

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, JULY 28, 2005, AT 9:00 A.M., NOTICE HAVING BEEN**  
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON JULY 7 AND 14, WITH AN**  
6 **ADDITIONAL SPECIAL AD ON JULY 14 AND 21, 2005.**  
7

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

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

8  
9 Mr. Wright -                             I call the June meeting of the County of Henrico Board of  
10 Zoning Appeals to order. Would you stand for the **Pledge of Allegiance to the Flag of**  
11 **Our Country.** Before we begin our Agenda today, I want to take a moment to  
12 recognize a member of this Board, who has just completed 30 years on the Board of  
13 Zoning Appeals. Mr. James W. Nunnally was reappointed for another term,  
14 commencing August 1, 2005, and ending July 31, 2010. Jim, we congratulate you on  
15 your service to the County through the Board of Zoning Appeals over these 30 years.  
16

17 Mr. Nunnally -                         Thank you, Mr. Wright. I appreciate it so much, and I’ve  
18 enjoyed working with all the people I have so far, and I just hope you will help me out up  
19 here during this term.  
20

21 Mr. Wright -                             You’ll make it fine. Mr. Secretary, would you read the rules,  
22 please.  
23

24 Mr. Blankinship -                       Good morning, Mr. Chairman, Members of the Board, ladies  
25 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each  
26 case. Then at that time the applicant should come to the podium. I will ask everyone  
27 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.  
28 The applicants will then present their testimony. After the applicant has spoken, the  
29 Board will ask them questions, and then anyone else who wishes to speak will be given  
30 the opportunity. After everyone has spoken, the applicant, and only the applicant, will  
31 have an opportunity for rebuttal. After hearing the case, and asking questions, the  
32 Board will take the matter under advisement. They will render all of their decisions at  
33 the end of the meeting. If you wish to know their decision on a specific case, you can  
34 either stay until the end of the meeting, or you can call the Planning Office later this

35 afternoon, or you can check the website. The vote on each case will be posted to our  
36 website within an hour of the end of the meeting. This meeting is being tape recorded,  
37 so we will ask everyone who speaks, to speak directly into the microphone on the  
38 podium, to state your name, and to spell your last name please. And finally, out in the  
39 foyer, there are two binders, containing the staff report for each case, including the  
40 conditions that have been recommended by the staff.

41  
42 Mr. Wright - Please call the first case.

43  
44 Mr. Blankinship - The first case actually has been withdrawn. A-58-2005,  
45 David A. Morse appeals a decision of the Director of Planning. Mr. Morse left me a  
46 voice mail this morning stating that he intends to drop his appeal. It may be well for the  
47 Board to go ahead and take a vote supporting the Director of Planning's determination.

48  
49 Mr. Wright - Do I hear a motion?

50  
51 Mr. Kirkland - I make a motion that we withdraw the case A-58-2005 and  
52 support the ruling of the Director of Planning.

53  
54 Ms. Dwyer - Second.

55  
56 Mr. Wright - Any discussion? All in favor, say aye. Opposed, no. So  
57 ordered. Thank you.

58  
59 Upon a motion by Mr. Kirkland, seconded by Ms. Dwyer, the Board **approved**  
60 **withdrawal of** application **A-58-2005**, appealing a decision of the Director of Planning,  
61 and expressed their support of the ruling of the Director of Planning.

62  
63 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
64 Negative: 0  
65 Absent: 0

66  
67 Mr. Blankinship - Mr. Chairman, as I have mentioned to you, but I will mention  
68 to everybody, I made a colossal mistake this month. We advertised the Agenda with  
69 only one case at 9:00 o'clock, and then after consulting with you and management, we  
70 changed the advertisement to move several of the cases to 9:00 o'clock, as is our  
71 normal practice. When the notice letters went out, I did not make the same change on  
72 those, so we have a number of cases this morning that were advertised for 9:00 o'clock,  
73 the notice letters said 10:00 o'clock, and after discussing that with the County Attorney's  
74 Office, I think we agreed that we should not hear any of those cases before 10:00  
75 o'clock, so we have two decisions to make, and then several other issues to discuss  
76 between now and 10:00 o'clock, and then we will begin calling those cases on the 10:00  
77 o'clock agenda.

78  
79 **Beginning at 9:00**

80

81 Mr. Blankinship - So the first thing for this morning is UP-9-2004, Tidewater  
82 Quarries. This is a continuation of the Show Cause Hearing from June 16.  
83  
84 **UP-9-2004 TIDEWATER QUARRIES** requests a conditional use permit  
85 pursuant to Sections 24-52(d) and 24-103 to extract materials from  
86 the earth at 11400 Staples Mill Road (Parcels 756-773-3302 and  
87 759-773-4746), zoned A-1, Agricultural District and M-2C, General  
88 Industrial District (Conditional) (Three Chopt).  
89  
90 Mr. Wright - The only thing I know from our minutes we read, is there any  
91 additional report concerning the highway, I-295?  
92  
93 Mr. Blankinship - We received a letter from them, stating that they had begun  
94 work, but would not have it completed by this time, and that they would send a  
95 representative here to this meeting. We received another letter just yesterday or the  
96 day before, requesting some further information from us, to help them in preparing that  
97 report.  
98  
99 Mr. Wright - Is a representative here? Come forward, please, and be  
100 sworn.  
101  
102 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
103 truth, the whole truth, and nothing but the truth, so help you God?  
104  
105 Mr. Jennings - I do. I'm Gary Jennings.  
106  
107 Mr. Wright - Would you give us any information that you can on this study  
108 that's being conducted; I guess the idea is the impact I-295 has possibly on these  
109 homes in that area.  
110  
111 Mr. Jennings - Yes sir. We are at the beginning stage of this study; it  
112 probably will not be completed until September. I would not want to speculate on the  
113 outcome of the investigation until the professional engineers on staff have finished the  
114 investigation.  
115  
116 Mr. Wright - Any questions of members of the Board?  
117  
118 Ms. Dwyer - So your investigation will be complete by the end of  
119 September?  
120  
121 Mr. Jennings - It should be complete sometime in September.  
122  
123 Ms. Dwyer - Are you also looking at perhaps the impact of the quarry and  
124 its operations on the roadbed?  
125  
126 Mr. Jennings - Yes we are.

127  
128 Ms. Dwyer - So you're looking at two things, the possible impact of the  
129 vibrations from I-295 on the homes and also whether the quarry has had any affect on  
130 the roadway.  
131  
132 Mr. Jennings - We are looking at both those issues.  
133  
134 Mr. Wright - All right sir. Any other questions? Thank you very much for  
135 appearing.  
136  
137 Mr. Kirkland - Mr. Chairman, I'd like to see if we've had a report back also,  
138 from the building officials, from the Building Inspection Department about their  
139 inspections that might have been made. I believe they said they were going to do that  
140 at the last meeting.  
141  
142 Mr. Wright - Any such report, Mr. Blankinship?  
143  
144 Mr. Blankinship - Yes, we received some comments, and they were included  
145 in the staff report, and I see the Building Official is here this morning.  
146  
147 Mr. Wright - Would you come forward.  
148  
149 Mr. Revels - I'm Gregory Revels.  
150  
151 Mr. Wright - Have you been sworn? I don't believe so. Please be sworn.  
152  
153 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
154 truth, the whole truth, and nothing but the truth, so help you God?  
155  
156 Mr. Revels - Yes I do. I provided a brief report to the Director of Planning  
157 via memo on July 25, indicating that we had looked at 12 of the homes in response to  
158 our contacts that we made with the residents, and we had called each one that had filed  
159 a written complaint, to offer services, to perform inspections, and the purpose of that  
160 process was to determine whether or not the problems they were experiencing were  
161 tied to any type of structural failure in the home. We did get responses back from 12 of  
162 them. We went out and looked at those homes, and we did not find any structural  
163 failures in the homes that might be leading to the problems that they have experienced  
164 up to this point.  
165  
166 Mr. Kirkland - How about soils? Did you check on soils?  
167  
168 Mr. Revels - All the soils for all the lots in Winterberry and Summerberry  
169 were laboratory tested by an engineer prior to construction of the homes. Those soils  
170 conditions were taken into account, and engineer footings were designed for each of  
171 them that had suspect soils. In most cases, engineers also performed inspections of  
172 those footings when the houses were constructed. We found no problems with any of

173 the foundations, no cracks, with any of the foundations that would lead you to believe  
174 there was any kind of a soils problem.

175  
176 Ms. Dwyer - We have some questions too.

177  
178 Ms. Harris - When Mr. Revels finished his report, I wanted to find out if  
179 the citizen liaison committee met and their progress.

180  
181 Ms. Dwyer - What about mining in the area? Did you look into that,  
182 whether there were any old mine shafts; there have been some in the area.

183  
184 Mr. Revels - There have been some in the area, but I'm not familiar with  
185 any in these particular subdivisions. Again, there were engineered soil surveys taken  
186 on every lot in Summerberry and Winterberry, and the questionable ones that are  
187 located in Hartley, and they didn't turn up anything that I'm aware of.

188  
189 Ms. Dwyer - Those were done at the time the houses were built, or they  
190 were done recently?

191  
192 Mr. Revels - No, that was done at the time the houses were built.

193  
194 Ms. Dwyer - When you say that there's no structural failure that would  
195 cause some of the damage reported, exactly what does that mean? I have cracks in my  
196 drywall and cracks in the cement in my garage. Does that mean I have a structural  
197 failure in my home, or does it just mean it's normal settling?

198  
199 Mr. Revels -It could mean normal settling or movement, and I think one of the things  
200 people were confused about was the concept of settlement being something that occurs  
201 one time and never reoccurs again. In reality, there's normal movement anticipated or  
202 expected or permitted or allowed as a result of normal use over the life of the building.  
203 You can have those types of things reoccur. There's a variety of different sources that  
204 could lead to that. Whether or not those sources, in this case, are attributable to  
205 blasting or vibrations from the roadway bed, we certainly cannot make that  
206 determination based on a single individual site inspection. It would require a lot of  
207 forensic investigation over a period of time to be able to make that assessment.

