'll have to come back to the next meeting.  
2494 Some may not have come today because of the weather. **(Inaudible comment from**  
2495 **the audience)** Can you come back?  
2496  
2497 Mr. Wright - I may add something further in the way of discussion. I feel  
2498 like the applicant has had plenty of time, and I don't hold it against the attorney, but to  
2499 wait all this time to retain an attorney to come before this Board, I think it's an affront to  
2500 this Board. I've always said we should go ahead with the hearing if we have people  
2501 who've come to hear the case, so I'm going to hold against the deferral, but whether I'll  
2502 be in a position to make a decision at the end of the hearing; that's something to be  
2503 decided.  
2504  
2505 Mr. Balfour - If we hear it and it's deferred, could we hear some more  
2506 evidence? That puts Mr. Dawson at a disadvantage.  
2507  
2508 Mr. Dawson - Mr. White did have an attorney, West Virginia attorney Jay  
2509 R. Morgan had a heart attack the first of this month, and he did not anticipate that he  
2510 would not be able to come and be here with local council. Ron Smallenburg had been  
2511 local council; there was a falling out, and he's been discharged as council, and that's  
2512 when he had retained me to represent him in a landlord-tenant dispute, and that was  
2513 the only thing. Then he came to me about this thing, but he had made attempts to get  
2514 local council and had an out-of-state council who was going to come in with local  
2515 council and represent him here today. The heart attack just happened recently.

2516  
2517 Mr. Tokarz - May I be heard on that? First of all, Mr. Morgan from West  
2518 Virginia is not even licensed to practice in the state of Virginia, and so is not capable of  
2519 practicing law in this state before you. So his unavailability should not be an issue.  
2520 Secondly, documents filed with the Circuit Court yesterday, indicate that Gold City has  
2521 known since February 6 that Mr. Morgan would not be available, so they've had almost  
2522 a month to retain council. In addition, a document filed yesterday with the Circuit Court  
2523 in Henrico County, in which a related case will be heard tomorrow, indicated that Mr.  
2524 Dawson had been retained several months ago, as local council, to represent the  
2525 interests of Colonial First Properties, and Mr. Dawson has in the past, filed a pleading in  
2526 the Virginia Court of Appeals and in the Circuit Court of Henrico County, related to other  
2527 Colonial First Properties matters. So we have a long-going relationship between Mr.  
2528 Dawson and Colonial First Properties, and the fact that Colonial First Properties did not  
2529 retain him until yesterday on this matter should not eliminate the fact that there certainly  
2530 has been a long-standing relationship, and it's up to Colonial First Properties to obtain  
2531 their council in time for a hearing before this Board. They requested the appeal; they  
2532 knew that they had to be here on the 27<sup>th</sup>; it's their responsibility to get an attorney.  
2533

2534 Mr. Dawson - May I respond. ***(Briefly unintelligible, too many voices at***  
2535 ***same time, one away from microphone)*** I don't know what he's referring to; I  
2536 represented one girl when they first had the arrests at the club, separate apart from the  
2537 rest of the club, from the girls. I had no relationship with Gold City at that time, and  
2538 have not been involved since then. That's the only place that I've filed any pleadings in,  
2539 is in a criminal case, where I represented one person separately. In fact she did that  
2540 deliberately, because she did not want to be grouped with the girls at Gold City. Our  
2541 case was dismissed.  
2542

2543 Mr. Balfour - I understand, Mr. Dawson. In fact, you indicated he had  
2544 other council, and he and the other council had a disagreement, which brought you to  
2545 this case? I understand your position how you got here through no fault of your own at  
2546 the last minute. Any other comments by members of the Board? There is a motion on  
2547 the table to defer it till the next meeting, by Mr. McKinney, and the Chairman seconded  
2548 it. We've had some discussion by council and members of the Board. Any other  
2549 discussion? Those in favor of deferring it to the next meeting, say aye. Any opposed?  
2550

2551 Upon a motion by Mr. McKinney, seconded by Mr. Balfour, the Board **denied** the motion  
2552 to **defer the hearing** of application **A-21-2003** to the next meeting on March 27, 2003.  
2553

2554	Affirmative:	McKinney	1
2555	Negative:	Balfour, Kirkland, Nunnally, Wright	4
2556	Absent:		0

2557  
2558 Mr. Balfour - Since it is not deferred, then Mr. Dawson, are you ready to  
2559 go?  
2560



2561 Mr. Dawson - The main point of controversy seems to be about this  
2562 definition of adult business. There's a separate definition for adult bookstore in the  
2563 ordinance 15-158. Adult business covers, in the definition, "adult bookstores, adult  
2564 video stores, adult motel studios, adult motels, adult movie theaters, adult night clubs,  
2565 adult stores, and business providing such entertainment." Adult bookstore or video  
2566 stores is defined separately as an "establishment having as a substantial or significant  
2567 portion of its stock in trade, books, magazines or other periodicals, videotapes,  
2568 computer disks, CD-ROMs, DVD-ROMs, virtual reality, or similar media that are  
2569 distinguished or characterized by their emphasis on matters depicting, describing,  
2570 relating, to specified sexual activities, or specified anatomical areas." Gold City has one  
2571 business license. It's main application on appeal has been referred to adult business  
2572 establishment; it's one business operating there. I think what the County seeks to do is  
2573 to take and say, "no, they're operating an adult bookstore, because part of what they do  
2574 at this adult business is sell some adult merchandise." Now my client is here to testify  
2575 that they sold adult merchandise since the day one when they opened the store, which  
2576 preceded the date of this zoning enactment. They didn't have it out on the counter as  
2577 you go into the store, like they do now, but they had it in vending machines, but it was  
2578 still sold on the premises. There was no indication that they were doing anything wrong  
2579 by selling that at the time that they got their business license to operate. They've been  
2580 selling it all along, and it's only a small portion of the overall adult business that  
2581 operates there. What the County wants to do, and the reason that they want to divide  
2582 or segregate up the businesses within the establishment, is so that they can comply  
2583 with the requirement for adult bookstores, saying that it has to have a substantial or  
2584 significant portion of their stock in trade. The way the County's trying to do it is, if they  
2585 sold one video, and that was all that they had, and they separated that off and said they  
2586 were adult business, and that was their stock in trade, one adult video would be a  
2587 substantial portion of the stock in trade if you divide that business out from the overall  
2588 business. They're a dance club; they have dancers there. It's a restaurant. That's  
2589 what the business is. There's been no effort made to determine whether the sales from  
2590 adult material, merchandise, comes anywhere close to matching the sales that they get  
2591 from selling food and liquor and providing the entertainment, the dancing entertainment,  
2592 in the club. My client's here to testify that they probably get less than \$500 a year from  
2593 the sale of those items, whereas, the business portion gets many, many, many times  
2594 that.

2595  
2596 Mr. Balfour - Why is the violation bothering you?

2597  
2598 Mr. Dawson - Because the County wants to stop them from selling adult  
2599 videos when they're still operating the restaurant. They don't want them to have that  
2600 there.

2601  
2602 Mr. Balfour - If I understood you, that's only \$500 a year, then why not  
2603 stop it and be done with it, have the restaurant and whatever else is there.

