

**MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT COMPLEX ON THURSDAY, JANUARY 28, 1999 AT 9:00 A.M. NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES DISPATCH ON JANUARY 7, 1999, AND JANUARY 14, 1999.**

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

Members Absent: Daniel Balfour

Also Present: Allen D. Webb, Secretary  
Susan W. Blackburn, County Planner II  
Randall R. Silber, Assistant Director of Planning  
Kay S. Lam, Recording Secretary

Mr. McKinney- Good morning, ladies and gentlemen, and welcome to the January meeting of the Board of Zoning Appeals. This is our first meeting in 1999. We are glad to have you.

The first thing on the agenda that I will call our Secretary to my immediate right, Mr. Allen Webb. This is his last meeting. He is, unfortunately for us, retiring. I will let him give you the Board procedure.

Mr. Webb- Good morning, ladies and gentlemen. This is the January meeting of the Board of Zoning Appeals. The Board of Zoning Appeals is one of the oldest bodies in the County except for the governing body formed back in the 1950's when zoning first came in. So, this is an august body and certainly an experienced body.

The Court appoints this Board. It is part of the Court system, so we are not dealing with a political appointed body. These gentlemen are appointed by the Court, and are part of the Court system.

as the meeting progresses, you will notice the similarity with the court presentation techniques. They will begin with, I, the secretary, calling the case. The applicant will have an opportunity to come forward and present his case after providing evidence that he has satisfactorily notified all of the neighbors and abutting property owners in accordance with the Code and law.

After the applicant's presentation, anyone who wishes to add additional comments or to speak in rebuttal of the applicant's testimony may do so. Following the presentation of the opposition testimony, the applicant will have a chance for rebuttal.

Now, it is presumed that those speaking in opposition are rebutting the applicant. They don't have an opportunity to rebut the applicant's answer to their concerns. After that, the Board will discuss, ask questions, or complete its review of the case. At the end of the meeting, the Board will make its decision on all the cases on the agenda.

The applicants may wish to stay and hear the Board's decision or call the Planning Office for the results of the Board's action.

Mr. McKinney- Thank you, Mr. Webb. I would like to indulge the audience and the Board just for a minute to speak to Mr. Webb at the podium.

Ladies and gentlemen, Allen Webb has been with the County in excess of 29 years and I have known him for 20 of those years. You won't find a nicer person. He has been put under the gun many times and has always been nice. He always has a smile. I think the people in the audience who have dealt with him will agree with me..

And, Mr. Webb, on behalf of the Board of Zoning Appeals, we would like to present you with this plaque "Presented to Allen D. Webb for his dedicated service and technical support to the Board of Zoning Appeals of the County of Henrico, January 28, 1999."

We certainly hate to see you go and we really appreciate what you have done. Thank you.

Mr. Webb- Thank you, Mr. Chairman, these have been some of the most delightful years of my career with the County. Some have said maybe it is all of my experience coming together, but I say it is because of these fine gentlemen. It has been a pleasure. Thank you, Mr. Chairman.

Mr. McKinney- Thank you, sir.

Mr. Webb- Thank you gentlemen.

Mr. McKinney- Do we have any requests for deferrals or withdrawals?

Mr. Webb- No, sir, I am not aware of any.

Mr. McKinney- Is there anyone in the audience here for UP-31-98 or UP-1-99? They are here. Okay. We have one Board member that's absent this morning, Mr. Balfour. Mr. Wright has a conflict of interest on these two cases. That being the case, we have three left, and three constitutes a quorum to vote yea or nay. If either one of you would like to defer your cases to next month when you will have four members voting on this rather than three, you are welcome to do so at this time.

Mr. Webb- Mr. Chairman, UP-34-98 as you recall, has been deferred and the Board will have to act on it this morning.

Mr. McKinney- We are not talking about that, Mr. Secretary. We are talking about UP-31-98 and UP-1-99.

Mr. Webb- They are both able to be deferred, yes, sir.

Mr. McKinney- So, it is at the pleasure of the applicant as to what they would like to do.

### **DEFERRED FROM THE DECEMBER 17, 1998 MEETING**

**UP-34-98** *Glen Allen Community Center* request to revise an existing use permit pursuant to Section 24-12(b) of Chapter 24 of the County Code to expand recreation facilities at 10800 Brookley Road (Brookley Acres)(Tax Parcel 31-1-D-1) zoned R-2A, One Family Residence District (Brookland).

Mr. Wright abstains from voting on this request.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Condlin- Yes, sir. My name is Andy Condlin from Williams, Mullin here on behalf of the Glen Allen Community Center, which is located in Glen Allen at the corner of Brookley and Thornbury Roads. I have with me a number of people to answer any questions you might have about the technical plans for construction.

The center has an existing use permit since 1974, to operate a private recreation center. The facility consists of parking, storage, play area, and meeting rooms for the general community surrounding the facility. The facility is located on about four acres. What they desire to do is to revise their permit to allow for needed improvements and expansion of their existing facilities.

The new improvements would include a bathhouse/snack bar, an outdoor pavilion, storage facilities, new pumphouse, and a new swimming pool to compliment the existing pool and recreation area. The initial phase of the construction would be the bathhouse and snack bar. The remainder of the buildings would be deemed future phases probably constructed within the next five year plans for the expansion of the facility.

All construction is, of course, subject to all applicable building codes and other plan requirements. There have been substantial and significant conditions proposed by the staff, including required parking, maintenance and operation obligations, lighting requirements, structure provisions and things of that nature.

We would agree with every one of these except for a few minor issues. The first one is No. 6 dealing with the hours. The staff has proposed that the hours be limited to a period of 8:00 am to 10:00 pm for outdoor activities, and 8:00 am to 12 midnight for indoor activities.

The facility sometimes has special events for private swim parties involving adults which are outdoors. They would like the hours of operation to be extended until midnight for special events.

The additional issue has to do with a phase of the development which involves the organization of a diving team and the construction of a new diving board. This team would be part of a statewide association.

The current conditions allow for only four dual swim meets The Community Center would have to host up to three diving meets and we would like to add that into condition No. 7...that it would read 'only four dual swim meets and three diving meets shall be permitted at the pool each swimming and diving season.'

We have gone around to the various neighbors adjoining Brookley Road. I have ten conditions based on the old ones. These conditions include the language in No. 6 to allow for closing the facility at 12 midnight for special events and permit the three dive meets under condition No. 7. I would like to give these to Mr. Webb. They have been signed by 15 people from the surrounding neighborhoods. They have read these and are okay with these additional conditions.

I would ask that the Board approve this request with the revised conditions. I'd be happy to answer any questions you have at this time. There are gentlemen here to answer any construction or operational issues.

Mr. Nunnally- How many special events do you anticipate having during this particular year?

Mr. Gibson- A total of seven. I'm Randy Gibson, and I am with the Bathhouse Committee. I'm on the Board of Directors.

Mr. Jamison- I'm Danny Jamison, and I am Vice-President of the association, and as of last year we only had four special events. Two for the children; and two for the adults. They were over by approximately 11:30pm on the weekends, and we anticipate that there will be no more than that this year.

Mr. Nunnally- No more than four?

Mr. Condlin- Yes, sir, no more than four.

Mr. McKinney- Mr. Condlin, would you agree to the conditions stating no more than four events?

Mr. Condlin- That would be fine.

Mr. Kirkland- Mr. Webb, when will Thornbury Street be constructed to help ease some of this traffic?

Mr. Webb- I don't have that at my finger tip.

Mr. Condlin- I believe that it is already paved. It is already cut away, and the dirt has been placed in there. I was out there this morning and saw a couple of people using it.

Mr. Webb- I don't know the completion date, but obviously it won't be too long.

Mr. Kirkland- I don't believe the 51<sup>st</sup> house has been constructed in the subdivision. I think when that happens, it has got to take place.

Mr. Condlin- They have built some of the houses. I don't know how many are under construction. I don't have a time frame on that.

Mr. Kirkland- In reading the staff report, you plan on increasing your membership. How high do you expect that to go?

Mr. Jamison- We have never set a limit. At the present time, we have 296 active families in the Glen Allen community. We are not aware of a limit for total membership. It is the intention of the Board of the Community Center to set a figure. We would like to have a waiting list for the pool.

Mr. Condlin- Of course, one of the conditions is that we provide a certain number of parking spaces per family in the membership. The membership is going to be capped by the parking.

Mr. Kirkland- How many spaces do you have out there now?

Mr. Condlin- There's almost a hundred right now.

Mr. Kirkland- There's 117, right?

Mr. Condlin- He said 117 are proposed. Of course, this does not include the baseball fields. There has been some confusion as to whether the baseball fields are included in that. That is a completely separate organization.

Mr. Kirkland- That creates a problem when you have a swim meet at the same time that you have a baseball game. You get into a little problem with the traffic. I don't know if these events occur at the same time or not.

Mr. Condlin- Generally, there has not been a problem in the past because of the hours and the time of the year that they occur.

Mr. Kirkland- Thank you.

Mr. McKinney- Any other questions of Mr. Condlin by Board Members? Is there anyone in opposition to UP-34-98? That concludes the case.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **granted** this request.

Affirmative:	Kirkland, McKinney, Nunnally	3
Negative:		0
Absent:	Balfour	1
Abstain:	Wright	1

REASON- The Board **granted** this request as it found from the evidence presented that authorizing this use permit with appropriate conditions will not be detrimental to

adjacent properties or local traffic conditions nor will its design and operation be detrimental to the community or purposes of the zoning regulations.

The Board **granted** this request subject to the following conditions:

1. The swimming pool and facilities must be open only to members and their guests.
  2. Sufficient parking shall be provided to satisfy the demands of the recreation facilities. The minimum number of spaces shall be one space for each three families in the membership.
  3. The property must be maintained in a park like manner, operated in a quiet manner, and activities must not create a nuisance to the surrounding neighborhood. All activities shall be properly supervised.
  4. Lights beamed only on a swimming pool shall be provided at all times when water is in the pool in order to facilitate policing. Such lights shall operate on a time-clock.
  5. The property shall be developed as shown on the plan filed with the case. No changes or additions to the layout may be made without the approval of the Board of Zoning Appeals.
  6. Activities shall be limited to the period between 8:00a.m. and 10:00p.m. daily for outdoor activities and 8:00a.m to 12:00 midnight daily for indoor activities. Four special activities (events) will be permitted on the property allowing outdoor use of the facility until 12:00 midnight.
  7. Only (4) four dual swimming meets and 3 (three) diving meets shall be permitted at the pool each swimming season. At these meets, starting guns and sound amplification equipment may be used. Starting guns and sound amplification equipment shall not be used at any other time except for emergencies.
- Any lights, except those deemed necessary for security and/or night-time safety and approved by the Planning Office after consultation with the Division of Police, which are to be erected or are existing on the property shall be controlled by an automatic timer which shall be set to prevent the lights from being turned on during the period between 10:00 p.m. and 8:00 a.m. daily.
9. The property shall be posted to prohibit trespassing by any person not authorized to be on the Property during the period between 10:00 p.m. and 8:00 a.m. daily.
  10. A building permit shall be required for each phase of construction. The building permit shall include a landscape and lighting plan, and the necessary information to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.

## **NEW CASES**

### ***UP-31-98***

***DuVal Development, Inc.*** request for a temporary conditional use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to process and sell soils not suitable for compaction and fill located at 11225 Greenwood Road (Tax Parcel 22-A-25C), zoned A-1, Agricultural District (Brookland). The applicant is requesting a temporary use permit to allow a use

not otherwise permitted because it does not conform to the regulations prescribed by the existing zoning classification of the Property.

Mr. Wright disqualifies from voting on this request.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. DuVal- Yes, sir. My name is David DuVal and I am an attorney with Williams, Mullin, and I am here representing the applicant, DuVal Development, Inc., on this request. I also have with me today the owner and president of DuVal Development, Inc., Bill DuVal. He is available to answer any of your questions as well.

I would like to point out to you that we have proceeded to notify more than just those that are defined by the County Code as adjacent and adjoining property owners so that everyone is kept informed on this request, and what has been going on this site. In past hearings, we have had some neighbors not considered by the County Ordinance to be adjacent and adjoining property owners complain of not being informed..

As you are aware, this case comes before you following the granting of an appeal that was heard on November 19, 1998 in regard to the applicant's right to file this request and be heard by the Board of Zoning Appeals. We were granted that right, and we are here before you today.

We are requesting the issuance of a temporary use permit that will allow the processing and sale of topsoil on a wholesale basis to contractors. The Board approved a temporary use permit for this use on the property on October 24, 1996. That use permit has since expired as it was issued for a period of 24 months.

There has been some concern as to whether the same type of use can be issued on the same property for another temporary use permit. I will address that later in my presentation, but at this point I would like to move forward based on what we have been doing in the past month with the adjacent and adjoining property owners, and also with Mr. Webb and his staff.

I would like for you to keep in mind that there is an existing fill permit issued by the Department of Public Works for this property. That fill permit dates back to when this property was used as a borrow pit for the construction of I-295. That permit allows the owner of the property to fill the property until such time as it reaches its normal elevation of the surrounding properties.

All of the improvements resulting from your prior approval in 1996 of a use permit are in place. I will talk about those shortly. Under the fill permit there would be no legal obligation for the applicant to continue with those. There is no intention to not use the

improvements already in place, I just wanted to point out that there is no legal obligation under the fill permit.

Since the appeal hearing in November, we have met with the adjoining neighbors. We have also had a neighborhood meeting on January 12<sup>th</sup> at the Hunton Civic Association. It was advertised in the Hunton Newsletter, and we had a very nice turnout and meeting with the neighbors. I attempted to address all of their concerns and issues and I think they are all here today and will tell you that we have done a good job of addressing their concerns.

Mr. Webb has handed you a copy of the suggested conditions. Those suggested conditions were initially submitted to Mr. Webb about a week and a half ago. His staff worked through them and made some revisions. They were then sent out to us. We looked at them and they didn't include several of the key conditions that we would like to see, if you decide to grant this approval.

Since that time, I worked with Mr. Webb on Tuesday to revise these conditions. Mr. Webb pointed out that a couple of the conditions we were requesting would not be enforceable under the use permit. We have changed that language and you have before you a revised version of Mr. Webb's original conditions.

Before I review the key suggested conditions, which you may choose to apply to the use permit if you so desire, I would like to point out four objectives that we feel can be achieved by the issuance of the fill permit.

1. We would maintain and place enforceable conditions on the entire site which otherwise would not be enforceable under the existing fill permit. That is key to keep all the operations suitable to all of the adjacent property owners.
2. The second objective would be to complete the fill operation in a much quicker time frame.

Let's just take for example a building site in Innsbrook. It is cleared by a contractor to begin the building by digging the foundation. They take off the top layer of dirt. It is just like doing a foundation for your house. When you dig into the soil you have got a layer of topsoil, a layer of fill dirt and the hardpan layer which supports a foundation. In this instance, a contractor will go out to a site such as the one on Greenwood Road, and they will request to bring their dirt into that site.

Without the use permit in place, the contractors would not be able to bring in any of the dirt that has a mixture of topsoil and fill dirt. Thus, they would go somewhere else and take their dirt. It is going to take a lot longer to get the site filled if we are not allowed to accept all of the dirt from these contractors and be able to separate out the topsoil; placing the fill dirt on the property; stockpiling the topsoil.

3. The third objective is to access the 30-acre parcel of land directly to the rear of this 60-acre site, which has been donated to the County sometime ago by the applicant for proposed parkland. There is really no access to this plan until such time as the applicant's site is completely filled and at that point there is a 50-foot right-of-way in place.
4. The fourth and most important objective is that we have committed to give all parties a definitive end date for all of the operations. Not just the topsoil processing, but also the fill operation. That's how we have revised the conditions to eliminate all operations on the site by September 30, 2000, approximately 20 months from now.

I would like to go through these changes in the conditions, the key ones. If you will look at the black line version, page 3, No. 12. That is the most important of the conditions. The others are certainly just as important in keeping the site clean. If you will look at No. 12, which says that the use permit, if you choose to issue it, will expire on September 30, 2000. "Upon the expiration of the use permit, the applicant shall cease all processing and sale of soils not suitable for compaction and fill allowed under the temporary use permit. All equipment and machinery associated with said processing be removed from the property within ten days of the expiration of the use permit or succession of said processing whichever shall occur first. In addition, the applicant will not seek another temporary use permit for this type of use as long as it or any of its subsidiaries or shareholders own any of the property."

What we have done is to commit to the Board and especially to the neighboring property owners, that not only will we cease operations of the topsoil processing, but we will also cease the fill operations, which will end all operations on the property. The property will be stabilized, seeded, and left in its state to settle. Whatever may happen in the future will be determine by someone else buying the land and developing it, whether it be for a subdivision or some other use.

So, we have added language that within 60 days of the issuance of this permit, the applicant will meet with the Department of Public Works to amend the existing fill permit issued for the property such that the fill permit will expire on September 30, 2000. In addition, the applicant agrees not to seek nor will its subsidiaries or shareholders seek to obtain another fill permit for the site. Failure to meet this requirement shall cause the temporary use permit to become void.

That's where Mr. Webb and I worked together on the language to make sure that the Planning Department could enforce something for a permit that is actually under the control of the Department of Public Works, and I think Mr. Webb agrees that that is now enforceable and works. I believe the staff is in a position to support our request, whereas in your staff report you saw that he initially stated a better option would be to rezone the property. That really goes against what anyone wants. We don't want to rezone the

property to allow this use because that makes it permanent. That's not what we want. That's not what the neighbors want. We want to fill this property as quickly as we can and leave it alone.

The second condition, which has also been revised, actually has been added is No. 14 on page 4 of the Black Line copy. We are committing to 80% of the dirt being brought onto the site to be used to fill the property. No more than 20% of the dirt brought onto the site may be resold as topsoil. We and Mr. Webb were concerned about how this would be enforced.

The applicant will keep a logbook on a daily basis of the number of trucks that come into the site and dump dirt and the number of trucks that leave the site taking out topsoil. He will continue to keep this log book and will have it available to the County Planning Department or the Secretary of the Board of Zoning Appeals when requested. If at any time upon the review of the logbook, it reveals that these percentages are not being met, then the temporary use permit would also become void. This is included to ease the concern that the residents have about how this site is going to be filled. I think this helps. The last time in 1996, we had a provision that said 75%/25%. After studying the log book for the last two years, I think the highest peak month that we had was actually 17% of the trucks that came onto the site and left the site were actually carrying topsoil. We feel comfortable that we can meet that range and actually stay below that.

I am not going to go through each one of the other conditions with you. You have them before you and I think you are familiar with them. All of the conditions are included to insure that the roads are kept clean, the dust is kept down, and the hours of operation for the trucks coming onto the site are limited.. The staff and neighbors are agreeable to these conditions. I won't go through all of the details on that.

The next thing that I would like to talk to you about is the issuance of successive temporary use permits on the same property. I am going to briefly touch on this and would like to reserve some time for rebuttal to whatever Mr. Tokarz has to say.

The Board of Supervisors has granted this Board the power under 24-116(c)(1) to issue a temporary use permit. That language specifically states that these permits can only be issued for a 24-month period. There is nothing in the Code which says that you cannot issue another temporary use permit. The reasoning is, when you look through 24-116, you are allowed to issue a normal special use permit that is not temporary. This can be issued for an indefinite period of time and is revocable. However, with a temporary use permit the wording states that you can only issue it for 24 months. That's so that if someone wants to come back and seek another one you have the right to review it, to review the conditions on the property, and to make sure that they are still in accordance with protecting the public health, safety and welfare of the adjoining property owners and the people who reside in the area.