208  
209 Ms. Dwyer - So although there's no structural failure in the homes that  
210 you investigated that would cause some of the damage reported, it's also true that that  
211 sort of damage, cracks in drywall, cracks in garages, occur normally, without what you  
212 call a structural failure?

213  
214 Mr. Revels - It could occur normally without any structural failure. It could  
215 occur normally in areas that do not have interstates next to them. It can occur normally  
216 in areas that don't have quarries that have blasting activities.

217  
218 Ms. Dwyer - So to what would you attribute that kind of cracking?

219  
220 Mr. Revels - What we're sure with the homeowners is that it could be  
221 environmental loads such as wind loading, snow loading and ice loading during  
222 wintertime. There's been at least two significant wind events that have occurred since  
223 the subdivision was built that could have led to the issue.  
224  
225 Ms. Dwyer - Such as Isabel and the hurricane?  
226  
227 Mr. Revels - Isabel, and there was also a tornado that went through a  
228 portion of one of the subdivisions. Normal human activity, in terms of using the  
229 structure, loading, in terms of how much furniture or storage you put in the building, just  
230 normal activities will load the elements, the trusses, the floor rafters. Those things are  
231 permitted a certain amount of movement and deflection even under the building code as  
232 a design parameter, and that's enough movement to cause cracking in the seams and  
233 joints, and nail pops as well. The other aspect that could affect this is the workmanship  
234 quality and the way the materials were installed in the first way, that may quite frankly,  
235 meet Code requirements, but may cause objectionable aesthetic problems over the life  
236 of the structure.  
237  
238 Ms. Dwyer - So again, when you use the term "structural failure," you  
239 could have poor or better workmanship that's not within the categories of structural  
240 failure.  
241  
242 Mr. Revels - That's absolutely correct.  
243  
244 Ms. Dwyer - And that poor workmanship could contribute to this sort of  
245 damage. When we think of settling, we think of soil settling. Is that also part of this?  
246  
247 Mr. Revels - It could be, but you would expect to see, if that were the  
248 case, some kind of problem with the foundation system, which we did not see. When I  
249 talk about structural failure, what I mean is breaking on girders, beams, joists, rafters,  
250 trusses, some significant movement that would point out the fact that there's a structural  
251 problem with the home that's not going to be repairable until you fix that structural issue.  
252 Then the cosmetic issue will be fixed, or can be fixed, and expected to not reoccur.  
253 This isn't an issue of structural failure up to the point that we've seen.  
254  
255 Ms. Harris - Did you have an opportunity to observe the diagonal crack  
256 across the window that many of the citizens referred to?  
257  
258 Mr. Revels - I saw one window that was damaged. I didn't see anything  
259 in the structure that would lead me to believe that there's a structural problem with the  
260 house that caused that crack to occur. I can't explain why that crack occurred.  
261  
262 Ms. Harris - The liaison committee was wondering if we have a report. I  
263 know that it's in the packet.  
264

265 Mr. Wright - Mr. Blankinship, do we have anything from the liaison  
266 committee?

267  
268 Mr. Blankinship - There have been a couple of things passed on to you.  
269 There was a press release, and also a letter from one of the officials at Tidewater  
270 Quarries, explaining some of the activities there. I see the counsel for Tidewater  
271 Quarries is here; perhaps he could address that question.

272  
273 Mr. Wright - Would you like to hear from him, Ms. Harris?

274  
275 Ms. Harris - Yes.

276  
277 Mr. Wright - I think you were sworn last time you testified, so that's not  
278 necessary.

279  
280 Mr. Wilson - My name is Jack Wilson; I'm an attorney representing  
281 Tidewater Quarries. Yes, there have, so far, been three meetings of the Community  
282 Liaison Committee, an organizational meeting, an informational meeting, and then they  
283 also organized the most recent information fair that was held earlier this week. The next  
284 meeting of the Community Liaison Committee is set for August 3<sup>rd</sup>; at that point they are  
285 planning to interview three experts that the Community Liaison Committee has set up to  
286 actually get retained by the committee to further inspect and do some other analyses,  
287 but the interviews will take place on August 3<sup>rd</sup>, and then the Community Liaison  
288 Committee will select the expert, again to be paid for by Tidewater Quarries, but to be  
289 selected by the Liaison Committee to continue the ongoing dialog and try to help explain  
290 what these people are experiencing and how Tidewater Quarries can modify its  
291 activities, if necessary, to assist them.

292  
293 Ms. Harris - So this will be ongoing?

294  
295 Mr. Wilson - Yes ma'am. The idea is that this will be an ongoing  
296 committee well into the future. This will probably be a permanent committee, an  
297 ongoing liaison committee between the Quarry and the affected subdivisions to make  
298 sure that communication is there between the two groups, so that Tidewater can be the  
299 good neighbor that it's promised to be.

300  
301 Ms. Dwyer - So the expert's purpose is two-fold, one to monitor vibrations  
302 among the residences in the neighborhoods that are affected, and the other would be to  
303 recommend modifications to Tidewater's operations.

304  
305 Mr. Wilson - I believe that's it exactly, yes ma'am. Again, because this is  
306 a committee that's been set up, and it's neighborhood committees, I've not attended any  
307 of those meetings as counsel for Tidewater. There's been a facilitator hired to facilitate  
308 those meetings. Obviously, Tidewater representatives are there, and community  
309 representatives are there, but I've not participated in them. My understanding is again,  
310 that this expert will be picked by the Community Liaison Committee to monitor those

311 issues that are important to the communities.

312

313 Ms. Dwyer - Do you know how long, or does someone here know how  
314 long it might take for this third party expert to have any sort of assessment and  
315 recommendation?

316

317 Mr. Wilson - I don't know that there's been any time line set up that we're  
318 aware of. Again, I think the expert, -- at this point, they've been seeing some resumes;  
319 they're going to interview the person on August 3<sup>rd</sup>; and then it's going to be an  
320 educational process for the expert to get feedback from the community members,  
321 explore Tidewater's activities, see if there are things that Tidewater could be doing that  
322 would alter the effect that the neighbors are feeling, and I think that's really going to be  
323 an ongoing process without any definitive deadline. I think again, Tidewater's position  
324 obviously is, they need to be a good neighbor. The permit comes up for renewal again  
325 in 2009, and it needs to make sure that the communities that are closest to the Quarry  
326 understand the operations of the Quarry and are comfortable with those operations.

327

328 Mr. Wright - Any further questions? Is anyone here from the committee  
329 from the residents who would like to add something to this report? I want to give  
330 everybody an equal opportunity to address these issues. I think that concludes any  
331 information that we were to receive.

332

333 Mr. Kirkland - Mr. Chairman, after reading over all the comments made by  
334 the homeowners and the testimony by the VDOT spokesman, he says it will take till  
335 September to complete the study, I'm not faulting the State of Virginia, but a lot of times  
336 they don't hit right on time. Also, I heard about the hurricane, tornado, wind reports, and  
337 normally by reading the blasting reports that took place through the years, in the winter  
338 months, normally the blasting is not this frequent. So I would like to make a  
339 recommendation that we defer this case for one year. This will give the Liaison  
340 Committee, the studies to be done, the engineers to be picked, and all the information  
341 to come before us in one year.

342

343 Mr. Wright - Is that your motion?

344

345 Mr. Kirkland - Yes sir.

346

347 Mr. Wright - Do I hear a second?

348

349 Mr. Nunnally - Second.

350

351 Mr. Wright - Is there any further discussion?

352

353 Ms. Harris - I was wondering why not six months instead of a year?

354

355 Mr. Kirkland - My situation with six months is that winter will be coming on  
356 in six months, and that might hinder the studies, the reports, and of course the blasting

357 will not be as frequent, so they can't make studies if they're not blasting. It's been said  
358 at a couple of the hearings that they don't do a lot of quarrying in the wintertime, so it  
359 looks like the spring months are when they really do a lot of blasting. If you'll read the  
360 blasting reports, you see that in the December, November, October, they're kind of  
361 slacked off on blasting. It looks like the months of March and April they really go to  
362 town on blasting, so that would give them a full year, and we'd be back to the summer  
363 again, and that would have covered the whole gamut of seasons and taken care of  
364 everything. That's why I'm going for the year. Every study should be completed by  
365 then. If the Liaison Committee is just going to interview in August, they're going to  
366 make the gentlemen acquainted with all the information through the month of  
367 September, then we go during the winter months of having to make his tests. If it's  
368 snowing, raining, sleeting by November or December, we're going to be over six  
369 months. That's why I picked the year. I think that's fair to everyone.

370  
371 Mr. Wright - You understand that we would entertain further evidence of  
372 anything that happens between now and that time; we would hear that at that time.

373  
374 Ms. Dwyer - So it would reopen the case essentially at the next hearing,  
375 unlike what we did today, just to hear specific requested information.

376  
377 Mr. Wright - Right. Things that have occurred from now, the end of our  
378 meeting in June, until the time we would hear this, we'd hear it.

379  
380 Ms. Dwyer - I understand what you're saying about the VDOT, but I  
381 guess I'm concerned about waiting an entire year for a hearing.

382  
383 Mr. Kirkland - A lot of studies are done for a year. I think six months is just  
384 too short a period of time; I really do. You don't want to put pressure on the  
385 homeowners association or the Liaison Committee to push this. We want them to do a  
386 thorough job, and we want to have a good engineer out there; I know they do, to see if  
387 the Quarry is causing any of their structural problems. To push an engineer, you might  
388 not be able to find an engineer to say he could do it in two or three months, after  
389 September, which would be six months. He might say he needs six months after  
390 September to do it, so I'm giving him a year. That should cover everything.

391  
392 Mr. Wright - Any further discussion from the Board? I'll call for a vote. All  
393 in favor of the motion, say aye. Opposed, no. It's carried.

394  
395 Mr. Kirkland - That would be July 27, 2006.

396  
397 Mr. Wright - July 27, 2006, at 9:00 o'clock.

398  
399 Upon a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board did not find cause  
400 to revoke the above-referenced conditional use permit **and deferred** application **UP-9-**  
401 **2004** for a conditional use permit to extract materials from the earth at 11400 Staples

402 Mill Road (Parcels 756-773-3302 and 759-773-4746). The Board decided to hold  
403 another show cause hearing in one year, at its meeting on July 27, 2006 at 9:00 A. M.