2604  
2605 ***[Voice from the audience]***

2606

2607 Mr. Balfour - We can't hear you, and we don't know who you are.  
2608  
2609 Mr. White - My name is Mark White, and I'm Mr. Dawson's client, and  
2610 we do not wish to stop selling that product, because it's legally sellable at our location.  
2611  
2612 Mr. Balfour - I don't know whether it is or not; that's one thing we're going  
2613 to determine.  
2614  
2615 Mr. White - The ordinance clearly allows for a non-significant, non-  
2616 substantial portion of your stock in trade to be sold as adult products. It clearly allows  
2617 that. So the sale of one adult video in the place, in conjunction with all the other  
2618 activities, is certainly permissible by the ordinance. What the question really here today  
2619 is how much, how much.  
2620  
2621 Mr. Wright - I'm confused. I'm looking at the violations, and I think we've  
2622 got to get this thing in order. What are we talking about? Are you talking about the  
2623 notice of the sale of adult merchandise within 500 feet of a residential zoning district, in  
2624 violation of Section 24-65(a) of the Henrico County Code? Is that what you're talking  
2625 about?  
2626  
2627 Mr. Dawson - That one. That's the only one that pertains to the adult  
2628 merchandise. The after-12 midnight was withdrawn.  
2629  
2630 Mr. Wright - Which one did they withdraw?  
2631  
2632 Mr. Dawson - They withdrew the one about selling after 12 midnight.  
2633  
2634 Mr. Wright - So we're dealing with sales of adult merchandise within 500  
2635 feet of a residential zoning district.  
2636  
2637 Mr. Dawson - Operating an adult business, the way the ordinance is, I read  
2638 .....  
2639  
2640 Mr. Wright - I'm looking at the notice. I've got before me is "sale of adult  
2641 merchandise within 500 feet of a residential zoning district, in violation of Section 24-65  
2642 (a)(1) of the Henrico County Code." Does the Henrico County Code, Section 24-65  
2643 (a)(1), deny the ability of this business to sell adult merchandise within 500 feet of a  
2644 residential district. Isn't that the issue before us on that one? I want to get this thing  
2645 straight.  
2646  
2647 Mr. Dawson - I think it is, partially .....  
2648  
2649 Mr. Wright - Partially? The ordinance says you cannot sell adult  
2650 merchandise within 500 feet of a residential zoning. Does it or does it not say that?  
2651

2652 Mr. Dawson - I don't believe that it does, in my quick scan of the  
2653 ordinance.  
2654  
2655 Mr. Wright - Have you got a copy of the ordinance? Let's get the  
2656 ordinance here.  
2657  
2658 Mr. McKinney - That was written on January 10, 2003.  
2659  
2660 Mr. Dawson - I believe it's in M-1.  
2661  
2662 Mr. Tokarz - Members of the Board, I have got the ordinance. If I could  
2663 distribute them to Mr. Blankinship, we can look at it.  
2664  
2665 Mr. Nunnally - Do I gather the fence requirement and the video requirement  
2666 are not something you are concerned about today?  
2667  
2668 Mr. Tokarz - We are concerned about the fence requirement; we are  
2669 concerned .....

2670  
2671 Mr. Nunnally - How about Mr. Dawson? He didn't mention those two a  
2672 minute ago.  
2673  
2674 Mr. Dawson - My client will tell you what he's done about the fence. He's  
2675 taken some steps already, with regard to that. But that condition existed before he  
2676 purchased the business.  
2677  
2678 Mr. Balfour - Let's don't jump around. I think Mr. Wright wants to get this  
2679 one straight. I just was asking that while we're in there.  
2680  
2681 Mr. White - To answer one of the Board member's questions, to say that  
2682 adult merchandise can't be sold within 500 feet of every residence, would make Barnes  
2683 and Nobles in violation of every zoning ordinance, every mom and pop video store that  
2684 carries a Playboy video. The amount of the reach of the extension of what you're  
2685 suggesting, it would encompass businesses that are certainly not adult businesses,  
2686 Barnes and Nobles at Pump and Broad, the brand new store, sells Playboy, Penthouse;  
2687 all of those materials are adult merchandise, and I don't believe the County has any  
2688 objection to them selling those.  
2689  
2690 Mr. Dawson - The ordinance itself doesn't say specifically you can't sell  
2691 adult videos within 500 feet; it says that an adult business shall be located at least 500  
2692 feet from a residential.  
2693  
2694 Mr. Wright - That's my point. The notice says that you're violating the  
2695 sale of adult merchandise, and the ordinance says – is this the ordinance that we're  
2696 relying on, Mr. Tokarz?  
2697

2698 Mr. Tokarz - This is part of it, but unfortunately Mr. Dawson hasn't told  
2699 you about the whole story. If I could tell you about the rest of the story, the ordinance  
2700 that I've given you is adult business, is (Section) 24-65(n)(1), and this is the current  
2701 language, which says that in addition to all other requirements, any adult business shall  
2702 conform to the following requirements. And this is, "1. That the business shall be  
2703 located at least 500 feet away from any residential or agricultural zoning district," and  
2704 that is the situation that's involved here. In order to apply this, you need the rest of the  
2705 ordinance that was passed at the time that this was enacted, and I have that for the  
2706 Board as well.

2707  
2708 This is an ordinance; I'll let you look at it here, if Mr. Dawson will allow me just to walk  
2709 you through the ordinance, I'll explain to you how all this fits together.

2710  
2711 Mr. Balfour - Mr. Dawson, we're kind of going out of order here, but do  
2712 you mind if he talks us through these ordinances?

2713  
2714 Mr. Dawson - Not at all.

2715  
2716 Mr. Wright - Right off the bat, Mr. Tokarz, is this business located within  
2717 500 feet of a residence?

2718  
2719 Mr. Tokarz - Yes sir.

2720  
2721 Mr. Wright - How long has it been there? Why is this just coming up  
2722 today? How long has this business been there?

2723  
2724 Mr. Tokarz - The reason it's coming up today is because the restaurant  
2725 and the bar and the dancing was permitted as a lawful, nonconforming use. What is  
2726 new .....

2727  
2728 Mr. Wright - Permitted by whom?

2729  
2730 Mr. Tokarz - Permitted under the zoning ordinance. It's a B-3 District. It  
2731 was a permitted use prior to the adoption of zoning ordinance amendments. What is  
2732 new, and what has just come to the County's attention in the last 2 months, is the sale  
2733 of adult videos, adult books, and adult sex toys. That is what is new, that came to the  
2734 County's attention in December. Mr. Short, who's prepared to testify, will testify that he  
2735 came out on January 10, 2003, and observed that material and wrote the notice of  
2736 violation. What is new is the fact that this was never done before, and it is in violation of  
2737 the ordinance which was enacted on February 12, 2002, which is what I passed out as  
2738 the second exhibit to you. If I might, I'll walk you through it, just to show you how we get  
2739 to where we get. The term "adult business" is defined on page 3 of 7 of the February  
2740 12. An "adult business" says, "Any adult bookstore, and other terms are defined in  
2741 there .....

2742  
2743 Mr. Wright - Where are you reading from now?

2744  
2745 Mr. Tokarz - (Section) 24-3, on page 3 of 7. First definition added to the  
2746 ordinance was Adult Business. And the first term included in that definition is "adult  
2747 bookstore." Now adult bookstore .....

2748  
2749 Mr. Wright - Are you saying, is it located, or is it the sale? You're after  
2750 the sale, it says here in your notice.

2751  
2752 Mr. Tokarz - Yes sir. The sale of materials in an adult bookstore is what  
2753 is the violation of the ordinance.

2754  
2755 Mr. Wright - What does the ordinance say?

2756  
2757 Mr. Tokarz - The ordinance says, "Any adult business shall conform to  
2758 the following requirements: the business shall be located at least 500 feet away."

2759  
2760 Mr. Wright - That's not what your notice says.

2761  
2762 Mr. McKinney - The notice says "the sale."

2763  
2764 Mr. Wright - It says "sale." Why doesn't it say, they can't conduct, it's not  
2765 a business located within 500 feet. I'm having problems with that.

2766  
2767 Mr. Tokarz - Well sir, it's the County's position that the sale of adult  
2768 merchandise constitutes the conduct of an adult business, which is required to be 500  
2769 feet away from a residential zone.

2770  
2771 Mr. Nunnally - If they're not doing what you've got a notice for, would it just  
2772 be a restaurant and a bar, is that what you're telling us? That's accepted where they're  
2773 located?

2774  
2775 Mr. Tokarz - That's right. That was a lawful, nonconforming use.

2776  
2777 Mr. Nunnally - But they added a few new Christmas ornaments to it now, to  
2778 make it more than just a restaurant and bar, to where you're suggesting it's a business;  
2779 and either they've got to move, because they'll be within 500 feet, or they've got to stop  
2780 doing this extra stuff, is that what you're saying?