There's no restriction whatsoever in reissuing a temporary use permit. I can cite you cases statutory citations that back that up. You, as a Board, have to look at what the Code

tells you to do. It doesn't tell you that you can't issue another temporary use permit. It is supported under all interpretations of statutory law under the plain meaning rule, and under the strict interpretation. It should also be a reasonable and fair interpretation and it should be consistent.

I can give you instances in the past where this Board has issued successive temporary use permits for the same type of use on the same type of property. For modular classrooms, storage trailers, turkey shoots, and others. I will be glad to go into specific examples if you would like to see this.

At this point, I would like to conclude my presentation by reiterating the key points that if you issue this temporary use permit (1) you are not in violation of County Code. You are helping to achieve all of the objectives of the interested parties in this case to end all operations as quickly as possible. It is definitely a temporary use permit as we have given you a definitive ending date of September 30, 2000.

As I stated, rezoning is not the solution. Rezoning would make it a permanent use. We don't want that. As such, I would respectfully request that the Board grant the temporary use permit subject to such conditions as the Board deems appropriate.

I'd be glad to answer any questions, as would Mr. DuVal.

Mr. McKinney- Mr. Webb, on this conditional No. 4, the temporary conditional use permit shall become void. If it becomes void, and they continued to work, do you take them to court?

Mr. Webb- Yes, sir, we would take corrective action as the law provides for a violation.

Mr. McKinney- Or, would you rather let Mr. Tokarz address that?

Mr. Webb- He may wish to comment, but we would consider that a violation of the County Code and proceed accordingly.

Mr. McKinney- And you or whoever would have the authority to declare the permit null and void., or does he come back before us? Whose decision is it?

Mr. Webb- I think it is an automatic decision if one of the terms or the conditions of approval of the Board are not met, then the failure to meet those by the applicant....

Mr. McKinney- In whose opinion?

Mr. Webb- I think just the language of it would automatically become...I think all would agree that if the Board said a certain time was the expiration date it would have to expire.

Mr. Tokarz- Mr. Chairman, if I may help you. I am Tom Tokarz of the County Attorney's Office. The question that you have raised is a good one and what we have done in the past has been to apply to the Court if there is a violation of a condition and ask the Court to find that the applicant is in violation and that the use permit has been violated, if the condition has been violated. So, ultimately, it would be the decision of the court based on conjunctive relief action. If there were a violation of any condition, and this use permit or any other use permits, that's the course we would take.

Mr. McKinney- We don't have the authority to put any type of fine on this.  
do we?

Mr. Tokarz- I'm sorry, we don't have the authority to do what, sir?

Mr. McKinney- We don't have any way, if it becomes void and they  
continue to work, to penalize them in a mandatory fashion.

Mr. Tokarz- I don't believe you do, no, sir.

Mr. McKinney- Do we have a bond on this?

Mr. Webb- Yes, Mr. Chairman, there would be a bond through the E &  
S procedure and process.

Mr. DuVal- If I can make one more point in regard to the bond and the  
erosion control. We are in contact with Mike Hackett of the Environmental Engineering  
Department, and are in the process of re-evaluating the current bond and the current plan  
within 30 days from the date of approval., We will meet with him, implement whatever  
plan is necessary to meet the appropriate requirements of the Department of Public  
Works. We do have today an existing erosion and control plan and a bond and we are  
also willing to re-evaluate that and revisit that and make any changes that would be  
deemed appropriate.

Mr. McKinney- But, Mr. DuVal, your erosion and control Bond that you post with  
the Director of Public Works is refundable to you. Am I incorrect, Mr. Webb, isn't this  
considered a mining operation?

Mr. Webb- I think it has a legal status of a filling operation rather than a  
mining operation.

Mr. McKinney- Well, the reason I asked that is don't we normally get so much an  
acre?

Mr. Webb- Yes, sir.

Mr. McKinney- I don't see that is handled through your office, but through the Director of Public Works. They have their own bond for erosion control to protect the adjoining property owner.

Mr. Webb- That's true. There is no proposal for a bonding process here because the proposal before the Board this morning is simply the processing and sale of topsoil which does not warranted a specific bond. The entire operation would be covered with an E & S bond. To bond this one separately would, in effect, would be double bonding, so to speak.

Mr. McKinney- Do you have anything else, Mr. DuVal?

Mr. Duval- I would like to reserve some time if Mr. Tokarz has anything to say.

Mr. McKinney- Any other questions of Mr. DuVal by Board Members? Is there anyone else to speak in favor of UP-31-98? Is there anyone to speak in opposition of UP-31-98?

Mr. Tokarz- Mr. Chairman, Tom Tokarz again from the County Attorney's Office. As the Board will remember, I was here in November with Mr. Axselle to discuss the question of whether a use permit applicant could be considered by the Board of Zoning Appeals.

At that time, the Board ruled that the Board of Zoning Appeals could proceed to hear the application, but as I understood the ruling at the time, the question was whether a temporary use within the meaning of Section 24-116(c)(1) could again be revisited at this time.

I am here to speak on behalf of the County to request the Board to deny this application, and because with all due respect to the Board, we believe this application is outside of the authority granted to the Board of Zoning Appeals by the Zoning Ordinance.

We agree with Mr. DuVal that the Board of Zoning Appeals authority is conferred by virtue of the terms of the zoning ordinance, specifically 24-116(c)(1) of the Zoning Ordinance, which allows you to grant temporary uses. We also agree that there is no specific prohibition in the ordinance that says that temporary use permits may not be renewed. However, we also respectfully submit that what Mr. DuVal is requesting the Board to do is to, in effect, rezone the property outside of the rezoning process as conferred upon the Board of Supervisors by the General Assembly.

All any applicant would have to do in order to effectively rezone property would be to come back again and again to renew temporary use permits, and we believe that that is totally contrary to what the intent of this action says. We have a specific provision in 24-116(c)(1) which limits the granting of a permit for a lot longer than 24 months, and we also have the specific language of the code that provides that the temporary use permit may only be granted for a temporary use, therefore we submit to you that the combination

of those two factors-the use of the word 'temporary' and the delineation of a limit of 24 months means that the Board of Zoning Appeals is not given the authority by the zoning ordinance to grant an extension of a temporary use permit past that 24 months.

I would also suggest to the Board that with respect to the question before you, Mr. DuVal has correctly stated to you that the fill operation is separate from the sale operation. If the Board were to deny this on the grounds that it does not have the authority to have the temporary use permit granted in this case, the fill operations could continue, and would continue under the fill permit granted by the Department of Public Works.

What is at issue here is the selling of materials in an agricultural zone, and their request to do something that is not permitted by the zoning ordinance. The filling is not at issue before you. What is at issue is something that the Board of Supervisors has said cannot exist in an agricultural zone, which is the sale of materials. They have granted an authority to temporarily permit that, but they have limited it to 24 months. Therefore, with all respect to the Board, we would request the Board to deny this on grounds that what is being requested here is, in effect, the rezoning of the property, which is reserved to the Board of Supervisors.

Mr. McKinney- Mr. Tokarz, let me understand where you are coming from now; you are stating that they had this and their time has expired.

Mr. Tokarz- That's correct, sir.

Mr. McKinney- And they have no right to come back and ask for renewal because they are treading on the aspect of using the land under another zoning classification.

Mr. Tokarz- That's correct, sir.

Mr. McKinney- And you say it is the sale of materials. Correct?

Mr. Tokarz- Yes, sir, that's the way I understand the request. The permit request is to process and sell soil in an agricultural zone. It is not an issue related to the filling of this site. It is only with respect to the selling of the soils in an agricultural district. That specifically is not permitted by the ordinance.

Mr. McKinney- Run that by me one more time.

Mr. Tokarz- My understanding is that the application is for a use permit to sell soil from the site in an agricultural zone, which is not a permitted use. That's the only reason they are before the Board today.

They are not seeking permission in the use permit to continue filling because filling is permitted under the fill permit granted by the Department of Public Works.

Mr. McKinney- Thank you. Anyone else to speak in opposition?

Mr. - My name is William F. , and I reside at 11090 Branch Road. I have resided at this location for approximately 21 years and for approximately 15 of those 21 years, the exterior of my house has had to endure a barrage of dust from the project in question.

I listen to the banging of tailgates and suffer through the stench of rotten soil all for this operation. There is a constant banging of tailgates that has started as early as 5:30 a.m. and has lasted as long as 8:30 p.m. My wife who works as a registered nurse, is forced to attempt to get some sleep amidst this chaos.

I realize that the applicant will argue that the filling of the property will continue regardless of the status of this permit, and his argument will be that he must be more selective of the soils that he uses to fill the project. As I have listened in the past to the rumbling of large stones or broken concrete falling from truck beds, I just wonder about that selection process. I don't know how well broken concrete compacts.

To the applicants rebuttal, I say, so what. If one truck can be eliminated from entering this property and dumping its load and creating its dust and noise, perhaps my wife will be able to get a half an hour of sleep.

I would like to read to you a portion of a letter that the surrounding neighbors received from David DuVal, legal representative for Mr. DuVal.

“As we have discussed many times, we all agree that this operation may still be somewhat undesirable to you and the other adjacent property owners. However, we believe the attached suggested conditions are a substantial commitment on the part of Mr. DuVal to minimize the disturbance to the surrounding property.”

This statement sums up my point exactly; better than I could have put it in my own words.

I fail to see the fairness in asking the permanent residents of the surrounding area to make sacrifices for an individual to line his pockets with profits from a business that is temporary, unnecessary, and nonessential. I ask that this permit be denied. Thank you for the opportunity to speak.

Mr. Nunnally- Mr. , did you ever call the County and complain about this early morning operation?

Mr. Broaddus- Yes, but I believe the way that that has been circumvented is the fact that this is under the fill operation and not the permit that we are discussing today.

Mr. Nunnally- Yes, but the daily operation...it says 7 a.m. to 5 p.m.

Mr. Broaddus- That's for the permit that they are asking for. That, obviously, does not apply to someone coming in and whatever.

Mr. Nunnally- Thank you, sir.

Mr. McKinney- Any other questions of Mr. Broaddus by Board members? Thank you, Mr. Broaddus. Anyone else to speak in opposition to Up-31-98? All right, Mr. DuVal.

Mr. DuVal- Thank you, Mr. Chairman and members of the Board. First, I would like to respond to Mr. Broaddus's comments and then we will go on to Mr. Tokarz.

Over the last two years, we have been checking with the County since you last approved a temporary use permit for the site to see if there have been any complaints filed. We have been told that there have been none. As far as Mr. Broaddus's contention that the trucks are in there at 5:30 a.m., I can assure you and Mr. DuVal can assure you that that is not occurring.

The hours of operation that were placed on the property over two years ago are not just for the processing and sale of topsoil, but also for the fill operation. We don't allow trucks to come in there before the times that are placed in the conditions.

It is just not the case. Maybe this occurred prior to the use permit issued in 1996, but that was because there was no conditions in place. That is my point to you today. If you do not see fit to issue the use permit, then no conditions will be in place on the fill permit.

The trucks will be allowed to come in there at 5:30 a.m. in the morning. I believe when I-295 was being built, the trucks were actually running 24 hours a day many times. Perhaps, even at the beginning of the fill operation when a big job was brought in, the trucks were also running 24 hours a day.

We have agreed under the conditions of the use permit to do away with that. If a contractor comes to us and says I have a job I have to complete in five days and I need to run my trucks 18 hours a day. We say no. You can't come in here. You are welcome to come in here during the hours that we are open, but you can't come in here past five o'clock during a certain period of the year and past 6 o'clock during a certain period of the year. In addition, just because you don't issue the use permit today, doesn't stop the trucks from coming in. They still come in under the fill permit. I think what we have done with these conditions is that we have tried to tell everyone that if we are allowed to process these soils and separate them, meaning that we can accept the entire job that a contractor has and fill the property quicker, and we will be out of there no later than September 30, 2000. End of operations.

Otherwise, we can't give a definitive date when we would be finished filling the property. That's under a separate use that is not before you today.

To respond to Mr. Tokarz, I would respectfully disagree that we are not requesting you to rezone this property. That's not what we want. This is not a permanent use. There are no permanent structures on the site that would indicate that it is a permanent use. That is something else that the Code points out. It says 'temporary uses and structures in any district that does not conform to the regulations prescribed by this chapter for the district in which located provided that such uses be a temporary nature and do not involve the erection of substantial buildings. We have not done that. We don't want a permanent use here. No one wants a permanent use here of a processing operation. It is not our intent coming before you today. We are trying to work out a situation that will allow us to end all operations. Get out of these peoples hair, get out of everyone's hair and allow the development to move on with the property in whatever manner he deems appropriate under the zoning ordinance and the regulations.

I would also respectfully disagree with Mr. Tokarz that says the only issue here before you is the sale of the topsoil. That is not true. The processing of the topsoil is more key to this permit than the sale. If we do not have the ability to process the soil and separate the fill dirt from the topsoil, then we have to turn that dirt down. We have to turn it away, and that's less fill dirt coming into the property. Neither of these would be allowed; neither the processing nor the sale of the topsoil.

As far as his contention that it is not allowed under the zoning Ordinances, I would point to two specific instances: Dixon Independent School Corporation that trades as the Steward School under UP-11-96. They requested that modular classroom be allowed to be placed on their property from April 25, 1996 to April 30, 1998.

Then, again, they came back to you under UP-23-98 and requested a modular classroom. The same use on the same property. Now Mr. Tokarz may argue that it is a different trailer, but I could also make the argument that this is different topsoil. It is not the same topsoil. You are allowed both of those permits to be issued. One from April 25, 1996 to April 30, 1998 and one from July, 98 to July, 2000.

I have another instance...Data Systems Corporation. came to you under UP-17-87 to maintain a storage trailer adjacent to their office building. You granted it and again they came back under UP-3-88 to maintain a storage trailer adjacent to their office building. Same use, same property. You granted it.

I could keep going on and one of the key ones I pointed out to you would be turkey shoot cases. You hear a turkey shoot case...and you have on about 15 or 20 occasions allowed turkey shoots to come in and request a permit for a two-year period. They restrict the days that they operate just like we restrict the days that we operate. We won't operate on Saturdays past noon; won't operate on Sundays, and we won't operate on National Holidays. They restrict the turkey shoots. They don't have them Monday through Friday. There are periods during that two-year period that they do have them...Wednesday,

Thursday, Friday and two years later they come back to you again and they ask for the same thing. You have issued it. You have issued it from 1987, 1988, 1992, 1994, 1996, and 1998 for the Richmond Elks. You have issued it in 1987, 1989, 1993, 1995 and 1997 for the Henrico Ruritan.

I don't think I need to go on with more examples. What I would like to do is talk to you a little bit about the law statues for zoning.

Dillon's Rule is what is followed in Virginia. It states the Board only has those powers that are expressly conferred upon them or by necessary implication. As I have stated before, there is nothing in the County Code that expressly prohibits the Board of Zoning Appeals from hearing these types of cases, and granting a successive use permit. You have to follow strict interpretation under a case that was decided in 1977. A strict interpretation...there is no prohibition that prevents from coming back for another use permit. You also have to give it a reasonable and fair interpretation. Let me give you one example.

The Code provides in Section 22-122 that the Board of Supervisors may hear a zoning case on a piece of property whether they approve it or deny it. If they deny that case no one can come back in within a one-year period and ask for the same use on that same property. That is a strict prohibition in the code. If it was meant for you not to be able to issue another use permit, there should be a strict prohibition in the Code. That is what we are talking about a reasonable and fair interpretation...and a strict interpretation. That's all I have. I will be glad to answer any questions. I would simply like to point out that we are trying to place strict conditions on the property to reduce dust, to reduce dirt, and also to end this operation. I think that's what everyone truly wants...even Mr. Broaddus even though he may not want the use permit, I think he wants the operations to end. With the use permit, they are going to end sooner than later. With the use permit they are not going to have as much dirt as you would have without the use permit because the fill operations will continue. Thank you.

Mr. McKinney- You bring up these turkey shoots, which we are familiar with because we have granted them. They are usually at Thanksgiving and at Christmas.

Mr. DuVal- That's correct.

Mr. McKinney- And that's the only time they have them. It may go on at night, and I'm guessing, and they have hours of operation. I don't think that's exactly what you are getting at when you have neighbors involved. One other question I wanted to ask you, how do you propose to retail the topsoil?

Mr. DuVal- Excuse me.

Mr. McKinney- How you propose to retail the topsoil?

Mr. DuVal- We don't sell at retail, sir. It is only sold to contractors.

Mr. McKinney- How do you propose to sell it to the contractors?  
Advertising? Signage on Greenwood Road?

Mr. DuVal- No, sir.

Mr. McKinney- So, you have no one coming into this piece of property to  
buy topsoil other than contractors?

Mr. DuVal- That's correct. What happens and maybe Mr. DuVal can  
answer this better, but it is my understanding that the contractors who clear the sites bring  
in the topsoil and fill dirt are normally the same contractors who come back after that  
building is built and want to put topsoil back on the ground.

Mr. McKinney- To do the landscaping?

Mr. DuVal- Yes, sir.

Mr. W. DuVal- I'm William DuVal. Probably that is 90% correct. Most of  
the time it goes back to the same site, but generally it is a different contractor. It's a  
landscaping contractor verses an excavation contractor.

Mr. McKinney- Any other questions or Mr. DuVal?

Mr. Kirkland- Mr. DuVal, when does your permit expire?

Mr. DuVal- I don't believe it has an expiration date on it.

Mr. Kirkland- Mr. Webb, how long do these things usually last?

Mr. Webb- Basically, until the operation is completed is my  
understanding, sir.

Mr. Kirkland- If it is revoked for some reason and something happens,  
they can't meet the September deadline, what do we do then?

Mr. Webb- Then we would be faced with some type of shutdown  
operation. He would be faced with rehabilitation requirements and controlling of the  
erosion and sedimentation and finish the property off as best he could to re-establish  
vegetation is what I would expect to have to see happen. That it could not be left in a  
state of unfinished, open, unprotected ground.

Mr. Kirkland- So, therefore, he possibly couldn't meet this 20<sup>th</sup> day if this  
happen.

Mr. Webb- That's what I understand in my discussions with Mr. DuVal. As they see it today, which to a certain degree is crystal balling, but if the current conditions continue, they have to be able to complete it in the 20 months.

Mr. DuVal- Mr. Chairman, if I could address more one point that you all had raised earlier regarding violations and enforcements. There's a specific provision in the Code 24-110 talks about violations and penalties...It states that any person who violates any provisions in this chapter, which is the entire County Code, or Chapter 24, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than \$10.00 and not more than \$100.00 if the defense is not willful. Not more than \$250.00 if the defense is willful. If the violation is uncorrected at the time of conviction, the Court shall order the violator to abate a remedy of the violation in compliance with the zoning ordinance, and a time period established by the court. Failure to remove or rebate will continue with the separate penalty of not less than \$10.00 nor more than \$250.00 for any failure during any succeeding 30-day period. It shall constitute a separate misdemeanor, so there are some fairly strict penalties and enforcement provisions in the code, and I can assure you Mr. DuVal does not want to be convicted of a misdemeanor.

Mr. McKinney- I'm sure of that too, and I'm sure you intend to do what you say you are going to do. Let's say in 18 months, something happens to DuVal Development Incorporated, and it ceases and the property is not put back to where it is supposed to be put back because DuVal Development Incorporated was not able to do so. Let's say that something happens and they file bankruptcy. Who are the courts going to turn to? If you will explain that this type of bond to recapture this property.