404  
405 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
406 Negative: 0  
407 Absent: 0  
408

409 **A-40-2005 MR. AND MRS. F. MICHAEL CROWLEY** request a variance from  
410 Section 24-95(i)(2) to build an in-ground swimming pool at 901  
411 South Gaskins Road (West Knoll) (Parcel 739-733-2504), zoned R-  
412 0, One-family Residence District (Tuckahoe). The accessory  
413 structure location requirement is not met. The applicants propose  
414 an in-ground swimming pool in the side yard, where the Code  
415 allows accessory structures in the rear yard.  
416

417 Mr. Blankinship - This is a re-hearing of a case that was previously denied.  
418 The applicant submitted a letter, stating that there was new testimony that was not  
419 available at the hearing at which it was denied, and they requested an opportunity to  
420 present that new testimony to the Board.  
421

422 Mr. Wright - Would the applicant please come to the podium. Does  
423 anyone else desire to speak with reference to this case? Would you raise your right  
424 hand and be sworn please?  
425

426 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
427 truth, the whole truth, and nothing but the truth, so help you God?  
428

429 Mr. Redmond - I do. My name is David Redmond. I'm the attorney for the  
430 applicant, Mr. and Mrs. F. Michael Crowley. This is a re-hearing, and we appreciate the  
431 opportunity to present some evidence which we hope you'll find will be persuasive in the  
432 granting of the variance. I plan to present a factual overview of the site and site  
433 utilization, and then I would like to call on Mr. Crowley, as the property owner, to discuss  
434 the impact on his site, and then Mr. Richard Cromwell, who's the Director of Golf  
435 Operations at the Country Club of Virginia, to express the views of the Country Club of  
436 Virginia as the adjacent property owner. After those presentations, I would like to have  
437 the opportunity to summarize and describe why I think this is an appropriate variance  
438 under the circumstances of the Cochran case.  
439

440 Ms. Dwyer - Mr. Redmond, I would like you to address the Cochran case  
441 first.  
442

443 Mr. Redmond - I certainly can do that. I think the Cochran case, which as  
444 we know was decided in April 2004, took on the constitutional test from the Penn  
445 Central case to decide when, in fact any ordinance, not just a zoning ordinance, but any  
446 zoning or applicable land use type ordinance, would create an unconstitutional taking of  
447 the property. They're using that in connection with the Penn Central, the railroad station

448 in downtown New York, where they were trying to refuse by calling it a landmark, the  
449 right to use air rights above. So what they've done is they've taken a global case, which  
450 was a United States Supreme Court case, and have now decided, as I read it, that in  
451 the context of Virginia cases, that any hardship is defined as an unconstitutional case.  
452 If you don't have a hardship that would amount to a complete taking, as defined in that  
453 United States Supreme Court's case, you have no authority to proceed. That's my  
454 underlying understanding of the case. They use the term that the ordinance would  
455 unreasonably restrict the use of the property as a whole. I understand that in any kind  
456 of property, there are various property rights and interests which are attendant to the  
457 use of the property. The air right in Grand Central Station is a right which we would  
458 have. What I don't think that the case describes, is the three cases which were set up  
459 to reach those conclusions.

460  
461 What that case does not describe is, what if the ordinance in effect, creates a safety  
462 concern, a hazard, if the implementation of the ordinance is made, a safety condition  
463 which hurts the property owner, is pushed forward. Nor does it describe what happens  
464 if the application of that ordinance adversely affects the adjoining property owner. I  
465 think these are two issues that can be distinguished from the general statement of what  
466 does this do with respect to the property, where we know that it absolutely could affect  
467 the safety of the individuals on the site and secondly, the utilization of the adjoining  
468 property. That's how I'd like to try to distinguish this; that's my purpose in this  
469 discussion. I'd like to put forth some testimony to that effect.

470  
471 Further, I also think that the Henrico Code, in and of itself, certainly hasn't been  
472 amended and the way that the Henrico Code reads, in effect a hardship is only that  
473 which goes against the spirit of the Zoning Ordinance. The Zoning Ordinances are  
474 designed to promote the health, safety and welfare of the community, and in this  
475 instance, I think safety is very much a part of it. So in the Henrico Code, I think that  
476 they have taken a line of argument which would support what I am saying here as to the  
477 safety of the property vis-a-vis Cochran. You've got your Code, and if you went through  
478 Section 11-26, is that the number, -- I think if you went through all the tests that are set  
479 forth, no, Section 24-116, -- I think if you went through all the tests under the existing  
480 ordinance, I think this case would go square on all points -- uniqueness of property and  
481 all, to reach the conclusion of the variance would be appropriate in this case. That's my  
482 overall reason for trying to discuss and go through the issues of safety and adverse  
483 effect on adjoining property owners, and I think that very frankly, it's law versus common  
484 sense in some respects. By the time we finish, I hope that you would agree that this  
485 would be the absolute correct conclusion. From your standpoint, you need to decide  
486 that Cochran is not an issue as it's presented in this case.

487  
488 Ms. Dwyer - Would you say that the homeowner in this case has  
489 reasonable and beneficial use of their property as it is without a pool?

490  
491 Mr. Redmond - The property has been used as a residence since 1948, and  
492 it continues to be used as a residence.

493

494 Mr. Blankinship - Is there a safety concern if it's used as it's used today, or  
495 does that only arise if they build a pool?

496  
497 Mr. Redmond - It only arises as a pool? It clearly does. The setting of the  
498 property is, the house itself is unique. I know Mr. Crowley could speak to this. We were  
499 just talking about it outside. We were talking about the effect of golf balls. The Club  
500 and course have been there since 1928. The house has been there since the late  
501 1940's. Incidentally, your County records show the house as being constructed in 1963.  
502 I passed out a photograph from the Richmond News Leader, which shows in fact that  
503 the house was there and present in 1955. It actually was built sometime in the late  
504 1940's. I think if you even look at that photograph, you'll see the relationship of the  
505 house to the golf course to the ninth green; it's only about 35 yards from the corner of  
506 the property to the ninth green. It's very close proximity; it's maintained its openness for  
507 so long. In answer to your question, I guess golf balls, for as long as the house has  
508 been there, have flown into the back yard. The reality is now though, that if you have to  
509 follow the ordinance and if you put the pool within 55 feet of the golf course, which you  
510 will, you'll go back almost to the cart path, adjacent to the boundary line. Balls hit the  
511 cart path, bounce in. Mr. Crowley can testify as to the number of balls which  
512 customarily fly into the yard. The hazard is certainly created by the use of that portion  
513 of the property.

514  
515 Mr. Wright - But aren't you creating your hardship by having a pool at all?

516  
517 Mr. Blankinship - In Cochran, in all three of the cases that the Court  
518 consolidated there, the Court found that they could have resolved the issue by  
519 abandoning the project.

520  
521 Mr. Redmond - But those cases, as I read those cases, were the classic  
522 minor case – I want to move my building two feet to the left because it's this, that, and  
523 the other. There wasn't a major undertaking such as this, to be able to bring in an  
524 entirely new use, which is permitted under the Code, and use the property. Those were  
525 just minor adjustments as I read most of the cases.

526  
527 Mr. Blankinship - I believe the actual Cochran case in Fairfax, they intended to  
528 demolish a house and build a new one, and the Board said they didn't need to do that to  
529 make reasonable use of the property. They could just keep the existing house.

530  
531 Mr. Redmond - You're right about that.

532  
533 Mr. Wright - Also, in one of those cases, they wanted to build another  
534 accessory building and place it in excess of the square feet that were permitted. That  
535 was denied because they said they could just abandon the project if they had a  
536 reasonable use of the property. That puts this Board in a tough position. They said that  
537 the special question for BZA in considering an application for a variance, as well as for a  
538 court reviewing its decision as well, was the effect of the Zoning Ordinance upon the  
539 property under consideration, as it stands, interferes with all reasonable and beneficial

540 use of the property taken as a whole. If the answer is in the negative, the BZA has no  
541 authority to go further. They've taken authority away from this Board if you have  
542 reasonable, beneficial use of the property. That's what we're faced with here.

543  
544 Mr. Redmond - My rejoinder to that is, simply yes, that's what the case says,  
545 but I wonder if the case was truly intended to create safety concerns and unreasonable  
546 use as far as adjoining property is concerned.

547  
548 Mr. Wright - It goes further to say that the legislature in its wisdom could  
549 change the statute to permit this Board to do some things, to take into consideration  
550 some other things too.

551  
552 Mr. Redmond - I understand the legislature did act this year, and Henrico is  
553 yet to undertake that as I understand it.

554  
555 Mr. Wright - That statute that was enacted doesn't affect this Board. It's  
556 the Zoning Administrator, and that gets a little ticklish, as to how far the Board of  
557 Supervisors will want to go with that.

558  
559 Ms. Dwyer - It hasn't changed Cochran and its application to this case or  
560 to this Board, and I think Cochran is unequivocal. I just don't see any wiggle room or  
561 gray area in this case whatsoever. In Cochran, the Court said in all three cases, "if the  
562 project were abandoned, this would not be a problem, if the property owners then still  
563 have reasonable and beneficial use of the property, then a variance cannot be granted."  
564 That's the question, and in this case, clearly the owners have reasonable, beneficial use  
565 of their property, without a swimming pool at all, so under Cochran we have no  
566 jurisdiction to even inquire further as I read that case. I don't think the Court could have  
567 been any clearer in defining what our authority is and what its limits are.

568  
569 Mr. Wright - I think where we need something is for folks to get our  
570 legislators working to do something to give some discretion in certain types of cases.

571  
572 Mr. Redmond - Does the fact that your Code reads differently, at least to my  
573 mind, clearly reading the Section 24-116, where it talks about hardship, and then  
574 parenthetically says .....

575  
576 Mr. Wright - We don't get to that.

577  
578 Mr. Redmond - Wouldn't we like to get to that?

579  
580 Mr. Wright - We'd like to, but Cochran says we have no authority to get to  
581 that. Once we get past that point, then we can consider the hardship applications.