2781  
2782 Mr. Tokarz - Exactly. It is not the fact that they have to close the bar and  
2783 the dancing; it is the sale of the videos and the adult toys and the books that is in  
2784 violation of the ordinance, and that is .....

2785  
2786 Mr. Nunnally - And now they fit the definition of an adult business, where  
2787 they didn't before, is that what you're saying?

2788

2789 Mr. Tokarz - What is new is the opening of a new use, which is an adult  
2790 bookstore, and the only things that are being sold that are at issue are adult books,  
2791 adult videos, and a adult sex toys.

2792  
2793 Mr. Nunnally - I'm with you.  
2794

2795 Mr. Tokarz - That is the violation, and the only violation with respect to  
2796 that notice, that is before you. This would not result in closing Gold City. It would  
2797 prevent them from opening an adult bookstore and operating it 60 feet away from an  
2798 adjacent residence, which is what the situation is right now. And I understand Mr.  
2799 White's contention that it's improper for the Board of Supervisors to regulate this, but  
2800 that's the decision for the governing body to make. They've made a decision that there  
2801 will be no adult bookstore with 500 feet. The only stock in trade of the adult bookstore  
2802 use, and there are multiple uses on this property, some of which are legal, some of  
2803 which are not -- the only stock in trade for the adult business use, which we contend,  
2804 should be located 500 feet away, are the adult videos, or the adult sex toys and the  
2805 adult books. This is not a Barnes and Noble situation; the Barnes and Noble situation is  
2806 entirely different, because the Barnes and Noble situation involves the sale of a small  
2807 percentage of materials that may fall within the definition of adult merchandise, in the  
2808 context of a bigger stock in trade. Here, all of their stock in trade, for the adult  
2809 bookstore use, is adult merchandise, and that's why the definition applies. How we get  
2810 to 24-65(1) is through the definition of adult bookstore, which is part of the definition of  
2811 adult business, and it is that new activity that is the subject of the notice before the  
2812 Board.

2813  
2814 Mr. McKinney - On this 4-7 adult motel, and motel, hotel, similar commercial  
2815 establishment (*unintelligible*), closed circuit television transmission, motion pictures.  
2816 Isn't there one of those right down the street from this, right before you get to Hilliard  
2817 Road, that has closed circuit adult films?

2818  
2819 Mr. Tokarz - I don't know if they have them, but the other part of the  
2820 definition, Mr. McKinney, is it also has to advertise the availability of the sexual oriented  
2821 type of material by means of a sign visible from the public right-of-way.  
2822

2823 Mr. McKinney - I think I've seen, I could be mistaken, waterbeds, adult  
2824 videos, on the marquee for this motel, right down the street, which is right behind that  
2825 motel, and it's residential.  
2826

2827 Mr. Tokarz - It may be, and if that were meeting the definition of an adult  
2828 motel, and the County receives a complaint, we would take the same action with  
2829 respect to that motel.  
2830

2831 Mr. McKinney - But however that motel would be grandfathered in.  
2832

2833 Mr. Tokarz - It depends. It would depend on what all the facts of that  
2834 situation were. What's different here is, that this use, the sale of adult videos, did not  
2835 start until after the ordinance came into effect.

2836  
2837 Mr. McKinney - They're saying that they had it prior to.

2838  
2839 Mr. Tokarz - Well, we know that that's not the case, Mr. McKinney, and  
2840 I've got witnesses from the police department here, and Mr. Short, and in addition, I  
2841 would also tell you, that if they were doing that, that would have been illegal under the  
2842 1999 ordinance, which I would like to tender to the Board at this point. The purpose for  
2843 tendering this to the Board is to indicate that this in no way was ever a lawful use. I'll  
2844 explain this ordinance to you if I may.

2845  
2846 This ordinance, the third exhibit that I passed out, was passed on October 12, 1999,  
2847 and this was the County's first regulation of adult bookstores per se, and I'll direct your  
2848 attention to page 2 of 5, down at the bottom of the page, Section 15-159, which says  
2849 "permit required from the Chief of Police." Section "a" says that "every person either  
2850 operating or desiring to operate an adult bookstore or adult video store, in addition to  
2851 obtaining a business license from the Director of Finance, shall apply to the Chief of  
2852 Police or his designee, for a permit to conduct such activity." Gold City has never  
2853 applied for such a permit. Therefore, its operation as an adult bookstore has been  
2854 illegal from the inception. Therefore, it is unable to claim the benefit of a lawful,  
2855 nonconforming use, and for that reason, is prohibited by the County Code. I have  
2856 officers from the Division of Police who are here to testify that they do not have a permit.  
2857 I don't know that that's even an issue at this point. So what we have here is an adult  
2858 bookstore being operated at Gold City. It is new, since the time of the passage of the  
2859 October 12, 1999, ordinance, since the time of the February 12, 2002, ordinance, and  
2860 we are simply asking that that business, that use be stopped. It does not preclude Gold  
2861 City from continuing to operate, but it does preclude them from continuing to offer the  
2862 sale of adult videos, adult books, and adult merchandise at that location. They can  
2863 operate at any other location as long as they meet the distance requirements.

2864  
2865 Mr. Balfour - Let's hear from Mr. Dawson, and then we've got a couple of  
2866 other people in the audience who may want to testify too.

2867  
2868 Mr. Dawson - First of all, if they say that this is something just starting in  
2869 the last couple of months, going back to September 4, 2002, there was an adult  
2870 business site checklist conducted by the Henrico Division of Police, and I point out  
2871 specifically .....

2872  
2873 Mr. Wright - What date was that?

2874  
2875 Mr. Dawson - September 4, 2002.

2876  
2877 Mr. Wright - When was this ordinance adopted -- March 2002. That was  
2878 before September.

2879  
2880 Mr. Dawson - This one had adult merchandise not visible from outside --  
2881 yes; adult merchandise in separate room -- yes. My client will testify that they had  
2882 merchandise in vending machines before that. It is not just adult video books and adult  
2883 things that are sold there. They sell lingerie, they sell condoms, and they sell things of  
2884 an adult nature. Videos are only one part of it. They have done nothing to determine  
2885 either the quantity or the amount of profit or whether it's a substantial portion of the  
2886 stock in trade. They are an adult business. There's no question but that they can  
2887 conduct adult business there, even though it's within 500 feet, because they opened the  
2888 adult business before the date that that ordinance took place. What we're saying is that  
2889 an adult business covers all those other matters. In fact, whether or not we can  
2890 determine at what point they started selling adult videos in the store, it's only a small  
2891 portion of the overall business. With the overall business being the operation of a  
2892 restaurant and bar that has dancers, you have to look at part of their stock in trade is  
2893 the food and liquor that they have on the premises. That's part of the adult business.  
2894 That's why the County wants to divide it up and say that this is a business separate from  
2895 this business. There's no separate business license for it. You obtain one business  
2896 license for the premises. And I submit that, I'm going to have my client testify in a  
2897 minute. Even the 1999 ordinance that he refers to, contains the same definition as  
2898 having a substantial or significant portion of its stock in trade. That's not the situation  
2899 here. This is not an adult bookstore. It is an adult restaurant. The fact that they sell  
2900 some adult books in there doesn't mean it's an adult bookstore. I submit you can't  
2901 divide it up that way, because they've already been operating as an adult business, that  
2902 they should be allowed to continue to do so. There are some things with regard to the  
2903 surveillance camera that I'm going to have Mr. White tell you.

2904  
2905 Mr. Wright - Is it your position then, that this ordinance, Section 15-  
2906 159(a), about getting a permit from the Chief of Police, you're not required to do that, is  
2907 that what you're saying, not as a bookstore?

2908  
2909 Mr. Dawson - All they have to do is apply for the adult business license,  
2910 which they have, and that matter is still pending.

2911  
2912 Mr. Wright - Give us some idea. You say that your position is that you  
2913 are not an adult bookstore or video store, because it is not a substantial or significant  
2914 portion of its stock in trade. How would you characterize what is a substantial or  
2915 significant portion of your stock in trade?