Mr. DuVal- As I understand bonds they are supported by Letters of Credit and....

Mr. McKinney- Well, whatever, if that scenario should happen.

Mr. DuVal- There's a bank that stands behind the letter of credit...the County would be able to draw on the Letter of Credit and complete the reclamation of the property. I think you are fully protected under your bond and that's the purpose of the bond that if a contractor simply throws up his hand and walks away.

Mr. Kirkland- I do not know the amount on that.

Mr. Webb- Mr. Kirkland, it is my understanding that at this time it is a very nominal amount, but under the new Erosion and Sediment Control plan that is being discussed and representatives from the Department of Public Works have indicated to me that they fully believe they will arrive at a decision on this as early as next week. I believe it is safe to say that there will be a substantial bond requirement.

Mr. McKinney- So, there is a bond to take care of this property through Public Works?

Mr. Webb- Yes, sir. If that condition is approved, there will be a bond...in fact, even if the condition is not...I believe the Department of Public Works is working with Mr. DuVal and regardless of what happens here today a bonding and new plan and a commensurate bond will be required.

Mr. McKinney- Well, the norm is a thousand dollars an acre.

Mr. Webb- I'm not sure what the bond amount is, but that sounds right. Whether or not it will be that amount for this particular property I don't know.

Mr. McKinney- How many acres are here, Mr. DuVal?

Mr. DuVal- Sixty acres. Maximum.

Mr. McKinney- Anyone else to speak in reference to UP-31-98? That concludes the case and thank you for coming down.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board granted UP-31-98.

Affirmative:	Kirkland, McKinney, Nunnally	3
Negative:		0
Absent:	Balfour	1
Abstain:	Wright	1

REASON: The Board **granted** this request as it found from the evidence presented that authorizing this use permit with appropriate conditions will not be detrimental to adjacent properties or local traffic conditions nor will its design and operation be detrimental to the community or purposes of the zoning regulations.

The Board **granted** this request subject to the following conditions:

1. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. from December 1 to March 31, and from 7:00 a.m. to 6:00 p.m. from April 1 to November 30, local time in effect in the County of Henrico.
2. A precast concrete "washrack" that was installed adjacent to the existing access road no less than eight hundred (800) feet from Greenwood Road pursuant to a requirement of UP-28-96 shall be maintained subject to all operational, environmental and drainage guidelines that may be established or set by the Henrico County Department of Public Works.
3. The eight hundred (800) feet of entrance road between Greenwood Road and the installed "washrack" shall continue to be maintained wide enough to allow two dump trucks to pass without requiring either vehicle to be driven off the paved portion of the road.
4. No operations shall take place on Sunday nor on national holidays. Operations shall cease at 12:00 noon on Saturdays.

5. During the hours of operation on the property, a water truck shall be used as necessary to reduce or eliminate generation of dust on the property. A street sweeping device shall be used as necessary to keep the access road between Greenwood Road and the “washrack” area free of dust generating deposits. line.
6. There shall be no retail sale or advertising of processed topsoil to the general public. Sale of topsoil shall only be to licensed contractors.
7. No processing or storage of topsoil shall occur within 300 feet of any property line.
8. The areas approved for topsoil processing and storage under this permit shall continue to be delineated on the ground by the erection of five (5) foot high metal posts at least five (5) inches in diameter and painted in alternate one (1) foot horizontal stripes of red and white. These posts shall be so located as to clearly define the boundaries of the area in which the processing is permitted. The locations of these posts shall be certified by a licensed surveyor and a plot plan submitted to the Planning Office within 60 days of the date of approval of this temporary use permit by the Board of Zoning Appeals, or this use permit shall become **void**.
9. Trucks shall be loaded in a manner that prevents overloading and/or spilling of materials of any kind on any public road. All trucks leaving the site with topsoil shall be covered in accordance with state law. In addition, the applicant shall post a sign at the “washrack” location notifying all exiting trucks to utilize their covers regardless of whether they have a load or not.
10. At the expense of the owners, a stop sign shall be placed at the end of the driveway to control vehicles exiting onto Greenwood Road.
11. At the expense of the owners, a sign shall be posted on the site near the end of the access driveway to Greenwood Road, on which sign is displayed the speed limit for Greenwood Road.
12. This permit shall expire on September 30, 2000. Upon the expiration of this temporary use permit, the applicant shall cease all processing and sale of soils not suitable for compaction and fill allowed under this temporary conditional use permit. All equipment and/or machinery associated with said processing and sale of soils not suitable for compaction and fill shall be removed from the property within 10 days of expiration of this temporary use permit or cessation of said processing and sale operation, whichever event shall occur first. Applicant shall not seek another temporary use permit for this type of use so long as it or any of its subsidiaries or shareholders own the property.
13. Applicant shall prepare and have approved by the Department of Public Works an Erosion and Sediment Control Plan (E&S plan) together with an implementation plan. Such approval shall be obtained prior to February 28, 1999 unless an extension of time not to exceed 30 days is authorized prior to February 28, 1999 by the Secretary of the Board of Zoning Appeals pursuant to a finding that such extension of time is warranted by virtue of actions or events not within the power of the Applicant to avoid or control. Failure to meet this requirement shall cause this temporary conditional use permit to become void.

**UP-1-99**

**NationsBank** request for a use permit pursuant to Section 24-50.20(b) from Chapter 24 of the County Code to construct a softball field at 8011 Villa Park Drive (Tax Parcel 63-16-A-1), zoned O/SC, Office/Service District (Conditional) (Brookland).

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Mukey- No, sir. My name is Doug Mukey and I am a representative here today on behalf of NationsBank. We have not served the notices to adjoining and adjacent property owners.

Mr. McKinney- We cannot hear your case unless notices have been served to all adjoining and adjacent property owners. Are you asking that this case be deferred to the next meeting, February 25, 1999?

Mr. Mukey- Yes, sir.

Mr. McKinney- Is there anyone here in opposition to this request? Do I hear a motion for deferral?

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **deferred** this request to the February 25, 1999 meeting.

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

REASON: This request is **deferred** from the January 28, 1999 meeting to the February 25, 1999 meeting because the applicant failed to comply with the notification of adjacent property owners.

**A-1-99**

**Colonial Homecrafters, LTD** requests for a variance from Section 24-94 of Chapter 24 of the County Code to allow a front porch to remain at 3708 Pennmardel Court (Foxhall) (Tax Parcel 45-2-C-29), zoned R-2AC, One Family Residence District (Conditional) (Three Chopt). The front yard setback is not met. The applicant has 42.6 feet of front yard setback where the Code requires 45 feet of front yard setback. The applicant is requesting a variance of 2.4 feet front yard setback.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Goode- Yes, sir. I'm Eddie Goode here on behalf of Colonial Homecrafters, LTD, today. We are requesting a variance of 2.4 feet front yard setback in order to allow a porch to remain at 3708 Pennmardel Court (Foxhall).

A building permit was approved for this dwelling in February, 1998. This front porch was not drawn on the plot plan which was submitted as part of the building permit. The dwelling was located on the site according to the plan without provision being made for the front porch.

Mr. McKinney- How was this mistake discovered, Mr. Goode?

Mr. Goode- The violation of the front yard setback was discovered in the field during inspection for a certificate of occupancy.

Mr. Wright- And you need a variance of how much?

Mr. Goode- A variance of 2.4 feet front yard setback.

Mr. McKinney- Any other questions of Board members? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board **granted** this request.

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

REASON: The Board **granted** this request as it found from the evidence presented that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations.

1. This approval is only for the front yard setback for the front porch which is the subject of this case. All future improvements to this property shall comply with the all applicable regulations of the County Code.

**UP-2-99**                      **Thomas K. Allard** request to renew a use permit pursuant to Section 24-52(d) and 24-103 of Chapter 24 of the County Code to extract materials from the earth at 2980 Meadow Road (Tax Parcel 158-A-22), zoned A-1, Agricultural District (Varina).

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Allard- Yes, sir. I'm Thomas Allard. We have been operating this mining operation on Meadow Road for the last few years. We are requesting renewal of the permit. We are in the process right now of updating an erosion sediment control plan... working with Mr. Hackett and Terry Ruhlen. We have gotten a list of suggested conditions from the County and agree with each and every one of these. I would like to have our permit renewed with these conditions.

Mr. McKinney- Have you read all of the conditions?

Mr. Allard- Yes, sir, I have.

Mr. McKinney- And you are in agreement with them?

Mr. Allard- Yes, I am.

Mr. Nunnally- Weren't most of these conditions on your last renewal?

Mr. Allard- There are a few minor changes like the hours of operation. They were extended on the last permit because of the White Oak project, and they are being put back to where they originally. We have no problem with them.

Mr. Nunnally- Mr. Allard, why didn't you conform to these conditions on your last permit? We have gotten complaints here from the County that you disregarded the suggested conditions we had on your permit, and we got a stack of complaints from your neighbors...people that live close to your place. Why didn't you do that last time?

Mr. Allard- We did conform with each of those conditions. We had requested, in prior years, to bring in the slabs from the reconstruction of Interstate 295 and I-64, which was approved at the time the mining permit was with Buck Leber. It took some time to find the letter, but it has been sent to Mr. Webb to requesting permission for that.

At that time, it was known that these operations were done during the night and that there could be several trucks coming in. But when we learned that this was a violation, we discontinued our operation at night, and everything conducted within the hours of operation. We were viewing that as an extended circumstance at the time. We had asked for permission and had been granted by the County and by the State to bring those slabs in with everyone knowing that that was done after normal working hours, but we are not conducting any operation other than that. Those slabs were being brought in and left. There were generally no more than three or four loads per night brought in because they had to shut the road down at those times in order to facilitate the movement of traffic. After we had the notification from the County, we did discontinue that after hour's operation, and we have not done anymore after hours operations since that time.

Mr. Nunnally- The site has been closed since December 31, 1998, the date your use permit expired?

Mr. Allard- Yes.

Mr. Nunnally- What is going on down there now? I drove down there yesterday and I saw two or three trucks coming in and out of there.

Mr. Allard- At the present time, we are not putting anything in the mine site or doing anything with the mine site. I have been working with Mr. Hackett as far as placing soil cover over on some of the pieces in there so that we can get the vegetation in and putting silt fence up. Mr. Hackett has been notified and has given a time frame plan to cover that area, but nothing has been put into the mine site at all since the mine was closed.

Mr. Nunnally- Why do the trucks keep running in and out of there then?

Mr. Allard- We are bringing in some cover soil to cover up some other areas so that we can have those completed. It's not part of the mine. There were only several loads that came in and we are using them for the final covers so we can replant grass. We had a meeting with Mr. Hackett and Mr. Ruhlen concerning this, and I have already sent them a letter with a time frame of when this would be completed.

We have not taken in any concrete or any type of fill. We are only taking in a very minimal amount of cover soil, so we can get the vegetation re-established in certain areas.

Mr. Wright- Mr. Allard, how many trucks go in and out of that property per hour during the day?

Mr. Allard- When we are open?

Mr. Wright- Yes, sir.

Mr. Allard- Since the Motorola project, the maximum is probably ten.

Mr. Wright- Per hour?

Mr. Allard- Yes. We don't have a large-scale operation there at all. The Motorola project was a big operation, and I know we had some problems at that time with keeping the roads clean and all of that. All of that has been addressed. The County at that time asked me to keep a water truck and a sweeper on the property at all times. Even though the Motorola project is finished, we keep that there to keep the roads clean and the dust down.

Mr. Wright- Have you seen copies of these letters that we have here before us from the citizens?

Mr. Allard- No, I have not.

Mr. Wright- Well, I think he should be furnished with a copy of them.

Mr. Webb- Yes, he should be, and we have them right here. They were just provided to us last evening.

Mr. Wright- I have read these letters, and it looks like to me the major complaint is gravel and mud on the road.

Mr. Allard- We have addressed those issues. That is something that we went through with Mr. Hackett as well. Our permit states that we should have the road paved for 400 feet, and that has been done.

Mr. Wright- When was that done?

Mr. Allard- That has been done for years. It has been there, but during the course of the Motorola project, J. D., who was the inspector at the time suggested, asked us to put a heavy layer of rock to that edge to keep the tires clean and to keep the mud off of the road. We covered the asphalt at the County's request with the stone. What we have done now when Mr. Hackett brought up the issue of the windshields and that problem, we dug that all out and put stone dust in there to eliminate all rock on Meadow Road. There is no problem with that now. It has been completed.

Mr. Wright- Where does the mud come from?

Mr. Allard- During the course of the Motorola project there was just so many trucks. There should not be any problem with mud now and it has not been as far as I know. There shouldn't have been any problem with mud since that Motorola project.

Mr. Wright- How long ago was that?

Mr. Allard- That was in 1997.

Mr. Wright- You are saying that there has been no...when in 1997...the middle of 1997?

Mr. Allard- I don't know; I'm not sure exactly. No, there should not have been any problem. We keep a sweeper there, and I am not saying that it ever gets a film on it or coloration, but there is no large amount of mud on the road, no.

In fact, I have two sweepers that we keep the roads swept with and maintain keeping the mud off of the roads. There may be some discoloration, but there is no accumulation.

Mr. Silber- Mr. Allard, are you going to be involved with the Hewlett Packard plant?

Mr. Allard- Not that I know of at this moment. I have not made any arrangements or any contracts with anybody concerning that right now. We cannot take in the dirt. I think the clearing is the biggest thing they have done so far. Of course, we can't take any type of stumps or debris like that in, so we cannot be involved with that at all. I don't know what the requirements for fill are. But, as of this time, no. I haven't even talked to anybody about that.

Mr. Wright- How long has this operation been going on?

Mr. Allard- At Meadow Road?

Mr. Wright- Yes.

Mr. Allard- Thirty odd years, I think.

Mr. Wright- How much longer will it be going on? Do you have any idea? Assuming that you get the permit.

Mr. Allard- The three and a half acres that we just got a use permit for last year will be the last of it. Then when that permit is over and we finish digging out that area. That's the last of the property that's usable and the rest of it will be refilling and slopping the banks, re-establishing the vegetation.

Mr. Wright- How long do you think it will take the present operation before that comes about?

Mr. Allard- My guess is two to three years.

Mr. Wright- You think in two to three years you will be finished at that location?

Mr. Allard- Totally.

Mr. McKinney- Any other questions of Mr. Allard by Board members? Alright, Mr. Allard, I think we have some other comments. Would you like to have a seat to take notes?

Mr. Tokarz- Members of the Board, I'm Tom Tokarz of the County Attorneys office. This is an unusual situation for me to be here before you to address a specific use permit application. I have, in the past, addressed you on legal issues, but on this particular case, I am here to address the facts of this case.

The reason I am here to address the facts is because Mr. Allard and his company, Allard Trucking Co., have had a history with the County Attorney's office and the Planning Office of persisting and continuing noncompliance with the zoning ordinance all during 1998.

I first became involved with Mr. Allard in February, 1998 involving another property that had been before the Board of Zoning Appeals involving the approval of a variance for an accessory building that had been placed in an agricultural zone in Varina.

The reason I bring this to your attention, although it is not related to the case directly, it is related indirectly because it goes to the matter of the activities that are occurring on the property that we have before you today.

This Board may remember a variance was granted for an accessory building to remain on the property in an agricultural zone. The Planning Office was given a complaint that Mr. Allard's company, Allard Trucking Company, was actually operating out of that accessory building and upon investigation we determined that that was the case.

During the course of the investigation, we were continually misrepresented as to the activities that went on there, and only after we were able to obtain photographs showing the illegal activity were we able to file a Bill of Complaint and get a Consent Decree, which recognizes there had been a violation of the Board's ordinance and an order from the court saying if there was any continuing violation of that the accessory building would be put down...it would have to be removed.

What I asked is to introduce the Bill of Complaint and Consent Decree just to give you a preliminary indication of the problem on that property. In addition, members of the Board, the trucking activities that were on that property down in Varina, then were shifted to this property out here, and once again illegally in violation of the ordinance.

What we have is a number of observations of trucks coming in there, not for filling operations, not for extraction operations, but employees of the trucking company come to the site, pick up their trucks and leave their cars. Basically, using this site approved for one use, a different use, which is the operation of the business off of that site.

Now turning to this particular use permit that is before the Board. There were some questions during Mr. Allard's testimony about the use permit. And what I would like to do now, and I think you probably have it, but I will just introduce it again, a copy of Use Permit-39-96.

This use permit was granted by the Board on December 19, 1996 in order to permit the extraction of materials from this property. What I would like to do is direct your attention to two conditions, which are the two conditions most particularly of concern to us.

Condition No. 2 specified the hours of operation for truck traffic shall be from 6:30 a.m. to 6:00 p.m., Monday through Friday, and 6:30 a.m. to 12:00 noon on Saturday. All other hours of operation may be conducted during the period of 6:00 a.m. and 11:00 p.m. Monday through Friday, and 6 A. M. to 12 noon on Saturday.

I am here to tell the Board of Zoning Appeals that that has been violated consistently by Mr. Allard and his folks.

I also bring your attention to paragraph 32, which specifies that no offsite generated materials shall be deposited on the mining site unless the plans for their placement have been approved by the Planning Office. That, too, has been violated because there has been deposits of materials on that site coming from off that site without any approved plan.

What I would like to introduce now would be the copy of the September 30, 1998...Notice of Violation, which Allard Trucking Company was given, based on an observation of Mr. William Cassidy, who is here to answer any questions about his observations.

He noticed Allard Trucking Company through three violations; operating on Sunday, which is a clear violation of condition No. 2; exceeding the hours of operation, which are also included in condition No. 2, and bringing in unauthorized materials to mine.

Now to date, there is no approved plan for Allard Trucking Company to bring materials onto that site. Mr. Allard told you that there was, but there is no plan. There was an approved plan of a plan given under a previous use permit to a previous use permit holder, but none has been granted to Mr. Allard.

What I would like to do now is submit a copy of a letter that was submitted to Mr. Webb on January 7, 1999, in which Mr. Allard writes on behalf of Allard Trucking Company speaking with reference to this use permit.

What I would like to do is direct your attention to the second page of this, April 11, 1995, where Mr. Clarke's permission to bring in fill material that was given to Mr. Warren Leber.

The next letter is a letter from Mr. Leber to Mr. Clarke in which he requested that permission. And, then finally, Mr. Allard has submitted a letter to you in which the State of Virginia has approved a disposal location on October 15, 1997, but there is no approval by the County to do that, and that is in clear violation of Paragraph No. 32.

So, what we have here is in our view a knowing violation of the conditions of the Use Permit-12-96, and in view of those facts we don't believe that this use permit should be approved by the Board at this point.

Furthermore, Mr. Allard is continuing despite his representations to you just a moment ago. He is continuing operations on the site even in January, 1999, and at this point I would like to tender to the Board a copy of the December 18, 1998 letter from Mr. Webb.

I think the December 18, 1998 letter might be in your packet; paragraph four is the important paragraph in which he advised him until the Board grants approval of the



Mr. McKinney- There's no date on it.

Mr. Tokarz- No, sir. It normally is not dated. What I gave you is a file copy. The filing date was at the same time of the Descent Decree. I think that was April or May.

You see the date on the bottom. That was what agreed, Mr. Allard's attorney agreed that there had been a violation on the property; agreed that the violation would be abated, agreed that if there was a violation the accessory building would be removed. So, there wasn't any need for any trial proceedings.

I will note that it took us three months to get that resolved, and during that process we were continually being told that it was not being used for a trucking operation when indeed it was.

