

33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78

Beginning at 9:00

Call for deferrals and withdrawals

Deferred from Previous Meeting

Mr. Wright - Are there any deferrals this morning?

Mr. Blankinship - Yes sir, there are two requests for deferral this morning. One is UP-27-2003 Holiday Barn Kennel. I don't know if there is anybody here to represent that one or not. We did not receive a written request for deferral, but if you remember last month, it was deferred so that they could apply for a variance in addition to their use permit, and we did not receive that application in time to get them on this month's agenda.

Mr. Wright - So we must defer.

Mr. Blankinship - Yes sir.

Mr. Wright - Any others?

Mr. Blankinship - The other is A-144-2003 RCI Builders. Last month there was some conversation between the builders and the neighbors and also some of the Board members about redesigning the house to make it more compatible with the neighborhood, and they are in the process of doing that, and they have sent us a written request for deferral so that they can complete those plans.

Mr. Wright - Within our time limits okay?

Mr. Blankinship - Yes sir.

UP- 27-2003 HOLIDAY BARN KENNEL requests a conditional use permit pursuant to Section 24-52(c) of Chapter 24 of the County Code to expand the existing kennel at 3800 Mountain Road (Parcel 765-771-4745), zoned A-1, Agricultural District (Brookland).

Upon a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **deferred** application **UP-27-2003** for a conditional use permit to expand the existing kennel at 3800 Mountain Road (Parcel 765-771-4745). The case was deferred from the January 22, 2004, until the February 26, 2004, meeting.

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

79 Mr. Wright - Please call the first case.

80

81 **A -143-2003** **SUNTECH HOMES** requests a variance from Section 24-95(q)(5)
82 of Chapter 24 of the County Code to build a one-family dwelling at
83 10600 Sherwin Place (Magnolia Ridge) (Parcel 781-769-9301),
84 zoned R-3AC, One-family Residence District (Conditional)
85 (Fairfield). The lot width requirement is not met. The applicant has
86 56 feet lot width, where the Code requires 60 feet lot width. The
87 applicant requests a variance of 4 feet lot width.

88

89 Mr. Wright - Does anyone else desire to speak? Would you raise your
90 right hand and be sworn please?

91

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

94

95 Mr. Wood - Michael Wood, President of Suntech Homes. Good
96 morning. I'd like to say first of all this is the first time we've been here, and I sincerely
97 hope it's the last time. We're requesting a variance for approximately four feet front
98 yard setback in lot 10600 Sherwin Place, in Magnolia Ridge. On the board here, you
99 see our proposed home site. It is approximately 2100-2200 square feet, two-car
100 garage, four bedrooms, two full baths and a half bath off of the foyer. This house
101 should retail for approximately \$240,000, which is right in line with the neighborhood,
102 previous sales, and current sales. Most of the homes on the street of Sherwin, Suntech
103 Homes has constructed within the last two years, so we feel like we've selected a
104 product that kind of meets the parameters of this lot, as well as fits the neighborhood
105 schemes, the architectural integrity of the neighborhood, as well as kind of fits the buyer
106 profile that we're looking for. It would be a wonderful addition to Magnolia Ridge. My
107 understanding from the Planning Department and the Permit Center is that this is a
108 unique lot that's been flagged. I guess they refer to it as a flag lot where the buildable
109 area line, which is approximately fifty feet from the street or the property line, is not sixty
110 feet wide, which, as you can tell from the parameters of the lot, it's a pretty narrow lot,
111 as well as there is a shrubbery easement on the right-hand side as we're looking at it. If
112 you're standing on Sherwin, facing the house, it would be to your left, to buffer from the
113 main street, Virginia Center Parkway there. We don't have any intentions of
114 encroaching into that. We're going to maintain that and probably improve it some. It
115 looks like there are a few spots where some trees have kind of died out there that we're
116 going to improve as well. We plan to construct one home that will fit the neighborhood
117 scheme, and based on the size of the lot, in all the other zoning and proffered
118 requirements, we believe that this is the best house that we could possibly put in this
119 neighborhood for this price range.

120

121 Mr. Wright - Do I understand that the County approved the building
122 permit for this house?

123

124 Mr. Wood - Yes sir, that is correct. I'm not exactly sure. This is a little

125 bit before my time. Suntech Homes has only been in business for about five years now.
126 This is the start of our fifth year. The community was designed and developed and
127 approved long before I became a builder. We're kind of picking up some of the last few
128 lots in the neighborhood that are challenging, either topographically, meaning that they
129 have some severe slopes or lot constraint size. Suntech Homes has the ability to kind
130 of personalizing the house to the lot, and that's kind of why other builders haven't
131 wanted the lot, because they really don't want to take the time to develop a plan that will
132 work best with the lot, and that's what we do best with Attack Properties. We've
133 probably bought, I guess over five years, forty or fifty lots that have been kind of infill
134 lots in wrapping up his communities, which has been, I guess, our success.

135
136 Mr. Wright - Mr. Blankinship, can you shed any light on this?
137

138 Mr. Blankinship - I cannot. We checked the files and could not come up with
139 any reasoning for why this lot was approved, without the correct lot width.
140

141 Mr. Wright - Has any work been done on it?
142

143 Mr. Wood - No sir, we have not started any construction. The only thing
144 we have done is post a sign now, letting the market know that we hope to intend on
145 building a home and it's for sale.
146

147 Mr. Balfour - Do you already own the lot?
148

149 Mr. Wood - No, we have not purchased the lot; we're due to purchase
150 the lot next week.
151

152 Mr. McKinney - Mr. Wood, do you plan on having a fireplace in this house?
153

154 Mr. Wood - Yes sir; it's a gas fireplace, a small, typical propane
155 fireplace, but it does have a foundation underneath it. If you look at the site map there,
156 you can see it on our right as you're looking at it, there's a five-foot by two-foot pop out;
157 that's our fireplace.
158

159 Mr. McKinney - Is that going to be a frame?
160

161 Mr. Wood - Yes sir. Generally it's about five feet wide and about eight
162 feet tall, looks like a little mini-shed roof.
163

164 Mr. McKinney - But it will have a brick foundation under it?
165

166 Mr. Wood - Yes sir; it's not going to be cantilevered; it will be a fireplace.
167 The picture there is an error there on our part, where the fireplace is showing a
168 cantilever, but it's going to be brick. That's proffered into the community already, where
169 there would not be any cantilevered fireplaces or bay windows on the sides or front of
170 the home.

171
172 Mr. McKinney - Is this vinyl siding?
173
174 Mr. Wood - Yes sir; it's actually upgraded vinyl siding from shiplap to
175 what's called beaded vinyl siding, so it's an upgraded vinyl siding as well.
176
177 Mr. Wright - Mr. Blankinship, I believe we have this technicality here
178 where it does not meet the width at the building line; is that correct?
179
180 Mr. Blankinship - Yes sir, that's correct.
181
182 Mr. Wright - So basically the lot does meet the width requirements except
183 at the building line?
184
185 Mr. Blankinship - Yes, at another point farther back, it would certainly meet it,
186 yes sir.
187
188 Mr. McKinney - If you brought it farther back, it wouldn't have the minimum
189 rear yard, would it Mr. Blankinship?
190
191 Mr. Wood - That's correct. We would either have to take away from the
192 rear yard, which we think that would be detrimental to the consumer, looking to have a
193 play area. Most of the customers in this neighborhood have children, so they're kind of
194 looking for a back yard. Even by pushing the buildable line down some, it constrains
195 the house that we'd be back asking for approval on the home itself, not meeting the
196 appropriate square footage on the house, or not being able to meet the correct garage
197 size that's been zoned in for this community.
198
199 Mr. Balfour - It says on the petition if these people who are opposed to it,
200 it says the previous builder couldn't build a house due to inadequate frontage, and then
201 the last sentence says that we feel the reopening of a previously closed issue will not
202 benefit our community. What issue was closed previously? Has this been before this
203 Board, and it was denied a building permit before?
204
205 Mr. Blankinship - Not to my knowledge.
206
207 Mr. Wood - I checked with the Planning Department about that, and
208 they're not aware of any previous hearings on this; they did say that several builders
209 have inquired about the lot and the size, and I think they just abandoned the idea
210 because they're not into custom designing homes to fit a lot parameter. There are a lot
211 of production builders in the neighborhood, that if it doesn't fit our box, we're moving on.
212 We're modifying a home to kind of fit the lot and work best with the community.
213
214 Mr. Balfour - Is the owner now the previous builder in this subdivision?
215
216 Mr. Wood - It's the developer. Attack Properties currently owns the lot.

217
218 Mr. Wright - Have you seen this petition in opposition?
219
220 Mr. Wood - I just received it Tuesday.
221
222 Mr. Wright - It looks like whoever wrote this just doesn't understand the
223 problem. They said "no frontage." They have plenty of frontage, and we have enough
224 area, so they're saying the area's inadequate and the frontage is inadequate; both are
225 inaccurate statements. Therefore, the premise on which this petition is framed is
226 erroneous.
227
228 Mr. Wood - I can certainly agree with you.
229
230 Mr. Wright - Because people don't understand the technicalities of the
231 ordinance; it's not that; it's at the building line. A lot of times we have that situation, and
232 that is caused by the shape of the lot. The east line comes in at an angle. The shape
233 of the lot causes this to happen.
234
235 Mr. Wood - As well as the lot is a little tight because of the easement,
236 but I think the easement is certainly important, and that has been a part of the
237 community since the beginning.
238
239 Mr. Wright - Anything further, Mr. Wood? Any questions by members of
240 the Board? Is anyone here in opposition to this request? Hearing none, that concludes
241 the case. Excuse me, were you sworn to begin with? Are you in opposition. Come
242 down please. You've got to be sworn.
243
244 Mr. Blankinship - Do you swear that the testimony you are about to give is the
245 truth, the whole truth, and nothing but the truth, so help you God?
246
247 Mr. Kumar - I do. My name is Mahesh Kumar, and I got some more
248 names on the petition, and these are the type of forms. One of the biggest issues is,
249 Virginia Center Parkway comes to Sherwin Place, and Sherwin Place is a major artery
250 going into Magnolia Ridge. We have already seen so many accidents at that
251 intersection, Virginia Center Parkway and Sherwin Place, and this house is so close to
252 the stop sign that it's going to be even more obstruction for the people who are coming
253 out of Magnolia Ridge or going into Magnolia Ridge. Another thing is, being a very, very
254 odd size, and the house is a little bit different from what the community requirements
255 are, and it's going to look different. The garage is sitting right in front of the house, and
256 it's much on the back of the other houses. The driveway is on a different side of the
257 house. All the houses have driveways; each house has it on the same side; they are
258 opposite to each of them, so it looks better. Here the driveway will be completely on
259 one side. I don't know what even, whether somebody really measured the lot or not. I
260 measured it, and it doesn't show those dimensions on the lot.
261
262 Mr. Nunnally - These specifications you handed us, were they adopted by

263 the neighborhood association?
264
265 Mr. Kumar - Yes, Magnolia Ridge Homeowners Association. I think the
266 architect is supposed to be here.
267
268 Mr. McKinney - Mr. Kumar, what's your address?
269
270 Mr. Kumar - 10604 Sherwin Place. I'm next door. That's what's affecting
271 me right, because when I bought the house, they said that nothing would be built on this
272 lot, because it was too small.
273
274 Mr. Wright - The lot is not too small.
275
276 Mr. Kumar - It's very odd-sized; we are right there.
277
278 Mr. Wright - But the lot is not too small; it satisfies the area requirements
279 of the Henrico County. That statement in the petition is incorrect.
280
281 Mr. Kumar - Width, I'm talking about.
282
283 Mr. Wright - And the frontage is not too short; it has enough frontage on
284 the road, so those two things are not involved here. It's at the building line, back where
285 the building line is, the line comes in and causes it not to meet the requirements at the
286 building line where the house will be.
287
288 Mr. Kumar - And they're setting the house very much back. They're not
289 on the same line of all the houses.
290
291 Mr. Wright - All right sir. Anything further you'd like to say?
292
293 Mr. Kumar - No. I think more safety issue than anything else, because of
294 traffic pattern, and this house is going to affect the traffic pattern there, at Virginia
295 Center Parkway and Sherwin Place.
296
297 Mr. Nunnally - You're saying the house is going to be back further from the
298 line.
299
300 Mr. Kumar - To get the fit of the house, that's what they're trying to do, is
301 set the house back.
302
303 Mr. Wright - What is the frontage requirement on this, Mr. Blankinship?
304 Back from the road, straight.
305
306 Mr. Blankinship - Twenty-five feet. It's controlled density, so it doesn't follow
307 the normal rules.
308

309 Mr. Wright - This house is set back 30.3 feet.
310
311 Mr. Blankinship - Thirty feet would be the front and the rear.
312
313 Mr. Wright - So is he saying the other houses in this subdivision are back
314 more than thirty feet from the road?
315
316 Mr. Blankinship - It appears to me that the others are set back pretty close to
317 thirty feet, just eye-balling it, and this one will be set back fifty feet from Sherwin Place,
318 so as you come around the corner, you'll have the corner house set back a little
319 differently from the others on the street.
320
321 Mr. McKinney - He needs that basically for visibility, correct?
322
323 Mr. Blankinship - Yes, because it's wider as it goes back.
324
325 Mr. Wright - All right sir, anything further?
326
327 Mr. Kumar - One more point, that it's going to just take from the
328 neighborhood, because we're sitting behind a separate house, and on the corner, when
329 you enter in, it's more like beautification if they can put trees. Right now it will be an
330 eyesore house.
331
332 Mr. Wright - The fact that it's back further from the street would indicate
333 that that would cause less of an obstruction for traffic. I don't think the house would
334 have anything to do with the traffic.
335
336 Mr. Kumar - The house driveway is very close to the stop sign.
337
338 Mr. McKinney - Mr. Kumar, how many square feet are in your house?
339
340 Mr. Kumar - 2,467.
341
342 Mr. Wright - Thank you very much for appearing. We appreciate your
343 coming down. Anyone else in opposition? All right, Mr. Wood, you have a brief time to
344 rebut if you care to do so.
345
346 Mr. Wood - Thank you. Just to answer a few of the gentleman's
347 questions or concerns, addressing the stop sign first of all. We plan on having the
348 driveway right in front of the garage. If we could have the site map back up just for a
349 quick look here. If you're standing on Sherwin, looking at the house, the drive's going to
350 be off to the right-hand side, to not have traffic right there at the stop sign, which is up
351 on the corner. In fact, about where the easement line is drawn is approximately where
352 the stop sign is, so we had planned on obstructing the view of the stop sign and causing
353 any traffic problems. I certainly don't want to be privy to that. The driveway is going to
354 be constructed out of concrete. Generally most of the builders in subdivisions use

355 asphalt, but we find asphalt to be a high-warranty issue. Most of the homes on the
356 street have concrete driveways, which again, Suntech Homes have constructed, so it's
357 going to be a straight shot into the garage. Shouldn't be any street parking there.
358 We're going to make the driveway twenty-four feet wide, so there's plenty of car space
359 to park, as well as plenty of room for them to get the car into the garage.

360
361 Mr. Nunnally - How many square feet is this house?

362
363 Mr. Wood - It's going to be almost 2200 square feet, which meets the
364 community guidelines, as well as the zoning guidelines. The gentleman's house next
365 door – we did actually construct that approximately three years ago. He's the second
366 owner of that, so I'm not familiar with him, but we did construct that home, and he's
367 exactly right; it's a little bit over 2400 square feet. That house has probably been one of
368 our best sellers. But we have constructed this product that we're talking about, as well
369 in Magnolia Ridge, and it's been well received with the market as well. In regards to the
370 house lines and his concerns there, we have a setback of about fifty feet. Most of the
371 residents along the street have actually a setback of forty-five feet. The developer,
372 Atack Properties proffered in a forty-five foot setback in trying to exceed the zoning
373 guidelines, particularly on this street, because this was the original model home sales
374 center street, and they were really trying to pull the houses off of the curb there, and
375 now we're just kind of wrapping up the community. I believe this is one of the last lots
376 left over.