2916  
2917 Mr. Dawson - The majority of their profits come from that.

2918  
2919 Mr. Wright - Can you give us some idea?

2920  
2921 Mr. Dawson - Even better than 50 % would be a substantial portion.

2922  
2923 Mr. Wright - I've got to get some feel for how much, what are your sales  
2924 from the adult merchandise?



2925  
2926 Mr. White - I think that it's appropriate for us to talk about the stock in  
2927 trade that's held, not even necessarily what's sold or not, because I'll tell you we sell  
2928 very little of it, but the ordinance itself does not talk about how much did you sell, or the  
2929 revenues generated from it.  
2930  
2931 Mr. Wright - It says a "substantial portion" .....

2932  
2933 Mr. White - Of your stock in trade, the merchandise that's held for sale.  
2934 To answer your question to that, we don't know. We don't know. We're asking. Why  
2935 don't you guys just tell us what substantial/significant means; we'll comply with it and  
2936 we'll get out of here. It's that simple. But the County doesn't want to make it that  
2937 simple. They want to say carrying one adult video makes you an adult bookstore and  
2938 an adult video store, whether you're Barnes and Nobles or anybody else, at least  
2939 according to what I have. Mr. Tokarz saying that we did not apply for a permit to  
2940 operate as an adult business, which included a small portion of our business as adult  
2941 retail products, is incorrect. If he'd refer back to the license application, it does explicitly  
2942 state exactly what we're doing today, and when the Chief of Police .....

2943  
2944 Mr. Wright - When was that filed?  
2945

2946 Mr. White - That was filed sometime right after the enforcement or the  
2947 ordinance, the first week of August, August 7, August 10, August 13, somewhere early  
2948 in August we applied for and disclosed to the County that we intended to be an adult  
2949 business with a substantial amount of our business being exotic dancing, food and  
2950 beverage, that sort of thing, with a small percentage of our business being adult retail.  
2951 The Chief of Police denied that permit for various reasons, but never once did he deny it  
2952 because of it being substantial or significant.  
2953

2954 Mr. Wright - Give me an idea of what the proportion is; that's what I'm  
2955 trying to find out. A percentage.  
2956

2957 Mr. White - The building is about a 5,500 square foot building, and we  
2958 dedicate less than 500 square feet to that use right now. So it's less than 10 % of the  
2959 overall floor space of the entire building.  
2960

2961 Mr. Wright - How about your sales?  
2962

2963 Mr. White - Less than \$1,000 a month.  
2964

2965 Mr. Wright - As compared to what?  
2966

2967 Mr. White - Substantially more as a club.  
2968

2969 Mr. Wright - Give me some idea of what does the \$1,000 compare to?  
2970

2971 Mr. White - So you want to know the sales of Gold City?  
2972  
2973 Mr. Wright - Roughly, approximately.  
2974  
2975 Mr. White - Roughly half a million dollars a year.  
2976  
2977 Mr. Wright - And how much a year is derived from the sales of this adult  
2978 business?  
2979  
2980 Mr. White - Less than 1%.  
2981  
2982 Mr. Wright - You're saying that less than 1% is for the sale of the adult  
2983 video and adult merchandise?  
2984  
2985 Mr. White - Yes sir. You're qualifying as adult merchandise, I will say  
2986 this, that all the products that the County freaked out about by being in this store, are  
2987 not all adult products. There are thousands of dollars of lingerie and costumes, that are  
2988 available for sale to the entertainers and for the customers to buy for the entertainers.  
2989 There were lotions, lubes, condoms, you know, many articles and merchandise that you  
2990 would not even be defined as adult merchandise as per the Code. The County is sitting  
2991 here trying to tell you that 100% of that product is adult merchandise, and that's  
2992 absolutely incorrect.  
2993  
2994 Mr. Dawson - The only thing the County ordinance deals with is videos,  
2995 books, movies, things like that. What I think he's trying to say is there are other things  
2996 that are sold there as well that should be part of this. You see, the County can't tell  
2997 what, because they never searched any records to determine whether this was a  
2998 substantial portion of their business or their stock in trade. They sell condoms; they sell  
2999 adult toys; they sell lingerie, all of these things, and it's difficult to determine what  
3000 percentage of that, but food and beer in the restaurant is part of the merchandise that  
3001 they sell as well. All of this is under one umbrella, one business license, and they  
3002 already existed in this capacity before the enactment of this ordinance. Do you want to  
3003 deal just with this before we deal with the fence and the other issue?  
3004  
3005 Mr. Balfour - If you can cover those quickly, because I don't gather they're  
3006 as important as the other two.  
3007  
3008 Mr. White - Very simply, the two fence issues, I believe, are the one on  
3009 the back of the property line, and the one to enclose the dumpster. They were all part  
3010 of plans submitted 20 years ago, that I've never even seen. I've asked for the plans  
3011 before. They told us they could not give us the plans. They're asking us to do things  
3012 that we've never seen any written confirmation that they have to be done, and it was the  
3013 responsibility of prior owners. The dividing fence along the back is an 8-foot fence; it is  
3014 there. I guess it's cosmetically not appealing to the County, and they want us to replace  
3015 it. The screening on the dumpster -- we don't feel like we're responsible for it, but I'll tell

3016 the Board right now, if you give us 30 days, we'll screen the dumpster in, and we'll  
3017 replace the fence, and that'll end those issues for us here today.

3018  
3019 Mr. Balfour - How about your video camera and security system?

3020  
3021 Mr. White - Camera system? It is there; it's installed. It's being  
3022 recorded, and we've made leaps and bounds of progress in that security system since  
3023 being inspected by the County.

3024  
3025 Mr. Balfour - You're saying they can inspect it again, and it won't be a  
3026 violation?

3027  
3028 Mr. White - I think if they come out now and tell us exactly what we're  
3029 missing, that we can comply with the security system requirement, under protest (we  
3030 don't feel like it's appropriate), but nonetheless, we'll comply with it to get past these  
3031 issues and to the more relevant issues.

3032  
3033 Mr. Balfour - You're saying that you'll comply with those two. Does that  
3034 suit you, Mr. Tokarz?

3035  
3036 Mr. Tokarz - Our desire is to have voluntary compliance when we can.  
3037 We would be happy to have voluntary compliance. We will be happy to. We will hold  
3038 Mr. White, though, to the 30 days.

3039  
3040 Mr. Balfour - Okay, we have those two taken care of. Okay, 30 days for a  
3041 new fence, and come look at his security system. All right, let's get back to the other  
3042 issues.

3043  
3044 Mr. Wright - So now we're down to the adult merchandise.

3045  
3046 Mr. Balfour - We've got two people in the audience, Mr. Tokarz. Do you  
3047 want them to speak first, or do you want to go?

3048  
3049 Mr. Tokarz - If I could address the legal part, and then they can tell you  
3050 about whatever they'd like to tell you, but I think it's important because the Board is a  
3051 quasi-judicial board, to at least have the benefit of the ordinances that are before you. I  
3052 have Mr. Short, and I have an officer from the Division of Police, who will both testify to  
3053 you, and I'll have them come up in just a minute, that there has not been this massive  
3054 sale of merchandise available to the public that Mr. White has just testified to. Has not.  
3055 They will testify to what has been available in the past, which is cigarette lighters having  
3056 naked women on them, in one vending machine. They will testify that until just the last  
3057 two months, there were never adult videos on sale, there were never adult magazines  
3058 on sale, and there were never adult sex toys on sale. The issue really before you is  
3059 this: Mr. Dawson would like you to believe that the adult business definition and the  
3060 adult bookstore definition should apply to sale of food and to revenue from cover  
3061 charges from people coming in to the bar to watch the dancers. That is not the

3062 definition that is before you. The definition that is before you specifically refers to a  
3063 substantial or significant portion of its stock in trade. And the definition of "stock in  
3064 trade" is really very simple. It is what you offer for sale to the public; it is inventory. You  
3065 don't count cover charges; you don't count drinks that you sell to the public; you don't  
3066 count food that you sell to the public. You count what you lay out for people to  
3067 purchase. I'll call Mr. Short at this point, who's the zoning inspector, to tell you what he  
3068 did observe, and what he has observed in the past, and I'll ask you to tell both prior to  
3069 March 12, 2002, when the Board enacted the Adult Business Ordinance, and what  
3070 you've observed after that fact.