Mr. McKinney- Are there any other questions of Mr. Tokarz by Board members? We have got some gross pictures down here. Next time, Mr. Tokarz, we need five sets.

Mr. Wright- Has Mr. Allard seen these pictures? I think we should give them this set.

Mr. Tokarz- Mr. Chairman, now that we have had a look at that, I have provided a copy for Mr. Allard. I would just simply point out to the Board that the pictures were taken January 7th, and January 8th. They show loaded trucks being brought into the site, which is a violation of the offsite materials rule. They also show a number of employee vehicles on the site empty, and I suggest that simply by examining the photographs, you know that those cars are not there for the restoration activities onsite.

Mr. McKinney- Any other questions of Mr. Tokarz by Board members?  
Okay, Mr. Allard.

Mr. Allard- I think Mr. Tokarz covered everything here and pretty much everything that I had already covered. I could cover it in a little more detail and would be glad to.

As far as the place in Varina, the operation was never run out of that place. We did construct a pond there. I had equipment there to do maintenance on and I am not denying that in any way shape or form. There's no office facilities there, and the office was never run there. There was a lot of equipment that stayed around in the course of time. It took us about a year to build a pond, an acre and a half pond, which was another problem I had with the County. I went through proper channels with Henricopolis Soil and Water Conservation; got approval, and then the County stepped in and say we didn't have approval. The Code said I didn't need to. We finally got all of that straight. The equipment was there. I am not denying that in anyway, shape, or form.

What I am denying is that when that became a problem that I moved my operation to this pit. My trucks have been parked at this pit since prior to the first conditional use permit I ever had, and there was never any complaint from anybody. It never has been until just recently. My trucks were never parked at the space in Varina; the only time they were there was to have maintenance or the actual construction of the pond. That's all been eliminated, taken care of.

I talked with Mr. Webb several times recently about purchasing a piece of property in Varina that I could park trucks on. I have not been able to get anything, but I have leased a lot that is zoned correctly in the City of Richmond. There are no trucks in this pit on Meadow Road at this time. Nobody reports to work there. There is equipment still there; equipment used in extracting materials from the mine. They are needed for the operation that we have. We have not extracted one single load from that mine since we were told to discontinue extraction operations. Anybody that says we have is not aware of the facts. We have brought in several loads of material in the evenings. Generally, what I had to do is my trucks, when they are working on a job, they have a load in the afternoon, I have had them bring it in so I can use it for cover material as I stated earlier. There again, that is not used in the mine. If you look at some of these pictures, it shows the pieces of concrete...it was the first pictures on 69, which is the first page they're...December 2, 1998. Concrete that you can see right there was inadvertently dumped in the wrong place, which is out of the mine site. That's the kind of things I have been working on since the closing. I've been moving that concrete, getting it away from there, putting cover material on there so we can plant grass. I talked to Mr. Hackett, Ms. Blackburn, and Terry Ruhlen about that. That's the kind of operations we have been doing since we were told not to do anything more with the mine until we got our permit renewed there approximately 30 years. There were no provisions for materials to be left on the site.

We have not extracted any materials whatsoever. As I stated before, this mine has been to use for cover materials to re-establish vegetation. Therefore, we have no choice but to bring it offsite. This was discussed there again with Mr. Hackett and Mr. Ruhlen. Mr. Ruhlen has been down there and inspected since the initial meeting.

These pictures were taken on December 2, 1998, the day that I met with Mr. Hackett, Mr. Ruhlen, and Ms. Blackburn at the property and we went over the things that I needed to do to bring everything back in line and within the time frames, and the silt fence and everything...the erosion plan that I need to update the erosion plan and have an engineer.

We have already contacted an engineer to come up with a new erosion plan. We have already put a temporary one in place as recommended by Mr. Hackett...that's been completed. We have completed everything that Mr. Hackett and Mr. Ruhlen asked us to do at this meeting on this day to try to get back up to par where they said the deficiencies were. That's the activities we have been doing since our permit actually ran out. There has never been a time that my business was operating from the pit. The trucks did park there; there were employees there. There were no complaints from anybody; the complaints started from the County and I immediately started working on something else to do with them.

Mr. Webb, I'm sure would testify that I have contacted him several times regarding zoning and what type of zoning I need. I couldn't find anything I could do fast enough. I do have a letter of verification showing I rented a lot, and all of the trucks are gone, and there's nobody reporting to work at the site.

Mr. Wright- How about the automobiles?

Mr. Allard- They are not there now because all of the trucks have been moved.

Mr. Wright- This is January 7<sup>th</sup>, so you have removed those since then?

Mr. Allard- Yes.

Mr. Wright- How about all of this offsite material that was shown in these pictures? Where did that come from? Did that just fall out of the sky?

Mr. Allard- The concrete....

Mr. Wright- There's asphalt right here in this picture.

Mr. Allard- Which picture are you looking at?

Mr. Wright- I'm looking at the picture that was taken January 8<sup>th</sup>.

Mr. Allard- What's the number?

Mr. Webb- No. 307.

Mr. Wright- No. 306.

Mr. Webb- It's 306, 307 and 310, Mr. Allard.

Mr. Wright- All of those show it, and there are two trucks there that are loaded.

Mr. Allard- I'm not denying that in any way, shape or form. I'm telling you what I have used that for. I have been working with Mr. Hackett on that. We are not doing any extraction.

Mr. Wright- I know that, but your permit says you cannot deposit any offsite material.

Mr. Allard- There are no materials there. There have never been any provisions to...we are not depositing them in the mine site. The pictures that you have here is not the mine site.

Mr. Wright- On the property.

Mr. Allard- It's property, but not the mine site. We are trying to get the property...the property has been mined for many years and left pretty much in an unusable situation. We have done some filling, and what we are working on now and working with Mr. Hackett on as well, is putting the top cover soil on to re-establish the vegetation. We had a meeting with them down there and went over everything that he requested us to do. That's what we have been working on since December 2<sup>nd</sup>, when we had the meeting there. But as far as the mining operations, they have ceased totally.

Mr. Tokarz was talking about the letter of permission that I have for bringing the concrete blocks on. We sent that to Mr. Webb. Warren Leber was running the mine. He's the property owner. I leased it from him when his mining permit ran out. I put it back into my name, and I did not realize at that time that I needed to get permission to bring those blocks in again because we already had the permission to bring them into that site. No property had changed hands. We were a different operator, but no property had changed hands, or no conditions had changed. It is still the same contractor; it is still the same material coming from the same place. It happens about four to five months out of the year when the weather is good when they come to do the repairs to Interstate 295 and 64. That's when we get those slabs and broken concrete as well and asphalt...when they do the repairs on the roads.

I asked Mr. Webb for permission again because they told me I needed to update the permission. We did have permission in 1995. The date of that letter was that we had permission to use those blocks...the exact same blocks coming from the same area and coming from the same contractor.

Mr. McKinney- Mr. Allard, who is Mr. Hackett?

Mr. Allard- Environmental Department of Henrico County.

Mr. McKinney- Is he here?

Mr. Allard- I haven't seen him.

Mr. McKinney- And Mr. Rhuhen?

Mr. Allard- He is the inspector for our mines. They just reorganized the Inspection Department. He is the inspector that's going to be handling our mine. He has been down...I think less than a week ago to see that we had done the things that we had talked on, and we were trying to get in compliance.

Mr. McKinney- Excuse me a minute. I would like to hear from Mr. Hackett.  
Mr. Hackett would you come down?

Mr. Hackett- I'm Mike Hackett.

Mr. McKinney- What do you have to say on this Mr. Hackett?

Mr. Hackett- Big question.

Mr. McKinney- Has Mr. Allard complied with everything that you have requested?

Mr. Hackett- Not exactly. We wrote Mr. Allard November 6<sup>th</sup>. I don't have copies for you.

Mr. McKinney- The reason I am asking you is Mr. Allard says he keeps doing these things for you, and we haven't heard from you. I want to find out if he has done it.

Mr. Hackett- I understand. We have an erosion control problem on his site. In the process of reviewing all the mining sites in Henrico County, this is one of them that we found had some violations.

We wrote him November 6, 1998 asking for some conditions to be met. One of those conditions was that he provide a schedule to us as to when he can (1) get a new plan design and implement it in the field, and his response to that one condition was that he is hiring an engineer in January. It doesn't address when the implementation can take place in the field. I still have a problem with that. The response we had was two weeks ago, so we are kind of right at the point of wondering when this work can actually take place on the ground.

He did do some things based on our field meeting in December, which was intended to just hold the site for a short period of time until we could develop the new overall plan. My inspector was on the site last week I believe and he did take those measures that we asked for in December. But also keep in mind that they are very temporary and by no means adequate for the problems that we have on this site. But we didn't want to have to work that in the field without having an approved properly designed plan to go by. So, these are just temporary measures.

Mr. McKinney- Do you have an erosion control bond on this property?

Mr. Hackett- Probably not, probably not...because it was only recently determined by Mr. Tokarz, I believe, that we would apply our normal erosion control sediment control standards on mining sites. Now, as new plans are being approved, the erosion control bond is being applied. Although it hadn't been in the past, but this is one of the ones that will be applied to when we get this new plan approved?

Mr. McKinney- So, you have done the erosion control bonds on this type of application come in 1996.

Mr. Hackett- I'm sorry.

Mr. McKinney- When did you put erosion control bonds on mining operations?

Mr. Hackett- A couple of months ago...maybe sometime during the fall. I would have to see a letter with a date where Planning contacted Mr. Tokarz, and he responded to that issue by determining that we would apply Public Works normal erosion sediment control standards, including the bond on mining sites. And now we are in the process of going through mining sites one by one to apply that standard with new plans. This is on the list. We have contacted Mr. Allard and now we are in that process with him.

Mr. McKinney- That's hard to believe. These builders do it on a house and yet mining companies doing thousands of acres of land and they aren't doing it on them.

Mr. Webb- Mr. Chairman, part of this is because the Code of Virginia and the mining operations exempt, or the Division of Mines exempts mining operations from E and S. However, they have given permission to Henrico to apply the normal E and S. In other words, whichever offers the greatest degree of protection, and that's what we are doing now.

Mr. McKinney- They should be jumping up and down about tests being made then.

Mr. Webb- No, this brings the mining operations under the same controls as everyone else does.

Mr. McKinney- I'm talking about pictures that I saw as far as erosion.

Mr. Tokarz- Mr. Chairman, if I may clarify on the erosion sediment control and the reclamation bond. They are two different things.

The reclamation bond...\$1,000.00 per acre is intended to ensure that once the operations are complete, and its reclaimed...that's different from the Erosion Sediment Control.

Mr. McKinney- I understand that. One other question I wanted to ask you... Was 1998 the first time you had problems with Mr. Allard.

Mr. Tokarz- Could I address just a couple of things that Mr. Allard spoke about if you are finished with Mr. Hackett?

Mr. McKinney- If it is all right with the audience.

Mr. Tokarz- I just want to make sure. Mr. Allard has made some representations to you which, unfortunately, I must disagree with, sir.

He told you that he had never had any complaints about the trucks on his property and as soon as he heard about it, he knew that he had to do something about it. You have seen the pictures. I would like to direct your attention to No. 315 taken on January 8, 1999. You see not only one dump truck in the foreground, but you see three dump trucks in the background.

If I heard Mr. Allard correctly, he testified that yes he has been storing his trucks at the property and yes, his employees had been going there. With respect to the statement that he had never had any complaints, I would like to submit a copy of a September 30, 1998 Notice of Violation in which the two charges against Mr. Allard were using parcel 155-8-22 as a contractors storage yard and by allowing employees to work on parcel 158-A-22.

I submit to you that the combination of the pictures on January 8, and the Notice of Violation on September 30, 1998 indicates that indeed Allard Trucking Co. has indeed not complied with our request to comply with the zoning ordinance.

Mr. McKinney- Okay, thank you Mr. Tokarz, you are rebutting a rebut, so we will have to let Mr. Allard do the same thing.

Mr. Allard- In answer to Mr. Tokarz on that issue. Yes, we did receive that notice, and I was aware of it at that time. The first time we had been made notice of it. That was approximately 90 days or a little over 90 days during the course of that time. As I told you before we were trying to purchase a piece of property in Henrico County. I talked with Mr. Webb on several different occasions. I asked about zoning and what we needed to do to comply. I was not able to work out anything that I could get in a short period of time, which is the reason for leasing the lot that I have leased, and I have remedied the situation. It was not something I could do over night as everybody up there was aware that I would go out and purchase or get a piece of industrial or commercial property and just make it appear over night with financing, proper zoning and that kind of thing.

It was a little over 90 days, I agree with that. I am not denying any of these, but what I am trying to say is that I corrected all of them. I have corrected everyone of these issues and all of these problems has been corrected. The engineer as far as the erosion control plan...we should have that and the reason I did not give Mr. Hackett a date was because I didn't know. I get the engineer to do his study and figure out how long it is going to be to get the work done and then we can put it into effect.

Mr. Kirkland- Mr. Allard, how long do you think it will take to get this plan?

Mr. Allard- As soon as the engineer finishes, we can put it in, in a matter of a couple of weeks. I have the equipment. I would say, I would guess, the end of February or March it should be completed. We have put in a temporary system at Mr. Hackett's recommendation, that is completed, to hold us over until this can happen.

It has been completed and his inspectors have already looked at that and approved it. That was what he recommended during the December, 1998 meeting out in the field. We implemented that right away, and we tried to do everything that he recommended that day that he was there. All has been finished except for the final large-scale plan, and we will have the engineer to draw it up and then us actually implementing the plan.

I would say by the end of February, or the middle of March we should be able to have all of that completed. As soon as I get the plans I have to submit them to the County for approval. That takes a while.

Mr. Kirkland- And this will correct all of the violations on the site?

Mr. Allard- As far as I know, yes. As far as the erosion, that was something that was just brought up to my attention and I addressed it as soon as I was made aware of it with Mr. Hackett. I know he said that the notification was a little earlier, but in order to meet out in the field and go over all of the things piece by piece. It took a little while, but as soon as we had the meeting in the field, we directly went and started implementing what he requested, and that has all been completed except for the final plan, which we anticipate to submit hopefully within the next couple of weeks. We can submit it to the County and however long it take the County to approve it. We should be able to implement it in a matter of a few days depending on weather.

I tried to fix all of the problems that we have had. I know they weren't done all in a matter of a week, but we haven't just blatantly disregarded all of this. We have taken care of every notification of violation, and some of that just can't be done overnight, but we have taken care of it. It is not that we are just sitting here and denying this and denying that saying that we never did this and never did that. I'm telling you what we did, and I admit to that, but what I am saying though is that we corrected the problem.

Mr. McKinney- Al right, do you have anything else to add Mr. Allard?

Mr. Allard- I don't think so.

Mr. McKinney- Anyone else to speak on Up-2-99? That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board denied this request.

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



Mrs. Daniel- Right.

Mr. Wright- Was the porch itself, Mr. Webb, in violation?

Mr. Webb- If it had a roof, it would have been. There may not have been a permit issued on it.

Mr. McKinney- There was a roof on it, she stated that.

Mr. Wright- Yes, she said it was.

Mrs. Daniel- Yes, it was.

Mr. McKinney- I'm sure she has a title policy.

Mrs. Daniel- Yes, I do.

Mr. Wright- So, it is a mystery as to how it got built.

Mrs. Daniel- Right.

Mr. Webb- But in any event, this action, if approved, would clear the title for them.

Mr. McKinney- The title policyholder ought to be taking care of this, shouldn't they Mr. Wright?

Mrs. Daniel- I'm taking care of that.

Mr. McKinney- All right, do you have anything else to add, Mrs. Daniel?

Mrs. Daniel- No, sir.

Mr. McKinney- Does this lady want to speak?

Ms. Rable- I'm Sarah A. P. Rable, and I live at 2324 Singingwoods Lane. It is a neighborhood that most people are very proud of and a very well sought after neighborhood in Henrico County.

This Florida room adds aesthetic value to the entire neighborhood. It is very well done and executed. Everyone who has looked at the property has commented on how nicely it was done with the deck added to the interior side of the house so it doesn't extend, and proportionately and aesthetically it is very pleasing.

Mr. McKinney- Any questions of Mrs. Rable by the Board members?  
Thank you. Anyone else to speak on A-2-99? That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board granted a variance of 6 feet rear yard setback.

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

The Board **granted** this request as it found from the evidence presented that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations.

The Board **granted** this request subject to the following condition:

1. This approval is only for the addition described on documents submitted with this case. Any future improvements to the property shall comply with all applicable regulations of the County Code.

**UP-3-99**

**C. Richard Dobson Builders, Inc.** request for a temporary use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to place a temporary sales trailer at 11850 Courtland Drive (Part of Tax Parcel 9-A-19C), zoned RTHC, Residential Townhouse for Sale District (Conditional) (Three Chopt).

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Tyler- Yes, sir. I'm Webb Tyler with Youngblood, Tyler and Associates, consulting engineers, representing Richard Dobson, builder and owner of the property.

The purpose of this request is to seek your permission for a temporary sales center or trailer for the sale operations of townhouses in Courtland at Wyndham Development proposed to be constructed by the C. Richard Dobson building firm, owner of the property located at the corner of Nuchols Road and Wyndham Park Drive.

If we are granted this request, the suggested conditions are acceptable to us as suggested by staff with one exception. We seek your permission to utilize a sewage holding tank for a period of 180 days since the trailer that is proposed to be the sales center would not have sewer available to it during that period of time while that sewer line has to be constructed approximately one thousand feet. Public water is near the trailer

approximately 100 feet and we can make a tap off of an existing main and run a service to that.

The tank is a common method of operation on trailers of this nature. The tank would be pumped approximately twice a week and would have limited usage.

The sales would typically take place on the weekend; that's when the high volume occurs, not generally during the week although it would be open during the week.

At the present time, we would anticipate this project or the permit would last for a period of two years based on the sales volumes that we are anticipating and projecting. We don't see a need for any extension beyond that period of time. In fact, I would estimate that we would need it for a year to a year and a half.

Mr. McKinney- Anything else?

Mr. Wright- Is there a fence around separating this from the Ashton area?

Mr. Tyler- Ashton Park.

Mr. Wright- Yes. I know the area.

Mr. Tyler- It is not a fence that presently exists to the best of my knowledge, sir.

Mr. Wright- I know there is a fence part of the way there because I see it every day. Is there any screening between this and Ashton Park.

Mr. Tyler- The Plan of Development was recently approved by the Planning Commission last month, the month of December, I believe. The landscaping plan that is required has not yet been submitted. But as a condition of approval, it is typically required to be submitted during the initial phases of the construction of the site. I would envision a landscaping plan would be submitted in late winter/early spring of this year, 1999.

The landscaping plan that would come back before the Planning Commission, I would envision that some type of a screening would be proposed between the Ashton Park and Courtland at Wyndham Townhouse development.

The plan has not actually even been drawn at this point. We are seeking approval of the POD plans to begin the infra-structure construction in the next few weeks and hope to commence that infra-structure construction in the month of February with sales occurring shortly thereafter, and then begin of the construction of homes in the spring.

At that point in time, there would be another public hearing on the landscaping plan before the Planning Commission.

Mr. McKinney- Any other questions of Mr. Tyler by Board members? Anyone else to speak in reference to UP-3-99? That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board **granted** UP-3-99.

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

The Board **granted** this request as it found from the evidence presented that authorizing this use permit with appropriate conditions will not be detrimental to adjacent properties or local traffic conditions nor will its design and operation be detrimental to the community or purposes of the zoning regulations.