377
378 Mr. McKinney - Mr. Wood, what is the setback of Mr. Kumar's house that
379 you built?

380
381 Mr. Wood - I believe it's forty-five feet, if I remember correctly.

382
383 Mr. McKinney - So this would be five feet back.

384
385 Mr. Wood - He, as well, has a wonderful concrete driveway that's, I
386 believe, double wide right at the front of the garage.

387
388 Mr. Wright - Anything further, Mr. Wood? Thank you very much. That
389 concludes the case.

390
391 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
392 Nunnally, the Board **granted** application **A-143-2003** for a variance to build a one-family
393 dwelling at 10600 Sherwin Place (Magnolia Ridge) (Parcel 781-769-9301). The Board
394 granted the variance subject to the following condition:

395
396 1. This variance applies only to the lot width requirement. All other applicable
397 regulations of the County Code shall remain in force.

398
399 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
400 Negative: 0

401 Absent: 0

402
403 The Board granted this request, as it found from the evidence presented that, due to the
404 unique circumstances of the subject property, strict application of the County Code
405 would produce undue hardship not generally shared by other properties in the area, and
406 authorizing this variance will neither cause a substantial detriment to adjacent property
407 nor materially impair the purpose of the zoning regulations.

408
409 **A -144-2003** **RCI BUILDERS** requests a variance from Sections 24-95(k) and (2)
410 of Chapter 24 of the County Code to build a one-family dwelling at
411 1800 Terrace Avenue (Hermitage Club Terrace) (Parcel 782-750-
412 2829), zoned R-2, One-family Residence District (Fairfield). The
413 minimum side yard setback and rear yard setback are not met. The
414 applicant has 17 feet rear yard setback, and 23 feet side yard
415 setback, where the Code requires 25 feet rear yard setback and 25
416 feet side yard setback. The applicant requests a variance of 8 feet
417 rear yard setback and 2 feet side yard setback.

418
419 Upon a motion by Mr. McKinney, seconded by Mr. Balfour, the Board **deferred**
420 application **A-144-2003** for a variance to build a one-family dwelling at 1800 Terrace
421 Avenue (Hermitage Club Terrace) (Parcel 782-750-2829). The case was deferred from
422 the January 22, 2004, until the February 26, 2004, meeting.

423
424 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
425 Negative: 0
426 Absent: 0

427
428 **A -145-2003** **BILLY E. STANDLEY, JR.** requests a variance from Sections 24-
429 95(i)2 and 24-94 of Chapter 24 of the County Code to construct a
430 front porch and rear addition at 10007 Falconbridge Drive (Raintree
431 East) (Parcel 747-750-1684), zoned R-2A, One-family Residence
432 District (Tuckahoe). The accessory structure location requirement
433 and front yard setback are not met. The applicant proposes to build
434 an addition that will result in the existing garage being in the side
435 yard and to build a porch that will encroach into the required front
436 yard. The Code allows accessory structures in the rear yard. The
437 applicant requests a variance to allow the existing garage to
438 remain. The applicant also proposes a front yard setback of 41
439 feet. The Code requires a front yard setback of 45 feet. The
440 applicant requests a variance of 4 feet.

441
442 Mr. Wright - Please state your name. Does anyone else desire to speak?
443 Would you raise your right hand and be sworn please?

444
445 Mr. Blankinship - Do you swear that the testimony you are about to give is the
446 truth, the whole truth, and nothing but the truth, so help you God?

447
448 Mr. Standley - I do. My name is Billy Eugene Standley, Jr., and I'm the
449 owner of the home at 10007 Falconbridge Drive. I was here last month, and I
450 discovered the morning of the meeting that we had an issue with an L-shaped wrap-
451 around porch; the two substantive issues were seeking a variance for R-2A Code in
452 order for us to build an addition on the rear of the home, the depth of the addition, which
453 would be twenty feet, would place our detached garage, which was built under the Code
454 allowance of a detached structure in the rear of the yard, it would then, because of the
455 wing or addition to the house, cause the garage to not be in the rear, but subsequently
456 be in the side of the yard. Additionally, we had hoped to build an L-shaped covered
457 porch around the house to cover both the side entrance and the front entrance to the
458 home. I was erroneous in my measurement by not checking the survey. There was
459 more easement or setback on the front where the property line began. There was a
460 total of 58 feet from the curb, but by survey and allowable distance, there's only 48 feet,
461 so for a six-foot wide porch, which will allow the appropriate pitch for the roof of that
462 porch, that would encroach into the 45-foot front setback requirement. There was no
463 problem with the side allowance for the structure. The house is twenty years old; we've
464 lived in it for twelve years now. The main purpose for the addition, in addition our deck,
465 which is the cross-hatched section in the left rear of the house, we will tear that down
466 and then build an appropriate deck to attach the wing there, but not go past the edge of
467 the house as it currently exists, and remove the above-ground pool and the deck
468 structure around it. The main purpose for the addition here is, we have seven children.
469 My two oldest sons are now enrolled at Virginia Commonwealth University, so they
470 intend to remain at home and go to school. It's a four-bedroom; we have approximately
471 2270 square feet in the present home, and this two-story addition will allow an additional
472 bedroom and bath upstairs and a large family room downstairs. That's the substantive
473 issues, and I'm ready to answer any of your questions, sir.

474
475 Mr. Wright - Before the proposed construction, the garage met the
476 setback requirements, is that correct?

477
478 Mr. Standley - Yes sir.

479
480 Mr. Wright - Any questions from members of the Board? Anyone here in
481 opposition to this request?

482
483 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
484 Kirkland, the Board **granted** application **A-145-2004** for a variance to construct a front
485 porch and rear addition at 10007 Falconbridge Drive (Raintree East) (Parcel 747-750-
486 1684). The Board granted the variance subject to the following conditions:

487
488 1. Only the improvements shown on the plan filed with the application may be
489 constructed pursuant to this approval. No substantial changes or additions to the layout
490 may be made without the approval of the Board of Zoning Appeals. Any additional
491 improvements shall comply with the applicable regulations of the County Code.

492

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

494

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

496 Negative: 0

497 Absent: 0

498

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

504

505 **New Applications**

506

507 **A - 1-2004** **KAREN SULLIVAN** requests a variance from Sections 24-95(c)
508 and 24-94 of Chapter 24 of the County Code to build a carport at
509 8216 St. Charles Road (Wildwood) (Parcel 789-755-2898), zoned
510 R-2A, One-family Residence District (Fairfield). The minimum side
511 yard setback, rear yard setback, and total side yard setback are not
512 met. The applicant proposes 8 feet minimum side yard setback, 18
513 feet total side yard setback and 40 feet rear yard setback, where
514 the Code requires 10 feet minimum side yard setback, 30 feet total
515 side yard setback and 45 feet rear yard setback. The applicant
516 requests a variance of 2 feet minimum side yard setback, 12 feet
517 total side yard setback and 5 feet rear yard setback.

518

519 Mr. Wright - Does anyone else desire to speak? Would you raise your
520 right hand and be sworn please?

521

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

524

525 Ms. Brooks - Yes, I do. I'm Patsy Brooks, and I'm the owner of the
526 company that put the carport up for Ms. Sullivan, and this is the homeowner. I put up a
527 carport for Ms. Sullivan, a 24 by 20, and I did not get a permit for it. I had already built a
528 deck and put a top over that. The concrete slab was already there, and to be honest
529 with you, I did not know that with something that was not closed in, that I had to meet,
530 which I thought was a three-foot clearance anyway, as far as even an addition. It was
531 my mistake to not check that out further before it was done. Of course a salesman sold
532 it, and I never really saw it until after it was completed, and we had a problem with it.
533 None of them are licensed contractors, just myself. Since then, of course, I've been
534 schooled on it quite a bit, over at the Building Inspectors' Office, and the State Board of
535 Contractors. The only problem that I saw, we had looked around as to where we could
536 move it. Ms. Sullivan already had the concrete slab there, which was the purpose of
537 putting it right on the side. The back of her yard, I've looked at it recently, and towards
538 the back she has a shed, right across the back line a little bit. Then when you first pull

539 up into the driveway, where we have it now, go around behind the house to the right,
540 which would be the only other place we could move it to, there's a capped well there.
541 There's also a lot of drainage that we looked at also, as far as putting a slab going up
542 the hill or over, it would present a lot of drainage down towards the house, as opposed
543 to where now it's just ground. They already have those black hoses in from the back of
544 the house all the way around to the side, because of the drainage. It goes up slightly, I
545 don't think you can see it in the picture, but it does go uphill, and there is some drainage
546 problem, which they've been working on that have the hoses coming around to the
547 front. We have a lot of footage in the front of the house. Of course we can't put
548 anything out there as far as a carport or anything, and that's why we didn't put it any
549 further up.

550
551 Mr. Wright - What is that bare area that seems to run along beside the
552 carport? Is that the neighbor's driveway?

553
554 Ms. Brooks - Actually, part of it is Ms. Sullivan's. That's grass; that's her
555 property right there. It ends on the driveway.

556
557 Mr. Wright - In color I can see it's grass.

558
559 Ms. Brooks - That's hers, and then it ends on the driveway.

560
561 Mr. Wright - Then it looks like the neighbor has an asphalt driveway all
562 the way back.

563
564 Ms. Brooks - Yes sir. And I'd also like to say that no one in the
565 neighborhood has come to Ms. Sullivan, other than to say that they liked it and thought
566 it looked nice. She's had no complaints. The Building Inspector, when he inspected the
567 part, you see where the railings are, the deck and the top that we put over there, when
568 he came out to give me a final on that, he told Ms. Sullivan that he thought the carport
569 looked like it was put up well, and that it looked like a very good job done, as far as what
570 we had done.

571
572 Mr. Wright - Why did she have the carport built?

573
574 Ms. Sullivan - I'm Karen Wingfield Sullivan. I just always wanted a carport
575 so I could get out of the car and not get rained on; I always wanted one.

576
577 Mr. Wright - Can you access your carport from the house without going
578 outside. Can you come through the back and get to the house, a back entrance?

579
580 Ms. Sullivan - Yes, I can.

581
582 Ms. Brooks - She had some water problem too, like they had the drainage
583 problem. They took care of that, but still the rain would settle right there at the steps,
584 and the carport helped with that, where they don't have to get in the mud.

585
586 Mr. Kirkland - Mr. Blankinship, how did we come upon this problem?
587
588 Mr. Blankinship - I don't see that in the case report.
589
590 Ms. Brooks - When I got the building inspector for the deck and such.
591
592 Mr. Blankinship - The building inspector reported it? I wasn't sure whether it
593 was a complaint from a citizen or from Building Inspections.
594
595 Mr. McKinney - Ms. Brooks, what company are you with?
596
597 Ms. Brooks - I have my own little company, Budget Home Improvements,
598 which I've had for many years.
599
600 Mr. McKinney - How many carports have you built? Did you get building
601 permits for the others?
602
603 Ms. Brooks - Several, and in my own home - I actually have to tell you the
604 truth. I didn't know that I had to have, well, most of them are freestanding. I never
605 knew I had to have a permit for it, but recently I have been schooled on that.
606
607 Mr. McKinney - Where are these other carports that you built? Where are
608 they located?
609
610 Ms. Brooks - Most of them are in the city. And maybe that's why you don't
611 have to have as much room. Now I'm sure, but I wasn't then.
612
613 Mr. McKinney - Any time you construct anything in Henrico County, you'd
614 better find out about a building permit.
615
616 Ms. Brooks - Where I live, right off of Parham and Three Chopt Road, in a
617 subdivision, I guess it just made me feel like it was all right, evidently it wasn't, but my
618 home that I just bought a couple of years ago has a brick built-on carport, and it's brick,
619 and it's on the line, comes to the line as far as the end of my property, and the carport's
620 there. I just never gave it a thought, to tell you the truth.
621
622 Mr. McKinney - How'd the concrete pad get here?
623
624 Ms. Brooks - That was there when Ms. Sullivan bought the home.
625
626 Mr. McKinney - It was already there. Was it a patio? What was the purpose
627 of this concrete pad?
628
629 Ms. Sullivan - It was just to park the car, a driveway.
630

631 Ms. Brooks - But then they put the concrete there, and anyway, I don't see
632 any other place to put the carport. We talked about it, as far as trying to move it. We
633 have a capped well to the right, and then the uphill slope going up, plus the expense of
634 Ms. Sullivan having to put another concrete slab someplace for the carport to go over,
635 and then not having the access to the house that of course she would like to have.
636

637 Mr. McKinney - Mr. Blankinship, this two feet minimum side yard setback
638 that they're asking for, how much is this projecting, the carport, over on the side yard?
639

640 Mr. Blankinship - It's drawn on the plat as eight feet from the side yard, where
641 the Code requires ten feet.
642

643 Mr. McKinney - So it's really two feet they're asking for on this, and a total of
644 twelve.
645

646 Ms. Brooks - Right, because the subdivision calls for ten feet, at least
647 thirty feet between the two yards.
648

649 Mr. McKinney - Ms. Brooks, I notice there's a downspout on the front of this
650 carport, and the carport slopes to the rear. Is that a gutter that goes across to take care
651 of the water problem you're speaking of?
652

653 Ms. Brooks - Yes.
654

655 Mr. McKinney - Are there gutters on the backside?
656

657 Ms. Brooks - I believe so. For Ms. Sullivan I feel bad that I put it up
658 without proper building inspection; it was put up by a company out of North Carolina.
659 They do supposedly put things up by Code. I don't put up; I sub all my work out, so it
660 wasn't subbed out to a company in North Carolina that makes the tops, delivers them,
661 and then has a man come out and put them up.
662

663 Mr. McKinney - Unfortunately, you're responsible.
664

665 Ms. Brooks - Yes sir, I know that. I've been made well aware of that.
666

667 Mr. Wright - Anything further, Ms. Brooks? Any questions of members of
668 the Board?
669

670 Ms. Brooks - No sir, except that I'd like for Ms. Sullivan to keep her
671 carport, and me to keep my money.
672

673 Mr. McKinney - Who paid to file this case?
674

675 Ms. Brooks - I did, and lots of other things.
676

677 Mr. Wright - Anyone here in opposition to this request?

678

679 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
680 Nunnally, the Board **granted** application **A-1-2004** for a variance to build a carport at
681 8216 St. Charles Road (Wildwood) (Parcel 789-755-2898). The Board granted the
682 variance subject to the following condition:

683

684 1. This variance applies only to the existing improvements. All other applicable
685 regulations of the County Code shall remain in force.

686

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

688 Negative: 0

689 Absent: 0

690

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

696

697 **A - 2-2004** **JORGE VARGAS** requests a variance from Section 24-95(i)(2)d. of
698 Chapter 24 of the County Code to allow a tool shed to remain at
699 2410 Williamsburg Road (Kemps Place) (Parcel 806-714-7322),
700 zoned R-4, One-family Residence District (Varina). The minimum
701 side yard setback is not met. The applicant has 2 feet side yard
702 setback, where the Code requires 3 feet side yard setback. The
703 applicant requests a variance of 1-foot side yard setback.

704

705 Mr. Wright - I'd like to disqualify myself. Please state your name.

706

707 Mr. Blankinship - Does anyone else intend to speak on this case? Would you
708 raise your right hand and be sworn please? Do you swear that the testimony you are
709 about to give is the truth, the whole truth, and nothing but the truth, so help you God?

710

711 Mr. Vargas - Yes sir. Jorge Vargas. I would like to get a variance on a
712 shed that I built. I believe I'm two feet away from my property line, and I did not know
713 that I had to have three feet of variance there. Basically, that's why I'm here, to ask for
714 that variance from you.