582  
583 Ms. Dwyer - Safety issues affect the neighbors. Those are issues that  
584 come into play after the threshold question has been met and answered.

585

586 Mr. Wright - We've got to get past the threshold question first, and it's put  
587 us in a real bind.  
588

589 Mr. Redmond - It will certainly restrict the number of variance cases that  
590 you'll be receiving, I would think.  
591

592 Ms. Dwyer - Probably.  
593

594 Mr. Blankinship - Yes, there are three filed for next month.  
595

596 Ms. Dwyer - You've done a lot of work, and we have read your letters and  
597 your submissions. Mr. Chairman, shall we proceed or .....  
598

599 Mr. Wright - I don't want to deny Mr. Redmond the opportunity to present  
600 his case. I want to be fair and listen to everything because he's billed on a record, and  
601 he may want to appeal this case, and he'd have something to have in the record.  
602

603 Mr. Redmond - I appreciate that, and I think it's important that Mr. and Mrs.  
604 Crowley and the Club have an opportunity to express their views on this.  
605

606 Mr. Wright - We just wanted to be up front with you at the outset.  
607

608 Mr. Redmond - I think, clearly, and whether we talk about threshold or just  
609 common sense in the application of the ordinances as written, we submitted a revised  
610 plat, which shows the entirety of the property, approximately two acres. The parcel on  
611 which the house is located is actually about a 1.4-acre piece. That was what was  
612 presented on the original one. When I sent in the packet of papers, we had a revised  
613 2003 survey. You have it in front of you. I think the point is, that it is a unique piece of  
614 property; it does abut the Country Club of Virginia. The parcel 1 that we're talking about  
615 was constructed in the late 1940's by Dr. Bryant, and apparently was quite an  
616 undertaking. They took down a building at First and Franklin Street and reinstalled it out  
617 there so they'd have all these 17<sup>th</sup> and 18<sup>th</sup> Century furnishings, it's so beautifully done  
618 on the inside. I think the Richmond News Leader photograph, which you were looking  
619 at a moment ago, shows the relationship of the property very well, and how a pool in the  
620 back yard could obviously adversely affect the golf operations on site.  
621

622 The second parcel, which brings in the final .6 acres was acquired in exchange between  
623 the Eures and the Country Club of Virginia in 1986, and the Crowleys acquired both  
624 pieces to bring the total to a little more than two acres. Obviously the problem that we  
625 have is evidenced on the survey, and that is the location of the house. The rear yard of  
626 this property is only 55 feet deep on a lot that's two acres in size, and relatively narrow  
627 in configuration, but nevertheless the definition of rear line for your purposes is only 55  
628 feet. Then, it's also unique, because that abuts the golf course, and the golf course, as  
629 we said, was constructed in 1928 – there's always been a feeling of openness and all  
630 involved in the use of the property. To my knowledge, and I've played the course for a  
631 while, we've never had any interference with the property owners from the house side,

632 and we hope that wouldn't change. This is not a typical house, in what we would now  
633 call a suburban type golf community at all. There are only two other houses on the  
634 fairway, and those are actually set much further back than the Crowley's house is set. I  
635 think also you can tell from the design of the house, when they built the house, they had  
636 two frontages, because they wanted to maintain sort of a handsome Georgian look on  
637 the golf course side, which I think they did. You can see it so well from that photograph.  
638 When we asked to place the pool on the side yard, that maintains the integrity of the  
639 whole experience, and at the same time provides more safety from errant golf balls, and  
640 more privacy as far as the Country Club is concerned.

641  
642 The staff had suggested that a privacy fence could be installed along the rear line, and  
643 sure, a privacy fence could be installed. It showed four and a half feet, and I believe the  
644 County ordinance, I read it, could go to 7 feet. But 7 feet won't stop all those high hooks  
645 that some of us can hit that would go into the pool anyway. It would help some, and  
646 obviously balls bouncing off the cart path would be eliminated, but it still wouldn't  
647 provide the safety and security that you'd find if the pool were relocated over on the side  
648 lot line, further from the golf course.

649  
650 Also, we have spoken with representatives of the Country Club of Virginia. You have a  
651 letter from Mr. Skip Harris, who is the General Manager, in support, and Richard  
652 Cromwell, Director of Golf Operations, is here to address their view in this. I also spoke  
653 with Bill Walsh, who is the trustee of the land trust that owns the adjoining property to  
654 the south. He said that he has passed on all the notices to the beneficiary of the trust,  
655 and he has not received any objections from the beneficiary at this point, so I would say  
656 we have concurrence, and we also understand that at least a representative from the  
657 Planning staff had contacted some other owners along South Gaskins, and to our  
658 knowledge, they all responded that they had no objection to it, probably stated that they  
659 were in favor of it. I wasn't there, but nevertheless, the neighborhood at large is in favor  
660 of this particular request. With that, I'd like to ask Mr. Crowley to come and speak to his  
661 experience with the house and the operations surrounding it.

662  
663 Mr. Crowley - I'm Mike Crowley. Obviously, I understand your situation,  
664 and we appreciate the time that you've given us this morning. Hopefully, you can  
665 understand our frustration. The comment was made at the last meeting, "Wouldn't you  
666 have researched this before you purchased the house?" While that's a valid comment,  
667 I'd like to make the point that the house across the street, whose address is Gaskins  
668 Road, has a pool in the side yard. I'd also like to point out that a house that we looked  
669 at before acquiring this piece of property, that's adjacent to the 16<sup>th</sup> fairway of the  
670 Country Club of Virginia, and I've been a member there for over 30 years, also has a  
671 pool in the side yard. So when we were looking at property to buy, and we saw very  
672 adjacent properties that had pools in their side yards, it never crossed our minds, that  
673 on two acres of land, with this kind of privacy, that nobody can even see the house, let  
674 alone the place that we want to put the pool, that there would be any issue with where  
675 we want to put the pool.

676  
677 Mr. Wright - The Supreme Court of Virginia intervened.

678  
679 Mr. Crowley - Right, and they intervened after we purchased the house.  
680 This ruling came after we purchased the house, and I have full belief that this Board and  
681 your staff would have approved this variance, had we asked for this variance at the time  
682 we purchased the house. That's frustrating for us as a property owner.

683  
684 Secondly, there are other reasons in addition too; I've had four back surgeries; I've got  
685 rods and screws in my back; I lived on the intercoastal waterway in Savannah for 13  
686 years; I swam out there as a health reason, and one of the reasons I want a pool is so  
687 that I can swim for health reasons, and I can get any neurosurgeon who's put a zipper  
688 in my back four times to verify that it is good therapy. Our point is one, the safety issue.  
689 Just since June, we've picked up fifteen golf balls where the pool would be located.  
690 That's not indicative, because if you sit on our terrace and have a drink, which we do  
691 quite often, most of the people who hit the balls in the back yard come and get their own  
692 ball and take it away, so by collecting the balls, you can't get a good read in terms of the  
693 safety issue. It's constant. When I came back and purchased this property, based on  
694 other property that I looked at around there, based on property that exists today, where  
695 pools are in the side yard, we had no belief that we could not put a pool in the side yard,  
696 the front yard, any place that we wanted to put it on the property. As Richard will testify,  
697 the Country Club of Virginia fully supports this, because of the increased liability for  
698 people playing golf, should we put a pool, which we're allowed to do in the back yard,  
699 for players and for the Club itself.

700  
701 Also, if we were to put the pool where the staff would like us to put the pool, it would  
702 require that we tear down thirty to fifty to hundred-year old cedar trees that provide a  
703 screening from the Clubhouse as well, which protects us and protects the Club. So it's  
704 a unique piece of property. The reason we didn't do the research, is because property  
705 exists today that has the same setting, and we wanted it for health reasons and safety  
706 reasons and common sense reasons, to put in the pool, which probably amounts to a  
707 thirty or forty feet difference from what you're allowing us to do. It's very frustrating for  
708 us to develop this property to protect a historical house that was built out of materials  
709 from the 1800's downtown, and to pay the taxes that we pay, and to not be able to use  
710 the property in a fashion that does not only not affect any of the adjoining property  
711 owners, but that has the full support of the adjoining property owners, some of whom  
712 have the beneficial use of a pool in their side yard. That's our frustration, and we  
713 appreciate your hearing that, and we wanted to make that point. I'd like to turn it over to  
714 Richard Cromwell and let him tell you the Club's point of view.

715  
716 Mr. Wright - Thank you. Any questions of members of the Board?

717  
718 Mr. Cromwell - My name's Richard Cromwell, Director of Golf at the Country  
719 Club of Virginia. I'd just like to address a few points that have already been covered,  
720 also covered in a letter from our General Manager, Mr. Skip Harris. The first one does  
721 deal with safety that we've heard a lot about, and with the design of the hole there,  
722 they're going to end up with a number of balls in the area where the pool would be  
723 located directly behind the house. There is a cart path there that would help speed balls

724 over in that direction, and a number of balls do end up there. That's a tough one to get  
725 around.

726  
727 The other one, from an impact from the Golf Club itself, more from a selfish standpoint,  
728 and you can see this in the picture, there is a natural stand of trees, some cedars, that  
729 Mr. Crowley referred to; that would protect the site line and also provide noise reduction  
730 and protect that experience that we're trying to create as the golfers play golf there,  
731 particularly on the ninth green.

732  
733 In a final point, regarding constructing a fence there, to protect the area if the pool was  
734 located right behind, the course was constructed back in the late 20's on natural  
735 farmland. It's open vistas; you can see the view again from that picture. It's not  
736 consistent, really with anything else that goes on over the 36 holes that are out there on  
737 that site. Of course it would only provide a measure of protection, no guarantee that  
738 any balls wouldn't go there.

739  
740 Mr. Wright - Mr. Cromwell, as a matter of interest, is there any way you  
741 could change that hole?

742  
743 Mr. Cromwell - It's a rather famous design back from the 1920's, so we'd  
744 prefer to keep it like it is there.

745  
746 Mr. Wright - People who live along a golf course collect a lot of golf balls.