The Board **granted** this request subject to the following conditions:

1. The property shall be developed as shown on the plans filed with the case and no changes or additions to the layout may be made without the approval of the Board of Zoning Appeals.
2. A Sewage holding tank may be used for disposal of waste for 180 days until public sewer is made available in the area. Approval is needed by the Health Department for the sewage hold tank. After the 180 days, The sales trailer shall be served by public water and sewer.
- 3 A detailed landscaping plan and lighting plan shall be submitted to the Planning office for review and approval prior to the issuance of a building permit.
4. The location of the trailer shall not conflict with any area that is or may designated as a tree protection area on the approved tree protection plan, or any buffer or environmental control area that may be part of the final approval of the constructions plans for the site.
5. Five off-street parking spaces shall be provided for the customers using the sales/trailer facility.
6. This approval will expire on January 28, 2001.

**A-3-99**

**William R. and L. Elliott** request for a variance from Section 24-94 of Chapter 24 of the County Code to build an attached garage at 109 Doverland Road (Sleepy Hollow) (Tax Parcel 112-6-B-13), zoned R-1, One Family Residence District (Tuckahoe). The side and front yard setbacks are not met. The applicant has 19.0 feet minimum side yard setback, 40.7 feet total side yard setback and 44.0 feet front yard setback where the Code requires 20.0 feet minimum side yard setback, 50.0 feet total side yard setback and 50.0 feet front yard setback. The applicant is requesting a variance of 1 foot minimum side yard setback, 9.3 feet total side yard setback, and 6.0 feet front yard setback.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Ms. Elliott- Yes, sir. I'm Lisa Elliott. My husband and I wish to build an attached garage addition to our home. In order to do so, we need a variance to our side setback of one foot, and the total setback we need a variance of 9.3 feet and 6.0 feet front yard setback.

We cannot take our garage...we are bringing it forward slightly. We have an existing two-car garage now and we plan to renovate that into a recreation room for our home, and we have a drainage easement that runs across the rear of our backyard, so we can't build our new garage in the back. We have to bring it forward slightly and the new garage will go no farther than the current asphalt driveway that we now have, so it will be flush with the existing driveway. I think that aesthetically it will look very nice. The property immediately to our north is a vacant field. I think it is an unimproved. It is not able to be improved, so the garage addition would still be a good distance from the next house. Our yard is really quite large, so I think it is rather surprising that we need a variance. But, because of the fact that our northern property line is on a diagonal, we have that drainage ditch. The variance is necessary.

Mr. Wright- It looks like you have sort of a pie shaped lot.

Mrs. Elliott- Yes, we do. These lots in Sleepy Hollow in this particular area, they all sort of go back in the rear to a point and it is rather unusual.

Mr. Wright- That's what causes your problem. If that line were parallel to the other line you wouldn't have that.

Mr. Elliott- Some of our neighbors are doing some deeds of exchange to even out their property lines so they are not on such a diagonal. Our house also sits up on a hill, and our backyard declines, and we have some drainage problems in the back.



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

The Board **granted** this request as it found from the evidence presented that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations.

The Board **granted** this request subject to the following condition:

1. This approval is only for the minimum side yard, total side yard, and front yard setback requirements for the garage addition that is the subject of this case. Any further improvements on the property shall comply with the applicable requirements of the County Code.

**A-4-99**                      *David Keogh* request for a variance from Section 24-94 of Chapter 24 of the County Code to build a screened porch on an existing deck at 12517 Cambie Place (Sutton) (Tax Parcel 66-24-C-5), zoned R-4C, One Family Residence District (Conditional) (Tuckahoe). The rear yard setback is not met. The applicant has 25 feet rear yard setback where the Code requires 35 feet rear yard setback. The applicant is requesting a variance of 10 feet rear yard setback.

Mr. McKinney-                      Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Keogh-                              Yes, sir, we have notified them. My name is David Keogh, and I am the homeowner at 12517 Cambie Place, but I regret to say that I failed to bring that documentation with me at this time. I can make arrangements to bring it back up here this afternoon if that's acceptable.

Mr. McKinney-                      We don't plan on being here this afternoon. How quickly can you get it?

Mr. Keogh-                              I would say within about an hour and a half from my leaving here.

Mr. McKinney-                      I doubt very seriously...where is it?

Mr. Keogh-                              It is on the other side of town. I have got to stop by my office on the way home, but I am 15 minutes away.

Mr. McKinney-                      Is it at your office?

Mr. Keogh- It's at my home.

Mr. McKinney- No one is at your home?

Mr. Keogh- My wife is there, but she doesn't have access to a car.

Mr. McKinney- What you can do, we will pass it by and if you get back before we finish our docket. If not, we will have to defer it for 30 days.

Mr. Keogh- Okay.

Mr. McKinney- If you would like to defer it for 30 days, and not be rushed we can do that, but that's entirely up to you.

Mr. Keogh- I would like to attempt to get back here if possible.

Mr. McKinney- That's fine. We will pass it by.

Mr. Keogh did not return to the hearing during the course of the day.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board deferred this request from the January 28, 1999, meeting to the February 25, 1999, meeting.

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

REASON: This application was **deferred** from the January 28, 1999, meeting to the February 25, 1999, meeting because the applicant failed to satisfy the notification requirements.

**A-5-99**

**Russell H. Malone, III** requests a variance from Section 24-94 of Chapter 24 of the County Code to build a dwelling at 12300 Perrywinkle Road (Shady Grove Estates) (Tax Parcel 17-1-C-5N), zoned A-1, Agricultural District (Three Chopt). The lot area and lot width are not met. The applicant has 40,728 sq. feet of lot area and 125 feet of lot width where the Code requires 43,560 sq. feet of lot area and 150 feet of lot width. The applicant is requesting a variance of 2,832 sq. feet of lot area and 25 feet of lot width.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Malone- Yes, sir, Mr. Chairman. I'm Russell H. Malone, III, and the owner of the property. This piece of land is a residue piece of land left over from when we were doing this subdivision in 1990, and the state highway at the last minute changed their sight distances. There's a fairly severe curve on Pouncy Tract Road, right there, that I think has a safe speed limit of 30 to 35 mph, which requires 300 or 350 feet of sight distance.

At that time, the speed limit was 55 on Pouncy Tract, so we had to switch our entrance to the south end of the property to get in, and we had already begun construction on this project, so we lost a lot going in and we ended up with this residue piece of land of .935 acre. In an Agricultural zoning, as we have here, we are required to have one acre.

Also, the frontage on Pouncy Tract is 125 feet and we are required to have 150 feet. We have got 1.6 acres of land here, but it is split into 0.935 acre, with another 0.7267 acre across the road, which does not tie into this, and which we are told cannot be counted in our square footage since the road actually divides it.

I approached Mr. Waters back a few years ago and asked him if he had any intention of purchasing this land, or if I could purchase some from him or sell it, and he had no desire at that time for either. So, I am left with a piece of land that is restrictive to our building, and we would like to build a house compatible with all of the other houses that are in this area and probably sell in the \$180,000 range.

There is signage to the subdivision right here which we would leave and put an easement and restriction there for it. The house would face Perrywinkle, so it is extended road frontage there, so we would have plenty of road frontage for the house. It would not look cramped on this lot or anything. This lot is just under one acre.

We would hope that you would grant this variance.

Mr. McKinney- Do you have water and sewer there, Mr. Malone?

Mr. Malone- No, sir. These are on well and septic.

Mr. McKinney- Has the property been checked for that?

Mr. Malone- Yes, sir, you need to have 40,000 square feet for this, and it meets all of the requirements, and has been checked by a soil expert and I think has been approved by the state.

Mr. Wright- We would enter off of Perrywinkle, inside the subdivision. We would actually face the house to Perrywinkle to go in line with the other houses in the subdivision.

Mr. Wright- When you say off of Perrywinkle, would it be to the extreme end away from Pouncy Tract?

Mr. Malone- That's what I would envision, yes, sir, and not cause any traffic congestion.

Mr. Wright- Where would the house be located then?

Mr. Malone- The house would be located then on the...I would try to locate as best I could off of Pouncy Tract, the west end of the property, and that would probably be the end I would have the garage on and have my drive into that end of the property also.

Mr. Wright- How is the property zoned, which I guess is Shady Grove Estates?

Mr. Malone- Yes, sir. Everything in this area is zoned A-1.

Mr. Wright- Even Shady Grove Estates?

Mr. Silber- Mr. Malone, if the road did come in straight as you had originally envisioned for...VDOT had something else in mind...even if that did come in straight, you still wouldn't meet the lot requirements.

Mr. Malone- We have seven-tenths of an acre. We are trying to bring the road into the north end of the property, and we have seven-tenths of an acre across the street from this that would be contiguous in. They would have plenty of road frontage and probably about an acre and a half for the lot.

Mr. Silber- From an area standpoint, you would meet the area requirement, but you still would not have met the lot width requirements.

Mr. Malone- I think we would have met the lot width requirements because the lot would have been fronted on Perrywinkle Drive and not on Pouncy Tract.

Mr. McKinney- Couldn't be.

Mr. Silber- The corner situation would still be the front yard...the narrower of the two.

Mr. Malone- I think at that time it had been recorded as a lot along with Lot 1 as you see right there to the east of Lot 1, that's in Shady Grove Estates. We had already put those lots in, roads in and then we had to shift this road down and do a curve in there.

They would have been pushed to Mr. Waters house when it was cleared and would have come in there and another lot would have probably been right there. There probably would have been a piece of residue land on Pouncey Tract that probably would have just gone with that lot.

Mr. McKinney- Any other questions of Mr. Malone by Board Members?  
We will now hear from anyone who wishes to speak in opposition.

Mr. Hall- My name is Preston Hall, and I am speaking on behalf of the Homeowners Association at Shady Grove Estates. I have copies of petitions that we have put together. We went around and talked with our dwellers and told them what was taking place.

Mr. McKinney- What did you tell them, Mr. Hall?

Mr. Hall- Well, as you will see in the petition, the reasons for our opposition are. that we feel that Mr. Malone has created a self-imposed hardship due to the fact that his engineers designed the right-of-way for Perrywinkle in such a way that it leaves one parcel on either side of the road that does not meet the minimum requirements for A-1 zoning.

There are a 0.726-acre parcel on the south side of Perrywinkle and a .935 parcel on the north side of the road. If Mr. Malone's engineers had put Perrywinkle road along the northern line of the 0.935 parcel, this would have been, as he had stated, approximately a 1.6-acre lot, which would have met the requirements. We feel that Mr. Malone and his engineers created his lots knowing full well that they were below the minimum requirements and standards of the present A-1 zoning, and we would like to go on record as opposing this request for a variance.

It also appears on the recorded subdivision plats that this is a reserved parcel, and therefore, may not be part of Shady Grove Subdivision, and therefore, not subject to the covenants, conditions, and restrictions for Shady Grove Estates.

The covenants, conditions and restrictions were written and executed as of April 14, 1986 by Mr. Malone.

Per the Henrico County Code, Section 24-94 of Chapter 24 'all lots are to be at least one acre in size in A-1 zoning'...and as an association we feel that granting this variance of that 0.935 parcel which also does not meet the minimum lot width of 150 feet, will set a precedence to other lot owners to request further subdivision of their lots.

We have a number of people in the subdivision who have an excess of two acres, three acres. Thank you.

Mr. McKinney- Any other questions by Board Members? Is there anyone else here to speak in regard to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board granted this request.

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

REASON: The Board granted this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. This approval is only for relief of lot width and lot area requirements for the lot which is the subject of this case. All improvements to the property shall comply with all applicable regulations of the County Code.
2. The title of this lot shall include restrictive covenants equal to those of the Shady Grove Estates Subdivision.
3. The dwelling on the property must contain 2400 square feet of finished floor area and an attached garage of no less than 400 square feet.

**UP-4-99**                      *Cole Brothers Circus, Inc.* requests a temporary use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to operate a circus at 10101 Brook Road (Virginia Center Commons) (Tax Parcel 24-A-7B), zoned B-3C, Business District (Conditional) (Fairfield).

Mr. McKinney-                      Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Bennett-                      Yes, sir. I'm Dan Bennett, and I am here today on behalf of Cole Brothers Circus, Inc. requesting a temporary use permit to operate a circus at Virginia Center Commons as a fundraiser for Hanover All-County Marching Band.

We have considered doing this in past years, but never got the process initiated due to the scheduling of other events and the BZA calendar.

Mr. McKinney-                      What date would these events occurs, Mr. Bennett?

Mr. Bennett-                      We would be conducting the circus on April 23 and April 24 from 3:30 to 9:30 p.m. and on April 25 from 12:30 to 6:30 p.m.

Mr. Wright-                      How would the parking be handled at these events?

Mr. Bennett- Parking would be located north of the Belk Store, which is adjacent to the circus site. The Virginia Center Commons management has committed to closing the loop road in that location for the event. This closure will prevent patrons and vehicle parking from competing for the same space.

Mr. Wright- What type of security would be provided?

Mr. Bennett- The management of the circus has its own security for the tents, equipment, and animals? We have discussed this with the Henrico County Police Department. We will satisfy the requirements for the Henrico County Division of Police regarding the security of the site and patrons of the event.

Mr. Kirkland- Have you talked with the Henrico Animal Protection Division regarding the care and security of the animals performing in the circus?

Mr. Bennett- We have talked with the Henrico Animal Protection Division and have no problem satisfying the requirements of the Henrico Animal Protection Officer, and the circus management will provide it own security.

We have also discussed this with the Henrico County Department of Health and the Henrico County Department of Building Inspections and have no problem complying with their requirements.

Mr. Nunnally- In looking at the map in our report, it appears you will have a tent the size of 231 feet long and 136 feet wide. Is that correct?

Mr. Bennett- Correct.

Mr. Nunnally- Also, there will be a fire lane?

Mr. Bennett- There will be a fire lane on all four sides of the tent.

Mr. McKinney- Any other questions? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board granted UP-4-99.

Affirmative:	Kirkland, Kirkland, McKinney, Wright	4
Negative:		0
Absent:	Balfour	1

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this use permit with appropriate conditions will not be detrimental to adjacent properties or local traffic conditions nor will its design and operation be

detrimental to the community or purposes of the zoning regulations. The Board granted this request subject to the following conditions:

1. This approval is only for the Cole Brothers Circus to conduct a circus event at Virginia Center Commons Shopping Center on April 23, 1999 from 3:30 PM–9:30 PM, April 24, 1999, from 12:30 PM–9:30 PM, and on April 25, 1999, from 12:30 PM–6:30 PM.
2. The applicant shall satisfy The Department of Public Works with a detailed operation statement and plan for traffic control during the event. This statement shall include, but not be limited to, the methods of notice for change in traffic patterns concerning the access to the Virginia Center Commons Shopping Center and closing of the loop road.
3. The applicant shall satisfy the requirements of the Henrico County Animal Protection Officer for the care and safety of animals performing in the circus.
4. The applicant shall satisfy the requirements of the Henrico County Division of Police concerning the security of the site and the patrons of the event.
5. The applicant shall satisfy all requirements of the Henrico County Department of Health and the Henrico County Department of Building Inspections.
6. On or before March 15, 1999, the applicant shall provide a satisfactory plan and surety to the Secretary of the Board of Zoning Appeals, that after the event the applicant will restore the site or provide for such restoration in accordance with the requirements of County of Henrico and Virginia Center Commons. Failure to meet this deadline shall result in this temporary use permit becoming void.

**UP-5-99**

***Tidewater Quarries, Inc.*** requests to renewal and revision of an existing use permit pursuant to Sections 24-52(d) and 24-103 of Chapter 24 of the County Code to extract materials from the earth at 11460 Staples Mill Road (Tax Parcels 20-A-1 and 2A) zoned A-1, Agricultural District and M-2C, Industrial District (Conditional) (Three Chopt).

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Wilson- Yes, sir. I'm Jack Wilson, III, attorney, from Hunton and Williams law firm, here on behalf of Tidewater Quarries, Inc. Tidewater is asking to renew and revise an existing use permit to extract materials from the earth at 11460 Staples Mill Road.

The first use permit for this location was issued in 1965. The area consists of approximately 205 acres, and there is a rock quarry within this 205 acres, which consists of 90 acres and a five-acre site consisting of the processing plant. This is the only granite and stone quarry site in the County, and has been mined for over 30 years.



REASON: The Board granted this request as it found from the evidence presented that authorizing this use permit with appropriate conditions will not be detrimental to adjacent properties or local traffic conditions nor will its design and operation be detrimental to the community or purposes of the zoning regulations. The Board granted this request subject to the following conditions:

1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. No operations of any kind are to be conducted at the site on Sundays, or on national holidays.
3. Traffic from the site shall be controlled by a flagman at the public road entrance, with the flagman yielding the right of way to the public road traffic at all times. This flagman will be required whenever the County of Henrico Division of Police advises the operator that it deems traffic conditions require such action.
4. A superintendent who shall be personally familiar with all the terms and conditions of Sections 25-52(d) and 24-103 of Chapter 24 of the County Code, as well as the terms and conditions of **UP-5-99**, shall be present at the beginning and conclusion of operations each work day to see that all the conditions of said Code and said Use Permit are carefully observed.
5. Operations may be conducted only between the hours of 7:00 AM and 6:00 PM, and blasting shall be conducted only between the hours of 9:00 AM and 5:00 PM on days that operations are permitted at the site. Shipping operations may be conducted only between the hours of 6:00 AM and 8:00 PM on days that operations are permitted at the site.
6. That a suitable completion bond with surety satisfactory to the County Attorney or certified check, be posted with the Secretary of the Board of Zoning Appeals for extracting materials from **89.09** acres, in an amount of **\$2,000.00** per acre for each acre of land included under development, for a total of **\$178,180.00** guaranteeing that the land will be restored to a reasonably level and drainable condition with a minimum slope on the restored property being five to one, or flatter. The completion bond may provide for the termination of the obligations of the surety on such bond by the surety giving a 90-day notice in writing to the principal and obligee of the bond, of its intention so to do. Such notice shall be served upon the principal and upon the obligee as provided by law for the service of notices. At the termination of the aforesaid 90 day notice to the principal, all authority of the principal under this use permit to extract materials, and work incident thereto, shall cease, provided the applicant has not furnished another bond suitable to the County within said 90 days. The principal shall then proceed within the next ensuing 90 days following the termination of its authority under this use permit, to accomplish the complete restoration of the land as provided for under the terms of this permit. A notice of termination by such surety shall in no event relieve the surety from its obligation to indemnify the County of Henrico for a breach of the conditions of this use permit.
7. The 30-foot private access road leading from the public road is to be hard surfaced and maintained in good repair by the operators of the quarry, until such time as the quarry operations are complete.