3071  
3072 Mr. McKinney - Quick question, Mr. Tokarz. Mr. White said he had a report  
3073 from the Police Department stating that that was on the premises, is that correct?  
3074

3075 Mr. Tokarz - Excuse me one second. We'll have a police officer who will  
3076 testify to that, sir, but that refers only to cigarette lighters and one vending machine. It  
3077 does not refer to magazines; it does not refer to sex toys.  
3078

3079 Mr. McKinney - I thought I heard him read off of that report, that it was  
3080 magazines and so forth.  
3081

3082 Mr. Tokarz - That's not correct, sir.  
3083

3084 Mr. McKinney - Okay.  
3085

3086 Mr. Short - My name is John Short. How are you doing this morning?  
3087 I'm a Planning Enforcement Officer for Henrico County.  
3088

3089 Mr. Tokarz - Tell the Board how many times you've been in Gold City.  
3090

3091 Mr. Short - I have been in Gold City, just estimating, probably ten times  
3092 or more.  
3093

3094 Mr. Tokarz - And prior to March 12, 2002, when the Board enacted the  
3095 last adult business ordinance, were there ever any sales of adult videos, adult  
3096 magazines, or adult sex toys?  
3097

3098 Mr. Short - No sir, I have never seen any.  
3099

3100 Mr. Tokarz - And prior to December 2002, had you ever seen any adult  
3101 merchandise, such as magazines, videos or sex toys?  
3102

3103 Mr. Short - No sir.  
3104

3105 Mr. Tokarz - Had you ever seen any lingerie or condoms or lubes, or  
3106 anything else Mr. White referred to, on display for sale to the public in Gold City, prior to  
3107 December 2002?

3108  
3109 Mr. Short - No, I have not.  
3110  
3111 Mr. Tokarz - All right, sir.  
3112  
3113 Mr. McKinney - Question, Mr. Tokarz. Mr. Short, the ten times that you were  
3114 in there, what times of day were they? Were they Monday through Friday, did they  
3115 include Saturday and Sunday? Was it during the day, was it during the night?  
3116  
3117 Mr. Short - It varies. I've been in there sometimes during the evenings.  
3118  
3119 Mr. McKinney - By evenings, you're speaking of after 6:00 o'clock?  
3120  
3121 Mr. Short - Yes sir. I've been there after 12:00 o'clock.  
3122  
3123 Mr. McKinney - At night?  
3124  
3125 Mr. Short - Yes sir.  
3126  
3127 Mr. Blankinship - One of the complaints that Mr. Short was asked to  
3128 investigate, had to do with parking, and of course their parking was most congested in  
3129 the evenings, so we actually authorized overtime for him to go out there in the evening  
3130 and inspect then.  
3131  
3132 Mr. McKinney - Okay, I just wanted to find out if he was working overtime. I  
3133 didn't mean to stop you, Mr. Short, if you had anything else to add.  
3134  
3135 Mr. Tokarz - No sir, I don't have anything else I'd ask him at this point to  
3136 add.  
3137  
3138 Mr. Dawson - May I ask a question?  
3139  
3140 Mr. Balfour - I think Mr. Dawson, the appropriate way is to ask us a  
3141 question to ask him. We don't really allow a cross-exam, but you certainly can ask us to  
3142 ask him.  
3143  
3144 Mr. Dawson - I would like you to ask him if he saw the vending machine, if  
3145 the vending machine had adult videos in it, if there was a vending machine that sold  
3146 condoms.  
3147  
3148 Mr. Balfour - When would you ask if he saw them, before or after  
3149 December?  
3150  
3151 Mr. Dawson - When he was in there before the enactment of the  
3152 ordinance.  
3153

3154 Mr. Balfour - Did you see such a machine in there that had those items in  
3155 it prior to the passage of this ordinance?  
3156  
3157 Mr. Short - I did not, sir, but that's not what I was inspecting at the time,  
3158 so I didn't look for them.  
3159  
3160 Mr. Wright - So you're not sure whether there was one in there or not?  
3161  
3162 Mr. Short - No sir, I cannot say there was.  
3163  
3164 Mr. Tokarz - Identify yourself for the Board.  
3165  
3166 Officer Dooley - My name is Mike Dooley. I'm a police officer for the Henrico  
3167 County Special Enforcement Unit.  
3168  
3169 Mr. Tokarz - Have you conducted an inspection of Gold City?  
3170  
3171 Officer Dooley - I did.  
3172  
3173 Mr. Tokarz - And when did you do that, approximately?  
3174  
3175 Officer Dooley - The end of August 2002.  
3176  
3177 Mr. Tokarz - And did you see any adult videos, adult sex toys, or adult  
3178 books on sale or on display for sale at that time?  
3179  
3180 Officer Dooley - No sir.  
3181  
3182 Mr. Tokarz - Did you see any vending machines at that time?  
3183  
3184 Officer Dooley - Yes sir, by the front door?  
3185  
3186 Mr. Tokarz - How many did you see?  
3187  
3188 Officer Dooley - There was just one.  
3189  
3190 Mr. Tokarz - And what was in the vending machine that you observed?  
3191  
3192 Officer Dooley - What I believed was a lighter with a naked female on it.  
3193  
3194 Mr. Tokarz - Did you inspect all the premises when you did your  
3195 inspection? And your inspection was for the purpose of determining whether the  
3196 business was in compliance with the Adult Business Ordinance, is that correct?  
3197  
3198 Officer Dooley - Yes sir. Yes sir.  
3199

3200 Mr. Wright - Was it in compliance at that time?  
3201  
3202 Officer Dooley - No sir.  
3203  
3204 Mr. Tokarz - Was the permit application denied?  
3205  
3206 Officer Dooley - Yes sir.  
3207  
3208 Mr. Balfour - What was the lack of compliance at that time?  
3209  
3210 Officer Dooley - There were several issues. One was, we were still waiting to  
3211 see if the zoning issue as far as the distance between the business and a residence, the  
3212 camera system – there was a direct-feed camera.  
3213  
3214 Mr. Wright - We were talking about the adult videos and books. Was  
3215 there any violation of that at that time?  
3216  
3217 Officer Dooley - No sir.  
3218  
3219 Mr. Balfour - Any other questions by Board members?  
3220  
3221 Mr. Dawson - I have a question of Mr. Dooley. He inspected in August of  
3222 2002. I was wondering if he had been in there and inspecting before that date, when  
3223 they opened in July of 2001, to say whether or not they had any more adult  
3224 merchandise in there at that time, which is what our contention was, that we had it from  
3225 the very beginning of the restaurant?  
3226  
3227 Mr. Balfour - Did you go in there prior to your visit in August?  
3228  
3229 Officer Dooley - The one and only time I've been there was that day that I  
3230 was asked to go down there and do the inspection.  
3231  
3232 Mr. Dawson - And this lighter is the only thing he saw in a vending  
3233 machine?  
3234  
3235 Mr. Balfour - Is that the only thing you saw in there?  
3236  
3237 Officer Dooley - That's the only thing I remember.  
3238  
3239 Mr. Wright - What type of vending machine is it?  
3240  
3241 Officer Dooley - It looks like an old type cigarette machine, when you could  
3242 go into some of the hotel lobbies, and you'd see all the cigarettes?  
3243  
3244 Mr. Balfour - But all this had was a lighter in it?  
3245