747  
748 Mr. Crowley - The point is that it's not a safety hazard for cutting the grass;  
749 it is a safety hazard as you pointed out. I understand your point about abandoning the  
750 project. We're not going to abandon the project for a lot of reasons. If you look at the  
751 photograph that's up there now, that's all the back yard there is. If you look closely,  
752 you'll see the wrought iron from the terrace that comes out there. There's hardly any  
753 room to put a pool in the back yard. Just to the left of that large tree, is the cart path, so  
754 that's the area that you're requiring us to put a pool in, even though we have two and a  
755 half acres of land out there.

756  
757 Ms. Dwyer - I appreciate what you've said. I just want to clarify  
758 something about the abandoning of the project. We're not interested in your  
759 abandoning the project. We're not recommending or suggesting that. We're simply  
760 saying that those are the words of the Supreme Court that govern the way we act, and  
761 one of the comments that they made was "if a person still has beneficial and reasonable  
762 use of their property, even if they abandon the proposed project, then the Board has no  
763 authority to grant the variance." That's how that came into the discussion.

764  
765 Mr. Crowley - I understand that, but I think Mr. Redmond has also pointed  
766 out how it does comply with regards to the Henrico Code, and some of the issues with  
767 the Code, and I think they're in conflict with the ruling, and that was our point today, is  
768 we believe that according to the Code, that we should be allowed to build a pool. I  
769 understand what you're saying, totally, and to me, and this is probably not your fault,

770 this is absolutely another example of government interfering with common sense in the  
771 normal run of life. It's very frustrating when you pay the kind of taxes that we pay to the  
772 County, the amount of taxes that the Country Club pays, the support that it pays to the  
773 County, and when it's in support, and there's no objection whatsoever from anybody,  
774 there's 100% support, that something that appears to be just common sense – I run a  
775 large business, so I know the frustrations. I've been through this with coastal councils in  
776 South Carolina and other things, and we've always come to some reasonable judgment,  
777 despite what a court case might say, in terms of where there's wiggle room for common  
778 sense. In this case, it's very clear that common sense suggests that there ought to be  
779 wiggle room here. I understand the position that you're in, but it's extremely frustrating  
780 to have to lead your life dealing with these kinds of issues. It's very frustrating to me  
781 that other people in the same neighborhood have been given the right, which we're  
782 being denied.

783  
784 Ms. Dwyer - Of course the fundamental County ordinance that we're  
785 dealing with is the one that says the pool has to be in the back yard.

786  
787 Mr. Crowley - I understand that, but I'm saying that there are pools in the  
788 side yard on the properties adjacent right now. That's the reason that we had no idea  
789 that we could not do this.

790  
791 Mr. Wright - I fully understand that. I think the remedy here is with your  
792 legislator. There can be some legislation that would clear this up.

793  
794 Mr. Crowley - How do we go about that?

795  
796 Mr. Wright - Talk to your legislator about introducing some legislation ...

797  
798 Mr. Crowley - ..... that gives you some flexibility.

799  
800 Mr. Kirkland - Yes.

801  
802 Mr. Wright - This court said that there could be legislation that would  
803 allow certain things to be done. They interpreted the law as it now stands, that we have  
804 no authority, but they specifically referred to that in the case, that the legislature could  
805 introduce some statutes that would permit some latitude here.

806  
807 Mr. Crowley - Understand that we have no issue with this Board with this  
808 situation. What we have is an issue with the Henrico County Code that Dave tried to  
809 point out, that there is wiggle room here with regards to the Cochran case. You seem to  
810 disagree.

811  
812 Ms. Harris - Mr. Crowley, it appears that the golf course was built in the  
813 1920's and your house was built in the 40's. Was it ever designed for the front of your  
814 house to be the rear?

815

816 Mr. Crowley - It's interesting, if you look at the design of the house, you  
817 would assume that the front of the house is facing the golf course. That argument could  
818 be made, and we thought about making it, but we figured it would be a feudal argument  
819 since the driveway comes up the other side. I happen to know for a fact, that is the way  
820 that Dr. Hancock got his pool put in the side of his yard, that this Board determined that  
821 his house faced another direction. You could very well determine that the driveway is in  
822 the back of the yard.

823  
824 Mr. Wright - That would still put the pool in the side yard. Either way, it's  
825 front or back.

826  
827 Mr. Crowley - That's true. The other issue is that we actually have two  
828 pieces of property here, and parcel 901 and parcel 903, and I would have no objection  
829 to placing the pool on parcel 903, which is in the front yard. It's a separate piece of  
830 property, but I could put it at the rear of that property, but I don't know whether you  
831 would approve that variance or not.

832  
833 Ms. Dwyer - You probably wouldn't need a variance if you met all the  
834 County requirements. That might be something you could pursue.

835  
836 Mr. Crowley - I think that the point that Mr. Redmond said that it's not a  
837 buildable lot.

838  
839 Mr. Redmond - There are some issues about the lot. It's .6 of an acre, and  
840 you look at the definition of rear yard, it's defined off of a dwelling, and there's no  
841 dwelling on that lot. We would love to be able to place that pool as an alternative in that  
842 front portion. It would meet all the tests that we would have, as opposed to putting it in  
843 what is the rear yard of 901. We looked closely at that.

844  
845 Mr. Wright - Maybe that needs to be pursued. I don't know what would  
846 be the result.

847  
848 Mr. Redmond - We'll certainly be glad to talk to Mr. Blankinship about it and  
849 see if there's an option.

850  
851 Ms. Dwyer - If I may also add, Mr. Wright mentioned amending State  
852 ordinances or State laws, which may be more difficult than amending a County  
853 ordinance. That's another possibility.

854  
855 Mr. Redmond - I know the enabling legislation is there, to allow for  
856 modifications by the Zoning Administrator, so they gave some latitude. I understand the  
857 County hasn't adopted that, and is not pursuing it.

858  
859 Ms. Dwyer - What about the regulations regarding pool location?

860  
861 Mr. Redmond - I was talking about the variance aspects, taking it away from

862 you.

863

864 Mr. Redmond - Unless you have any more questions about Cochran, I think  
865 you understand our position on the fact that it just seems, and put aside the statement  
866 that it has to be confiscatory and whole, it just seems unreasonable that a court would  
867 require a property owner to do something which could be a hazard to that property  
868 owner, just because he has other use of that property and secondly, clearly, as far as  
869 the adjoining property owner is concerned, the privacy, the removal from the golf  
870 operations, -- that house has been there for 59 years, and the operations have been  
871 there – it just makes all the sense in the world to maintain that position. If you have no  
872 further questions, I appreciate it.

873

874 Mr. Wright - Thank you very much for appearing. We appreciate your  
875 taking your time to come. A-40-2005.

876

877 Ms. Dwyer - I move we deny.

878

879 Mr. Kirkland - Second.

880

881 Mr. Wright - Motion's made and seconded we deny it. Any further  
882 discussion?

883

884 Ms. Dwyer - This occupant has used the property for a number of years.  
885 It's been on the site for a number of years, used as a residence. It can continue to be  
886 used as a residence, so denial of this variance will not affect that reasonable use under  
887 the Cochran case, so they've not met that threshold question.

888

889 Mr. Wright - Also, it appears that they may be able to work something  
890 through the County with the separate lot.

891

892 Ms. Dwyer - There is space to build the pool, just not in the precise  
893 location that they desire. But under Cochran, even if they couldn't build the pool at all,  
894 we still wouldn't be authorized to grant this variance.

895

896 Mr. Wright - Any further discussion? All in favor of denial, say aye.  
897 Opposed, no. It's denied.

898

899 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Mr.  
900 Kirkland, the Board **denied** application **A-40-2005** for a variance to build an in-ground  
901 swimming pool at 901 South Gaskins Road (West Knoll) (Parcel 739-733-2504).

902

903 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

904 Negative: 0

905 Absent: 0

906

907 The Board denied your request as it found from the evidence presented that there was  
908 no “hardship approaching confiscation” as required by § 15.2-2309 of the Code of  
909 Virginia to justify a variance.

910  
911 Mr. Blankinship - Mr. Chairman, the last item that we have before beginning  
912 new cases is a request from Milton R. Jeffers for a rehearing of a case A-63-2005. It’s  
913 an application that you denied last month. Let me read the applicable sentence from  
914 the Bylaws of the Board of Zoning Appeals, Article IV, Paragraph 2: “No motion for a  
915 rehearing shall be entertained unless new evidence is submitted which could not  
916 reasonably have been presented at the original hearing.” Is Mr. Jeffers still here – I saw  
917 him before.

918  
919 Mr. Wright - Is Mr. Jeffers here?

920  
921 Mr. Blankinship - I thought I saw him; perhaps I was mistaken.

922  
923 Mr. Nunnally - Is Mr. Jeffers here?

924  
925 Mr. Blankinship - Well, he’s represented by letter:

926  
927 “This is my motion for rehearing of the denial of my application for a  
928 variance on the addition to my garage. The building contractor I  
929 hired to do the addition to my already existing garage, told me he  
930 would take care of the paperwork. I did not know that he had failed  
931 to do so until I asked him for it, and he never returned my calls. I  
932 became concerned. I talked to a realtor, who advised me to file for  
933 a variance. Had I known the contractor was not going to comply  
934 with the Board’s regulations, I would not be in this situation. None  
935 of my neighbors have complained to me or to the Board, so far as I  
936 know. It is also my understanding that four-story apartments are  
937 being constructed behind my property that will be higher than the  
938 addition to my garage, so I do not see how the variance I seek  
939 could truly adversely impact the neighborhood. Yours truly, Milton  
940 Jeffers”

941  
942 Ms. Dwyer - This was the garage in Varina.

943  
944 Mr. Blankinship - Yes ma’am. We had received a complaint, and when we  
945 investigated, we told him that had to be correct.

946  
947 Mr. Wright - What’s the pleasure of the Board?

948  
949 Mr. Nunnally - I move we deny a rehearing.

950  
951 Mr. Kirkland - Second.

952

953 Mr. Wright - The motion's that we deny a rehearing. Is there any  
954 discussion?

955  
956 Ms. Dwyer - Because nothing new has been presented. According to our  
957 Bylaws, we have to have some new evidence that couldn't have been presented before.

958  
959 Mr. Wright - Any further discussion? Hearing none, all in favor, say aye.  
960 Opposed, no. So ordered.