8. All roads used in connection with this use permit shall be effectively treated by sprinkling or otherwise treated with water, calcium chloride, or other wetting agents to eliminate any dust nuisance.
9. The entire boundary of the 89.09 acre tract quarried, as shown by metes and bounds on the plat of the property included in this case, is to be fenced with a chain link fence at least 6 feet high and topped with tree stands of barbed wire. At the point where the access road enters the 89.09 acre site, a chain link fence at least 6 feet high, topped with three strands of barbed wire, is to be erected. The entry gate is to be kept securely locked at all times that the quarry is not in operation. In addition, at the point where the access road enters any public road, a gate and fence are to be erected and secured at all times that the quarry is not in operation. State standard fence FE-1A may be substituted for the 6-foot chain link fence.
10. All power driven or power producing machinery or equipment installed on the property shall be located within the boundary of the 89.09-acre site and at least 600 feet from the adjacent property line and public roads. All such machinery is to be enclosed where practicable.
11. "No Trespassing" signs shall be posted and maintained on the property to warn against use of the property by unauthorized persons. The minimum letter height shall be three inches, and signs are to be posted every 250 feet along the perimeter of the property. The applicant shall furnish the Chief of Police a letter authorizing enforcement by the County Police Officers of the "No Trespassing" regulations, and agreeing to send a representative to court for purposes of testimony whenever required or requested by the Division of Police.
12. No blasting is to be permitted which endangers the general public and shall be carried on in keeping with the Bureau of Mines standards using time delays and avoiding blasting on days when atmospheric conditions would produce undesirable effects from sounds.
13. Responsibility for maintaining the property, fences, and roads in a safe and secure condition indefinitely, or of converting the property to some other safe use, shall rest with the applicant.
14. When the quarry is to be abandoned (operations discontinued and the quarry left unattended for one month or longer), the quarry is to be filled with soil, or a pond developed. Sufficient topsoil and overburden shall be retained on the site to accomplish the rehabilitation as shown on the plans filed by the applicant.
15. Quarry operations are to be discontinued on the site by **April 30, 2004**, and rehabilitation accomplished by not later than **April 30, 2005**, unless a new permit is applied for by **February 27, 2004**, and subsequently granted by the Board of Zoning Appeals.
16. The applicant shall erect substantial metal markers at each of the corners of the 89.09-acre tract. The markers shall be at least five feet in height and a plat, prepared by a certified surveyor or engineer, shall be furnished to the Planning Office, certifying the markers have been properly placed.
17. Tidewater Quarries shall submit to the Planning Office every 90 days, complete blasting records.
18. The amount of explosives shall be limited to a maximum of 1,000 pounds per time delay.

19. A progress report shall be submitted to the Board on April 30 of each year. This progress report must contain information concerning how much property has been mined to date of the report, the amount of land left to be mined, and how much rehabilitation has been performed, and when and how the remaining amount of land will be rehabilitated, and any and all pertinent information about the operation that would be helpful to the Board.
20. The applicant shall furnish a certification from his bonding company each year, verifying that the bond is in effect, premiums have been paid, and that the bonding company reaffirms its responsibility under the use permit conditions. This certification shall be submitted to the Board on **April 30** of each year.
21. In the event that an appeal of the Board's approval action is filed, all conditions requiring action on the part of the applicant within 90 days are considered satisfied, if the required actions take place within 90 days of final action on the appeal process by the courts.
22. The applicant shall comply with the Chesapeake Bay Preservation Act and all state and local regulations administered under such act applicable to the property, and shall furnish to the Planning Office copies of all reports required by such act or regulations.
23. The applicant must obtain a mine license from the Division of Mineral Mining, Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90 days of the approval of this use permit or the use permit is void.
24. No offsite-generated materials shall be deposited on the mining site unless the materials and the plans for their placement have been approved by the Planning Office.
25. A sign shall be posted at the entrance to the mining site stating the name of the operator, the Henrico use permit number, the Division of Mineral Mining mine license number, and the phone number of the operator. The sign shall be 12 square feet in area and shall be properly maintained.

**A-6-99**

**John Gibbs, Jr.** requests a variance from Section 24-95(b)(5) of Chapter 24 of the County Code to build a dwelling at 8822 Midway Road (Westhampton Settlement) (Tax Parcel 100-10-4-1), zoned R-3, One Family Residence District (Tuckahoe). The lot width is not met. The applicant has 50 feet of lot width where the Code requires 65 feet of lot width. The applicant is requesting a variance of 15 feet of lot width.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Hahn- Yes, sir. I'm Nicholas Hahn, and I am here today on behalf of John W. Gibbs, Jr. Mr. Gibbs bought this lot in Westhampton Settlement at 8822 Midway Road. Mr. Gibbs requests a variance of 15 feet lot width in order to build a single family dwelling not to exceed 35 feet in width.

Prior to 1960, this subdivision was recorded and the zoning was R-4, One-Family Residence District. In 1960, the property was rezoned to R-3 through the comprehensive rezoning of the County. Dwellings constructed since that date have been built on sites consisting of more than one lot in order to comply with the current zoning regulations. Mr. Gibbs has made an attempt to buy the adjacent vacant lot, but he was not successful in doing so, as other property owners have been.

Mr. Wright- You say an attempt has been made to purchase adjacent property to take care of this problem?

Mr. Hahn- Yes, sir, but Mr. Gibbs wasn't successful in doing do.

Mr. Nunnally- What's the topography of this lot, Mr. Hahn?

Mr. Hahn- It is wooded with gentle topography.

Mr. McKinney- Any questions of Mr. Hahn? Is there anyone here in opposition to this request? Hearing no one, that concludes the case.

After an advertised public hearing, and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board granted A-6-1999, a variance of 15 feet lot width.

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations.

1. This approval is only for the lot width for the lot, which is the subject of this case. All future improvements to the property shall comply with the applicable regulations of the County Code.

**A-7-99** *John Gibbs, Jr.* requests a variance from Section 24-95(b)(5) of Chapter 24 of the County Code, to build a dwelling at 221 Westover Ave. (Bungalow City) (Tax Parcel 141-4-C-100) zoned R-3, One Family Residence District (Fairfield). The lot width is not met. The applicant has 50 feet of lot width, where the Code requires 65 feet of lot width. The applicant is requesting a variance of 15 feet of lot width.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Hahn- Yes, sir. Again, I am R. Nicholas Hahn, representing Mr. John Gibbs, Jr. Mr. Gibbs is requesting a lot width variance of 15 feet at 221 Westover Avenue in Bungalow City. The adjacent lots have been developed, and, therefore, additional land is not available to purchase to meet Code requirements. Therefore, we are here before you today requesting a variance of 15 feet lot width as Mr. Gibbs wants to build a single family dwelling not to exceed 35 feet in width.

The platted lot widths in Bungalow City are 25 feet. The subdivision was zoned R-4, One-Family Residence District prior to 1960. The property was rezoned to R-3 through the comprehensive rezoning of the County in 1960.

Real Estate records indicate that lots adjacent to this site have been developed, and the lot to the north is a 50-foot wide site (created by combining 2 recorded lots), and the lot to the south is a 150-foot wide site developed in 1963. Both lots are located on Westover Avenue.

I think that's about all of the background information I can give you. If you have any questions I'd be glad to answer them.

Mr. Wright- He wants 15 feet lot width as in the previous case?

Mr. Hahn- Yes, sir, and he is building the same size house...35 feet in width.

Mr. McKinney- Any additional questions by Board members? Is there anyone here in opposition to this request? Hearing no one, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted A-7-99, a variance of 15 feet lot width.

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following condition:

1. This approval is only for the lot width for the lot, which is the subject of this case. All future improvements to the property shall comply with the applicable regulations of the County Code.

**A-8-99**

***Tuckahoe-Richmond Moose Lodge*** requests a variance from Section 24-95(a)(3)e.1. of Chapter 24 of the County Code at 4366 Springfield Road (Tax Parcel 48-A-19), zoned A-1, Agricultural District (Three Chopt). The side yard setbacks are not met. The applicant has 114 feet side yard setback on the north side of the property and 94 feet side yard setback on the south side of the property, where the Code requires 132 feet for both side yard setbacks. The applicant is requesting a variance of 18 feet of side yard setback on the north side of the property and 38 feet of side yard setback on the south side of the property.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the Code?

Ms. Harwell- Yes, they have, Mr. Chairman. Mr. Chairman, Members of the Board, my name is Ashley Harwell, and I am an attorney representing the applicant.

Triton, PCS, a wireless telecommunications provider, has entered a lease with the Tuckahoe-Richmond Moose Lodge which will permit Triton to place a 120-foot monopole communications tower on the Lodge's property at 4366 Springfield Road in Henrico. The tower is considered a stealth flagpole design, which means that it will be narrower than a regular monopole tower, and the antenna will be concealed inside the pole.

At the request of the Moose Lodge, however, no flag will be flown. The tower will have a galvanized finish. As the site is zoned A-1, in which the zoning ordinance allows towers up to 50 feet by right; Triton applied for a provisional use permit to allow 120 feet in height. On Tuesday, January 26, 1999, The Henrico County Board of Supervisors granted Triton a provisional use permit to construct the tower on the site to a height of 120 feet, with certain conditions, including that application for a building permit be made within one year, that the tower and related structures be removed within 90 days after use has been discontinued for 180 days, that a landscape plan for screening the base of the tower be submitted prior to issuance of the building permit, and that the relief from the side setback requirements be granted.

In order to construct the tower to a height of 120 feet on this site selected for optimum coverage, the applicant requests variances from the side yard setback requirements for communications towers found in Section 24-95(A)(3)(E)(1) of the Henrico County Code. This section requires that communication towers be set back from adjacent residential districts an amount equal to 110% of the tower's height. The purpose of this requirement is to provide a safe fall zone from residential buildings. The 120 foot height was selected because it permits collocation by another wireless service on the same tower. The County's telecommunications policy generally promotes collocation as a preferable alternative to the proliferation of many single-user towers. Given the number of carriers already in the Richmond area market, it is unlikely that the market could bear more than

one more new entrant; thus, the tower was not designed to accommodate more than two users.

As applied in this case, the Code requires side setback of 132 feet. The site plan depicts the tower as being located 94 feet away from the R-5C property, the Oakbrook Apartments, located generally south of the lodge, and 114 feet away from the R-5 property, the Hampton Glen Apartments, located generally north of the lodge. Accordingly, the applicant requests side yard setback variances of 38 feet on the south side and 18 feet on the north side.

The Lodge property is exceptionally narrow. It is only approximately 210 feet wide at its widest point. If the County's setback requirements were strictly applied, they would restrict the tower to 90 feet. A 90-foot tower would not meet Triton's needs and would eliminate the collocation options.

Granting the variances in this case would serve the spirit of the Ordinance because the tower is located more than 132 feet from the nearest buildings on the adjacent residential properties. The nearest building at the Oakbrook Apartments to the south is 134 feet away. From the tower and the nearest building at the Hampton Glen Apartments to the north is 185 feet away from the tower. The Code's 110% setback requirement is meant to provide a safety "Fall Zone" in case the tower is damaged. Additionally, these towers are constructed so that in the event of damage, the structure will fold or collapse on itself rather than falling to the side.

The setback variances are necessary due to the extreme narrow shape of the property. The actual distances from residential buildings and the method of construction of the tower are such that granting the variance is in harmony with the spirit and intent of the purpose of the code. Granting the variance will not be detrimental to the adjacent properties. The public interest will be served because the 120 foot flagpole tower will provide collocation for another wireless phone carrier without another tower in the neighborhood. The Board of Supervisors determined this site to be appropriate for this tower and the property cannot be used this way without the setback variances.

The applicant submits that the foregoing reasons meet the jurisdictional requirements for a variance, and so we respectfully request that you grant the 38 foot side setback variance on the south side of the property, and the 18 foot side setback variance on the north side of the property with the condition listed in the staff report.

Mr. Willie Coleman, Administrator of the Tuckahoe Moose Lodge, and Mr. Larry Horton of Triton, are here with me. We will be glad to answer any questions you might have.

As a result of Triton's planned location, the Moose Lodge will lose four (4) parking spaces. Triton has discussed this issue with the Lodge and County Staff and proposes to reconstruct the four (4) spaces as shown on this exhibit. The construction area is 40 feet wide and will easily accommodate four (4) spaces of the required 9-foot by 18-foot size. Triton will enlarge the detention pond as necessary to replace the portion lost to parking.

Triton chose the lodge location to avoid gaps in its coverage of the Richmond area. Gaps and loss of carrier coverage are undesirable to both the carrier and its customers.

Mr. Wright- I'm not sure this is an appropriate site for a tower.

Ms. Freye- I'm Gloria Freye, attorney, and the use was approved by the Board of Supervisors, Tuesday night (January 26, 1999) as appropriate, with the conditions in Ms. Harwell's presentation.

Mr. McKinney- Are there any other questions of the Board? Hearing none, I will ask for opposition.

Ms. Huff- Thank you. I'm Debbie Huff, and I am concerned about looking out my window and seeing a tower. That's my basic concern.

Mr. Winfrey- I'm Tim Winfrey, and I basically have the same concern as Ms. Huff...about looking out my window and seeing a tower.

Mr. Webb- The request is only for the variance for the setbacks, not the use. That has already been determined by the Board of Supervisors.

Mr. McKinney- Anything else? That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board granted A-8-99, variance of 18 feet of side yard setback on the north side of the property and 38 feet of side yard setback on the south side of the property.

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following condition:

1. This approval is only for the side setbacks for the tower that is the subject of this case. All future improvements to the property shall comply with the applicable regulations of the County Code.

**A-9-99**

**Keith Wallace** requests a variance from Section 24-95(c)(1) of Chapter 24 of the County Code to build an attached carport at 6929 Horsepen Road (Duntreath) (Tax Parcel 92-8-2-14), zoned R-3, One Family Residence District (Three Chopt). The front yard setback is not met. The applicant has 8.11 feet of front yard setback where the Code requires 35.00 feet of front yard setback. The applicant is requesting a variance of 26.89 feet of front yard setback.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Wallace- Yes sir. I'm Keith Wallace, and I am here today requesting a variance of 26.89 feet front yard setback.

Mr. Wright- What brought this request about, Mr. Webb?

Mr. Webb- This request is the result of enforcement action initiated by the County in response to a complaint submitted to the Planning Office.

Mr. McKinney- How did this happen, Mr. Wallace?

Mr. Wallace- I was not aware that I needed a building permit for this as I always thought you had to have a building permit for anything with a permanent foundation, which this does not have.

I erected this carport in November, 1998, and would like to keep it at its present location. Pending the outcome of this request, a building permit will be obtained, and I will have the finished carport inspected.

In driving around, I have noticed several carports in close proximity to me, all of them resembling the construction of mine. All of these carports are located on the side or rear of the property. Because of the specific size and shape of my home and lot, a side/rear location is not a viable option for me.

Mr. Wright- What is the topography of your lot, Mr. Wallace?

Mr. Wallace- The specific size and shape of my home...my narrow side yard will not accommodate my carport on either side. Moving my carport to the back yard would be very undesirable, as I would have to gravel my entire side yard and a major portion of my backyard. Maneuvering my car would be cumbersome.

I would have to install a wide gate, which would have to be opened and closed every time I enter or exit. I would like to retain my limited backyard for outdoor enjoyment.

I do not use my two-car garage for car storage. One bay will not accommodate a vehicle due to a washer/dryer and a flight of steps leading to the upstairs of the garage. The other bay is set up as a workshop.

Due to the narrowness of my side yard, the current location of my carport is the only logical location.

I'd be happy to answer any questions that the Board may have.

Mr. McKinney- Any questions from Board Members? Is there anyone here in opposition to this request?

We will hear from the opposition and then give you a chance to rebut, Mr. Wallace.

Mr. Smith- Good morning. My name is Bertram A. Smith, and I would like to make several comments regarding this carport.

The Colognes and I consider this to be an eyesore. My first comment to my wife was that it looked like a tin can on stilts out in the front yard. I used to be able to sit on my front porch and look up the road and see nice houses and nice lawns. I looked down the road and saw nice houses and nice lawns. Now all I have to my left is a tin can on stilts. I find this very unpleasing, I realize that I am not in a position to dictate taste, but sometimes it is fairly evident.

I have three vehicles opposed to his four. I keep two of them in the driveway and one is parked on the street, My son drives a pickup truck, so it is usually parked on the street. These vehicles were bought new; they sit out under the same weather conditions; under rain, sleet, snow and leaf fall. I haven't seen fit to block my neighbor's view of other properties or the road. I probably really don't have enough room for any structure that large. Those are the facts of life when you buy a place.

I see no reason why the garage can't be used if he is protecting one car and one car only. In a two-car garage, you should be able to find space to put a car in no matter how much junk you have.

The contractor, I think, was very remiss in not of informing him of the setback requirements, and for his investment in it and with that I am very sorry for any money he has in it. It is not my desire to hurt him financially nor in any other way. I also need to protect my own interest. I have a very large investment in my house and that represents, except for some small savings, my life investment.

If this is made any less valuable by something a neighbor does, it is my concern, and I will speak out about it.

I did not make any complaint to anyone about this when it went up, nor have I yet. This is my first time in talking to anybody about it. I just sort of shrugged my shoulders and

went, 'well, what's done is done.' He must have had the right permits and everything. Since then I have found out that is not the case.

I have two things for you gentlemen to look at. One is a letter that Mrs. Cologne wrote. Actually, she was going to go to the neighbor who is on his western side and ask him if he would sign the letter. She couldn't get in touch with him, but since she had to leave, she crossed out the address and signed her name. It gives her opinion of the situation. I don't know if you can consider this or not. If not, no matter.

The other is some pictures we have taken of the street. I will give a short explanation of a couple of them, but the rest are pretty well self-evident. The white house with blue trim with the porch on it is the Cologne's house; the white house which appears to be black shutters is mine, 6917. If you would please look at these, and the letter.

I hope that you all consider our neighborhood, and the neighbors' consideration of this project in this and future dealings, whether it is variances applied for or whatever permits are applied for, to put it the side or the back. The side would put it almost in my Florida room window. The back, the only consideration that I have there, is that an electric line runs across about midway to the backyard...the full width of it. I think they would have a major problem with the structure being built underneath it, which is what would wind up. They do have clearances to consider as well as evidenced by the street that I keep having to cut back every so often. That's about all I have. Do you have any questions you would like to ask me?

Mr. McKinney- Any questions for Mr. Smith by Board members?

Mr. Kirkland- Mr. Smith, that 15 foot behind your house...that's unimproved alley behind your house also?

Mr. Smith- At one time on part of that block, the alley had been incorporated into the yards of the residents there, either by fencing or through just the fact that it is mowed and considered part of the yard. It borders on the rear property of houses which are much bigger houses than what we have on Horsepen.

Mr. Kirkland- It is not an easement of some sort where cars drive through?

Mr. Smith- No, sir, it is not.

Mr. McKinney- Any other questions of Mr. Smith by Board members?

Mr. McKinney- These two vehicles, do they have license tags on them?

Mr. Wallace- No, sir.

Mr. Silber- Mr. Chairman, if I may be allowed to comment from the Planning perspective. There was some comment made about some improvements being made to properties across the street that is, in fact, true. Gumenick Properties are renovating apartment complexes across the street and have begun a fairly vigorous process in rezoning properties and working with the County, and there is a fair amount of public expenditures being made on utility improvement, road improvements across the street, so there should be within the next five years substantial improvement to the Crestview area which is across the street.

Mr. McKinney- Thank you. Thank you, Mr. Smith. Do you have any rebuttal, Mr. Wallace?

Mr. Wallace- Yes, sir. I take exception to this being a rare bird. I see them...I saw one coming into the courthouse today, off of Hungary Springs Road.

Mr. McKinney- Saw what?

Mr. Wallace- Carports, similar to mine.

Mr. McKinney- In the front yard.

Mr. Wallace- No, sir, on the side.

Mr. McKinney- We are talking about a front yard. We are talking about where it is legal and not legal.

Mr. Wallace- Yes, sir. I have not seen another one in the front yard, that is true.

Mr. McKinney- So, you don't take exception.

Mr. Wallace- Well, I take exception that there are others like it, but in the front yard, no, sir.

Mr. Webb- Mr. Wallace, let me comment a moment, I understand what you said, but it is under the assumption that it is legal, and there are many, many of them out there that are not legal. They have not been properly permitted.