715

716 Mr. Wright - Is that shed completed?

717

718 Mr. Vargas - No, it's not.

719

720 Mr. Nunnally - You didn't realize you had to have a building permit either?

721

722 Mr. Vargas - No, I didn't. I've never built anything in my back yard before,

723 and I didn't, honestly I didn't.
724
725 Mr. Nunnally - You have a double lot, don't you? Is that cement platform, I
726 guess it's a basketball court back there, is that on your property?
727
728 Mr. Vargas - Yes it is.
729
730 Mr. Nunnally - Why did you build that shed close to your property line on
731 the other side, when you had all that property over there, and you could put it back
732 further on your lot?
733
734 Mr. Vargas - I have quite a few nephews that like to come over to the
735 house, and I didn't want to move that over, but I do have two sons, and they love to play
736 basketball, and I didn't want to get in their way. I wanted to kill some of the grass too.
737
738 Mr. Nunnally - But you also have a neighbor over on the other side, where
739 you're putting that shed up, almost covers his little shed.
740
741 Mr. Vargas - Yes, but I believe there are no complaints from that
742 neighbor. As a matter of fact, they love the shed; all they asked me to do is to make it
743 look pretty, and that's exactly what I want to do.
744
745 Mr. Nunnally - You didn't have any complaints, and he loves the shed?
746
747 Mr. Vargas - Yes sir. They're beautiful people. I've been living in that
748 house for about ten years now. We get along fine. All my other neighbors, we get
749 along fine. Far as I know, there has not been any complaint on this.
750
751 Mr. Kirkland - Mr. Vargas, what's the size of this little shed?
752
753 Mr. Vargas - It is 17 by 25.
754
755 Mr. Kirkland - How is it secured to the ground?
756
757 Mr. Vargas - I have twelve concrete posts two feet in the ground, and then
758 I have six by six on top of the posts.
759
760 Mr. Kirkland - How much trouble would it be to saw these off and move it
761 over one foot?
762
763 Mr. Vargas - A whole lot, a whole lot.
764
765 Mr. Kirkland - It's supposed to be a shed; it should be easily moved.
766
767 Mr. Vargas - Again, I'm sorry, it's my ignorance. I did not know that sheds
768 were supposed to be moveable.

769
770 Mr. McKinney - Why didn't you build it out of brick, or are you going to brick
771 veneer the shed?
772
773 Mr. Vargas - No, It's either going to be siding or wood.
774
775 Mr. McKinney - But your home is brick.
776
777 Mr. Vargas - Yes it is.
778
779 Mr. Kirkland - Mr. Blankinship, has the building inspector been on site to
780 inspect to see what's there already, so that it's being built correctly?
781
782 Mr. Blankinship - This is another case that I think came to us from Building
783 Inspections. They either observed or received a complaint that the structure was going
784 up without a permit, and it was their inspection that triggered our review.
785
786 Mr. Wright - Have you read the suggested conditions on this case. Did
787 you get a copy of it from the County?
788
789 Mr. Vargas - Yes I did, but I apologize; I left it at home. I don't recall.
790
791 Mr. Nunnally - Mr. Blankinship, would you hand him a copy so he can read
792 it. Are you in agreement with these conditions?
793
794 Mr. Vargas - Yes sir, I don't see a problem.
795
796 Mr. Blankinship - We probably need to clarify on the first one whether we're
797 talking about brick, since it's been discussed.
798
799 Mr. Nunnally - The condition says that new construction shall match the
800 existing dwelling as nearly as practical.
801
802 Mr. Vargas - Are you trying to say that I need to build my shed out of brick
803 to match my house?
804
805 Mr. Nunnally - I don't know what "nearly as practical" means.
806
807 Mr. Blankinship - Normally it would mean the same materials. You can't
808 match brick colors exactly; you can't match vinyl colors exactly.
809
810 Mr. Nunnally - But it doesn't mean wood or vinyl, does it? It means brick.
811
812 Mr. Blankinship - I think the Board should address that specifically, since it's
813 on the table. I would take it to mean brick.
814

815 Mr. Vargas - I do have vinyl siding on the back of my house that I wanted
816 to match to that. My house is not 100% brick; the back of my house has a good portion
817 of vinyl siding. The picture probably does not show it, but I do have vinyl siding on the
818 back of my house and on each end on top.
819
820 Mr. Nunnally - I suggest that it be vinyl.
821
822 Mr. McKinney - You say you dug down two feet for these salt-treated posts?
823
824 Mr. Vargas - Yes sir. Well, it's concrete. I dug down two feet
825
826 Mr. McKinney -and you poured the concrete footing. How deep is the
827 footing?
828
829 Mr. Vargas - Two feet.
830
831 Mr. McKinney - Two by two?
832
833 Mr. Vargas - It's eight-inch pillars, and it's two feet deep.
834
835 Mr. McKinney - How thick is the concrete? Is it two feet? How thick is the
836 concrete in the bottom of these holes?
837
838 Mr. Vargas - Two feet.
839
840 Mr. McKinney - So you've got two feet of concrete you've poured in there.
841 How do the posts attach to the concrete?
842
843 Mr. Vargas - The posts are sitting, and what I did, I drilled a 5/8 bolt into
844 the center of the pillar, and then I sat my six by six on top of that. Then I made my
845 frame around it.
846
847 Mr. McKinney - How does it attach? It just sits on it, so that what you've got,
848 that anchor bolt you've got sitting there, really doesn't attach to the shed.
849
850 Mr. Vargas - No, it just sits on there.
851
852 Mr. McKinney - What happens if a strong wind comes along? It's going to
853 blow it right off.
854
855 Mr. Vargas - It's a pretty heavy shed; it's got to be a very strong wind.
856
857 Mr. McKinney - We've gotten some pretty strong winds here lately too.
858
859 Mr. Vargas - Yes we have.
860

861 Mr. McKinney - If you go to the Building Inspections Office, he's going to
862 make you attach it. You're probably going to have to dig all the way down beside each
863 one of these posts, where he can see where that concrete is. You're going to have to
864 dig out around them, or he's not going to give you an approval.
865
866 Mr. Kirkland - That's what I was thinking.
867
868 Mr. McKinney - It's just sitting there on top of this concrete. So right now you
869 could just pick it up and move it; it's not attached.
870
871 Mr. Kirkland - Economically, it probably would be best to move it, because
872 you're going to have to dig down beside every one of those piers and show that they're
873 two feet thick. You're going to end up taking holes out of the floor, punching holes in
874 the floor, so they can do that. So you're just as well lift it, pour new piers, do the proper
875 mounting, set it back down. It would probably be just as cheap in the long run, if we
876 don't grant the variance, of course.
877
878 Mr. Vargas - So I'm one foot away from my property line, and that's going
879 to make me have to move 400 and some square feet

880
881 Mr. Kirkland - You'll probably have to move more than one foot to clear the
882 piers. You're probably going to have to move over more than one foot to clear the
883 existing piers, so that you can re-dig them, pour them, and set the shed back down on
884 them.
885
886 Mr. Nunnally - You're only required to have eight inches of concrete, as
887 long as you're sitting on (**unintelligible**). You don't have to have two feet. If you dug
888 them down two feet, poured eight inches, then the posts went down into the ground,
889 then the ground would pretty much support it. But what you've got is just really sitting
890 almost on top of the ground.
891
892 Mr. Vargas - So I couldn't attach right to the concrete.
893
894 Mr. McKinney - How are you going to attach it? You can't put bolt on the
895 inside of the post.
896
897 Mr. Vargas - I could put it around the concrete and the six by six, shoot it
898 right through the concrete, have clips, metal stud clips.
899
900 Mr. McKinney - That would be up to the building official who inspects it, but
901 it's got to be safe.
902
903 Mr. Vargas - If I do make this safe, would I be able to leave it in that same
904 place?
905
906 Mr. Kirkland - That's up to us.

907 Mr. McKinney - We don't know yet.
908
909 Mr. Blankinship - That decision will be made at the end of the meeting.
910
911 Mr. Wright - Anything further, Mr. Vargas?
912
913 Mr. Vargas - No, I do apologize; it was my ignorance for building it so
914 close to the edge and not getting enough information. I definitely will get more
915 information next time I build something.
916
917 Mr. Nunnally - If you had applied for a building permit, all of this would have
918 been resolved.
919
920 Mr. McKinney - Mr. Vargas, do you have cable TV?
921
922 Mr. Vargas - Yes I do.
923
924 Mr. McKinney - Do you watch the Henrico County Channel 37?
925
926 Mr. Vargas - No I don't. I do want to say something. I did have to get an
927 engineer, an architect, letter of approval, on the shed, how it was built, and if it was
928 sufficient. Would you like to see that?
929
930 Mr. McKinney - Mr. Marlles, you might need to contact Tamra McKinney and
931 tell her that she may need to put on the cable station, the next time you plan on building,
932 you'd better contact the Building Inspection Office so the public will know about it.
933
934 Mr. Marlles - Yes sir, Mr. McKinney, we can do some public service
935 announcements to remind our residents when they do need building permits.
936
937 Mr. Wright - Anything further, Mr. Vargas?
938
939 Mr. Nunnally - Mr. Vargas, how long did you say you've been living at this
940 property?
941
942 Mr. Vargas - Ten years.
943
944 Mr. Nunnally - How long has your neighbor been living there?
945
946 Mr. Vargas - The one next to me, she's been there when my big tree was
947 just a little tree, so she's been there for 40-something years, and she loves it.
948
949 Mr. McKinney - Mr. and Mrs. Carter.
950
951 Mr. Wright - Any further questions of members of the Board? Is there
952 anyone here in opposition to this request?

953
954 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
955 McKinney, the Board **denied** application **A-2-2004** for a variance to allow a tool shed to
956 remain at 2410 Williamsburg Road (Kemps Place) (Parcel 806-714-7322).

957
958 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
959 Negative: 0
960 Absent: 0

961
962 The Board denied the request as it found from the evidence presented, that any
963 hardship was self-imposed.

964
965 **A - 3-2004** **WARREN COLEMAN** requests a variance from Section 24-94 of
966 Chapter 24 of the County Code to build an addition with porch at
967 3801 Reynard Court (Foxhall) (Parcel 730-761-8800), zoned R-
968 2AC, One-family Residence District (Conditional) (Three Chopt).
969 The rear yard setback is not met. The applicant proposes 40 feet
970 rear yard setback, where the Code requires 45 feet rear yard
971 setback. The applicant requests a variance of 5 feet rear yard
972 setback.

973
974 Mr. Wright - Does anyone else desire to speak? Would you raise your
975 right hand and be sworn please?

976
977 Mr. Blankinship - Do you swear that the testimony you are about to give is the
978 truth, the whole truth, and nothing but the truth, so help you God?

979
980 Mr. Coleman - I do. My name is Warren Coleman; I'm the homeowner.
981 This is Warren Hardwicke; he is the architect and friend. We are looking to just add an
982 addition to the right back corner of our house and the property is a cul-de-sac lot, as it is
983 described here. We would like to build a screened-in porch. The area has a little bit of
984 a triangle, that one length of it would be five feet into the 45-foot variance. The property
985 behind us, it's wooded in the area behind us to the right of the property, and behind us
986 the house that's there, there's quite a distance between the houses, and that individual
987 actually has a fence on his property.

988
989 Mr. Wright - Is there any screening behind your house, woods, or
990 whatever?

991
992 Mr. Coleman - As you can see here, this is to the right of the property;
993 there's lots of trees there as you come around where the area where the screened-in
994 porch is going to be situated. As you can see here, there's a fence that's down on his
995 property; the fence does not actually come to his property line; it's down the slope of the
996 landscape there is where he built his fence. The area to the right of the photograph
997 here would be just a corner of the screened-in porch would need to go into the variance.
998 The rest of the proposed addition would not have any problems with any requirements

999 of the Code.

1000

1001 Mr. Wright - Is there anything further you wish to present? Any questions
1002 of members of the Board? Is anyone here in opposition to this request?

1003

1004 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1005 McKinney, the Board **granted** application **A-3-2004** for a variance to build an addition
1006 with porch at 3801 Reynard Court (Foxhall) (Parcel 730-761-8800). The Board granted
1007 the variance subject to the following conditions:

1008

1009 1. Only the improvements shown on the plan filed with the application may be
1010 constructed pursuant to this approval. No substantial changes or additions to the layout
1011 may be made without the approval of the Board of Zoning Appeals. Any additional
1012 improvements shall comply with the applicable regulations of the County Code.

1013

1014 2. The new construction shall match the existing dwelling as nearly as practical.

1015

1016 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

1017 Negative: 0

1018 Absent: 0

1019

1020 The Board granted this request, as it found from the evidence presented that, due to the
1021 unique circumstances of the subject property, strict application of the County Code
1022 would produce undue hardship not generally shared by other properties in the area, and
1023 authorizing this variance will neither cause a substantial detriment to adjacent property
1024 nor materially impair the purpose of the zoning regulations.

1025

1026 Mr. Silber - Members of the Board of Zoning Appeals, I'm Randy Silber,
1027 Assistant Director of Planning. Because of the nature of this request, I will be sitting in
1028 as Acting Secretary of the Board of Zoning Appeals. Good morning. It's my pleasure to
1029 be here.

1030

1031 **A - 4-2004** **ABID KRAK** appeals a decision of the Director of Planning
1032 pursuant to Section 24-116(a) of Chapter 24 of the County Code
1033 regarding the property at 5401 Dickens Road (Parcel 773-744-
1034 3103), zoned R-2, One-family Residence District (Brookland).

1035

1036 Mr. Wright - Do we have anyone else here who desires to speak with
1037 respect to this case? Would everybody please stand and be sworn. Mr. Silber, would
1038 you swear everyone in.

1039

1040 Mr. Silber - I'd be happy to. Mr. Moore, will you be testifying in this
1041 case?

1042

1043 Mr. Moore - No sir; I hopefully will be representing Planning.

1044

1045 Mr. Wright - Go ahead and be sworn, just to be safe.
1046
1047 Mr. Silber - Do you swear that the testimony you are about to give is the
1048 truth, the whole truth, and nothing but the truth, so help you God?
1049
1050 Mr. Wright - Please state your name for the record. Present your case,
1051 please.
1052
1053 Mr. Krak - Abid Krak. Gentlemen, we've met maybe three or four times
1054 until now. In October 28, 2003, I applied for a building permit to build another garage,
1055 actually a storage shed, 26 by 16, to meet zoning requirements to have accessory
1056 buildings up to 1350 square feet. I don't know what happened. I received a letter from
1057 the Planning Office and Building Office, stop work order. I tried to seek the answers.
1058 First of all, I met with Mr. Marlles and Gregory Revels to solve the case; I got no right
1059 answers, it seems to me. I've got some letters here. After the meeting, I sent it to Mr.
1060 Marlles, and this particular letter I sent to Mr. Marlles, Director of Planning, Deputy
1061 Building Official, Residential Inspector Supervisor, Plumbing Mechanical Inspector
1062 Supervisor, Brookland District Supervisor, and I got the only response from Mr. Marlles
1063 about that. He sent me another letter, like,
1064
1065 "On November 18 I sent you a letter about a zoning violation at your property
1066 located at 5401 Dickens Road. I also requested that you provide a written
1067 confirmation within seven calendar days; violation will be discontinued. At your
1068 request, a building official and myself met with you on November 25. At this
1069 meeting, and subsequent conversation on December 1, 2003, I expressed my
1070 expectation and repeated my request that you respond in writing to the identified
1071 violations. You also made several comments during our conversation that have
1072 not been reflected in your correspondence. If I don't receive clear written
1073 assurance that the violations have been corrected, additional enforcement action
1074 will be taken. If you are not able to provide these assurances, I recommend that
1075 you obtain legal counsel."
1076
1077 Let me read the first letter I sent to Mr. Marlles and Deputy Building Official, Residential
1078 Inspection Supervisor, Plumbing Mechanical Inspection Supervisor, Brookland District
1079 Supervisor, and you gentlemen try and answer some of these questions, please.
1080
1081 Mr. McKinney - Mr. Krak, could I ask you a question? Why is it we don't
1082 have a copy of those letters?
1083
1084 Mr. Krak - This is a stamp.
1085
1086 Mr. McKinney - Why don't we, as listening to this case, why don't we have a
1087 copy of those, and why are you sitting down there reading this to us, when we could
1088 have had it and read it prior to this. When you filed your appeal, you didn't file those
1089 letters with it?
1090

1091 Mr. Krak - No, I did not.
1092
1093 Mr. McKinney - Why not, if you're making it part of the case?
1094
1095 Mr. Krak - I think (thought), first of all, we can solve this case before we
1096 have this meeting.
1097
1098 Mr. McKinney - Apparently not, but go ahead.
1099
1100 Mr. Krak - OK. This letter, on December 1, is to inform you, that after
1101 our conversation with your department in the past and the present, time has finally
1102 come to get all the answers right at this time, such as requesting a new assessment for
1103 this property to increase the assessment. I requested a couple of times, maybe three
1104 times, to increase the assessment on my property. What I heard, was that I was the
1105 second person in the County history to request the assessments to be increased to the
1106 right amount.
1107
1108 Mr. Wright - What has that got to do with this case? That doesn't have
1109 anything to do with this case.
1110
1111 Mr. Krak - Let me finish them.
1112
1113 Mr. Balfour - Well, read the pertinent parts to us and don't tell us about
1114 assessments; we're not here talking about that.
1115
1116 Mr. Krak - The case involves the whole thing, and I want to read it to
1117 you.
1118
1119 Mr. Balfour - You'll read it if we tell you (*that*) you can read it, and I'm
1120 asking you to read the part about the kitchens.
1121
1122 Mr. Krak - The kitchens – this will answer your kitchen situation. And
1123 also, let me stop reading this letter. On December 18, when I filed this appeal, I
1124 requested from Mr. Blankinship, to have that particular inspector, who performed the
1125 inspection down there, to be present today at this meeting. I don't see him here today.
1126 Also, I requested from Mr. Blankinship, for Richard Moore – he's the residential building
1127 inspector supervisor, to be present at this meeting today. He's not here. That's why I
1128 got this tape.
1129
1130 Mr. McKinney - Mr. Krak, I think you need to turn around and look behind
1131 you. You said Mr. Blankinship wasn't here?
1132
1133 Mr. Krak - No, no, no, no. I requested from Mr. Blankinship for Mr.
1134 Lucchesi. He performed the inspection down there on November 17.
1135
1136 Mr. Marlles - Mr. McKinney, Mr. Lucchesi is on vacation out of the state.