3246 Officer Dooley – That’s all I remember. I was walking out the door.  
3247  
3248 Mr. Wright - Could it have had anything else in there?  
3249  
3250 Officer Dooley - There were other items in there; I really didn’t pay attention  
3251 to what exactly was in there.  
3252  
3253 Mr. Wright - So there could have been other items that you didn’t pay  
3254 attention to?  
3255  
3256 Mr. Balfour - Mr. Tokarz, is that it for the moment?  
3257  
3258 Mr. Tokarz - Unless there are questions about the interpretation of the  
3259 ordinance. I think really, the question for the Board is this. It’s whether you are going to  
3260 accept Mr. Dawson’s interpretation of the definition of “adult bookstore” as  
3261 encompassing the sale of drinks, the sale of food, and cover charges, or whether you’re  
3262 going to read the definition to be limited to defining whether a substantial portion of the  
3263 stock in trade is to be applied. In our view, the stock in trade that is referred to in this  
3264 definition talks about the books, magazines, periodicals, videotapes, computer disks,  
3265 etc., and all the evidence that you have at this point is, that it’s all adult merchandise.  
3266 I’d also point out for your .....  
3267  
3268 Mr. Balfour - You’re saying then that you want to exclude the food, the  
3269 bar, and the drinks?  
3270  
3271 Mr. Tokarz - Absolutely.  
3272  
3273 Mr. Balfour - There are two businesses here in your mind.  
3274  
3275 Mr. Tokarz - There are three businesses. There is a bar, there is a  
3276 restaurant, and there is adult – the two uses I’ve already told the Board, are appropriate,  
3277 legal, non-conforming uses. What is not lawful or non-conforming is the sale of adult  
3278 merchandise as part of an adult business on the premises. This did not occur prior to  
3279 October 12, 1999, or February 12, 2002, and for that reason, it is prohibited.  
3280  
3281 Mr. Balfour - And you’re not saying it’s an adult nightclub, under that  
3282 definition?  
3283  
3284 Mr. Tokarz - We’ve not cited them for being an adult nightclub. We  
3285 believe that they are entitled to operate the exotic dancing in compliance with other  
3286 requirements of the County Code, but that has not been cited as a violation of the  
3287 Zoning Ordinance. That really is the only thing that is before you today.  
3288  
3289 Mr. Balfour - Are you expecting us to put words in the ordinance that’s not  
3290 there?  
3291



3292 Mr. Wright - Why are the words "stock in trade" in the ordinance then?  
3293 Why does it read, "video, computer disks, portions of books, magazines, or other  
3294 periodicals" – what does "stock in trade" do then?  
3295

3296 Mr. Tokarz - It distinguishes an adult bookstore, where the emphasis is  
3297 on materials that are of an adult nature, from other bookstores.  
3298

3299 Mr. Wright - You're saying it should read, "a portion of its stock in trade,  
3300 that is books, magazines, .....,," in other words .....

3301  
3302 Mr. Tokarz - Yes sir, what we're saying is, if you have inventory of books,  
3303 magazines, etc., and a substantial portion of them, which by administrative guideline is  
3304 15%, then that fits within the definition of an "adult bookstore." Now the trigger for this,  
3305 the importance of this, is simply this: if you are an adult bookstore, you are still allowed  
3306 to operate, but you have to meet distance requirements in the zoning ordinance, and  
3307 you have to get a permit, and you have to meet other development standards  
3308 applicable. It's not that adult bookstore are prohibited in the County; it's that they have  
3309 to meet the zoning requirements for distance, display of merchandise, that type of thing.  
3310 All we're saying here is the reason "stock in trade" is used, is to distinguish it from  
3311 Barnes and Noble, where yes, I don't know if they have Penthouse and Hustler, or  
3312 whatever, but let's assume that they do. But given the inventory that Barnes and Noble  
3313 has, and our inspectors went out and inspected them at the time of this ordinance. It  
3314 did not rise to the level of 15% of their inventory, and they did not fall within the  
3315 definition of an adult bookstore. For those who have a significant inventory, and more  
3316 than 15 % of their stock in trade is adult merchandise, it would trigger the adult  
3317 bookstore requirements.  
3318

3319 Mr. Balfour - I understand the argument. I'm just not sure I agree you've  
3320 got three stores here. The ordinance is not really well written.  
3321

3322 Mr. Wright - It says "an establishment having a substantial or significant  
3323 portion of its stock in trade" – it doesn't have a comma there. If it doesn't mean  
3324 anything, then why is it in the ordinance? Looks like to me "stock in trade," "an  
3325 establishment having a significant portion of its stock in trade" would mean everything  
3326 that the establishment does. This is an establishment, isn't it? It's a nightclub.  
3327

3328 Mr. Tokarz - It is an establishment. I do disagree with you sir, when you  
3329 say that it includes everything that it does. "Stock in trade" is a term of art; it refers to  
3330 inventory.  
3331

3332 Mr. Wright - Then isn't whiskey or drink or food .....

3333  
3334 Mr. Tokarz - It is not for sale to the public. That is regulated by ABC. The  
3335 sale of food is regulated by the State Department of Health. You don't go into a  
3336 restaurant and pick food off of the counter and purchase it. It's not inventory for sale to  
3337 the public. It is served to the public, and it is not "stock in trade."

3338  
3339 Mr. Balfour - I understand your argument. I think the Board does. We've  
3340 got to decide whether we think that's a distinction with any difference. Yes sir.  
3341  
3342 Mr. Tokarz - With respect to the fence, we've taken care of the fence and  
3343 the security system, yes sir.  
3344  
3345 Mr. Balfour - I think we've settled that. The fence has 30 days, and the  
3346 security system's been taken care of. We've got to decide if we agree with you there's  
3347 one establishment here or three different establishments.  
3348  
3349 Mr. Tokarz - We're not saying it's not one establishment; it is one  
3350 establishment; it's multiple uses, and it is the use as an adult bookstore that is a  
3351 violation.  
3352  
3353 Mr. Balfour - I understand. Any other questions by Board members on  
3354 that distinction?  
3355  
3356 Mr. McKinney - Mr. Tokarz, you said that this constitutes 15% of their "stock  
3357 in trade"?  
3358  
3359 Mr. Tokarz - What I said was, or what I meant to say was, that the 15% is  
3360 the working number that we use to determine whether it was a substantial portion. It is  
3361 an administrative interpretation enacted by the County Manager at the time that this  
3362 ordinance was enacted.  
3363  
3364 Mr. McKinney - Referring to Barnes and Noble.  
3365  
3366 Mr. Nunnally - But we take your viewpoint as 100% in this case.  
3367  
3368 Mr. Tokarz - In this particular case, it is 100%.  
3369  
3370 Mr. McKinney - It is 100% of their stock in trade that they sell to the public.  
3371  
3372 Mr. Tokarz - That's correct. That's our position.  
3373  
3374 Mr. Blankinship - Could I ask Tom one question? We've heard a good bit  
3375 about a vending machine. If you went into a restaurant, bar, nightclub, whatever, and  
3376 saw a vending machine there, that sold whatever kind of merchandise, adult  
3377 merchandise, would that be an example of something that was not a significant or  
3378 substantial portion of their stock in trade?  
3379  
3380 Mr. Tokarz - Thank you for asking that question, because I think that also  
3381 goes to Officer Dooley's testimony, the fact that there was one vending machine selling  
3382 cigarette lighters and some other items, would not have triggered this adult bookstore  
3383 definition at all. The adult bookstore definition is not designed to get at incidental sale of

3384 adult items. It's designed to get at what's at issue here, where you put magazines and  
3385 videos and sex toys on display, for sale to the public, in the hallway, entering into the  
3386 facility. That's an entirely different situation, to having one vending machine off to the  
3387 side, selling cigarette lighters or something like that.

3388  
3389 Mr. Balfour - Mr. Dawson, our rules are that if you're on one side, you only  
3390 get to speak once, but if you've got something new to say, .....

3391  
3392 Mr. Wright - He's the applicant.

3393  
3394 Mr. Balfour - But we've got to hear from 2 people in our audience too.

3395  
3396 Mr. McKinney - Is he finished presenting his case?

3397  
3398 Mr. Dawson - I just want to comment about it's not being inventory. If they  
3399 were going to sell this as not being counted into inventory, certainly the unsold food, the  
3400 unsold beer would be considered inventory. Beer is not transformed from one thing into  
3401 another when it's sold to the public. You can't sell at ABC regulations the beer without  
3402 selling a certain amount of food. The food is something that's prepared and sold. It's  
3403 not just given to a person, saying "here, I'm serving this to you." It's food that's sold to  
3404 the public, beer that's sold to the public. These are all part of one business venture, not  
3405 three, as the County would have you believe.