Mr. Wallace- I understand. Actually, I wasn't aware. I assumed that if they were on the side from what I heard they were legal, but not necessarily.

Mr. Webb- Not necessarily.

Mr. Wallace- Right. I will tell you this, it has worked out really nice for me. I have enjoyed it, and I personally would like to keep it. I don't see it as an eyesore. I feel like it adds value to my house. I can take the sides off it and make it a wide open



Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Moore- Yes, sir. I'm Glenn Moore. I would like the Board to indulge with me for just one second. I believe this is Mr. Webb's last meeting with the Board. Maybe you all acknowledged that at nine this morning and I wasn't here, and I just wanted to say that I have been doing land use work in Henrico County for over 20 years, and when I first started I worked with Mr. Webb, and I have been working with him on a variety of matters ever since. I have always appreciated the gentlemanly and calm way that matters have been conducted with him, and I think a lot more has been accomplished and a nice tone was basically set for the whole Planning Office because of that...the way in which he conducted himself over the years.

I have thoroughly enjoyed it, and I am going to miss Mr. Webb. I assume I will see him again around here or in some capacity, but I did want to acknowledge that I think he has made a great contribution to the County Planning Department.

Mr. McKinney- You could hire him at \$200,000 a year as a consultant.

Mr. Moore- I'm going to wait until you retire and hire you for that.

Mr. Webb- Thank you, Mr. Moore. I appreciate it. We have disagreed on a lot of things but I don't think either one of us has ever been disagreeable about it.

Mr. Moore- Well, certainly, you haven't been, Mr. Webb.

This is a case that is brought about by a condemnation proceeding along Springfield Road. A 35-foot yard requirement is required for the Oakbrook Apartments. They had 45 feet, and approximately 17 feet was taken and, consequently, they are down now to 28 feet of front yard along Springfield Road, which makes the building closest to the road nonconforming.

Because of that nonconformance, we have applied for a variance at this time to make a nonconforming situation legitimate. I would submit to you that the nonconformance was not caused by the owner of the property. If that building is ever destroyed, we could restore it if we are able to achieve the variance. That helps the financial status of the property.

I'd be happy to answer any questions the Board members may have.

Mr. McKinney- So the state has taken this for Rt. 157?

Mr. Moore- Yes, sir.

Mr. McKinney- Has the condemnation suit taken place?

Mr. Moore- They have taken land; the land has been taken. I don't think the improvements have been done in front of the property yet, but they have condemned it.

Mr. Webb- They are in the process of working on it.

Mr. McKinney- Did they pay for your variance request?

Mr. Moore- Actually, I think they are paying something for that, Mr. McKinney. I think that's part of the deal that my partner worked out with them.

Mr. McKinney- Any questions of Mr. Moore by the Board? Anyone else who wishes to speak? That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted A-10-99, a variance of 7 feet front yard setback.

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following condition:

1. This approval is only for the front yard setback. All future improvements to the property shall comply with applicable regulations of the County Code.

**A-11-99** *Steve W. and S. S. R. Thomas* request a variance from Section 24-95(c)(1) of Chapter 24 of the County Code to build an attached garage and addition at 7708 Sunderland Road (Westham) (Tax Parcel 101-17-SS-16), zoned R-3, One Family Residence District (Tuckahoe). The minimum and total side yard setbacks are not met. The applicant has 3.1 feet minimum side yard setback and 13.6 feet total side yard setback where the Code requires 10.5 feet minimum side yard setback and 30.0 feet total side yard setback. The applicant is requesting a variance of 7.4 feet minimum side yard setback and 16.4 feet total side yard setback.

Mr. McKinney- Our Secretary has called the case, but there doesn't seem to be anyone present at this time. We will go on to the next case and call the case at the end of the hearing.

After hearing all of the cases, Mr. McKinney called A-11-99. There was no one present at the hearing in reference to A-11-99.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board deferred this request, A-11-99, from the January 28, 1999, meeting to the February 25, 1999, meeting.

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

REASON: This case was **deferred** from the January 28, 1999, meeting to the February 25, 1999, because the applicants failed to appear before the Board to present their case.

**UP-6-99**                      *Tarmac America, Inc.* requests a conditional use permit pursuant to Sections 24-52(d) and 24-103 of Chapter 24 of the County Code to extract materials from the earth at New Market Road and Curles Neck Road (Part of Tax Parcel 270-A-1) zoned A-1, Agricultural District (Varina).

Mr. McKinney-                      Is there anyone here to testify on UP-6-99?

Mr. Lewis-                      Yes, sir. My name is Monte Lewis, and I am with Lewis and Associates representing the applicant, Tarmac.

Mr. Lewis-                      If I might have use of your audiovisual, Mr. Webb. Again, Mr. Chairman, I am representing Tarmac. With me I have Tom Brazzell and Leon Lindel with Tarmac. This is another site on Curles Neck. The entire Curles Neck farm is under the state permit. This is a new section that is coming before you. Right now you have two others that are in use...16-97 and 17-97.

One thing I wanted to point out, and that is in your packet, it shows that there are a little over 70 acres that are in for mining. Actually, due to the buffers that we have all along Route 5 and the RPA, we are only left with about 40 acres that are going to be mined.

Along New Market Road, we have a 100-foot undisturbed buffer, and by ordinance, we cannot excavate any materials within 200 feet of the right-of-way. Along the area that is on the left and lower portion of this map, we have an RPA area, which we are restricted from.

The County Ordinance says we cannot come within 100 feet of the RPA. Working with Public Works, we have agreed to extend the RPA out 200 feet, of which the first 50 feet

that is away from the river will be used as their Sediment Control Basin area. We control sediment and cannot release it into the wetlands and the RPA.

Curles Neck has been mined by Tarmac for over 20 years. We expect this operation to go very fast because it is such a small area compared to the other mining sites. If you will notice on the permit that we will be out of this area on January 31, 2002.

We expect the actual mining to be over in eight months. The other months are used for reclamation of the site to get it back and seeded and stabilized. Since this is one of the newer sites that's coming under Public Works, we will have a bond for Erosion Control, and we will also have a separate bond for the restoration. One thing I did want to point out in your package, on No. 21 there is a reference to Allard Trucking. They have nothing to do with this case. I think that was simply a misprint.

Mr. Webb- And I apologize to the Board and Mr. Lewis. I guess we couldn't get our minds off of Mr. Allard for the moment.

Mr. Lewis- All of this material will be trucked across private land of Mr. Watkins, which is Curles Neck. It will be taken over to their river plant, where it is processed, barged, and hauled down the river, so there is no traffic on Route 5, whatsoever. I'd be happy to answer any questions you might have.

Mr. McKinney- Any questions of Mr. Lewis by Board Members?

Mr. Wright- If you will note in No. 13, it says "operations shall be discontinued January 31, 2001." So, you are right. It is the 2002 period that's allowed for restoration.

Mr. McKinney- Any other questions of Mr. Lewis? Anybody else who wishes to speak in reference to UP-6-99? That concludes the case. You can get your answer in a little while.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted UP-6-99.

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this use permit with appropriate conditions will not be detrimental to adjacent properties or local traffic conditions nor will its design and operation be detrimental to the community or purposes of the zoning regulations. The Board granted this request subject to the following conditions:

1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. Hours of operation shall be from 7:00 a.m. to 5:00 p.m., from December 1 to March 31, and from 6:00 a.m. to 6:00 p.m., from April 1 to November 30, local time in effect in the County of Henrico.
3. No operations of any kind shall be conducted at the site on Sundays, or on national holidays.
4. All roads used in connection with this use permit shall be effectively treated by sprinkling or otherwise treated with water, calcium chloride, or other wetting agents to eliminate any dust nuisance.
5. Open and vertical excavations having a depth of 10 feet or more, for a period of more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the public safety.
6. Routes of ingress and egress shall be over the applicant's private roads to the loading area at the James River as outlined on the map filed with the application.
7. A superintendent who shall be personally familiar with all the terms and conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and conditions of **UP-6-99** shall be present at the beginning and conclusion of operations each work day to see that all conditions of said Code and said Use Permit are carefully observed.
8. Topsoil shall not be removed from any part of the property outside of the area in which mining is authorized. Sufficient topsoil shall be stockpiled on the property for respreading in a layer with five (5) inches of minimum depth. If the site does not yield sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime, as recommended by the County of Henrico, after the results of soil tests have been summated to the County of Henrico. All topsoil shall be stockpiled within the authorized mining area and provided with adequate erosion control protection.
9. Erosion & Sediment Control Plans shall be submitted to the Department of Public Works for review and approval within 30 days of the Board's action, or such action becomes void. No land disturbance shall take place until the Erosion & Sediment Control Plans have been approved. Throughout the life of this mining operation, the applicant shall continuously satisfy the Department of Public Works that erosion control procedures are being properly followed, and shall furnish plans and bonds that the department deems necessary. Applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structure meet standard and approved design criteria as set forth by the State.
10. Responsibility for maintaining the property, fences, and roads in a safe and secure condition indefinitely, or of converting the property to some other safe use, shall rest solely with the applicant.
11. The applicant must satisfy the Department of Public Works that erosion will be properly managed and shall furnish any plans and bonds the department deems necessary. Said plans must be submitted for approval within **30 days** of the Board's action or the action becomes invalid.
12. Areas approved for mining under this permit shall be delineated on the ground by the erection of five (5) foot high metal posts at least five (5) inches in diameter and painted

in alternate one (1) foot horizontal stripes of red and white. The posts shall be so located as to clearly define the area in which the mining is permitted. They shall be located and erected, and their locations certified by a certified surveyor, within thirty (30) days of the date of approval of this use permit by the Board of Zoning Appeals, or this use permit shall become invalid.

13. Excavation operations shall be discontinued on said site by **January 31, 2001**, and restoration accomplished by not later than **January 31, 2002**, unless a complete application for new permit is received in the Planning Office not later than 60 days before the expiration of the permit, and is subsequently granted by the Board of Zoning Appeals.
14. That a suitable completion bond with surety satisfactory to the County Attorney or certified check, be posted with the Secretary of the Board of Zoning Appeals, for extracting materials from **70.86** acres, in an amount of **\$1,000.00** per acre, for each acre of land included under development, for a total of **\$70,860.00**, guaranteeing that the land will be restored to a reasonably level and drainable condition with a minimum slope on the restored property being five-to-one or flatter. The completion bond may provide for the termination of the obligations of the surety on such bond by the surety giving a **30** day notice in writing to the principal and obligee of the bond, of its intention so to do. Such notice shall be served upon the principal and upon the obligee as provided by law, for the service of notices. At the termination of the aforesaid **30**-day notice to the principal, all authority of the principal under this use permit to extract materials, and work incident thereto, shall cease, provided the applicant has not furnished another bond suitable to the County within said **30** days. The principal shall then proceed within the next ensuing **30** days following the termination of its authority under this use permit, to accomplish the complete restoration of the land as provided for under the terms of this permit. A notice of termination by such surety shall in no event relieve the surety from its obligation to indemnify the County of Henrico for a breach of the conditions of this use permit.
15. The applicant shall furnish a certification from his bonding company each year, verifying that the bond is in effect, premiums have been paid, and the bonding company reaffirms its responsibility under the use permit conditions. This certification shall be submitted to the Board on **September 30** of each year.
16. This permit does not become valid until the bond, required in condition **No. 14**, has been posted with the County, and necessary approval received. This must be accomplished within **30 days** of the Board's action or the action becomes **invalid**.
17. A progress report shall be submitted to the Board on **January 31** of each year, of the date of the Board's action. This progress report must contain information concerning how much property has been mined to date of the report, the amount of land left to be mined, how much rehabilitation has been performed, when and how the remaining amount of land will be rehabilitated, and any and all pertinent information about the operation that would be helpful to the Board.
18. If, in the course of its preliminary investigation or operations, the applicant discovers evidence of the existence of cultural or historical material, or the presence on the site of significant habitat or an endangered species, it will notify appropriate professional or governmental authorities and provide them with an opportunity to investigate the site and applicant will report the results of such investigation to the Planning Office.

19. The applicant shall comply with the Chesapeake Bay Preservation Act and all state and local regulations administered under such act applicable to the property, and shall furnish to the Planning Office copies of all reports required by such act or regulations.
20. The applicant must obtain a mine license from the Division of Mineral Mining, Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90 days of the approval of this use permit or the approval becomes invalid.
21. **No offsite-generated materials shall be deposited on the mining site unless the materials and the plans for their placement have been approved by the Planning Office.** Off-site generated materials may be brought to and deposited on the mining site only for rehabilitation/restoration purposes. Such materials shall consist only of clean soils and inorganic materials free of refuse and debris, such as, but not limited to, biodegradable objects and materials, toxic and sanitary wastes, any material which may in any way adversely affect the quality of ground waters. Tarmac America Inc. shall be responsible for obtaining certifications that all such off-site generated materials brought to the site conform to these requirements, and shall document the receipt and placement of such materials in the manner and in locations permitted by an approved restoration plan. A full report documenting the dates, amounts, and placement locations of such off-site generated materials during each calendar quarter shall be submitted to the Secretary of the Board of Zoning Appeals at the close of such calendar quarter. All documentation relative to acceptance and use of off-site generated materials shall be available to the County of Henrico in a timely manner upon request by appropriate County agencies.
22. A sign shall be posted at the entrance to the mining site, stating the name of the operator, the Henrico use permit number, the Division of Mineral Mining mine license number, and the phone number of the operator. The sign shall be 12 square feet in area and shall be properly maintained.
23. All drainage and erosion and sediment control measures shall conform to the standards and specifications of the Mineral Mining Manual Drainage Handbook. Any drainage structures in place prior to October 14, 1992, and which do not conform to the Mineral Mining Manual Drainage Handbook, may remain in place until such time as any reconstruction is required, at which time said structures shall be brought into conformance with the Mineral Mining Manual Drainage Handbook.

**A-12-99**

**James C. and A. McCracken** request a variance from Section 24-95(i)(2) a. of Chapter 24 of the County Code to build an accessory structure in the front yard at 101 Culpeper Road (Westham Ridge) (Tax Parcel 126-5-F-17), zoned R-1, One Family Residence District (Tuckahoe). The location requirements for an accessory structure are not met. The applicant has the detached structure located in the front yard where the Code requires the detached structure be located in the rear yard. The applicant is requesting a variance to locate the detached structure in the front yard.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. McCracken- Yes, sir. I'm James McCracken. My wife and I are homeowners and reside at 101 Culpepper Road, which is a corner lot in the Westham Ridge subdivision. We are surrounded by three roads, one being South Ridge Road, and the other one Cameron and on the front yard, Culpepper Road. We would like to request a variance to build a detached two-car garage in what is considered our front yard.

We would like to access this garage off our driveway, which enters from Cameron Road, our side yard. Access from the rear of the property, according to the staff report, would be considered dangerous and unsafe, due to the steep grade in our backyard up to South Ridge Road.

Placement of the garage at the driveway to the side of our house would take up what little off-street parking we currently have. And placement of the garage in our rear yard, off the driveway, would require that we take down some mature trees, which is not my wife's first choice, since we only have two very large ones right there.

I would like to point out what I interpret as an error in the staff report. They have stated that they believe the garage that we want to build is to be used as a guest house structure for a live-in parent. That is not the case. I have applied and obtained a building permit, issued 12/3/98, to renovate our basement. Plans are on the staff report for the basement renovation. That renovation is 99% complete, and is pending the final inspection. This basement renovation encompasses our former two-car garage, what was an unfinished room, and an unfinished workshop.

We have converted this basement into a living area for my father who has suffered a stroke, who is currently living with us.

We would like to do the new garage to obviously house items such as cars, storage, yard implements on the second floor since we have don't have attic storage. We live in a rancher.

That's about all I have to say. If you have any questions, I'll be glad to answer.

Mr. McKinney- Any questions of Mr. McCracken by Board member?

Mr. Wright- Yes. I have got this diagram, or this plan that you have given us, and what is the size of this garage?

Mr. McCracken- The garage is 24 feet by 24 feet. The current setbacks we have on the plat are 14 feet from the front line of the house, and 24 feet from the sideline. We are not pushing the setback limit so to speak.

Mr. Wright- This shows some sort of building or structure to the rear of the garage. Is that...there's a den, a workroom...what is all of that?

Mr. McCracken- This is what I had stated earlier that I think had mixed in. When I originally had the drawings done for this, the architect had drawn the basement renovation, which is in my existing home, and drawn plans for the detached garage. Upon applying for the building permits, they said the basement renovation was fine, but we couldn't build the detached garage because it would be in the front yard. Basically we pulled the plans for the garage, and applied only for the basement renovation, which I have obtained a building permit for. That is just about finished. That's what you are looking at...the workshop and the den area, and the garage area they show right there. If you look to the right of that, that's at the existing structure to the left, and the modified floor plan to the right of the basement.

If you turn the page, then you get over to the drawings for the actual detached garage.

Mr. Wright- I don't have that.

Mr. Webb- That explains the problem in the staff report. Somehow we had been given and gotten the wrong set of drawings.

Mr. McCracken- The staff report I have has the right drawings for the detached garage.

Mr. Webb- Somehow then, we have misread the conversion of the in-house...the inside garage or the attached garage.

Mr. McCracken- The inside garage, and the confusion...we tried to apply originally for both, not knowing that we didn't conform with the detached garage that we wanted to build.

Mr. Webb- Okay. I apologize for that error and the distress that it caused.

Mr. McCracken- That's all right. I don't mind. My father is a former member of the original regional Planning Commission, and he told me he would be very upset if we didn't do things by the book.

Mr. Wright- So, the garage is going to be 24 feet by 24 feet, a freestanding structure, with one story?

Mr. McCracken- One story. The roofed area will have access as unfinished storage.

Mr. Wright- Is there going to be a dormer in that roof?

Mr. McCracken- Yes, sir. There are four dormers in the roof.

Mr. Wright- And to the garage?

Mr. McCracken- Yes, sir. A dormer facing the....

Mr. Wright- In the room above the garage?

Mr. McCracken- Yes, sir, an unfinished room.

Mr. Wright- How will you access that?

Mr. McCracken- From inside the garage?

Mr. Wright- A stairwell inside the garage?

Mr. McCracken- Yes, sir.

Mr. Wright- You face Culpepper Road. Is that correct? Your house faces Culpepper?

Mr. McCracken- Yes sir. My front doors do, yes. For a while there, according to Henrico Code, they considered my side yards my front yard because of the distance of my house from the property line.

Mr. Wright- This is where Mr. McCracken's front door is in his side yard, and his side door is in his front yard.

Mr. Wright- You are considering his front yard....

Mr. McCracken- Culpepper is what I think everybody has agreed to according to the....

Mr. Webb- Cameron Road by Code is your front yard.

Mr. McCracken- By Code, but according to your staff report, you all seem to think that Culpepper is my front yard.

Mr. Wright- That makes a lot of difference.

Mr. McCracken- Either way, I would still need a variance front yard, Culpepper, or Cameron, the location of the garage is in that corner of my lot.

Mr. Webb- And whichever way it falls, it is still in the front yard.

Mr. McCracken- Absolutely.

Mr. Wright- If it was pushed back in line with your house, then it wouldn't be in your front yard.

Mr. Webb- Technically.

Mr. Wright- If the front yard was Culpepper that would be your side yard.

Mr. McCracken- To me it makes sense that my front yard is where my address is.

Mr. Wright- Are you on Culpepper?

Mr. McCracken- 101 Culpepper, yes, sir.