1137 Mr. Blankinship is here, and Mr. Revels, who is a building official, is on call if we need
1138 him.
1139
1140 Mr. Wright - Let's cut to the chase here. We're not going to sit here and
1141 listen to all this. Let me ask you a question. It looks like to me that what our report
1142 says, and that's all we've got to operate from, that you have put kitchens in an
1143 accessory building and more kitchens in your house than the County Ordinance would
1144 provide. Is that correct?
1145
1146 Mr. Krak - No!
1147
1148 Mr. Wright - The kitchens are not there? You're saying the kitchens are
1149 not there.
1150
1151 Mr. Krak - No!
1152
1153 Mr. Wright - Well that's the issue here.
1154
1155 Mr. Krak - No! Okay, this is going to answer your question, sir, I'm
1156 sorry. All right, forget this first part, forget it.
1157
1158 Mr. Wright - The question is whether you've got kitchens or not, and
1159 that's a pretty simple issue.
1160
1161 Mr. Krak - No, I don't!
1162
1163 Mr. Wright - You're saying you don't. Then the County's got to prove that
1164 you do. It's that simple
1165
1166 Mr. Krak - Okay, let me finish reading this whole letter. I'm sorry, I'm
1167 sorry. There are many unanswered questions here. I tried to seek these answers for a
1168 long time.
1169
1170 Mr. Wright - What has that got to do with whether you've got a kitchen or
1171 not? That's all we're concerned with.
1172
1173 Mr. Krak - All right. Forget this part; forget this part. Okay. We'll have
1174 a meeting next month too. Let me go back to the kitchen situation.
1175
1176 Mr. Wright - That's all I want to hear about.
1177
1178 Mr. Krak - All right. Work to be performed to this property from October
1179 28, 2003, to May 1, 2004. I requested to have an inspection prior any work to be done
1180 from the plan, the building permit plan. 2003-04-467, to find out how much
1181 improvement was already done to the property since December 22, 2000, I bought this
1182 place then, until October 28, 2003, and a final inspection from that same building permit,

1183 by me, John Marlles, Director of Planning, Gregory Revels, Building Official, John
1184 Cooper, Plumbing Mechanical Inspection Supervisor, and Electrical Inspection
1185 Supervisor, I don't know his name. Okay, I request an inspection, okay, to make sure
1186 what we have down there, to build a new garage by the plan from a building permit
1187 2003-o4-467.

1188
1189 Mr. Wright - I understand. Didn't you get a permit in October 2003 to
1190 build a garage?

1191
1192 Mr. Krak - Yes sir.

1193
1194 Mr. Wright - Okay, you got the permit; did you build a garage?

1195
1196 Mr. Krak - No! They stopped work order. No! I had a couple
1197 inspections for footings, foundation, and slab.

1198
1199 Mr. Kirkland - Mr. Krak, is that the big garage that you have on your
1200 property behind your home that exists. Did you have a kitchen inside of that building?

1201
1202 Mr. Krak - Yes, I did.

1203
1204 Mr. Kirkland - Is it still there?

1205
1206 Mr. Krak - No. No.

1207
1208 Mr. Kirkland - Has it been removed more than once?

1209
1210 Mr. Krak - What do you mean?

1211
1212 Mr. Kirkland - I mean, has it been there, and you take it out and put it back
1213 again?

1214
1215 Mr. Krak - Just the stove, just the stove.

1216
1217 Mr. Kirkland - Mr. Marlles and his staff seem to have a legitimate claim
1218 here in this report, and that's what we're trying to get to, just the kitchen issues. Okay?

1219
1220 Mr. Krak - Okay, let me ask you this question.

1221
1222 Mr. Balfour - Mr. Chairman, could we hear from the staff, and then let Mr.
1223 Krak reply to the staff.

1224
1225 Mr. Kirkland - I think we need to hear from the staff.

1226
1227 Mr. Wright - Give him a couple more minutes to finish up that.

1228

1229 Mr. Krak - Let me finish reading this.
1230
1231 Mr. Wright - Let's go.
1232
1233 Mr. Krak - Let me finish reading. To build a new garage from the
1234 building permit, I just started. To finish renovation on existing main building, basement,
1235 first floor, second floor, and a third floor, from that same building permit.
1236
1237 Mr. Nunnally - And a garage? You've got three floors and a garage?
1238
1239 Mr. Krak - Main house. I'm talking about main house. For the same
1240 permit, I include everything to be inspected in my main house. I got basement, first floor
1241 and a second floor. Okay? To finish Dickens Road drainage. Can I ask one question?
1242 Who's responsible to maintain the front ditch in front of my property, against Dickens
1243 Road?
1244
1245 Mr. Wright - That's not at issue here; we'll take that up later. We're
1246 talking about simply whether you've got these kitchens in your main house and garage.
1247
1248 Mr. Krak - Okay, that's my plan. All right, to have as a guesthouse
1249 building, as a guesthouse use, or to use this building for any business I can have to
1250 operate from home., To have existing shed as playroom use, to install new drainage
1251 from the far back corner of this property on Krueger Drive to the left far corner from my
1252 property and Dickens Road, and to have right assessment to this property up to
1253 \$250,000, I request that from you. Okay, final inspection this property from the plan of
1254 the building permit 2003-04-467 will answer all your questions, such as Planning and
1255 Zoning and the codes. Work to be performed to this property after May 1, 2004: to
1256 build a new addition to the house, garage and first floor, and a living space up on the
1257 second floor, to build a new in-ground swimming pool.
1258
1259 Mr. Wright - What has all of that got to do with whether you've got two
1260 kitchens in your house and a kitchen in the garage? That's what we're here to hear. I
1261 don't want to listen to all of this. This has no bearing on this case. You're just bringing
1262 up a lot of extraneous information. Do you have two kitchens in your house?
1263
1264 Mr. Krak - No, I don't.
1265
1266 Mr. Wright - Okay, and do you have a kitchen in your garage?
1267
1268 Mr. Krak - No, I don't.
1269
1270 Mr. Wright - Okay, so that's it. So let's hear from the County, and then
1271 you'll get a chance to rebut. Okay, let's hear from the County.
1272
1273 Mr. Krak - Okay. All right. But I want to finish this, my presentation. I
1274 want to finish this, my presentation.

1275
1276 Mr. Wright - We're not going to sit here and listen to you talk about
1277 everything under the sun that has nothing to do with this case. I'm going to declare that
1278 you're out of order, and that'll end it. If you don't like what we do, you can appeal it to
1279 the Circuit Court.

1280
1281 **(Mr. Blankinship was relieved of his duties as Secretary of the Board, and Mr.**
1282 **Randall Silber, Assistant Director of Planning, sat in as Acting Secretary of the**
1283 **Board.)**

1284
1285 Mr. Blankinship - Mr. Chairman, members of the Board, my name is Benjamin
1286 Blankinship, and as the Zoning Division Manager, I supervise the field staff who do the
1287 inspections of zoning complaints, including Mr. Scott Lucchesi, who inspected this
1288 property. I have also been on this property a couple of times myself, so I will be
1289 speaking, both as an eyewitness, and as Mr. Lucchesi's supervisor. I do apologize. As
1290 Mr. Krak mentioned, he had asked Mr. Lucchesi to be present. As soon as I was aware
1291 that Mr. Lucchesi could not be here, I suggested to Mr. Krak that we defer to the
1292 February meeting, when Mr. Lucchesi could be present, and he chose to go ahead,
1293 rather than defer.

1294
1295 Mr. Wright - Let's ask him now – would you want to defer this until Mr.
1296 Lucchesi can be here in February? You said you wanted him here. Do you want him
1297 here? If you want him here, we can have him here in February. The question is, do you
1298 want to defer the case to February when Mr. Lucchesi can be present? You said you
1299 wanted him here, and we can have him here.

1300
1301 Mr. Krak - We'll be here next month too.

1302
1303 Mr. Wright - That's not my question. Can't you answer the question
1304 directly? Do you want to defer the case until Mr. Lucchesi can be here, or not, or do
1305 you want to go ahead without his presence? That's your decision.

1306
1307 Mr. Krak - No, we'll solve the problem today.

1308
1309 Mr. Wright - All right.

1310
1311 Mr. Blankinship - I also asked Mr. Revels, the Building Official, if Richard
1312 Moore could attend, as Mr. Krak had requested. Mr. Revels did not feel that that was
1313 appropriate, as Mr. Moore himself had not been on the property. But Mr. Revels, as
1314 mentioned, has offered to come to the hearing. He's working today, but he is by his
1315 phone and would be happy to come if the Board has questions for him.

1316
1317 Mr. Wright - Mr. Krak, you're going to have an opportunity to rebut after
1318 the County finishes, so please don't interrupt.

1319
1320 Mr. Blankinship - If I can go very quickly through the chronology of this issue.

1321 As you know, there have been some other issues, some variance applications. I'm not
1322 even going to bring those in, unless you have any questions about them, but sometime
1323 after Mr. Krak bought the house with the original garage on it, he applied for a building
1324 permit to convert the garage to what, under the terms of the Zoning Ordinance, was a
1325 dwelling. We rejected that building permit and explained to Mr. Krak that he could not
1326 have a second dwelling unit on the property, and that if a kitchen were built into that
1327 garage, that would constitute a dwelling unit, so we rejected the building permit. He
1328 took that under advisement. He came back with a revised application for his building
1329 permit, showing the original garage on the property to be converted to a workshop. We
1330 explained to him that he could have a workshop as long as it's not a dwelling. He built
1331 the workshop according to the plans, we did a final inspection for the Building
1332 Inspections; we did an inspection from Zoning Inspections; the workshop was approved.
1333 Very shortly after that, we received a complaint that the workshop had been converted
1334 to a dwelling unit, that a kitchen had been installed. Mr. Lucchesi went out and
1335 inspected the property, found that there was a kitchen in the garage, served a notice of
1336 violation. It took us several months of working with Mr. Krak to get that violation
1337 corrected, but he did eventually come into voluntary compliance. We didn't have to go
1338 to court. He did remove all the cooking facilities from that kitchen, so that it was no
1339 longer a kitchen, so that it could be used as a guesthouse. He converted it from
1340 workshop to guesthouse somewhere along the line. He then came in for another
1341 building permit, to build a new garage, as well as to do some renovation work to the
1342 existing house. Once again, we had inspectors on the site, and once again, Mr.
1343 Lucchesi saw that there was the normal kitchen in the house; there were also cooking
1344 facilities in the basement of the house, and the cooking facilities had been put back into
1345 the guesthouse building. So Mr. Lucchesi reported that and because it was a repeat
1346 violation, Mr. Marles wrote the letter that served as the notice of violation on that case.
1347 That's what brings us here today. Mr. Krak has stated that he has removed two of the
1348 kitchens and has only the main kitchen in the house. If that is true, then the property is
1349 in compliance today. The Planning Office has four ongoing concerns however. One is
1350 just the use of the property in general, and we want to be certain that the use of the
1351 property remains in compliance. The second is the use of the guesthouse. The Code is
1352 not very specific on what a guesthouse is or who a guest is or who may stay in a
1353 guesthouse, but we believe it is not intended for long-term stay for people who do not
1354 have other homes. We believe it is for short-term stay of people visiting the residence
1355 of the property, and we would like to have a statement from Mr. Krak on the record this
1356 morning, clarifying that he is not going to use the guesthouse for long-term stays by
1357 anyone. The third is the design of the garage. As was mentioned, there was one
1358 building permit for both the renovation to the house and a new garage. That garage is
1359 16 by 24 feet. The overhead door is shown on one of the 24-foot sides, which means
1360 that the depth of the parking bay is only 16 feet, which is inadequate by normal
1361 standards for a garage. Because of that curiosity of design, staff is concerned to know
1362 exactly what that building is going to be used for in the future. There's nothing illegal
1363 about the design of the garage, so we can't reject the permit, but we would like to have
1364 it clarified on the record this morning exactly what that structure will be used for. Finally,
1365 as I mentioned, we are just concerned that, not only that the property be in compliance
1366 today, but that it remain in compliance. We really don't want to invest any more staff

1367 resources pursuing the same complaints over and over again. I would be pleased to
1368 answer any questions.
1369
1370 Mr. Kirkland - Mr. Blankinship, when you said you are concerned about
1371 what the building is going to be used for, are you talking about the newest permit that he
1372 got for the newest garage, I guess it would be the third structure, is that correct?
1373
1374 Mr. Blankinship - We are concerned about both that building and the other one
1375 that was originally a garage and was converted to a guesthouse. We're concerned with
1376 both of those.
1377
1378 Mr. McKinney - Have you had an opportunity to inspect to make sure the
1379 kitchens are gone?
1380
1381 Mr. Blankinship - No sir, we have not.
1382
1383 Mr. McKinney - So you don't know whether they are gone or not?
1384
1385 Mr. Blankinship - No sir, we do not.
1386
1387 Mr. Wright - Looks like to me that's the issue we're confronted with here.
1388 When was the last inspection that the County conducted at the house?
1389
1390 Mr. Blankinship - November, I believe, 18th.
1391
1392 Mr. Wright - And this is almost into February? The charge here is that
1393 he's got too many kitchens, and he states under oath that there are no kitchens, that he
1394 has one kitchen in his house, and no kitchens in the garage.
1395
1396 Mr. Blankinship - He has told us that this morning, and we would be happy to
1397 go out and inspect to see whether that is true.
1398
1399 Mr. Wright - I don't see what we've got to decide. If he says it isn't, and
1400 the County hasn't inspected it, I don't understand what the issue is.
1401
1402 Mr. Blankinship - The question of fact should be settled by an inspection, I
1403 agree with you.
1404
1405 Mr. Wright - How is it that the County didn't inspect it before this
1406 meeting?
1407
1408 Mr. Blankinship - The statement was just made to us this morning that he has
1409 removed the other kitchen.
1410
1411 Mr. Wright - So you just found out about the fact – when was the
1412 inspection made that you determined there were two kitchens in the house and one in