961  
962 On a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **denied** a request  
963 from Milton R. Jeffers for a rehearing of a case A-63-2005. The Board denied the  
964 request because nothing new has been presented. According to the Bylaws, there has  
965 to be some new evidence that couldn't have been presented before.

966  
967 Mr. Blankinship - Well, my big mistake seems to have been a little mistake.  
968 I've felt badly about that all week.

969  
970 Mr. Wright - We only have a minute, so I'm not going to get into anything;  
971 we'll just wait and take a brief moment.

972  
973 **Beginning at 10:00**

974  
975 Mr. Wright - All right, 10:00 o'clock cases.

976  
977 **A-65-2005** **W. GRAY CORBETT, JR.** requests a variance from Section 24-94  
978 to build an attached garage at 5330 Springfield Road  
979 (Summerberry) (Parcel 756-770-3110), zoned R-3C, One-family  
980 Residence District (Conditional) (Brookland). The rear yard  
981 setback is not met. The applicant proposes 15 feet rear yard  
982 setback, where the Code requires 40 feet rear yard setback. The  
983 applicant requests a variance of 25 feet rear yard setback.

984  
985 Mr. Wright - Does anyone else desire to speak with reference to this  
986 case? Would you raise your right hand and be sworn please?

987  
988 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
989 truth, the whole truth, and nothing but the truth, so help you God?

990  
991 Mr. Corbett - I do. W. Gray Corbett, Jr. The main thing I want to do is try  
992 to build an attached garage to the back of our house on Springfield Road. We have a  
993 reverse corner lot, as you can see. That's one of the original houses in the  
994 Summerberry parcel. We were built in 1984, and the rest of the houses, were built  
995 probably after 2000. We have a deck on the back of the house right now. What I would  
996 propose to do is take the deck down and go ahead and build the garage to the back. I  
997 have a 92-year-old father-in-law who is living with me, and it would just be more  
998 convenient for us to put an attached garage to the house, so that we could pull on up,

999 and he would not get wet.  
1000  
1001 Mr. Wright - Any questions of members of the Board?  
1002  
1003 Mr. Kirkland - Mr. Corbett, did you read the staff report on this case? Did  
1004 you notice that in # 1 it said that there was room for a one-car garage?  
1005  
1006 Mr. Corbett - I read that, yes.  
1007  
1008 Mr. Kirkland - You couldn't live with a one-car garage?  
1009  
1010 Mr. Corbett - My wife couldn't, but I would live with it.  
1011  
1012 Mr. Wright - If you read that, it's in reference to that Cochran case that  
1013 we've been talking about for two months. You have a home on your property now, and  
1014 you have reasonable use of the property without this. That puts this Board in a very  
1015 difficult position. We would have no authority to even hear the case.  
1016  
1017 Ms. Dwyer - Had you considered having the garage on a wing that comes  
1018 towards the front?  
1019  
1020 Mr. Corbett - We had thought about that. I just felt like, aesthetically it  
1021 wouldn't be as pleasing as putting it onto the back. We would try to match it as much as  
1022 we could with the rest of the houses. All the rest of the houses have a two-car garage,  
1023 and I just feel like it would fit better. I talked to the two people who live across from us  
1024 and the person who lives behind us; they have no problems. I asked them to e-mail Mr.  
1025 Blankinship; I don't know if anybody ever did or not.  
1026  
1027 Mr. Blankinship - It should be in the file if they did.  
1028  
1029 Mr. Corbett - They had no problems; they were very pleased that we  
1030 moved in. The house was rental property two years prior to us buying it last August,  
1031 and there were about twenty young men living there, and there was a fence that was  
1032 damaged due to Isabel all along the right side of the house, and we took that down, and  
1033 that made the neighbors real happy because it was an eyesore at the time.  
1034  
1035 Mr. Wright - All right, sir. Anything further you wish to present?  
1036  
1037 Mr. Corbett - That's all I have to say.  
1038  
1039 Ms. Harris - Outside of Cochran, what effect would this addition have on  
1040 the visibility from that corner, if you built the garage – the traffic?  
1041  
1042 Mr. Corbett - Instead of coming in off of Springfield, which is a really bad  
1043 spot to try to get out of in the morning, and to pull into, it would just be easier for us to  
1044 just go down Warnerwood and just pull into our garage area. We have two cars. I don't

1045 think it would be any more than normal. We have people come visit us, and they park  
1046 either out in front of the house, or they park on Warnerwood and just walk through. I  
1047 don't think it would be any additional traffic for that street.

1048  
1049 Mr. Wright - Any further questions of the Board? Is anyone here in  
1050 opposition to this request? Hearing none, that concludes the case. A-65-2005.

1051  
1052 Mr. Kirkland - Move that we deny it.

1053  
1054 Mr. Wright - Motion's made that we deny it. Is there a second?

1055  
1056 Ms. Dwyer - Second.

1057  
1058 Mr. Kirkland - They have reasonable use of the property, plus they could  
1059 build a one-car garage, and they could build a garage in another location on the  
1060 property, so there's a lot of reasons.

1061  
1062 Mr. Wright - Any further discussion? All in favor of denial, say aye.  
1063 Opposed, say no. It's denied.

1064  
1065 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
1066 Dwyer, the Board **denied** application **A-65-2005** for a variance to build an attached  
1067 garage at 5330 Springfield Road (Summerberry) (Parcel 756-770-3110).

1068  
1069 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1070 Negative: 0  
1071 Absent: 0

1072  
1073 The Board denied your request as it found from the evidence presented that there was  
1074 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
1075 Virginia to justify a variance.

1076  
1077 Mr. Wright - Next case.

1078  
1079 **A-78-2005** **LIFESTYLE HOMES OF FOUR MILE RUN** requests a variance  
1080 from Section 24-94 to allow a one-family dwelling to remain at 8121  
1081 Four Mile Run Parkway (Four Mile Run) (Parcel 819-686-5549),  
1082 zoned R-2A, One-family Residence District (Varina). The front yard  
1083 setback is not met. The applicant has 42 feet front yard setback  
1084 where the Code requires 45 feet front yard setback. The applicant  
1085 requests a variance of 3 feet front yard setback.

1086  
1087 Mr. Wright - Does anyone else desire to speak with reference to this  
1088 case? Would you raise your right hand and be sworn please?

1089  
1090 Mr. Blankinship - Do you swear that the testimony you are about to give is the

1091 truth, the whole truth, and nothing but the truth, so help you God?  
1092  
1093 Mr. Planz - I do. Bryan Planz. I'm with Balzer and Associates,  
1094 representing Lifestyle Homes in this matter, as they're out of Virginia Beach. I'm here, I  
1095 guess, more to answer questions that may be presented by the Board, or any  
1096 opposition that may be present.  
1097  
1098 Mr. Wright - We need you to present your case.  
1099  
1100 Mr. Planz - Not a problem. The structure located on this lot in Four Mile  
1101 Run Subdivision was built as the model home, one of the first structures in the  
1102 subdivision. I see by the report that the front yard setback on the original building  
1103 permit plat conforms to the zoning as far as the front yard setback being greater than 45  
1104 feet. To the best of my knowledge, Balzer and Associates did provide that building  
1105 permit plat to the County at that time; however, this structure is eight years old. Our  
1106 records being destroyed after seven years, I do not have proof of that. We're here to  
1107 request a variance against that 45-foot front yard setback to allow us an additional three  
1108 feet.  
1109  
1110 Mr. Wright - How was this house staked out? Did you have a surveyor  
1111 stake the house?  
1112  
1113 Mr. Planz - I can't say, because of our records being destroyed after  
1114 seven years. We have staked probably 95% of the homes in this neighborhood. It is  
1115 not unusual for the very first house, being the model home, not to be done by an  
1116 engineer other than who did the original subdivision, which was not Balzer and  
1117 Associates.  
1118  
1119 Mr. Nunnally - And you've been using this house since 1997 as a model  
1120 home? Any you've sold it now, right?  
1121  
1122 Mr. Planz - Yes. When this request was presented to me by Lifestyle  
1123 Homes, I was under the impression that they still owned it and wanted to get this  
1124 cleared up before they conveyed it to a new homeowner. In the report here, it says that  
1125 it has already been conveyed.  
1126  
1127 Mr. Nunnally - It has been conveyed?  
1128  
1129 Mr. Planz - That's what I don't know. I was under the impression that  
1130 Lifestyle Homes still owned it and was going to get it cleaned up, but in the staff report,  
1131 it says that it had already been conveyed.  
1132  
1133 Mr. Blankinship - We spoke to a gentleman on site who said that he had  
1134 purchased the home.  
1135  
1136 Mr. Planz - That's very possible; I'm just not sure if it actually has been

1137 conveyed at this point.  
1138  
1139 Mr. Kirkland - Mr. Blankinship, when this home was built, even though it  
1140 was a model, was there a building permit applied?  
1141  
1142 Mr. Blankinship - Yes, I've got it here.  
1143  
1144 Mr. Kirkland - I was wondering, was there a drawing with that, which  
1145 showed how far the house should sit back?  
1146  
1147 Mr. Blankinship - Yes sir, it shows 45 feet.  
1148  
1149 Mr. Kirkland - Balzer did the original survey.  
1150  
1151 Mr. Planz - Of that individual parcel? Yes that is correct.  
1152  
1153 Mr. Blankinship - That was submitted with the building permit.  
1154  
1155 Mr. Wright - Wasn't this checked when they got the original Certificate of  
1156 Occupancy, Mr. Blankinship?  
1157  
1158 Mr. Blankinship - It should have been.  
1159  
1160 Mr. Wright - The County should have checked – is there any record that it  
1161 was checked, or what happened? That's been eight years ago.  
1162  
1163 Mr. Blankinship - We don't have the detail records from that period. We have  
1164 the record that a CO was issued, but we don't have all the paperwork.  
1165  
1166 Mr. Wright - Once a CO is issued, couldn't they rely upon that to assume  
1167 that everything was satisfactory?  
1168  
1169 Mr. Blankinship - 99% of the time, yes sir.  
1170  
1171 Mr. Kirkland - I see where the error was made on this plot plan. It probably  
1172 came off of the corner of the porch, versus where the County drew in a little box here,  
1173 and determined 45 feet from that point, and they probably thought they had 56.9 feet or  
1174 maybe 53 feet. I can see where the error occurred right there on this plot. The County  
1175 should have picked that up. It's got "Received, Henrico County Building Inspections."  
1176  
1177 Ms. Dwyer - Are you saying that if you draw the line from the corner of  
1178 the house to the road at a different angle .....  
1179  
1180 Mr. Kirkland - Let me show you this – it shows you where they drew the  
1181 box.  
1182