Mr. Webb- But this is one of those unusual things where it probably isn't, and Mr. Wright made the comment that if it were to be pushed back even with the house, the way the side is developed, it would not be in a good position.

Mr. McKinney- Any other questions of Mr. McCracken? Is there anybody else to speak in reference to A-12-99? That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted A-12-99, request for a variance to locate the detached structure in the front yard..

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following condition:

1. This approval is only for relief of the location requirement in Section 24-95(i)(2)a. of the County Code in order to build an accessory structure in the front yard at 101 Culpepper Road (Westham Ridge) (Tax Parcel 126-5-F-17), zoned R-1, One Family Residence. All other improvements to the property shall comply with all applicable regulations of the County Code.

**A-13-99**

*County of Henrico* requests a variance from Section 24-104(a)(2) of Chapter 24 of the County Code to erect a sign at 2880 Mountain Road (Tax Parcel 31-A-44) zoned A-1, Agricultural District (Brookland). The sign area requirement is not met. The applicant has 30.25 sq. feet of sign area where the Code requires 20.00 sq. feet of sign area. The applicant is requesting a variance of 10.25 sq. feet of sign area.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Sved- Yes, sir. I'm James Sved. I am an architect with the Department of General Services here at the County. One of the projects that I am currently working on is the renovation of the old Glen Allen School to be used as a Cultural Arts Center for the community.

In creating this renovation, in order to provide adequate parking and other amenities to meet all of the Codes and requirements for this project, the County has purchased several other contiguous lots and pieces of property in the area with regard to parking; and to create a new access road to the property off of Mountain Road whereas the old school was just off of Washington Highway.

Along with the Director of the Cultural Arts Center, we have developed the sign you see with me here and up on the Board. This design was a competition that was won by a VCU Art Department Design competition. Because of where we propose to set this new sign off of Mountain Road, and because of the distance involved, in order for it to be visibly seen by the public as they drive by, we request an additional 10.25 square feet for the actual signage.

Mr. McKinney- So, you are saying the sign cannot be reduced down to meet the Code?

Mr. Sved- In order for this sign to be reduced down to meet the Code and because of the proximity of the location of the sign with relation to the road, it would not be visible, no. It would be difficult to be seen by passersby's.

Mr. Kirkland- Is this sign to be lit at night?

Mr. Sved- This sign is supposed to be internally lit.

Mr. McKinney- Any other questions of Mr. Sved? That concludes the case.

After an advertised public hearing, and on a motion by Mr. Kirkland, seconded by Mr. Nunnally the Board denied this request.

Affirmative:	Kirkland, Nunnally	2
Negative:	McKinney, Wright	2
Absent:	Balfour	1

REASON: The Board **denied** this request as it found from the evidence presented that the applicant failed to provide adequate evidence that a demonstrable hardship existed as defined by the Code; therefore, authorizing this variance will be of substantial detriment to adjacent property and will materially impair the purpose of the zoning regulations.

**A-14-99** *Catherine Z. Forsyth* requests a variance from Section 24-9 of Chapter 24 of the County Code to build a dwelling at 3674 Britton Road (Part of Tax Parcel 206-A-23), zoned A-1, Agricultural District (Varina). The public street frontage requirement is not met. The applicant has 0 feet public street frontage where the Code requires 50 feet of public street frontage. The applicant is requesting a variance of 50 feet public street frontage.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Burch- Yes, sir. I'm Mark Burch, and I am here on behalf of my mother, Catherine Z. Forsyth.

We are requesting a variance to build a home at 3674 Britton Road. That parcel is 206-A-23. We don't meet the public street frontage requirement of 50 foot. We are requesting a variance for 50 feet road frontage.

Mr. Wright- How will you access your property?

Mr. Burch- From the side of my mother's land, and I do have a survey plat that has been drawn up, and I will submit it to you so you can look at it.

Mr. Wright- I think we have got a copy of that.

Mr. Burch- That's the old one. I'm giving you the new survey plat.

Mr. Wright- Have you seen the conditions that have been proposed for this case?

Mr. Burch- Yes, I have.

Mr. Wright- You are satisfied with those?

Mr. Burch- Yes. I have already had a perk test done on the land. I just need to get the variance.

Mr. McKinney- Any other questions, Mr. Burch?

Mr. Burch- That's all.

Mr. McKinney- Anyone else here to speak in reference to A-14-98? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted A-14-99, a variance of 50 feet public street frontage.

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

REASON: The Board **granted** this request as it found from the evidence presented that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. A well and septic system approval by the Health Department must be obtained.
2. The owners of the property, their heirs or assigns, must accept responsibility for maintaining access to the property until such a time as the access is improved to County standards and accepted by the County road system for maintenance.
3. The applicant must present proof with the building permit application that a legal access to the property has been obtained.
4. The applicant must submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.

***A-15-99***

***Christopher Shumaker*** requests a variance from Section 24-95(i)(2) a. of Chapter 24 of the County Code to build an accessory structure in the front yard at 11938 Old Washington Highway (Lakeview) (Tax Parcel 7-2-4-25), zoned A-1, Agricultural District (Brookland). The location requirement for an accessory structure is not met. The applicant has a detached accessory structure in the front yard where the Code requires the detached accessory structure be located in the rear yard. The applicant is requesting a variance to locate the detached accessory structure in the front yard.

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Shumaker- Yes, sir. I'm Christopher Shumaker. I would like to build a pool house on the front yard, which is actually my side yard but I guess the corner of it is the front yard next to the pool in the side yard. Last March, I was before you to get a variance to put a pool in the side yard. We live on five acres...actually, 25 acres. I own 66 percent of the 20 acres, and I own 100 percent of the five acres. My father-in-law owns the balance, so we are surrounded by 25 acres of woods.

While I was granted the variance for the side yard, the hardship on the back side we have a flood plain, a steep slope, and then we have the Chickahominy River there.

At the time I asked for the pool, I also asked for the pump house, which was granted, but since then my wife and I have decided we want to add a bathroom to this pump house, and it has kind of grown a little bit.

So, that not meeting the requirement, I had to come back and ask for a variance.

Mr. McKinney- Do you have anything else to add?

Mr. Shumaker- No, I have an aerial shot. If someone is interested in perspective, I am one-half mile off the road. The same reasons apply to the pool.

Mr. Kirkland- The pump in the poolhouse is going to go inside the structure?

Mr. Shumaker- No, actually, they are now going to go next to it on the outside. We have learned a lot since then. My wife and I have learned a lot about chlorine fumes. My wife and I...if we are going to have people in the house to use the bathroom, she doesn't want chlorine, and I have learned that you can have exterior pump equipment which is exposed so we are going to put that adjacent to the back of the house.

It has kind of changed, but I think you all understand how those things happen.

Mr. McKinney- Any other questions? That concludes the case, and thank you for coming, sir.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright, the Board granted A-15-99, a variance to locate a detached accessory structure in the front yard.

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following condition:

1. This approval is only for the location of the pool house shown on the plans and documentation submitted with this case. All future improvements of the property shall comply with applicable regulations of the County Code.

**UP-7-99**

***Pendragon Development Co. LLC*** requests a use permit pursuant to Section 24-12(b) of Chapter 24 of the County Code to construct and operate a private recreation facility on the east line of Doran Road about a mile north of New Market Road for residents of Four Mile Run Subdivision, (Part of Tax Parcel 238-A-38), zoned R-2AC, One Family Residence District (Conditional) (Varina).

Mr. McKinney- Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Cross- Yes, sir. I'm Joe Cross, and I am here on behalf of Pendragon Development Co. LLC . Developers of Four Mile Run Development in the Varina District seek a use permit to build and donate to the community a community recreation center that will serve the Four Mile Run Community. The Four Mile Run Development is a 260 unit subdivision off of Doran Road, just east of Doran Road between that and I-295. The entrance is right beside the old Four Mile Run Baptist Church.

The original zoning for this property calls for and allows the development of a recreation parcel, which as I understand it, is the first community in that part of the County that has its own individual recreation association specifically developed for that community.

We, the developers, wish to construct this recreation area now, and we are hoping to have it...at least the pool, up and ready to go by early summer. The remainder of the recreation area will be developed, hopefully following the pool. Our initial goal is trying to get the pool open as soon as possible.

We had been working with the Architectural Review Community, small though it may be at the present time at Four Mile Run, which does have a number of residents, towards the implementation of the plan that you see before you.

Specifically, we are seeking to build a six-lane, 25-meter pool with bathhouse and pump room, which is shown on the attached plan. An open air picnic pavilion, two tennis courts, an open grassy field area and play area, walking trails that will connect to the rest

of the community with the recreation area and a storm water management pond, which is the little blue area at the top of the drawing.

The interesting feature of this site is two-fold. One, running through the middle of this development is a very large and wide Virginia Power easement that runs roughly more south and connects with one running east/west that is also part of the County's future trail system.

We are trying to link the community from all ends through this Central Virginia Power easement through both the recreation area and to the County's Community Trail System...

I would like to correct one aspect of the narrative that was sent to me, that this recreational facility will be for the exclusive use of the Four Mile Run residents, and not "the surrounding divisions in the general vicinity."

The homes association that is in place for this development requires everyone in the development to be a member of this recreational facility and to support it with their annual dues structure. It is anticipated that with 260 families, that will be sufficient to service whatever maintenance cost there will be for this facility.

I would like to address several of the staff comments if I could. I have not had the opportunity to talk with staff about them, but condition No. 1 suggests we proffer a six-foot fence with barbed wire on top. We would prefer an eight-foot fence, not a six-foot, and we would ask that the barbed wire be not in keeping with what we think the community is and be omitted from the top of it.

We feel that an eight-foot chain link fence is sufficient deterrence from people trying to get in and, of course, it would have a gate, which would be locked when the facility was not used.

Condition No. 2. I seek to understand the rationale for staff's recommendation of one space per three families per parking, which in this case would generate the need for over 78 parking spaces.

We are trying to put a community together that will have sufficient walking trails that most of the people will be allowed to actually walk or bike, off-road to the site. In addition to that, having developed over 12 community centers in the past, I have certain guidelines that I have used in the past, and I don't know if they are right or wrong. I just know that they are guidelines that have come from published sources, and I would also note that the nearby Four-Mile Run Baptist Church does not even have 78 parking spaces for their people.

We looked at the methodology in terms of developing the plan. We used three different methodologies for just coming up with our required parking, which we see as about 42 spaces. There are published standards by the Urban Land Institute that have been adopted

by a number of Virginia localities, which give one parking space for every ninety square feet of surface area in the pool.

On a 25 meter six lane pool, that's 3,400 square feet of water surface area divided by 90, it is 38 spaces. In addition to that, the International Transportation Engineers (ITE), in their most recent volume of traffic generation studies give an average daily trip to a community recreation center such as this on the peak day, which they say is Sunday, of 3.4 parking spaces for every 1,000 square feet of surface area. That equates to about 46 spaces in this particular case.

Third, and a standard that I have used and developed in some other developments, and it's neither right nor wrong, but it seems to be similar to the experienced communities. As we have allocated one parking space per ten units for anybody within a quarter mile of the site, feeling that if you were within a quarter mile of the site, it is fairly unlikely that you are going to be able or want to drive to the site. One space per five units for everything within a half mile of the site, and one space for every two units for anything that is a mile or greater from the site. If we use that formula, then we are talking about 42 parking spaces which is what we have included in this design.

So, from the knowledge that we have been able to research on this, we have come up with a range of 36 to 48 parking spaces required, and I do not really understand the rationale in staff's comment that we need 78 parking spaces.

So, I would ask that you look at that condition, if you would please, and give us some guidance as to how we should move with that.

The condition No. 5 that is presented -- I don't really understand the intent. If the intent is to have security lights on timers, we will certainly have those. As I read it, I can see one intent as being that you want to make sure that the lights don't stay on late at night and cause light pollution for surrounding residents. If that is the intent, we will meet that by having timers on the lights.

In addition, I would suggest that for safety sake that we would be installing motion sensor lights in the pool area as well, so that should anyone be in the pool area late at night, there will be a safety mechanism that will light up and alert not only the people there...they probably know that they are not supposed to be there at that time, but any passersby or any neighbors know that there is someone in the pool that shouldn't be.

Condition No. 7 says that there will be no changes or additions to the layout. The layout that I saw is a little indistinct. I would like to ask the Board to include the B&P for the little pond that is to the north of this, with the sight plan because that allows us to...although it will serve the subdivision in general, it will allow us to accelerate our complying with the Chesapeake Bay Act requirements. I don't know whether that was included in the original site plan or not.

Condition No. 8 -- hours of operation. I have no problem with that. I would note, however, as a swim team parent of some long standing, that practice in many swim teams starts as early as 7 a.m. and would that it be true that we could get out by 10 p.m., but many of the meets that I go to do not get out by 10 p.m. The condition is fine with me but the staff may wish to think about that a little more.

I have no problems with the other conditions. So, in summation, we are ready, willing and very desirous of building this facility for the community and running it until they get enough people in the community to maintain it themselves.

I would ask for relief for the parking conditions, and the other minor things that I have noted.

Mr. McKinney- Mr. Cross, You stated that the subdivision is just over 260 lots. You made the statement that all of them have to belong to this?

Mr. Cross- That's correct.

Mr. McKinney- They pay dues to it?

Mr. Cross- They have to pay dues to it whether they use it or not.

Mr. McKinney- And your calculations said 78 parking spaces...one per three families. I come up with 86 and two thirds.

Mr. Cross- I guess I did my math wrong.

Mr. McKinney- Instead of 78.

Mr. Cross- I'm sorry.

Mr. McKinney- We can ask Mr. Webb. We have done these on different racquet clubs, etc., and the one that comes to mind is the one out on Francestown Road and Hungary Road...that one out there. I forget the name of it.

Mr. Webb- Hungary Creek.

Mr. McKinney- In your years of experience, have you found that to be true, that it is one space for every three families?

Mr. Webb- This is a rule that the Board has used on a lot of things. I think, for example, in the rural area I think this is the formula to work. Whereas a place like Ridge....

Mr. McKinney- We are talking about subdivision with 260 lots. I kind of have to agree with Mr. Cross that people who live right down the street are not going to

drive. The further away you get, and I am sure he has done some calculations, they tend to get in the car and drive.

Mr. Webb- Absolutely. Particularly mothers and children.

Mr. McKinney- That's true. There again you have to think about the size of the family the mothers are going to take with all the stuff they will be taking to the pool.

Mr. Kirkland- How many people do you think would be coming from other areas?

Mr. Cross- I can't answer that. I know that in the swim meets that I have attended, that there have been as many as maybe 100 people that come to a swim meet. I have never been to a swim meet where parking was not a problem. But, you don't build a church for the Easter crowd, and I am sort of in the same position here. To look at this site in the area that is topographically available for parking, if we are building 87 parking places, we are looking at over half an acre of nothing but parking. That seems like a lot of land.

Mr. Silber- Mr. Cross, is there room to construct that many if you found that there was a problem?

Mr. Cross- We have room within the easement as you can see from the sketch before you. The area immediately underneath the tennis courts is available and can be graded off.

Mr. Silber- So, could you somehow show it on the plan, construction of so many now and allocate so many if parking was deemed to be a problem in the neighborhood or if the County had safety concerns.

Mr. Cross- That would certainly be acceptable to us. We have in the plans, some other plans that have been submitted, we showed that area could be used for overflow parking.

Mr. Webb- Forty-two or forty-six parking places are on the plan with the overflow to the 78 or something.

Mr. Cross- That would be perfectly acceptable.

Mr. Webb- If experiences dictates, it may not ever be necessary to build the others.

Mr. Cross- That's correct.

Mr. Webb- But at least you have the authority to do that should you find a need or wish to exercise it.

Mr. Cross- That would be fine.

Mr. Nunnally- Did you say 46, Mr. Webb?

Mr. Webb- Forty-two to forty-six were mentioned.

Mr. Cross- I think we have 42 on the plan. I'd have to check.

Mr. Wright- I have got 52 on my plan.

Mr. Webb- I was leading to your formula. I was trying to find out what your formula was.

Mr. Cross- We have had several of these as we worked through the design. This was the earliest one.

Mr. McKinney- You are counting future parking?

Mr. Wright- Yes, it says future parking. That, plus what's there, is 52. I counted them. There's more than that if you count these over here. There are another 20 right in these two little areas up here.

Mr. Cross- The configuration can be worked out. I'm asking that we not have to build 87 spaces.

Mr. Wright- You are asking 42. Is that what you said?

Mr. Cross- Forty-two is what I have on this drawing. I can certainly go a few more than that...there is no real magic in it.

Mr. McKinney- We are showing 52 spaces on our plans. You are saying 42, so how about 46?

Mr. Cross- Forty-six would be perfect.

Mr. Wright- What about the time? You said you had a little problem with that? Is that the standard of what we normally use for these?

Mr. Cross- That's the standard of what you normally do. However, that has not been my experience of what happens in the real world. That's acceptable to us. I understand what you are trying to get at. We wouldn't have any problem with that.

Mr. McKinney- How about the fence? How about an eight-foot fence and eliminate the barbed wire? Also, Mr. Cross, do birds and everything else set these motion lights off?

Mr. Cross- It has been my experience that they do not. It takes a person or someone larger to set them off.

Mr. McKinney- Where are you getting these motion lights? Birds set off mine when they fly in front of it. I would hate to see the lights go on and off and people think somebody is in there and say that's a false alarm, and somebody be in there.

Mr. Cross- It has been my experience that what we are typically talking about, are teenagers who take a little after-hours swim, and climbing the fence and when lights go off, that acts as much of a deterrent as anything to keep them out. That's why I have put them up in past projects.

Mr. McKinney- Any other questions? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted UP-7-99, this request for construction and operation of a private recreation facility on the east line of Doran Road about a mile north of New Market Road for residents of Four Mile Run Subdivision..

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

REASON: The Board **granted** this request, as it found from the evidence presented, that authorizing this use permit with appropriate conditions will not be detrimental to adjacent properties or local traffic conditions nor will its design and operation be detrimental to the community or purposes of the zoning regulations. The Board granted this request subject to the following conditions:

1. An eight-(8) foot tall chain link fence will enclose the swimming pool.
2. Off street parking spaces at a ratio of one space for each three families in membership.
3. The swimming pool and facilities must be operated on a nonprofit basis and be open for members and their guests only.
4. The property must be maintained in a park-like manner, operated in a quiet manner, without creating a nuisance to the surrounding neighborhood, and be properly supervised.
5. Lights beamed only on the swimming pool and on a time clock shall be provided when water is in the pool, to facilitate policing.
6. Connection shall be made to public water and sewer.
7. The property shall be developed as shown on the plan filed with the case, and no changes or additions to the layout will be made without the approval of the Board of Zoning Appeals.

8. Activities shall be limited to the hours of 8:00 AM to 10:00 PM, local time in effect in Henrico County.
9. Four (4) dual swimming meets shall be permitted at the pool each swimming season. At these meets, starting guns and amplifier equipment may be used, but shall not be used at any other time except for emergency purposes. Swim meets shall not be permitted on Saturdays, Sundays nor national holidays.
10. The applicant must submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.
11. With the each phase of development construction plans, a detailed landscape and lighting plan will be submitted to the Planning Office for review and approval.

There being no further business and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board adjourned until February 25, 1999.

All of the aforementioned decisions have been filed in the office of the Board of Zoning Appeals as of February 2, 1999.

Gene W. McKinney, C. P. C., C. B. Z. A.

Allen D. Webb, Secretary