1413 the garage?
1414
1415 Mr. Blankinship - I believe it was November 18th; it was in November.
1416
1417 Mr. Wright - So you haven't inspected it since that time?
1418
1419 Mr. Blankinship - Right.
1420
1421 Mr. Balfour - Did he ask you to inspect it prior to today?
1422
1423 Mr. Blankinship - No, I don't believe so.
1424
1425 Mr. McKinney - Mr. Blankinship, on our agenda it says that Mr. Krak is
1426 appealing the decision of the Director of Planning. What is he appealing the decision of,
1427 the kitchens? The kitchens is the code; it's not the Planning Director. What is he
1428 appealing?
1429
1430 Mr. Blankinship - My understanding, and he would be the best one, I guess, to
1431 answer that, my understanding is that he is challenging the statement of fact that there
1432 are three kitchens on the property, or that there were three kitchens on the property
1433 November 18.
1434
1435 Mr. McKinney - But you inspected it, and there were three kitchens.
1436
1437 Mr. Blankinship - Yes sir.
1438
1439 Mr. Wight - I think Mr. Marlles wants to be heard.
1440
1441 Mr. Marlles - Thank you, Mr. Chairman. My name is John Marlles, and
1442 I'm Director of Planning. Just to add to what Mr. Blankinship mentioned in his staff
1443 report, and maybe to address the questions by the Board, there is a notice of violation.
1444 The issue was that there were three kitchens on the property. The other concern here
1445 that was brought up by Mr. Blankinship, and it was included in the notice of violation, is
1446 that there is a concern here that Mr. Krak is providing temporary housing, in fact, to
1447 immigrants, and we felt it was very important, as Mr. Blankinship, in his staff
1448 presentation made, to get Mr. Krak here to clarify for the record, that he is not going to
1449 be using the property for providing temporary housing for immigrants or any other
1450 group. Staff would be glad to perform the inspection of the property, but again, we felt it
1451 was important to get some clarification for the public record for Mr. Krak regarding the
1452 use of the property.
1453
1454 Mr. Wright - All right. Anything further from the County?
1455
1456 Mr. Moore - Mr. Chairman, I'm Jim Moore with the County Attorney's
1457 Office. I really can't add any substance to what the folks were talking about, but it may
1458 well be that a deferral, in order to have that inspection, because as Mr. Blankinship

1459 indicated, our evidence is, and our experience is, that at least the kitchen in the guest
1460 house, has come and gone a couple of times, and we're kind of concerned about the
1461 shifting sands that we're faced with in trying to resolve this. Mr. Krak has told at least
1462 one person that he's building a resettlement center. Now we don't know whether he
1463 was referring to this particular property or not, but it looks like, given the history of it, and
1464 for that reason we thought it was important that it at least get to this point before it was
1465 dismissed as moot, and then find out that tomorrow we've got a violation again.

1466
1467 Mr. Wright - Thank you. All right, Mr. Krak, we can hear from you again.
1468 Excuse me, I'm sorry, we have somebody else in opposition. I apologize; I didn't see
1469 you.

1470
1471 Mr. Wenk - Good morning. I'm Brian Wenk. I thought this hearing was
1472 for him to continue on building this garage, but obviously, it's other things involved that
1473 maybe I'm not aware of. I live at 3011 Krueger Drive, directly behind Mr. Krak's
1474 property. My brother and I own the property at 5403 Dickens, which is next door. I wish
1475 to voice my disagreement on allowing Mr. Krak to continue building a new structure. I'm
1476 still quite concerned about the flooding of our property on Krueger Drive, due to the
1477 blockage of the natural flow of access water across Mr. Krak's property, which the
1478 Board was informed of, with pictures, at the June 26, 2003, meeting. I have some
1479 pictures, that you're welcome to use, showing you where this pipe that went under the
1480 road, that has now been taken up or blocked up, by this garage building. I've drawn
1481 roughly where the pipe is.

1482
1483 Mr. Balfour - Mr. Wenk, have you been in there lately, in any of those
1484 buildings?

1485
1486 Mr. Wenk - No sir. On January 13 of this year, I met with Mr. Glover, Mr.
1487 Pinkerton, Mr. Hinson, and Mr. Vanarsdall. I was shown a picture, which you showed
1488 up there earlier, or Mr. Krak's property, that you already have, of the foundation that had
1489 gravel on it, and I was told that this picture was done on November 18. I'm assuming
1490 you have the letters that the County sent him; they sent them to me, and if you don't, I
1491 can make copies and bring them to you. The picture shows that the stopwater was
1492 graveled, the foundation up. I have pictures that I took, showing that now he's put a
1493 slab over top of it, after the work order stoppage, so I'm just assuming that he doesn't
1494 pay any attention to what the County tells him.

1495
1496 Mr. Balfour - These pictures were taken January 16, is that right?

1497
1498 Mr. Wenk - Yes sir.

1499
1500 Mr. Wright - And this was for the new garage?

1501
1502 Mr. Wenk - Yes, this was the foundation for the new garage, which is the
1503 slab now.

1504

1505 Mr. Wright - And there was a stop order?
1506

1507 Mr. Wenk - Done on November 18, that I'm assuming you have a copy
1508 of that letter. I don't know if you do or not, but the County sent me one. Also, from
1509 talking to my neighbor, Mr. Krueger, who used to live there, still lives there, talking to his
1510 son, where this pipe is, to give you a history, and I think I've told this Board in the past,
1511 that it was put in by Henrico County. The son told me that when they built (*Route*) 64,
1512 they had to come up and put a water line in there, for County water, because the
1513 Interstate 64 cut off all the wells. I guess they had this drainage problem then, and then
1514 the County put this pipe in, and it went on over and it drained; you have a copy of the
1515 picture I gave you at the last hearing, showing the natural flow that went through that
1516 property before he bought it. That's where we're at. I would like to review a few facts.
1517 The BZA hearing on April 25, 2002, Mr. Krak stated that he put 21 loads of fill in his
1518 yard. After obtaining a copy of the hearing, he states there were only 15 loads put in
1519 there. Facts from the BZA hearing April 2002 and June 26 we had. How can Mr.
1520 Blankinship, being your Secretary, and he's also in Planning and Zoning, allow another
1521 building permit to be issued, because it seems like every time I've been to the County
1522 about inspection, I wind up with him. That department is fully aware of what's been
1523 going on. Another question I'd like to have answered, which it seems no one can
1524 actually give me a straight answer, is how the County can allow a barn/garage structure
1525 to be converted to a house – you are calling it a guest house now – that was probably
1526 built with no foundation. Okay, yes, it had a slab. He's replaced probably 100% of the
1527 structure, from the original structure. It's all been rebuilt with new wood. How that can
1528 be allowed – I would think that's a change of use, would have a special permit. This
1529 thing is new – why doesn't it meet the current County setback laws and rezoning stuff to
1530 be built? No one can answer that question for me.

1531
1532 Mr. Wright - It's got to meet those requirements.
1533

1534 Mr. Wenk - Well, I get that this is grandfathered because the slab was
1535 already here, but the whole structure's new. There's probably not a stick of wood in this
1536 thing that's from the original garage, and that's what I've been trying to tell everybody,
1537 but no one seems to be Then he brought up Mr. Lucchesi, he's supposed
1538 to have been the inspector; I'm assuming he's seen new wood in that building as it went
1539 up, before they sheet-rocked it. Then on that same meeting we had back in January, on
1540 the 13th, I was told that Mr. Krak was under numerous zoning violations, which I've
1541 already brought up, and I would like to know if they have been corrected. From the
1542 sketch of this new garage that I was shown, it appears to me that this is going to be
1543 probably another apartment or a house, and you've brought that out, because you're not
1544 going to be able to put a car in a 16-foot wide building. I just want to thank you for
1545 allowing me to voice my concerns on this matter.

1546
1547 Mr. Wright - Nice to hear from you. We'll certainly take all of this, and we
1548 will certainly have the staff look into these requirements of your request. I want to ask
1549 the staff one question before we go further. It says the building official issued a stop
1550 work order for the building permit on this new garage, and I want to ask the staff why

1551 was that stop work order issued?

1552

1553 Mr. Blankinship - The permit for the garage was the same permit as the permit
1554 to renovate the house. He put all that work on one permit, and I believe I used the
1555 wrong term. I was in a meeting with Mr. Revels yesterday; actually it was not a stop
1556 work order. The permit was revoked, so that's my mistake, and I apologize for that.
1557 There was one permit for the renovation of the house and for the construction of the
1558 new building. The reason that was revoked was because the second kitchen was
1559 discovered, which was a violation of the zoning ordinances.

1560

1561 Mr. Wright - That brings us back to the kitchens.

1562

1563 Mr. Blankinship - Right; yes sir.

1564

1565 Mr. Wright - That's where we started and where we are. Is that all from
1566 the County? Mr. Krak, this is what it appears to be. You say, under oath, that you have
1567 one kitchen in your house and no kitchen in your garage. That's what you say? Under
1568 oath, that's your testimony?

1569

1570 Mr. Krak - Thank you. Right now, yes.

1571

1572 Mr. Wright - Right today. If that is correct, there is no basis for revoking
1573 this permit.

1574

1575 Mr. Krak - Thank you.

1576

1577 Mr. Wright - Now what we've got to do is very simple in my mind. The
1578 County has got to prove, go out and check to see if that's correct. If that's correct, then
1579 this would be overruled, and you'd go forward.

1580

1581 Mr. Krak - Thank you sir.

1582

1583 Mr. Wright - What I'm going to suggest right now, before we get anything
1584 further, that's the issue, that we defer the case to the February meeting, to permit the
1585 County to go out and inspect the property thoroughly, and then come back and report,
1586 with pictures, the results of those inspections.

1587

1588 Mr. Krak - I've got everything on the tape.

1589

1590 Mr. Wright - I'll take your word; you're under oath. You said you've got
1591 no kitchens, and we've got to stand on that. We've got to accept that until, unless the
1592 County can contradict it, prove it. My view right now is what we need to do is defer this
1593 case until the February meeting, have the County go inspect the property. If you have
1594 one kitchen in your house and one in your garage, as long as you don't use that garage
1595 for something else besides a garage, and as long as you don't use the guesthouse for
1596 permanent facilities, you're in compliance. But if we determine that you're using the

1597 new garage for something else other than a garage, or that you're using the guesthouse
1598 for a permanent facility for someone to live in, then you're going to be in violation again,
1599 and you're going to be back here.
1600
1601 Mr. Krak - Thank you, thank you. Let me say this.
1602
1603 Mr. Wright - One kitchen in the house, no kitchens in the garage, is what
1604 I'm saying.
1605
1606 Mr. Nunnally - I move to defer the case to the February meeting.
1607
1608 Mr. Krak - Let me go back to what I said to the letter I sent to Mr.
1609 Marlles.
1610
1611 Mr. Wright - We don't need to discuss that now. We'll let you speak at
1612 the next meeting when we come in.
1613
1614 Mr. Krak - Please, let me answer a couple of questions regarding the
1615 position here. I have a right.
1616
1617 Mr. Kirkland - You might dig a hole for yourself; you'd better listen.
1618
1619 Mr. Wright - This is the issue, whether you've got two kitchens in the
1620 house or a kitchen in the garage, and you said you don't.
1621
1622 Mr. Nunnally - That's all we need to know right now.
1623
1624 Mr. Wright - That's all we need to know right now.
1625
1626 Mr. Krak - Can I continue to build that garage now?
1627
1628 Mr. Wright - When they make the inspection, and if you don't have a
1629 kitchen in the garage, and you don't have but one kitchen in the house, I think they
1630 would have to give you the permit to proceed with the garage, as long as it's a garage.
1631
1632 Mr. Nunnally - But you're not getting that permission right now, in answer to
1633 your question. You cannot do anything until they come over there and look at it.
1634
1635 Mr. McKinney - He already has; he poured the floor when he had a stop
1636 work order.
1637
1638 Mr. Krak - A stop work order, and why? Just one more question.
1639
1640 Mr. Kirkland - Mr. Blankinship explained it really wasn't a "stop work"; your
1641 permit was revoked, which is a lot different.
1642

1643 Mr. Wright - If you don't have but one kitchen in your house and no
1644 kitchen in your garage, they will have to reissue your permit. It's as simple as that.
1645
1646 Mr. Krak - Can I ask you one more question, please?
1647
1648 Mr. Wright - One question, and let's go, because we've got other people
1649 waiting here.
1650
1651 Mr. Krak - One question. The one kitchen is supposed to be on this
1652 property, right or wrong?
1653
1654 Mr. Wright - That's correct.
1655
1656 Mr. Krak - Doesn't matter where?
1657
1658 Mr. Wright - It's a single-family; it's in your house. You can't have a
1659 kitchen in the garage. In your living quarters, in the house. It's as simple as that.
1660
1661 Mr. Kirkland - In the house, not the guesthouse.
1662
1663 Mr. Krak - All right. Then why they didn't perform the inspection when I
1664 sent the letters to Mr. Marlles?
1665
1666 Mr. Wright - I don't know about that, but we're going to take care of it.
1667 Wait a minute, Mr. Moore has got a question.
1668
1669 Mr. Moore - That's right, thank you. The only other thing is, there was a
1670 statement that if he didn't have any additional kitchens, he could proceed with the work.
1671 I think when they made the inspection which resulted in the revocation of the permits,
1672 they also found some building code violations. Obviously, we didn't tell you that earlier,
1673 but obviously they would have to be dealt with, and I don't want him to go away thinking
1674 that that's the whole test.
1675
1676 Mr. Wright - Get all that resolved in your report for next time, and then
1677 that's what we'll deal with.
1678
1679 Mr. Kirkland - Then we'll have testimony again next time?
1680
1681 Mr. Wright - Yes, we'll have to.
1682
1683 Mr. Kirkland - We'll have testimony again next time.
1684
1685 Mr. Wright - We'll have testimony on behalf of the County, to prove
1686 whether it's a kitchen or not.
1687
1688 Mr. Moore - Thank you.