3406  
3407 Mr. Balfour - We've got two people in the audience who've patiently  
3408 waited, if they'd like to say anything.

3409  
3410 Mr. Wright - Well, that's if he wants to put them on. Mr. Tokarz is the one  
3411 who puts them on, isn't he?

3412  
3413 Mr. Blankinship - Not in a public hearing.

3414  
3415 Mr. Balfour - Do either of you want to speak?

3416  
3417 Mr. Wright - They took all that time to get here.

3418  
3419 Mr. Vidler - I'm Bo Vidler, Vidler Auto. I'm right next to Mr. White's  
3420 establishment. I have nothing against Mr. White, don't know him personally. I don't  
3421 care for his business, but I guess that's a personal thing. I've grown up on Route 1; my  
3422 father started the business in 1951. I know a lot of the residents' families behind the  
3423 business. I don't like the things that go on there. I put expensive video cameras in.  
3424 There are beer bottles broken in my lot, people urinating between cars at nighttime.  
3425 We've towed away over 60 cars out of my lot, for illegal parking. He put a sign up; that  
3426 stopped a lot of that. I didn't come here to try to tell you what was legal and what was  
3427 illegal; that's for the County lawyers to do. All I got was a notice on a variance, and I  
3428 don't like what he's doing there now, and I don't want any variance that's going to make  
3429 him do any more than what he is doing. So I can't tell you whether what is legal what

3430 he's doing, but I sure don't want any kind of bookstores and sex toys and things coming  
3431 out with kids in the back. People are getting shot. I'm on TV all the time, and the front  
3432 of my business, because there's always cops in my lot, and all the TV cameras are  
3433 always there, so first thing my customers say is, "Is it safe to come to your lot," or "I saw  
3434 you on TV last night." It's getting to be a regular thing. So all I'm asking is that I don't  
3435 want any variances. I don't know the laws, but I don't want the man to be running any  
3436 more than what he's running now. Any questions?  
3437

3438 Mr. Wright - We're not asked for any variances here today. It's an  
3439 appeal. It's an appeal on a notice that he's violating something.  
3440

3441 Mr. Vidler - Right, well if he's violating it, I don't want it changed.  
3442

3443 Mr. Balfour - Mr. Dawson, are you through? Okay, that's it then. Do I  
3444 hear a motion? Pass it, fight it, defer it.  
3445

3446 Mr. Wright - Now what are you ruling on here?  
3447

3448 Mr. McKinney - I'd like to defer the decision till next month.  
3449

3450 Mr. Balfour - It's been moved that we defer the decision to next month. Is  
3451 there a second to that motion?  
3452

3453 Mr. Kirkland - Do we discuss afterwards?  
3454

3455 Mr. Balfour - Yes, you can second, and then we'll discuss. Are you  
3456 seconding it?  
3457

3458 Mr. Wright - I'll second it.  
3459

3460 Mr. Balfour - All right, it's been moved and seconded that we defer it. Is  
3461 there any discussion about deferring it?  
3462

3463 Mr. Kirkland - We're going to take out one of them, right? We're  
3464 eliminating the one about the fence hours.  
3465

3466 Mr. McKinney - They've got 30 days to fix the fence, and the video cameras.  
3467

3468 Mr. Wright - And the other one is out too.  
3469

3470 Mr. Kirkland - If they don't do the fence and the video camera, they go to  
3471 Circuit Court. They don't come here any more; they don't talk to anybody else.  
3472

3473 Mr. Blankinship - I think the best way to do it would be for you to deny the  
3474 appeal on those two notices; then the notice stands; if they don't comply with the notice,  
3475 they go to court.

3476  
3477 Mr. McKinney - Okay, I'll amend my motion to say that.  
3478  
3479 Mr. Blankinship - Right, and the County has withdrawn the hours of operation.  
3480 In case you're curious, it's because we didn't actually observe between 2:00 and 3:00  
3481 o'clock in the morning.  
3482  
3483 ***[Unintelligible, multiple voices]***  
3484  
3485 Mr. Kirkland - But on the notice, you've got to make the corrections by a  
3486 certain date, will you extend that?  
3487  
3488 Mr. Wright - If you deny, they've got 30 days to do it.  
3489  
3490 Mr. Balfour - Explain to them that's what we're doing; at least they'll be  
3491 satisfied with what we did there and understand it. They have 30 days. All in favor?  
3492  
3493 ***[Unintelligible, multiple voices]***  
3494  
3495 Mr. Balfour - That leaves the question of whether or not "stock in trade"  
3496 includes food, drinks, and other items, or whether they can be separated, as suggested  
3497 by the County, and I guess that's our issue between now and next month, or right now,  
3498 if we want to do it now.  
3499  
3500 Mr. Wright - The question before us, very simply, is whether or not that  
3501 constitutes a substantial portion of their business. Whether you treat that as a separate  
3502 adult bookstore, or whether it's part of their business. If it's a substantial portion of their  
3503 business, if there's no testimony to refute the testimony of Mr. White, then it's about 1%  
3504 of his business, which is not substantial. 15% would have to be.  
3505  
3506 Mr. McKinney - Mr. Tokarz' view is it's a whole separate business,  
3507  
3508 ***[Unintelligible, too many voices at once]***  
3509  
3510 Mr. Blankinship - The idea is that what was there when the Code was  
3511 adopted, this latest amendment, what was there at that time was a restaurant nightclub.  
3512  
3513 Mr. McKinney - The police officer couldn't testify exactly what was in the  
3514 vending machine.  
3515  
3516 Mr. Blankinship - But that there was a vending machine, and the vending  
3517 machine, to my mind is, you have vending machines in restaurants. That's normal,  
3518 customary, incidental.  
3519  
3520 Mr. McKinney - You have magazines in motels and hotels.  
3521

3522 Mr. Blankinship - This isn't a hotel or a motel. This is a restaurant. I don't go  
3523 into a restaurant to buy videos or books or whatever these other items are; I haven't  
3524 been in there to inspect it myself, so I don't know exactly.

3525  
3526 Mr. McKinney - I mean you're talking about the hallway. You've got hotels  
3527 and motels that have got restaurants, and you've got hallways, magazines, I mean  
3528 they're all under one roof.

3529  
3530 Mr. Wright - Whether or not it was there at the start or not is immaterial.  
3531 The question is whether or not it constitutes a substantial portion of the business of that  
3532 establishment. The only way that you can rule in favor of the County would be if you  
3533 consider this a separate business they've gone into as an adult bookstore, or whether  
3534 it's part of the establishment being operated there. It's obvious it is not a substantial  
3535 portion. It's as simple as that. That's the issue. We've got the documentation

3536  
3537 Mr. Kirkland - What would we need, some documentation?

3538  
3539 Mr. Wright - It's not clear in the ordinance, that's the problem.

3540  
3541 Mr. Balfour - You've got the documentation; it's a very small percentage.

3542  
3543 ***[Unintelligible, too many voices]***

3544  
3545 Mr. Wright - He said 1% of this stuff is his total sales. Based on what Mr.  
3546 Tokarz said, they look at 15%, so it depends on whether you want to look at it as one  
3547 thing, or whether you want to break it down as a separate bookstore type of thing.

3548  
3549 ***[Unintelligible, too many voices]***

3550  
3551 Mr. Kirkland - There's no real way, though, if we let it go, that we can stop  
3552 the growth of it.

3553  
3554 Mr. Balfour - That's true if you take his, because he's got a long way to go  
3555 to get to 15%.

3556  
3557 Mr. Wright - Well if it gets to be a substantial, then they'd have another  
3558 case that it's a substantial part of their business. At this point it's not.

3559  
3560 Mr. Balfour - Except if you think about it, he's got a half million dollars in  
3561 drinking and eating and entertainment, it's going to take a heck of a lot of sales to ever  
3562 get to substantial, which means he could end up having a lot of videos.