1183 Mr. Nunnally - Mr. Blankinship, you say you talked to someone who said  
1184 they had purchased the home?  
1185  
1186 Mr. Blankinship - Yes sir, there was a gentleman there.  
1187  
1188 Mr. Nunnally - He didn't say anything about getting a variance on it, did he?  
1189  
1190 Mr. Blankinship - He was unaware of it. He asked us to send him a copy of  
1191 the file, which we did.  
1192  
1193 Ms. Dwyer - So where is it written how this is measured, how the front  
1194 yard setback is measured?  
1195  
1196 Mr. Blankinship - It's defined as the nearest point. The yard is the area  
1197 between the lot line and the nearest point of the structure.  
1198  
1199 Ms. Dwyer - And if there's any confusion about that, is that something the  
1200 County would normally pick up in its CO?  
1201  
1202 Mr. Blankinship - Normally, today we require an "as built" survey to be  
1203 submitted, showing that the dwelling was built where it was approved to be built. Where  
1204 it was approved to be built was in conformance with the Code, but it was actually built  
1205 slightly different from what was approved. Today we would require an "as built survey,"  
1206 and we would pick that up at the time of CO. Of course it's really too late now, but at  
1207 least we were aware of it at that time. In '97 whether we required "as built," I don't  
1208 know; it was before I came here. I think we were requiring "as built" then; I don't know  
1209 for certain.  
1210  
1211 Mr. Wright - You could take the position they would not have a  
1212 reasonable use of the property without this variance unless you moved the house at a  
1213 great expense, or disfigured it by chopping off the garage and the porch.  
1214  
1215 Mr. Blankinship - That raises the question of what's reasonable at that point.  
1216  
1217 Mr. Wright - It looks like the County had something to do with this.  
1218  
1219 Ms. Harris - It may not be exactly a self-imposed hardship.  
1220  
1221 Mr. Wright - I don't know. This new owner could rely on the CO that was  
1222 issued by the County.  
1223  
1224 Mr. Kirkland - When the new owner purchased the property, this is when  
1225 the mistake was caught? I guess they did a lawyer's title insurance-type survey?  
1226  
1227 Mr. Planz - To the best of my knowledge, it wasn't even caught at that  
1228 time, by the title company, the closing attorney, or whenever this most current survey

1229 was produced, that the builder saw that it was in violation. I'm assuming that's why the  
1230 current owner was unaware that there was even a problem.

1231  
1232 Mr. Blankinship - This is dated March 2005.

1233  
1234 Mr. Wright - Any further questions of the Board? Is anyone here in  
1235 opposition to this request? Hearing none, that concludes the case. A-78-2005.

1236  
1237 Mr. Nunnally - Move we approve it.

1238  
1239 Ms. Harris - Second.

1240  
1241 Mr. Wright - Motion's made and seconded that we approve it. Any  
1242 discussion?

1243  
1244 Ms. Dwyer - Given our adherence to Cochran, we may have more  
1245 incidents of people going ahead and building and then asking for the variances later,  
1246 and we need to be mindful of that. This is not that case; this is one in which .....

1247  
1248 Mr. Wright - Sounds like a comedy of errors here.

1249  
1250 Ms. Dwyer - And it's confusing, because there's an angle to the road, and  
1251 there's several angles to the house. It seems that a person could legitimately have  
1252 thought that the setback had been met. It's been there for 8 years, so it's an  
1253 exceptional case.

1254  
1255 Mr. Wright - So motion's been made and seconded that we approve it.  
1256 Any further discussion? All in favor of approval, say aye. Opposed, say no. It's  
1257 approved.

1258  
1259 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
1260 Harris, the Board **granted** application **A-78-2005** for a variance to allow a one-family  
1261 dwelling to remain at 8121 Four Mile Run Parkway (Four Mile Run) (Parcel 819-686-  
1262 5549). The Board granted the variance subject to the following condition:

1263  
1264 1. This approval applies only to the existing improvements shown on the plan filed  
1265 with the application. Any additional improvements shall comply with the applicable  
1266 regulations of the County Code.

1267  
1268 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1269 Negative: 0  
1270 Absent: 0

1271  
1272 The Board granted this request, as it found from the evidence presented that, due to the  
1273 unique circumstances of the subject property, strict application of the County Code  
1274 would produce undue hardship not generally shared by other properties in the area, and

1275 authorizing this variance will neither cause a substantial detriment to adjacent property  
1276 nor materially impair the purpose of the zoning regulations.

1277  
1278 Mr. Wright - Next case.

1279  
1280  
1281 **UP-13-2005 WEST END ASSEMBLY OF GOD** requests a temporary  
1282 conditional use permit pursuant to Section 24-116(c)(1) to install a  
1283 tent and a mobile box office at 401 Parham Road (Parcel 753-736-  
1284 0655), zoned R-1, One-family Residence District (Tuckahoe).

1285  
1286 Mr. Blankinship - I forgot to mention that UP-13-2005 has requested a  
1287 deferral. The church had requested a temporary use permit for their mobile box office.  
1288 In talking to them, they would also like to erect a tent at the same time, and I told them  
1289 since that had not been advertised or notified, that they would need to defer, so they'll  
1290 be back before you next month with that.

1291  
1292 Mr. Wright - UP-13-2005. Do I hear a motion?

1293  
1294 Ms. Dwyer - I move we defer this case to our August meeting.

1295  
1296 Mr. Kirkland - Second.

1297  
1298 Mr. Wright - Motion made and seconded. Any discussion? Hearing  
1299 none, all in favor, say aye. Opposed, no. It's deferred.

1300  
1301 Upon a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **deferred** application  
1302 **UP -13-2005** for a temporary conditional use permit to install a tent and a mobile box  
1303 office at 401 Parham Road (Parcel 753-736-0655).

1304  
1305  
1306 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1307 Negative: 0  
1308 Absent: 0

1309  
1310 The Board deferred the request, from the July 28, 2005, until the August 25, 2005,  
1311 meeting, so that the request for a tent could be considered at the same time.

1312  
1313 **A-79-2005 LOUISE BURWELL** requests a variance from Section 24-94 to  
1314 build a sunroom over an existing deck at 1208 Wilderness Court  
1315 (Newmarket Farms) (Parcel 802-704-3522), zoned R-3, One-family  
1316 Residence District (Varina). The rear yard setback is not met. The  
1317 applicant has 29 feet rear yard setback, where the Code requires  
1318 40 feet rear yard setback. The applicant requests a variance of 11  
1319 feet rear yard setback.

1320

1321 Mr. Wright - Does anyone else desire to speak with reference to this  
1322 case? Would you raise your right hand and be sworn please?  
1323

1324 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1325 truth, the whole truth, and nothing but the truth, so help you God?  
1326

1327 Mr. Harris - Yes I do. My name is James Harris. I'm with AAPCO of  
1328 Richmond, the contractor for Mrs. Burwell. On the rear of this property, there is an  
1329 existing 14 by 16 deck, with a landing and a set of stairs. It also has an aluminum patio  
1330 cover roof over the top of it, and what we're proposing is to enclose three walls on the  
1331 room with vinyl walls and sliding glass windows.  
1332

1333 Mr. Kirkland - You would not change the footprint of the deck or the roof?  
1334

1335 Mr. Harris - No sir, we're building on the existing deck as is. The only  
1336 thing we would have to do is uncover just the concrete footers for the building inspector  
1337 and fill them back in. We're looking not to make any major improvements at all, other  
1338 than if we have to upgrade the framing on the deck.  
1339

1340 Ms. Dwyer - Mr. Blankinship, how far is a deck allowed to extend into the  
1341 setback area?  
1342

1343 Mr. Blankinship - Up to ten feet.  
1344

1345 Ms. Dwyer - So they're not in compliance, is that it, already with the  
1346 existing deck is not in compliance, because it's eleven feet?  
1347

1348 Mr. Blankinship - Apparently not, unless that's a foot of overhang. If the deck  
1349 itself is at eleven feet, then it's in violation.  
1350

1351 Ms. Dwyer - What about the roof? Are you permitted to have a roof over  
1352 a deck?  
1353

1354 Mr. Blankinship - No ma'am.  
1355

1356 Ms. Dwyer - So the roof as it exists is a violation of the ordinance. So we  
1357 have an existing situation that is in violation of the ordinance.  
1358

1359 Mr. Kirkland - Were there any permits issued for this deck or any of this  
1360 roofing?  
1361

1362 Mr. Blankinship - The deck was probably included on the dwelling and would  
1363 have been approved up to ten feet and may have just been built in error. The roof I  
1364 don't have any record on. It does not look like it was constructed with the existing  
1365 dwelling.  
1366

1367 Mr. Wright - There is currently a residence on this property.  
1368  
1369 Mr. Harris - Yes.  
1370  
1371 Mr. Wright - And when was it built?  
1372  
1373 Mr. Harris - Our staff report says 1975.  
1374  
1375 Mr. Blankinship - 1975 is what we have in our records.  
1376  
1377 Mr. Wright - In '75 it was built, so since that time, the owners have had  
1378 reasonable use of the property in its present existence.  
1379  
1380 Mr. Harris - Yes, with the exception, the only other thing that was in  
1381 concern here was that they have a mentally challenged son, and this way he could  
1382 better use the back yard.  
1383  
1384 Ms. Harris - Had you considered building on the side? I know that this is  
1385 probably the most economical way to go.  
1386  
1387 Mr. Harris - Yes, this is why it was considered, was because the  
1388 structure itself, being the deck, is already existing.  
1389  
1390 Mr. Wright - Any further questions of the Board? Is anyone here in  
1391 opposition to this request? Hearing none, that concludes the case. A-79-2005.  
1392  
1393 Mr. Nunnally - I move we deny it.  
1394  
1395 Mr. Kirkland - Second.  
1396  
1397 Mr. Wright - Motion has been made and seconded that we deny it. Is  
1398 there any discussion? Your basis for the denial is?  
1399  
1400 Mr. Nunnally - I don't think it's in conformance with the law right now.  
1401 Looks like to me they've almost imposed it so far.  
1402  
1403 Mr. Kirkland - Probably would have if somebody hadn't said something.  
1404  
1405 Mr. Wright - The basic reason would be that they have reasonable use of  
1406 the property. All in favor of denial, say aye. Opposed, no. Denied.  
1407  
1408 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1409 Kirkland, the Board **denied** application **A-79-2005** for a variance to build a sunroom  
1410 over an existing deck at 1208 Wilderness Court (Newmarket Farms) (Parcel 802-704-  
1411 3522).  
1412

1413 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1414 Negative: 0  
1415 Absent: 0

1416  
1417 The Board denied your request as it found from the evidence presented that there was  
1418 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
1419 Virginia to justify a variance.