1689
1690 Mr. Wright - The motion's been made to defer the case; is there a
1691 second? Any further discussion?
1692

1693 Upon a motion by Mr. Balfour, seconded by Mr. Kirkland, the Board **deferred**
1694 application **A-4-2004** to appeal a decision of the Director of Planning regarding the
1695 property at 5401 Dickens Road (Parcel 773-744-3103). The case was deferred from the
1696 January 22, 2004, until the February 26, 2004, meeting.
1697

1698 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

1699 Negative: 0

1700 Absent: 0

1701
1702 **UP- 1-2004** **W. C. ENGLISH, INC.** requests a conditional use permit pursuant
1703 to Sections 24-103 and 24-52(d) of Chapter 24 of the County Code
1704 to extract materials from the earth at 3591 Britton Road (Parcels
1705 826-697-0978 and 827-697-3933), zoned A-1, Agricultural District
1706 (Varina).
1707

1708 Mr. Blankinship - Mr. Chairman, should I call case UP-2-2004 as well? These
1709 are companion cases.
1710

1711 Mr. Wright - Would you call both of them, please.
1712

1713 **UP- 2-2004** **W. C. ENGLISH INC.** requests a conditional use permit pursuant to
1714 Sections 24-103 and 24-52(d) of Chapter 24 of the County Code to
1715 extract materials from the earth at 6919 Monahan Road (Parcel
1716 822-699-9433), zoned A-1, Agricultural District (Varina).
1717

1718 Mr. Wright - Does anyone else desire to speak? Please stand and be
1719 sworn at the same time. Would you raise your right hand and be sworn please?
1720

1721 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1722 truth, the whole truth, and nothing but the truth, so help you God?
1723

1724 Mr. Higginbotham - I do. My name is Jay Higginbotham. I'm with W. C. English,
1725 Inc. Members of the Board, the area on the screen right now is the Wooten/Preston
1726 Borrow Pit. This pit is currently being used to construct the Britton Road overpass over
1727 Britton Road, which initially was supposed to be part of the 895 construction, but due to
1728 various funding issues, that was postponed and finally started this fall. Areas A and B
1729 are areas that were originally potential wetland sites, and we've had the Corps of
1730 Engineers examine those two sites, and so we're asking that areas A and B be allowed
1731 to be incorporated into the borrow pit plan, and that is basically, other than asking for
1732 the renewal, that's the only change. Every other condition, I believe, Mr. Blankinship, is
1733 fine.
1734

1735 Mr. Wright - Is that in both cases?
1736
1737 Mr. Higginbotham - The other borrow pit has never been opened up; that's off
1738 Monahan Road; that pit, the airport connector is the third project that we anticipate
1739 possibly coming on line within the next year, to maybe two years, and wanted to renew
1740 both permits at the same time. This permit expires maybe several months after the
1741 other permit.
1742
1743 Mr. Wright - Have you read all the suggested conditions for both cases?
1744
1745 Mr. Higginbotham - It's my understanding that the conditions are identical to
1746 what were approved at the last meeting, and that's find.
1747
1748 Mr. Wright - Is that the case, Mr. Blankinship?
1749
1750 Mr. Blankinship - Yes sir, that's correct. There is one change we need to
1751 make to the conditions on UP-1. The bonding amount depends on the area to be
1752 disturbed, and I believe you asked to increase that area.
1753
1754 Mr. Higginbotham - We'll check that, but I think you've got, the full bond amount
1755 has never been changed from 1999.
1756
1757 Mr. Blankinship - But you're adding additional area.
1758
1759 Mr. Higginbotham - Right, but we've actually eliminated some area, but whatever
1760 the acreage is, we'll make sure that we comply with the County.
1761
1762 Mr. Blankinship - So the numbers in condition 15 might change a little bit.
1763
1764 Mr. Wright - That would be understood.
1765
1766 Mr. Blankinship - Absolutely.
1767
1768 Mr. Nunnally - You said the conditions in both cases were identical to last
1769 time it was renewed, and you accept that?
1770
1771 Mr. Higginbotham - Yes sir, I will accept the identical conditions that we had last
1772 time.
1773
1774 Mr. Wright - Anything further? All right, we'll hear from the opposition.
1775 Sir, would you come down and be heard.
1776
1777 Mr. Blankinship - Mr. Chairman, while he's coming down, I did also receive
1778 one phone call from a resident of the County, who opposed all three of the extraction
1779 permits. There weren't any specific complaints, just general opposition.
1780

1781 Mr. Wright - Please state your name for the record.
1782
1783 Mr. Christian - Good morning. My name is Leon W. Christian. I'm here to
1784 oppose UP-2-2004. Mr. Chairman, and other Board members, I have a personal eye-
1785 view of this property since the proposed 895 completion. The last letter I got from the
1786 County was in December of 2000. Judge Hicks heard the initial facts on the land. The
1787 State came in to defend its position on the proposed 895 at that time. The deed for our
1788 family part was taken up by me in a letter sent to me from the State on behalf of Henrico
1789 County. I'm the spokesman, and I also hold the Deed of Trust for the original property
1790 in question. Prior to me getting the Deed of Trust sent to me, I have not changed the
1791 address to my personal residence of Richmond, but the last heir was my grandfather's
1792 daughter. She lived in Mohave Valley, Arizona.
1793
1794 Mr. Wright - Do you have some question about the legality or the
1795 conveyance of the use?
1796
1797 Mr. Christian - Yes sir.
1798
1799 Mr. Wright - Well, that's not before us. We're concerned with the use of
1800 the property. Whether or not they have legal right to do so would be something that
1801 would be between you or the owners and the company, and if you're claiming that it was
1802 something that was not legally in that conveyance, that's something that needs to be
1803 taken up by a court, but that's not our concern. We're concerned with the use.
1804
1805 Mr. Christian - Maybe I'm confused then, on the original intent of this letter.
1806
1807 Mr. Higginbotham - Is your property the Christian Estate?
1808
1809 Mr. Christian - Yes sir.
1810
1811 Mr. Blankinship - Jay, we need you on the record.
1812
1813 Mr. Higginbotham - If I could go on the record to clarify Mr. Christian, I am
1814 somewhat familiar with the Christian family, because back in 1999, trying to locate
1815 properties, there's actually an error. UP-2-2004 is actually on the flip, where it says
1816 2002 aerial photograph. The location is actually on the lower side of 895, not the upper
1817 side. Now that is originally part of the Spanos Tract, so what's shown in yellow right
1818 now is still owned by the Spanos Family, but the area that English is requesting the
1819 permit on is actually on the lower side of 895, and so Mr. Christian, I think your property
1820 is up in the top left corner, so there's been some confusion. The actual property is
1821 going to be in the lower. This property does not abut the Christian tract.
1822
1823 Mr. Christian - But it's contrary to the letter.
1824
1825 Mr. Blankinship - Mr. Wright, we're going to have to defer. We've notified the
1826 property owners bordering the parcel shown on this map.

1827
1828 Mr. Nunnally - Apparently you got notice when you didn't need to, so we're
1829 going to have to re-notify and re-hear the case.
1830
1831 Mr. Wright - Evidently we've got a problem here with the notice, and
1832 that's created the problem.
1833
1834 Mr. Christian - I shouldn't have gotten this letter, in other words.
1835
1836 Mr. Wright - I'm sorry you've been put to the trouble of coming down
1837 here, Mr. Christian.
1838
1839 Mr. Christian - I am too, because I could have done something else today.
1840
1841 Mr. Wright - Am I hearing that we gave notices improperly?
1842
1843 Mr. Higginbotham - We can ask for a deferral, members of the Board.
1844
1845 Mr. Wright - Is that on both cases?
1846
1847 Mr. Higginbotham - No, just on UP-2.
1848
1849 Mr. Christian - May I ask a question?
1850
1851 Mr. Wright - Since you've come all the way down here.
1852
1853 Mr. Christian - Can I, as the sole owner of the property, can I go and survey
1854 my property?
1855
1856 Mr. Wright - Oh yes you can. Do what you want. As long as it doesn't
1857 violate any law. Does that conclude your case? At the end we'll defer that one then. Is
1858 anyone else here in opposition?
1859
1860 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1861 McKinney, the Board **granted** application **UP-1-2004** for a conditional use permit to
1862 extract materials from the earth at 3591 Britton Road (Parcels 826-697-0978 and 827-
1863 697-3933). The Board granted the use permit subject to the following conditions:
1864
1865 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the
1866 County Code.
1867
1868 2. Monday through Friday hours of operation shall be from 6:00 a.m. to 6:00 p.m.
1869 when Daylight Savings Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other
1870 times. Saturday hours of operation shall be 8:00 a.m. to 1:00 p.m.
1871

- 1872 3. No operations of any kind are to be conducted at the site on Sundays or on
1873 national holidays.
1874
- 1875 4. Open and vertical excavations having a depth of 10 feet or more for a period of
1876 more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the
1877 public safety.
1878
- 1879 5. All means of access to the property shall be from the public right of way of I-895
1880 or Britton Road.
1881
- 1882 6. A superintendent who shall be personally familiar with all the terms and
1883 conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and
1884 conditions of UP-1-2004, shall be present at the beginning and conclusion of operations
1885 each work day to see that all conditions of the County Code and the use permit are
1886 carefully observed.
1887
- 1888 7. Topsoil shall not be removed from any part of the property outside of the area in
1889 which extraction is authorized. Sufficient topsoil shall be stockpiled on the property for
1890 re-spreading in a layer with five (5) inches of minimum depth. If the site does not yield
1891 sufficient topsoil, additional topsoil shall be brought to the site to provide the required
1892 five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and
1893 lime as recommended by the County of Henrico after the results of soil tests have been
1894 submitted to the County of Henrico. All topsoil shall be stockpiled within the authorized
1895 borrow area and provided with adequate erosion control protection.
1896
- 1897 8. The rehabilitation of the property shall take place simultaneously with the
1898 extraction process. Rehabilitation shall not be considered completed until the extraction
1899 area is covered completely with permanent vegetation.
1900
- 1901 9. Responsibility for maintaining the property, fences, and roads in a safe and
1902 secure condition indefinitely, or for converting the property to some other safe use, shall
1903 rest with the applicant.
1904
- 1905 10. Entrance gates shall be erected and maintained at all entrances to the property.
1906 These gates shall be locked at all times, except when authorized representatives of the
1907 applicant are on the property.
1908
- 1909 11. Erosion Control Plans shall be submitted to the Department of Public Works for
1910 review and approval at time of application for the Use Permit. Throughout the life of this
1911 extraction operation, the applicant shall continuously satisfy the Department of Public
1912 Works that erosion control procedures are properly handled and furnish plans and
1913 bonds that the department deems necessary. The applicant shall provide certification
1914 from a licensed professional engineer that dams, embankments and sediment control
1915 structures meet standard and approved design criteria as set forth by the State.
1916

1917 12. The areas approved for extraction under this permit shall be delineated on the
1918 ground by the erection of five (5) foot high metal posts at least five (5) inches in
1919 diameter and painted in alternate one (1) foot stripes of red and white. These posts
1920 shall be so located as to clearly define the area in which the extraction is permitted.
1921 They shall be located, and the location certified by a certified surveyor, within ninety
1922 (90) days of the date of approval of this use permit by the Board of Zoning Appeals, or
1923 this use permit is void.

1924
1925 13. "No Trespassing" signs shall be posted and maintained on the property to warn
1926 against use of the property by unauthorized persons. The minimum letter height shall
1927 be three inches and signs are to be posted every 250 feet along the perimeter of the
1928 property. The applicant shall furnish the Chief of Police a letter authorizing enforcement
1929 by the County Police Officers of the "No Trespassing" regulations, and agreeing to send
1930 a representative to court for purposes of testimony whenever required or requested by
1931 the Division of Police.

1932
1933 14. Excavation operations shall be discontinued on said site by April 30, 2006, and
1934 restoration accomplished not later than April 30, 2007, unless a new permit is applied
1935 for by not later than 60 days before the expiration of the permit, and is subsequently
1936 granted by the Board of Zoning Appeals.

1937
1938 15. A financial guaranty satisfactory to the County Attorney shall be posted with the
1939 Secretary of the Board of Zoning Appeals for extracting materials from 31.51 acres, in
1940 an amount of \$2,000.00 per acre for each disturbed acre of land included, for a total of
1941 \$63,020.00 guaranteeing that the land will be restored to a reasonably level and
1942 drainable condition with a minimum slope on the restored property being five to one or
1943 flatter. The guaranty may provide for the termination of the obligations after 30 days
1944 notice in writing. Such notice shall be served upon the principal and upon the obligee
1945 as provided by law for the service of notices. At the termination of the aforesaid 30 day
1946 notice to the principal, all authority of the principal under this use permit to extract
1947 materials, and work incident thereto, shall cease provided the applicant has not
1948 furnished another guaranty suitable to the County within said 30 days. The principal
1949 shall then proceed within the next ensuing 30 days following the termination of its
1950 authority under this use permit, to accomplish the complete restoration of the land as
1951 provided for under the terms of this permit. A notice of termination by such surety shall
1952 in no event relieve the surety from its obligation to indemnify the County of Henrico for a
1953 breach of the conditions of this use permit.

1954
1955 16. The applicant shall furnish a certification each year, verifying that the guaranty is
1956 in effect, premiums have been paid, and the bonding company reaffirms its
1957 responsibility under the use permit conditions. This certification shall be submitted to
1958 the Board on April 30 of each year.

1959
1960 17. This permit does not become valid until the guaranty, required in condition No.
1961 15, has been posted with the County, and necessary approval received. This must be
1962 accomplished within 30 days of the Board's action or the action becomes invalid.

- 1963
1964 18. A progress report shall be submitted to the Board on April 30 of each year during
1965 the life of this permit. This progress report must contain information concerning how
1966 much property has been disturbed to date of the report, the amount of land left to be
1967 disturbed, and how much rehabilitation has been performed, and when and how the
1968 remaining amount of land will be rehabilitated, and any and all pertinent information
1969 about the operation that would be helpful to the Board.
1970
1971 19. If, in the course of its preliminary investigation or operations, applicant discovers
1972 evidence of the existence of cultural or historical material or the presence on the site of
1973 significant habitat or an endangered species, it will notify appropriate professional or
1974 governmental authorities and provide them with an opportunity to investigate the site,
1975 and applicant will report the results of such investigation to the Planning Office.
1976
1977 20. The applicant shall comply with the Chesapeake Bay Preservation Act and all
1978 state and local regulations administered under such act applicable to the property and
1979 shall furnish to the Planning Office copies of all reports required by such act or
1980 regulations.
1981
1982 21. In the event that an appeal of the Board's approval action is filed, all conditions
1983 requiring action on the part of the applicant within 90 days are considered satisfied if the
1984 required actions take place within 90 days of final action on the appeal process by the
1985 courts.
1986
1987 22. If the Virginia Department of Mines, Minerals and Energy determines that the use
1988 of this property constitutes a mine, the applicant shall obtain a mine license from the
1989 Division of Mineral Mining, Virginia Department of Mines, Minerals and Energy, within
1990 90 days of such determination, or the use permit is void.
1991
1992 23. No offsite-generated materials shall be deposited on the site unless the materials
1993 and the plans for their placement have been approved by the Planning Office.
1994
1995 24. If the Virginia Department of Mines, Minerals and Energy determines that the use
1996 of this property constitutes a mine, a sign shall be posted at the entrance to the mining
1997 site stating the name of the operator, the Henrico use permit number, the Division of
1998 Mineral Mining mine license number, and the phone number of the operator. The sign
1999 shall be 12 square feet in area and shall be properly maintained.
2000
2001 25. If the Virginia Department of Mines, Minerals and Energy determines that the use
2002 of this property constitutes a mine, all drainage and erosion and sediment control
2003 measures shall conform to the standards and specifications of the Mineral Mining
2004 Manual Drainage Handbook.
2005
2006 26. If water wells located on surrounding properties are adversely affected, and the
2007 extraction operations on this site are suspected as the cause, the effected property
2008 owners may present to the Board evidence that the extraction operation is a contributing

2009 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
2010 the operator may be required to correct the problem. The applicant shall post a
2011 financial guarantee in the amount of \$25,000, satisfactory to the County Attorney,
2012 guaranteeing compliance with this condition.

2013
2014 27. Failure to comply with any of the foregoing conditions shall automatically void this
2015 permit.

2016
2017 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2018 Negative: 0
2019 Absent: 0

2020
2021 The Board granted the request because it found the proposed use will be in substantial
2022 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2023
2024 Upon a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **deferred**
2025 application **UP-2-2004** for a conditional use permit to extract materials from the earth at
2026 6919 Monahan Road (Parcel 822-699-9433). The case was deferred from the January
2027 22, 2004, until the February 26, 2004, meeting.

2028
2029 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2030 Negative: 0
2031 Absent: 0

2032
2033 The Board deferred your request to allow for a correction to the location map, re-
2034 advertisement and re-notification.

2035
2036 **UP- 3-2004** **GILLIES CREEK** requests a conditional use permit pursuant to
2037 Sections 24-103 and 24-52(d) of Chapter 24 of the County Code to
2038 extract materials from the earth at 6650 Hines Road (Parcels 855-
2039 695-5768 and 8710), zoned A-1, Agricultural District (Varina).

2040
2041 Mr. Wright - I must disqualify myself on this case.

2042
2043 Mr. Nunnally - Does anyone else desire to speak? Would you raise your
2044 right hand and be sworn please?

2045
2046 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2047 truth, the whole truth, and nothing but the truth, so help you God?