3563  
3564 Mr. Kirkland - He could have a Priscilla's sitting in there, or something like  
3565 that.

3566

3567 Mr. Balfour - It seems to me the door's open for other people who've got  
3568 restaurants or bars, if they've got that much business from that, they could say, "boy, I  
3569 could get up to a third of my business selling these other things and get by with it." The  
3570 Code is not well written in that regard.  
3571  
3572 Mr. McKinney - I think they need to readdress the Code.  
3573  
3574 Mr. Balfour - Well, we might force them to do it, I suspect. Then these  
3575 people have got to put up with something that because of a technicality with the Code,  
3576 that could have been the Code anyway, if we buy the County's idea that it's a separate  
3577 business.  
3578  
3579 Mr. McKinney - I don't buy that personally. I'd like to vote in favor of the  
3580 applicant with that, that they don't do a substantial amount of business in it. If they do  
3581 later, they can bring it back.  
3582  
3583 Mr. Balfour - We can think about it for 30 days anyway. The other side  
3584 would be too, we turn it down, they can go to the Circuit Court and let a judge decide  
3585 what the thing is.  
3586  
3587 Mr. McKinney - The County has a right to go to Circuit Court too.  
3588  
3589 Mr. Nunnally - I still think it's a separate business. They're not selling it in  
3590 the restaurant; they're selling it in the hallway.  
3591  
3592 Mr. Kirkland - He said he had 500 square feet set aside; is that a hallway?  
3593  
3594 Mr. McKinney - No, I'm saying what Mr. Tokarz said, it's a hallway.  
3595  
3596 Mr. Kirkland - Mr. White said he had 500 square feet set aside to do this,  
3597 so that's a separate room.  
3598  
3599 Mr. Wright - And a separate business, I think.  
3600  
3601 Mr. Balfour - I agree with him. It could be a separate business, like  
3602 anyone else who had a flower shop; then they decide they're going to sell clothes on the  
3603 side. They go down to the Williamsburg Pottery or somewhere. You could argue it  
3604 either way.  
3605  
3606 Mr. Wright - That's the issue.  
3607  
3608 Mr. Kirkland - He did say he had a very small percentage of 500 square  
3609 feet set aside for this, out of 5,000 square feet. That's a good-sized room, 500 square  
3610 feet. You could hang a lot of stuff on the wall. That could be a separate business.  
3611

3612 Mr. Balfour - I guess another determination we need evidence on, is what  
3613 percentage of people are coming in to buy a video or a naked girl on a lighter, and walk  
3614 out without eating. That kind of business is different from the guy who comes in and  
3615 says, "I'm going to have a meal and a drink." We didn't hear that.  
3616

3617 Mr. Wright - We didn't have any evidence of whether they have any walk-  
3618 in trade.  
3619

3620 Mr. McKinney - I just take it that it's the trade by the patrons who patronize  
3621 the establishment.  
3622

3623 Mr. Balfour - Of course if the word gets out, that you can walk in and get a  
3624 nice video and not buy a meal, they might have some more people coming in. I don't  
3625 know how he advertises.  
3626

3627 Mr. Wright - There was no evidence that they were advertising this as a  
3628 separate business. Do you know Ben?  
3629

3630 Mr. Balfour - We didn't get anything that talks about their advertising,  
3631 whether they're advertising a separate business or not.  
3632

3633 Mr. Blankinship - It's on their sign now.  
3634

3635 Mr. McKinney - It is? What does it say?  
3636

3637 Mr. Blankinship - Adult videos, adult books, or something.  
3638

3639 Mr. McKinney - Outside? I vote to deny.  
3640

3641 Mr. Kirkland - What's to stop an adult bookstore, or a video store, from  
3642 opening a bar?  
3643

3644 Mr. McKinney - Nothing.  
3645

3646 Mr. Kirkland - Then what's substantial?  
3647

3648 Mr. McKinney - They've got to be 500 feet from a residential area.  
3649

3650 Mr. Kirkland - They could be in a shopping center somewhere.  
3651

3652 Mr. McKinney - I think if they advertise it separately, even though we were  
3653 told, that if that's what the facts .....

3654

3655 Mr. Wright - Is it on the sign, Ben?  
3656

3657 Mr. Blankinship - I'm almost positive.



3658  
3659 Mr. Kirkland - Call John on the phone and ask him if it's on the sign. They  
3660 have a good-sized sign out there.  
3661  
3662 Mr. McKinney - I've seen the sign, and I go by it a couple of times a day, and  
3663 I've never seen it on the sign. **[Too many voices]**  
3664  
3665 Mr. Blankinship - I could be wrong.  
3666  
3667 Mr. Kirkland - Maybe they got it confused with the motel you said was  
3668 close by.  
3669  
3670 Mr. McKinney - I've never seen where it says anything about adult videos or  
3671 adult items or anything else on that marquee out there.  
3672  
3673 Mr. Wright - That's crucial. We could defer it to get the information.  
3674 That's a matter of fact. Couldn't be any contest over that, whether it is or it isn't. Here's  
3675 another angle; let me throw this out to you. If you've got an adult bookstore, period, no  
3676 dancing or anything, you don't want that bookstore within 500 feet of a residence selling  
3677 all this pornographic stuff. You've got here naked women and all these activities going  
3678 on, so selling the stuff isn't much worse than that. You see what I'm saying? It's all the  
3679 same kind of stuff, within 500 feet.  
3680  
3681 Mr. Wright - What did you find out?  
3682  
3683 Mr. Blankinship - John's not back in the office; I don't know what happened to  
3684 him; maybe he's gone to lunch.  
3685  
3686 Mr. Balfour- Well the motion's on the floor to defer it. We can vote that  
3687 up or down, or we can defer it.  
3688  
3689 Mr. McKinney - Or we can find out what's on the marquee.  
3690  
3691 Mr. Blankinship - I'll get over there and take a photograph. I'll take a  
3692 photograph of the sign today.  
3693  
3694 Mr. Wright - If the sign says that, I'm fully in accord with saying it's a  
3695 bookstore. If it's not on the sign, and as much as I detest what they do, I'm looking at it  
3696 from a strictly legal viewpoint.  
3697  
3698 Mr. Blankinship - They do have legal rights.  
3699  
3700 Mr. Wright - I think the selling of this stuff is minimal to what the other  
3701 damage that's done with all the other activities that go on within that place, but they say  
3702 that's legal; at least some of it is.  
3703

3704 After an advertised public hearing and upon a motion by Mr. McKinney, seconded by  
3705 Mr. Kirkland, the Board took the following actions on the application **A-21-2003** appeals:  
3706 of a decision of the Director of Planning concerning notices of violation at 7103 Brook  
3707 Road (Club Court) (Parcel 784-751-9627).

3708  
3709 1. "Selling adult merchandise within 500 feet of a residential district:" -- The Board  
3710 deferred their decision on this matter until March 27, 2003.

3711  
3712 2. "Selling adult merchandise after 12:00 Midnight:" -- The County withdrew the  
3713 notice prior to the public hearing.

3714  
3715 3. "Failure to construct and maintain a fence as shown on the approved plan:" --  
3716 The Board affirmed the decision of the Director of Planning.

3717  
3718 4. "Failure to install a video security camera system:" -- The Board affirmed the  
3719 decision of the Director of Planning.

3720  
3721 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3722 Negative: 0  
3723 Absent: 0

3724  
3725 On a motion by Mr. McKinney, seconded by Mr. Kirkland, the Board **approved** the  
3726 Minutes of the November 21, 2003, and December 19, 2002, (as amended) and  
3727 January 23, 2003, Henrico County Board of Zoning Appeals meetings.

3728  
3729 There being no further business, and on a motion by Mr. Wright, seconded by  
3730 Mr. Kirkland, the Board adjourned until **March 27, 2003**, at 9:00 am.

3731  
3732

3733 Daniel T. Balfour,  
3734 Chairman

3735  
3736 Benjamin Blankinship, AICP

3737 Secretary