2048
2049 Mr. Bryant - Yes sir. My name is Lew Bryant; I'm with Gillies Creek. This
2050 property was originally owned by E. R. Plaster; it's a sand and gravel pit located off of
2051 Hines Road. There is some sand and gravel left in the pit to be extracted. What we
2052 would like to do is use that as fill material for our various construction projects
2053 throughout the city, as well as reclaim that site, use it as both a borrow pit and a waste
2054 pit to ultimately fill and reclaim.

2055
2056 Mr. Nunnally - Have we had any complaints of anything on this case, Mr.
2057 Blankinship?
2058
2059 Mr. Blankinship - We did receive the one phone call that I mentioned earlier,
2060 just sort of blanket opposition to the three extraction cases.
2061
2062 Mr. Nunnally - But the operation has been all right?
2063
2064 Mr. Blankinship - To the best of my knowledge, yes sir. The applicant's
2065 statement that he wants to bring frill material to this site, I do not believe that is
2066 consistent with the conditions. Condition # 24, and these again are copied from the
2067 previous permits, "No offsite-generated materials should be deposited on the mining site
2068 without prior written approval of the Director of Planning." so if they want to do that, they
2069 need to be aware

2070
2071 Mr. Bryant - Right, I understand that I would need to send a letter to the
2072 Planning Commission prior to any material being deposited there.
2073
2074 Mr. Kirkland - What kind of material are you going to deposit?
2075
2076 Mr. Bryant - Primarily it's going to be excess dirt from clearing and
2077 grading projects, possibly concrete, possibly asphalt, all inert materials though.
2078
2079 Mr. Nunnally - And you have read all the conditions?
2080
2081 Mr. Bryant - Yes sir. The only question I have is item # 9, "No operations
2082 of any kind are to be conducted at the site on Saturdays, Sundays, or national holidays."
2083 I would ask that we be given some Saturday hours. I would like 7:00 am till noon if
2084 that's possible. We generally work six days a week at our company, and find it
2085 necessary to use Saturday as a day to make up for any lost time, rain or any other
2086 delays we come across.
2087
2088 Mr. McKinney - Mr. Bryant, at 7 o'clock in daylight savings time, it's dark, I
2089 mean on northeastern time.
2090
2091 Mr. Bryant - On standard time it's still dark at 7? Yes, that's true, but

2092
2093 Mr. McKinney - How about 8:00 o'clock?
2094
2095 Mr. Bryant - Eight o'clock's fine.
2096
2097 Mr. McKinney - And then you could have 7 during daylight savings time and
2098 8:00 o'clock standard time.
2099
2100 Mr. Blankinship - The other way around.

2101
2102 Mr. McKinney - And it will cease at 12, right? And only on Saturday?
2103
2104 Mr. Bryant - Only on Saturday.
2105
2106 Mr. Nunnally - What is that motion for, maintenance? Why are you
2107 operating there on Saturday?
2108
2109 Mr. Bryant - Why would we operate on Saturday?
2110
2111 Mr. Nunnally - Is it for maintenance, or is it for what?
2112
2113 Mr. Bryant - If we're going to use this size of a , will more than likely need
2114 it on Saturday, and I'd like to be able to provide that service.
2115
2116 Mr. McKinney - How far away from the site is that fill coming from?
2117
2118 Mr. Bryant - With a location of this site, it would be predominantly work in
2119 the city of Richmond, and eastern Henrico, Charles City, New Kent. I think it would be
2120 prohibitive for material from the western part of the County to come all the way down
2121 here.
2122
2123 Mr. Nunnally - Any other questions from the Board or staff? Mr. Deal, do
2124 you have anything to say? May we hear from the opposition.
2125
2126 Mr. Bolen - Good morning. Brian Bolen. We are the residents at 6640
2127 Hines Road, which is adjacent to the pit. Our main concerns are for the safety of our
2128 children. We have been complaining to Mr. Plaster, to the Zoning Board, everybody,
2129 about the trucks that are coming in and out, especially with Gillies Creek now.
2130 Excessive speed – they seem to fly down the road. There's a posted speed limit on that
2131 road of 15 miles an hour. They are going well in excess of 15 miles an hour. They are
2132 not maintaining the road, for one. We live adjacent to, right there at 6640. Our house is
2133 no more than 50 feet off of that and 50 feet in grass easement for them to get into that
2134 pit, and we're collecting all this dust and debris that's coming from these trucks. We
2135 bought this home previously from Mr. Plaster. We were aware of this eight years ago
2136 when we moved into this home. The main thing with us is the safety issues. They don't
2137 seem to slow their vehicles down. We've got a nine-year-old son and a seven-year-old
2138 daughter who play out in the front yard. They can't play with the dust and amount of
2139 trucks that are going down the road.
2140
2141 Ms. **(unidentified female)** - I called Mr. Lucchesi on this several occasions back
2142 in November and December when Gillies Creek was running some of their 18-wheeler
2143 tandem trucks in and out of the pit, and also because the gates never close. There are
2144 other people going in, ATV-ing
2145
2146 Mr. Bolen - It's like a recreational facility now.

2147
2148 Ms. (UF) - It's people coming and going as they please. The gates
2149 never shut. There's a safety issue just for the public safety also, as well as our children,
2150 and we can't breathe because of the dust. They've got a lot of trucks going back and
2151 forth, back and forth, and it's all day long.
2152
2153 Mr. McKinney - So Mr. Bolen, they don't lock the gates in the evening?
2154
2155 Ms. (UF) - It's open right now as we speak.
2156
2157 Mr. Bolen - Yes, it's open and free to the public to walk on in as you
2158 please. The gate, if you look right here where the easement makes a fifty-foot jog,
2159 that's where the gate is at this present time.
2160
2161 Ms. (UF) - And it's only big enough for one vehicle at a time to go
2162 through, coming in and out. So there's two tandem trucks at a time coming and going,
2163 in front of our house.
2164
2165 Mr. Bolen - If you look at another issue with us is the safety of the
2166 children in general on Hines Road. If you could pan the aerial view down to show Hines
2167 Road, they're coming out of the easement and making a right onto Hines Road, which is
2168 a very narrow and curvy road. They've already had confrontations with the school bus
2169 drivers of running the school buses basically off the road.
2170
2171 Ms. (UF) - That sharp curve. I have pictures of the dump trucks going
2172 into the curve, which is of concern to all of us who have children on the bus, as well as
2173 people driving on the road, because we're like almost falling off the road to get away
2174 from the dump trucks coming our way.
2175
2176 Mr. Bolen - Route 156 and Darbytown Roads are adequate enough
2177 roads for them to get to wherever they need to go to.
2178
2179 Ms. (UF) - And they can take a left out onto Elko, which most of Mr.
2180 Plaster's trucks always did throughout the years, and nobody had a problem with that.
2181 One of my neighbors was here, but she had to leave for an appointment. She was
2182 going to be speaking on behalf of, she lives on Hines Place.
2183
2184 Mr. McKinney - Mr. Bolen, where you live, is that road paved?
2185
2186 Mr. Bolen - No sir, it isn't.
2187
2188 Mr. McKinney - What's the construction of the road?
2189
2190 Mr. Bolen - It's gravel and dirt. As you enter off of Hines Road, there's
2191 about a hundred-foot stretch that is broken asphalt. The rest of that road, for 1200 feet,
2192 is dirt and gravel. They don't maintain it by water trucks or the calcium that's listed in

2193 your guidelines already; they don't abide by that.
2194
2195 Mr. McKinney - They don't spray?
2196
2197 Mr. Bolen - No sir. It would be great if they would come in and pave it.
2198 If they're going to have the volume of traffic that's on that road, there's a lot of dust and
2199 speed.
2200
2201 Mr. McKinney - Who maintains the road?
2202
2203 Mr. Bolen - At the time, Mr. Plaster was doing that. We could call and
2204 voice our complaints to Mr. Plaster at the time, and he would get Steve Plaster or
2205 someone to wet the road down or something for that day. But when Gillies Creek
2206 started taking over this project, no one kept the road wet or anything like that. It's a dust
2207 nuisance. I'm having to power wash my home two to four times a year.
2208
2209 Mr. Nunnally - Where do your children pick up the school bus? Does the
2210 school bus come down the lane?
2211
2212 Mr. Bolen - Yes sir, if you came down at Hines Place and Hines Road,
2213 where they would be making that right onto Hines Road. I know they're requesting; we
2214 would like to express not to have Saturdays in there. There's children, our children are
2215 having to put up with it Monday through Friday; now you're going to take Saturday and
2216 add 7 to 12.
2217
2218 Ms. (UF) - They can't play outside when the trucks are running.
2219
2220 Mr. Nunnally - Have they been operating on Saturday before, when the
2221 previous people were there?
2222
2223 Mr. Bolen - No sir.
2224
2225 Ms. (UF) - Well, a couple of times they've worked on Saturdays, here
2226 and there, with Mr. Plaster. We never knew that they weren't allowed.
2227
2228 Mr. Bolen - We received the guidelines when we started contacting you.
2229 We were never aware that they were not supposed to be there on national holidays or
2230 Saturdays. Those are our main concerns, are the speed on the road. There are
2231 children, not just in our area, but the third lot down is a vacant lot. There's another in
2232 the woods that they've got younger children coming up now, and eventually they will be
2233 out and about. Those are our main concerns, the speed limits on the roads, the dust
2234 and going down Hines Road when children are on the school buses.
2235
2236 Mr. Nunnally Are you saying that the road is only wide enough for a truck
2237 going one way, and they have them going both ways at the same time?
2238

2239 Mr. Bolen - Yes sir, they've had them going both ways at the same time.
2240 We have pictures.
2241
2242 Ms. **(UF)** - There's no stop sign at the front; it's been missing for about
2243 a year.
2244
2245 **(voice from the audience, unintelligible)**
2246
2247 Mr. Nunnally - You have to be at the microphone. So what you want is to
2248 make sure 1) the gate's there; 2) that they sprinkle it; 3) that they obey the speed limit.
2249
2250 Ms. **(UF)** - The gate's there; it's just that you've got to pick it up and set
2251 it over to the side.
2252
2253 Mr. Bolen - No one ever maintains that gate, like in your guidelines.
2254
2255 Mr. Nunnally - You're saying you want the gate maintained, you want it
2256 sprinkled, you don't want them using it on holidays and Saturday mornings and you
2257 want them to obey the speed limit.
2258
2259 Mr. Bolen - Yes sir, put it down to five miles an hour if they're going to go
2260 over it.
2261
2262 **(Unintelligible)**
2263
2264 Mr. Nunnally - There's too many people talking at one time. Did you also
2265 mention there's another road you want them to take out?
2266
2267 Ms. **(UF)** - There is no other road.
2268
2269 Mr. Bolen - It's when they go out onto Hines Road, we don't want them
2270 going to the right all the way down Hines Road to reach Charles City Road. You see
2271 the winding in the curves? You see with the pictures, they're going up into that curve.
2272
2273 Mr. Nunnally - I think they're making a list, so we'll see what they say?
2274
2275 Mr. McKinney - Does Mr. Plaster still maintain that road?
2276
2277 Ms. **(UF)** - Not really, because I think he's getting old, and he's sick and
2278 in a wheelchair now.
2279
2280 Mr. McKinney - What happens when these trucks tear this road all up?
2281
2282 Ms. **(UF)** - For one, he's a corporation that only has five or six dump
2283 trucks, and sometimes he would hire more trucks when they had a bigger job to do.
2284

2285 Mr. McKinney - Are there six homes as you come in?
2286
2287 Ms. (UF) - There's four and ours.
2288
2289 Mr. Bolen - That two-acre piece is a vacant wooded lot.
2290
2291 Mr. McKinney - And the one just adjacent to you is vacant?
2292
2293 Mr. Bolen - Yes sir.
2294
2295 Mr. Nunnally - We'll take this up with the applicant in time. Anything else?
2296 Anyone else in opposition?
2297
2298 Mr. McKinney - That is a private road, correct? Mr. Chairman, I think this
2299 lady in the back wanted to say something.
2300
2301 Mr. Nunnally - Come right on down please.
2302
2303 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2304 truth, the whole truth, and nothing but the truth, so help you God?
2305
2306 Ms. Sharpe - Yes I do. My name is Ann Sharpe, and my family owns the
2307 property looking up there to the west and to the south. I would just like to say that I
2308 think in the past the guidelines, what's on paper is fine, but the problem is, who do we
2309 call when we feel like they're not in compliance with it? And then, when we do call, how
2310 do we know that truly an inspection is made of the property, because that's been my
2311 concern in the past. I have gone down through my family's woods and looked at the
2312 site over Christmas, one of those warm days, and the site right not looks good. I didn't
2313 check the gate because that's on the other side from where I was walking, but it looks
2314 good. The problem is, just this morning I realized that I did notice the last time I saw
2315 trucks in and out, they were coming out the opposite way on Hines Road, which that is a
2316 concern, because Hines Road is only two miles long, and they have an exit, and they
2317 could get out to 156 and Elko Road, which is a wider road within a half a mile, if they
2318 chose to go that way, which would lessen the traffic problem on Hines Road. Hines
2319 Road is very curvy; it's very narrow, and even going that way, you're going to have
2320 some issues with mailboxes and trucks, etc. You're going to have to be careful, both for
2321 the neighborhood and the people driving the trucks. I'd just like to ask, how do we, if we
2322 have concerns about this, how do we make sure that what you write on paper, is what
2323 they comply with?
2324
2325 Mr. Nunnally - All you have to do is call Mr. Blankinship.
2326
2327 Ms. Sharpe - Okay, and then that counts as a formal concern, and we can
2328 put our concerns in writing and send them to Mr. Blankinship/
2329
2330 Mr. Nunnally - And then he'll follow through for you. Thank you for coming?

2331 Anyone else in opposition? Mr. Bryant, do you want to rebut?
2332
2333 Mr. Bryant - Thank you. We are aware of the issue of the dust on the
2334 road. We have two other facilities that have similar problems, and we have a couple of
2335 ways to deal with them, either through water or through improving the road in such a
2336 way that the dust shouldn't be a problem. As to the speed issue

2337
2338 Mr. Nunnally - Wait a minute on that, which are you saying, because we
2339 may want to make that a condition. You say 1) you'll improve the road, and 2) you'll
2340 sprinkle it. Are you going to do both?
2341

2342 Mr. Bryant - We can do either or. We have used a crushed asphalt
2343 product in the past that really cuts down on mud and dirt going to the road, as well as
2344 the dust problem.
2345

2346 Mr. Nunnally - What's wrong with the sprinkler truck? Looks like to me that
2347 would be easier.
2348

2349 Mr. Bryant - There's nothing wrong with it, other than the fact that too
2350 much water can be a problem.
2351

2352 Mr. Nunnally - That's why you sprinkle rather than pour, I suspect.
2353

2354 Mr. Bryant - My point is, we are aware of the dust problem, and we have
2355 not used the pit directly for about six weeks now. We used it for a brief time for a
2356 project we were on, and I'm aware there were a lot of trucks in there, and I'm sure the
2357 residents had some concerns.
2358

2359 Mr. Nunnally - Was your gate closed this last six weeks?
2360

2361 Mr. Bryant - To my knowledge it has been. Now I haven't been to the pit
2362 myself recently; it's possible it's down, but personally I have no knowledge of that. As to
2363 the speed issue, we are also concerned with the speed of the trucks and the safety
2364 involved. We have almost as much interest as the residents in making sure our
2365 employees behave in a safe fashion, and I know there's a posted speed limit on there.
2366 We will work to control their speed and allay both our concerns, both the residents and
2367 the company's.
2368

2369 Mr. Nunnally - How about the trucks going both ways at the same time?
2370

2371 Mr. Bryant - It's ultimately up to the Board, but Charles City Road is a
2372 more convenient access point for some locations than Elko Road is. It is narrow; it is
2373 curvy, and I know why there is concern there, but sometimes for our usage, Charles
2374 City Road is a more advantageous access point than Elko Road for jobs that are closer
2375 to the city or on the western side of the borrow pit.
2376

2377 Mr. McKinney - Mr. Bryant, you've been using this for two years?
2378
2379 Mr. Bryant - No sir, we have only used this pit since this past December,
2380 last month. Mr. Plaster owned it before then, and we have negotiated a purchase with
2381 him, contingent on approval by the County.
2382
2383 Mr. McKinney - Did you go over the conditions with him when you took it
2384 over?
2385
2386 Mr. Bryant - I went over the conditions that were imposed on Mr. Plaster
2387 and wrote a new narrative that was submitted to the County by Engineering Design.
2388
2389 Mr. McKinney - Why aren't you adhering to the condition # 25? This
2390 suggests some of the concerns of the opposition.
2391
2392 Mr. Bryant - Why is there not a superintendent present each day? There
2393 is; I'm just not that superintendent.
2394
2395 Mr. McKinney - Well apparently he's not doing his job, according to the
2396 neighbors who live there.
2397
2398 Mr. Bryant - And that's the case, and I will probably need to go examine
2399 that when I leave this meeting today and find out what's going on with this gate and why
2400 it's not up and locked.
2401
2402 Mr. McKinney - It would make it a lot easier, or do you think it's possible, for
2403 you to give the Bolens and The Sharpes your phone number, so they can call you and
2404 say, "Mr. Bryant, we've got a problem. Can you address it?," rather than going through
2405 Mr. Blankinship, and then he has to send in an inspector?
2406
2407 Mr. Bryant - I have no problem with that at all. I'd be happy to deal with
2408 any problems they have.
2409
2410 Mr. McKinney - So you can get with them before you leave?
2411
2412 Mr. Bryant - Absolutely.
2413
2414 Mr. McKinney - Is that okay with you, Mr. Bolen?
2415
2416 Mr. Bolen - Yes sir, that's fine with us. The one thing, # 25, there's
2417 never been anyone down there to take control.
2418
2419 Mr. McKinney - Is that okay with you Ms. Sharpe? And if you don't get a
2420 response, then you can get with Mr. Blankinship.
2421
2422 Mr. Nunnally - Yes, to the lady – we've already had opposition?

2423
2424 Ms. (*unidentified female in audience*) Yes, I'm a neighbor who lives in the
2425 area too, and I'm sorry I had to run out for something for work and I was hoping to get
2426 back before it started.
2427
2428 Mr. Nunnally - We've already taken the opposition ma'am; I imagine the
2429 others have already expressed what you wanted to say.
2430
2431 Ms. ? - Yes, my daughter rides the school bus down that twisty road.
2432
2433 Mr. Nunnally - Let me ask a question. The previous people didn't use it on
2434 Saturday, Sunday and holidays, and they managed to make money with it, I suspect,
2435 without using it.
2436
2437 Mr. Bryant - I'm not interested in Sundays and holidays, just half a day on
2438 Saturday.
2439
2440 Mr. Nunnally - Well, is that included?
2441
2442 Mr. Bryant - No, it's not; that would be an amendment to your item # 9,
2443 which excludes Saturday.
2444
2445 Mr. Nunnally - That's what I'm asking. They got along with it fine; why can't
2446 you?
2447
2448 Mr. Bryant - We are a little bit larger operation than Mr. Plaster was, and I
2449 think our demand is a little higher for this material, both the use of it as a waste pit and
2450 as a borrow pit.
2451
2452 Mr. McKinney - You've got to look after your neighbors too, Mr. Bryant.
2453
2454 Mr. Bryant - I have a question to ask. I didn't quite understand what
2455 some of the neighbors were saying. I was unclear as to whether their children catch the
2456 school bus on the private road leading to the pit, or whether they go to Hines Road and
2457 meet the bus there.
2458
2459 Mr. Blankinship - I understand it was at Hines Road.
2460
2461 Mr. Bryant - Okay, so the children have to walk down the private road to
2462 get to Hines Road to meet the school bus?
2463
2464 Mr. Blankinship - That's correct. And the school bus has to compete with your
2465 trucks on Hines Road.
2466
2467 Mr. Nunnally - Suppose we use that as a preference to go, I think you said
2468 if you're going west, use the other road. We could restrict you, of course, to the road

2469 they want you to use, which is going to be how much more distance for you?
2470
2471 Mr. Bryant - We would have to go east to Elko Road, and then north from
2472 Elko Road, and then loop around and then turn west, and the road is off that picture.
2473
2474 Mr. Nunnally - Couple of miles?
2475
2476 Mr. Bryant - Probably three or four miles. What the Board proposes, of
2477 course, we would follow. As I say, it's preferential for us to be able to go both east and
2478 west.
2479
2480 Mr. Nunnally - I understand, but you've got to appreciate, and I think you
2481 do, we have to weigh your rights with the adjoining landowners' rights and the safety of
2482 their children and the school buses and the school system.
2483
2484 Mr. Bryant - Do the school buses go west on Hines Road towards
2485 Charles City, or does it proceed all the way through Hines Road to Elko?
2486
2487 Mr. Blankinship - Apparently they go both ways; I don't know how true that is.
2488
2489 Mr. Nunnally - Any other questions from Board or staff? Thank you for
2490 coming.
2491
2492 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
2493 Kirkland, the Board **granted** application **UP-3-2004** for a conditional use permit to to
2494 extract materials from the earth at 6650 Hines Road (Parcels 855-695-5768 and 8710).
2495 The Board granted the use permit subject to the following conditions:
2496
2497 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of
2498 the County Code.
2499
2500 2. Before beginning any work, the applicant shall provide a financial guaranty in an
2501 amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total of
2502 \$20,800.00, guaranteeing that the land will be restored to a reasonably level and
2503 drainable condition. This permit does not become valid until the financial guaranty has
2504 been approved by the County Attorney. The financial guaranty may provide for
2505 termination after 90 days notice in writing to the County. In the event of termination, this
2506 permit shall be void, and work incident thereto shall cease. Within the next 90 days the
2507 applicant shall restore the land as provided for under the conditions of this use permit.
2508 Termination of such financial guaranty shall not relieve the applicant from its obligation
2509 to indemnify the County of Henrico for any breach of the conditions of this use permit. If
2510 this condition is not satisfied within 90 days of approval, the use permit shall be void.
2511
2512 3. The applicant shall submit within 45 days of the approval of this permit, a revised
2513 Erosion and Sedimentation Control Plan reflecting the change in property boundaries
2514 and any applicable changes as required by Section 24-103 of the Zoning Ordinance.

2515 This plan will be reviewed by the Planning Office and Department of Public Works for
2516 approval. Throughout the life of the operation, the applicant shall continuously satisfy
2517 the Department of Public Works that erosion control procedures are properly
2518 maintained, and shall furnish plans and bonds that the department deems necessary.
2519 The applicant shall provide certification from a licensed professional engineer that
2520 dams, embankments and sediment control structures meet the approved design criteria
2521 as set forth by the State. If this condition is not satisfied within 90 days of approval, the
2522 use permit shall be void.

2523
2524 4. Before beginning any work, the applicant shall obtain a mine license from the
2525 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied
2526 within 90 days of approval, the use permit shall be void.

2527
2528 5. Before beginning any work, the areas approved for mining under this permit shall
2529 be delineated on the ground by five-foot-high metal posts at least five inches in diameter
2530 and painted in alternate one foot stripes of red and white. These posts shall be so
2531 located as to clearly define the area in which the mining is permitted. They shall be
2532 located, and their location certified, by a certified land surveyor. If this condition is not
2533 satisfied within 90 days of approval, the use permit shall be void.

2534
2535 6. In the event that the Board's approval of this use permit is appealed, all
2536 conditions requiring action within 90 days will be deemed satisfied if the required actions
2537 are taken within 90 days of final action on the appeal.

2538
2539 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2540 state and local regulations administered under such act applicable to the property, and
2541 shall furnish to the Planning Office copies of all reports required by such act or
2542 regulations.

2543
2544 8. Hours of operation shall be limited to 7:00 a.m. to 5:30 p.m. Monday through
2545 Friday.

2546
2547 9. No operations of any kind are to be conducted at the site on Saturdays, Sundays,
2548 or national holidays.

2549
2550 10. All means of access to the property shall be from the established entrance onto
2551 Hines Road and the portion of Hines Road between the property and Elko Road. No
2552 trucks shall enter or exit the property to or from the west on Hines Road.

2553
2554 11. The applicant shall erect and maintain gates at all entrances to the property.
2555 These gates shall be locked at all times, except when authorized representatives of the
2556 applicant are on the property.

2557
2558 12. The applicant shall post and maintain a sign at the entrance to the mining site
2559 stating the name of the operator, the use permit number, the mine license number, and

2560 the telephone number of the operator. The sign shall be 12 square feet in area and the
2561 letters shall be three inches high.

2562
2563 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet
2564 along the perimeter of the property. The letters shall be three inches high. The
2565 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to
2566 enforce the "No Trespassing" regulations, and agreeing to send a representative to
2567 testify in court as required or requested by the Division of Police.

2568
2569 14. Standard "Truck Entering Highway" signs shall be erected on Hines Road on
2570 each side of the entrances to the property. These signs will be placed by the County, at
2571 the applicant's expense.

2572
2573 15. The applicant shall post and maintain a standard stop sign at the entrance to
2574 Hines Road.

2575
2576 16. The applicant shall provide a flagman to control traffic from the site onto the
2577 public road, with the flagman yielding the right of way to the public road traffic at all
2578 times. This flagman will be required whenever the Division of Police deems necessary.

2579
2580 17. The entrance road shall be paved from its intersection with Hines Road for a
2581 distance of 300 feet and a width of 24 feet. The remainder of the roads used in
2582 connection with this use permit shall be effectively treated with calcium chloride or
2583 otherwise improved to eliminate any dust nuisance.

2584
2585 18. The operation shall be so scheduled that trucks will travel at regular intervals and
2586 not in groups of three or more.

2587
2588 19. Trucks shall be loaded in a way to prevent overloading or spilling of materials of
2589 any kind on any public road.

2590
2591 20. The applicant shall maintain the property, fences, and roads in a safe and secure
2592 condition indefinitely, or convert the property to some other safe use.

2593
2594 21. If, in the course of its preliminary investigation or operations, the applicant
2595 discovers evidence of cultural or historical resources, or an endangered species, or a
2596 significant habitat, it shall notify appropriate authorities and provide them with an
2597 opportunity to investigate the site. The applicant shall report the results of any such
2598 investigation to the Planning Office.

2599
2600 22. Open and vertical excavations having a depth of 10 feet or more, for a period of
2601 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the
2602 public safety.

2603
2604 23. Topsoil shall not be removed from any part of the property outside of the area in
2605 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for

2606 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
2607 within the authorized mining area and provided with adequate erosion control
2608 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
2609 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
2610 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
2611 tests have been provided to the County.

2612
2613 24. No offsite-generated materials shall be deposited on the mining site without prior
2614 written approval of the Director of Planning. To obtain such approval, the operator shall
2615 submit a request stating the origin, nature and quantity of material to be deposited, and
2616 certifying that no contaminated or hazardous material will be included. The material to
2617 be deposited on the site shall be limited to imperishable materials such as stone, bricks,
2618 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any
2619 hazardous materials as defined by the Virginia Hazardous Waste Management
2620 Regulations.

2621
2622 25. A superintendent, who shall be personally familiar with all the terms and
2623 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms
2624 and conditions of this use permit, shall be present at the beginning and conclusion of
2625 operations each work day to see that all the conditions of the Code and this use permit
2626 are observed.

2627
2628 26. A progress report shall be submitted to the Board on January 31 of each year
2629 from the date of the Board's action. This progress report must contain information
2630 concerning how much property has been mined to date of the report, the amount of land
2631 left to be mined, how much rehabilitation has been performed, when and how the
2632 remaining amount of land will be rehabilitated, and any other pertinent information about
2633 the operation that would be helpful to the Board.

2634
2635 27. Excavation shall be discontinued by January 31, 2006, and restoration
2636 accomplished by not later than January 31, 2007, unless a new permit is granted by the
2637 Board of Zoning Appeals.

2638
2639 28. The rehabilitation of the property shall take place simultaneously with the mining
2640 process. Rehabilitation shall not be considered completed until the mined area is
2641 covered completely with permanent vegetation.

2642
2643 29. All drainage and erosion and sediment control measures shall conform to the
2644 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
2645 drainage structures in place prior to October 14, 1992 and which do not conform to the
2646 Mineral Mining Manual Drainage Handbook may remain in place until such time as any
2647 reconstruction is required at which time said structures shall be brought into
2648 conformance with the Mineral Mining Manual Drainage Handbook.

2649
2650 30. Failure to comply with any of the foregoing conditions shall automatically void this
2651 permit.

2652
2653 Affirmative: Balfour, Kirkland, McKinney, Nunnally 4
2654 Negative: 0
2655 Abstain: Wright 1
2656
2657 The Board granted the request because it found the proposed use will be in substantial
2658 accordance with the general purpose and objectives of Chapter 24 of the County Code.
2659
2660 **A - 5-2004** **CAROL CHAVEZ** requests a variance from Section 24-94 of
2661 Chapter 24 of the County Code to enclose the existing screened
2662 porch at 10804 St Anton Circle (Village at Innsbrook) (Parcel 752-
2663 763-1492), zoned R-3AC, One-family Residence District
2664 (Conditional) (Three Chopt). The rear yard setback is not met. The
2665 applicant has 27 feet rear yard setback, where the Code requires
2666 35 feet rear yard setback. The applicant requests a variance of 8
2667 feet rear yard setback.
2668
2669 Mr. Wright - Does anyone else desire to speak? Would you raise your
2670 right hand and be sworn please?
2671
2672 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2673 truth, the whole truth, and nothing but the truth, so help you God?
2674
2675 Ms. Chavez - I do. I'm Carol Stephanie Chavez. I request to enclose an
2676 existing screened-in porch that's on my property. The screened-in porch was on my
2677 property when I purchased it in 2001. I do not have the setback, short eight feet on the
2678 setback. I learned about it as I was going through this process; I had no idea when I
2679 purchased this house. Enclosing the screened-in porch will allow me to continue using
2680 the porch as I do now, just for an additional four months of the year. It was a plan I had
2681 from the moment I saw it was to enclose it. We're just enclosing it with windows. It's
2682 almost entirely windows; very little trim work will be involved in the enclosure. What little
2683 trim work there is will be painted in a color to match the trim on my house. In the spring
2684 I'm actually changing all the trim on my house, the trim, not the paint of the house, to an
2685 ivory, and all the trim will match what's going on.
2686
2687 Mr. Wright - So the porch was there when you purchased the house?
2688
2689 Ms. Chavez - The screened-in porch was there when I purchased the
2690 house.
2691
2692 Mr. Wright - What you want to do is replace the screening with windows.
2693
2694 Ms. Chavez - With a window system, yes. And I have the contractor here
2695 to answer any technical questions about that.
2696
2697 Mr. Wright - Any questions of the Board? Any opposition to this request?

2698
2699
2700
2701
2702
2703
2704
2705
2706
2707
2708
2709
2710
2711
2712
2713
2714
2715
2716
2717
2718
2719
2720
2721
2722
2723
2724

2725

2726

2727
2728
2729
2730
2731
2732

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **granted** application **A-5-2004** for a variance to enclose the existing screened porch at 10804 St Anton Circle (Village at Innsbrook) (Parcel 752-763-1492). The Board granted the variance subject to the following conditions:

1. Only the improvements shown on the plan filed with the application may be constructed pursuant to this approval. No substantial changes or additions to the layout may be made without the approval of the Board of Zoning Appeals. Any additional improvements shall comply with the applicable regulations of the County Code.
2. The new construction shall match the existing dwelling as nearly as practical.

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

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

There being no further business, and on a motion by Mr. Nunnally, seconded by Mr. McKinney, the Board adjourned until **February 26, 2004**, at 9:00 am.

Russell A. Wright,

Chairman

Benjamin Blankinship, AICP

Secretary