1420  
1421 **UP-14-2005** **EASTERN HENRICO RURITAN** requests a temporary conditional  
1422 use permit pursuant to Section 24-116(c)(1) to operate a turkey  
1423 shoot at 3808 Nine Mile Road (Parcel 806-723-4768), zoned A-1,  
1424 Agricultural District (Varina).

1425  
1426 Mr. Wright - Does anyone else desire to speak with reference to this  
1427 case? Would you raise your right hand and be sworn please?

1428  
1429 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1430 truth, the whole truth, and nothing but the truth, so help you God?

1431  
1432 Mr. Courtney - I do. My name is James E. Courtney, Jr.

1433  
1434 Mr. Stewart - I do. I'm Stanley Stewart. Eastern Henrico Ruritan is a  
1435 community service organization located in Henrico County, and we request an  
1436 extension of an existing temporary use permit to operate a turkey shoot, which we have  
1437 operated for 38 years, I believe, for the years 2005 and 2006. This is a fundraiser for  
1438 this organization.

1439  
1440 Mr. Kirkland - Mr. Blankinship, have we had any complaints?

1441  
1442 Mr. Blankinship - No sir, none that I'm aware of.

1443  
1444 Mr. Wright - I don't see a time when this expires. It indirectly says in # 1  
1445 that hours of operation are so and so.

1446  
1447 Mr. Nunnally - 2005 and 2006 calendar years, it says.

1448  
1449 Mr. Blankinship - We could clarify that if you like.

1450  
1451 Mr. Stewart - It's October 7, 2005, to December 16, 2005, and October 6,  
1452 2006, to December 15, 2006. The hours are 6:00 pm to 10:00 pm.

1453  
1454 Mr. Wright - I understand that, but there's no specific statement that the  
1455 permit expires on a certain day, and it would be at the end of 2006.

1456  
1457 Ms. Dwyer - Is there any limitation on the type of firearm that's used for  
1458 the turkey shoot?

1459  
1460 Mr. Stewart - In what respect? It's a shotgun, 4-10, 16, 20-gauge, or 12-  
1461 gauge; we furnish shells, so everybody shoots the same shells. It's not a matter of "you  
1462 bring your own." You bring your own gun. Then there are restrictions in the gun related  
1463 to choking of the barrels – do you know what I'm talking about there?  
1464  
1465 Ms. Dwyer - You might explain it.  
1466  
1467 Mr. Stewart - The diameter of the barrel, we'll say at the end, restricts the  
1468 shot as it comes out, and the more that it's reduced at the end of the barrel, the tighter a  
1469 pattern it holds, which we require you can't go more than what's considered a 4-choke,  
1470 or a turkey-tube choke, which brings it down and keeps it in. Then our targets are eight  
1471 inches square, one-inch thick oak, with a frontier on it, and then your paper target. The  
1472 shot number is number 8 shot, which is small, real small, so we're safe with it if that's  
1473 what you're asking.  
1474  
1475 Ms. Dwyer - I am. So you inspect the guns before people can use them.  
1476 Is somebody there to make sure that the guns have the right diameter choke?  
1477  
1478 Mr. Stewart - The guns are not, the way our rules are, if you can buy it  
1479 over the shelf, say at Green Top, it's acceptable. We do have a micrometer that we can  
1480 put down the barrel and measure the difference between the diameter this far in the  
1481 barrel and the end – that would tell you how much difference, in the thousands, it's  
1482 being reduced, and if we get a complaint on a gun, then we would pull the gun out, put  
1483 the mike in it and do that. Otherwise, you're looking at the guns, you've got a man on  
1484 the firing line who's watching the guns. He's also watching for shell cha.....  
1485 You can't believe in a fundraiser what you've got to do, but you're watching for them  
1486 pulling different shells, so sometimes we'll run a blue shell; sometimes we'll run a red  
1487 shell, and make sure that .....  
1488  
1489 Ms. Dwyer - My son does paintball, and they do the same thing.  
1490  
1491 Mr. Stewart - I don't know about that.  
1492  
1493 Ms. Dwyer - Is there any alcohol consumed at all?  
1494  
1495 Mr. Stewart - No ma'am, absolutely not.  
1496  
1497 Ms. Dwyer - I would like to modify # 5. It says, "No alcoholic beverages  
1498 may be consumed outside of the main building ....." I think it should be they  
1499 don't consume any alcohol at all on the premises.  
1500  
1501 Mr. Nunnally - Is there no alcohol at all inside the building?  
1502  
1503 Mr. Stewart - No, but it's all outside anyway, except.  
1504

1505 Mr. Nunnally - Well, I know, and we don't want it outside, but you don't  
1506 have any inside.  
1507  
1508 Ms. Harris - I noticed that this area is more populated now than 38 years  
1509 ago when you got started, but there's a home right across the street on Dabbs House  
1510 Road. Are you familiar with the Assisted Living or senior citizens there?  
1511  
1512 Mr. Stewart - We're kind of downstream from there, because we're at that  
1513 softball diamond. Are you familiar with that? Do you know where the softball field is?  
1514 Right in there where the police department used to be? Then the guns are discharged  
1515 towards the back where the Utility Department has their vehicles, their snowplows and  
1516 those kinds of things. What you're talking about is out close to Nine Mile Road, so they  
1517 probably wouldn't even hear it, if that's what you're asking. Certainly, nothing has any  
1518 potential to go that way.  
1519  
1520 Mr. Wright - Any further questions of the Board? Is anyone here in  
1521 opposition to this request? Hearing none, that concludes the case. UP-14-2005.  
1522  
1523 Mr. Nunnally - Move we approve it.  
1524  
1525 Mr. Kirkland - Second.  
1526  
1527 Mr. Wright - Motion's made and seconded that we approve it. Any  
1528 discussion?  
1529  
1530 Ms. Dwyer - I would like to amend Condition # 5, so that it says no  
1531 alcoholic beverages may be consumed on the premises during the turkey shoot. That's  
1532 what they said they do anyway.  
1533  
1534 Mr. Wright - They have no problem with that.  
1535  
1536 Mr. Kirkland - That's fine.  
1537  
1538 Mr. Blankinship - You had asked us to clarify the expiration in Condition # 1 as  
1539 well.  
1540  
1541 Ms. Dwyer - One of their rules is that people only use shot provided by  
1542 the Ruritans and that, I guess I'm wondering whether we should require them to inspect  
1543 the guns just to make sure that they do comply with what their rules are. This isn't really  
1544 adding anything.  
1545  
1546 Mr. Kirkland - Believe me, once you fire the gun and the barrel isn't right,  
1547 they will inspect it.  
1548  
1549 Ms. Dwyer - It's hard to hide, in other words?  
1550

1551 Mr. Blankinship - Self-policing.  
1552  
1553 Ms. Dwyer - Having never been to a turkey shoot ..... I think I'm  
1554 going to go this year though.  
1555  
1556 Mr. Kirkland - I've been to several.  
1557  
1558 Mr. Wright - Any further discussion? Hearing none, all in favor of  
1559 approval, say aye. Opposed, no. It's approved.  
1560  
1561 Ms. Dwyer - That's with the two amendments.  
1562  
1563 Mr. Wright - Right, correcting the conditions.  
1564  
1565 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1566 Kirkland, the Board **granted** application **UP-14-2005** for a temporary conditional use  
1567 permit to operate a turkey shoot at 3808 Nine Mile Road (Parcel 806-723-4768). The  
1568 Board granted the use permit subject to the following conditions:  
1569  
1570 1. [Amended] Hours of operation shall be limited to 6:00 p.m. to 10:00 p.m. on  
1571 Fridays during October through December and on the Wednesday before Thanksgiving  
1572 during calendar years 2005 and 2006. This permit shall expire December 31, 2006.  
1573  
1574 2. No firearm shall be discharged within 300 feet of any lot occupied by a dwelling,  
1575 or within 300 feet of any building other than buildings on the same parcel, or across any  
1576 road or street.  
1577  
1578 3. The land shall be clearly posted to show where shooting will occur.  
1579  
1580 4. Sufficient off-street parking shall be provided for all cars visiting the premises.  
1581  
1582 5. [Amended] No alcoholic beverages may be consumed on the site during the  
1583 turkey shoot. A sign to this effect must be conspicuously posted in the immediate  
1584 vicinity of the shooting area. No person under the influence of alcohol, as defined in  
1585 Section 18.2-266 of the Code of Virginia, may be permitted in the shooting area.  
1586  
1587 6. Restrooms shall be provided.  
1588  
1589 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1590 Negative: 0  
1591 Absent: 0  
1592  
1593 The Board granted the request because it found the proposed use will be in substantial  
1594 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
1595  
1596 **A-80-2005 SHERRY L. BAXTER** requests a variance from Section 24-95(c)(4)

1597 to build a front porch at 3016 Greenway Avenue (Dumbarton)  
1598 (Parcel 776-745-4559), zoned R-4, One-family Residence District  
1599 (Brookland). The front yard setback is not met. The applicant has  
1600 16 feet front yard setback, where the Code requires 35 feet front  
1601 yard setback. The applicant requests a variance of 19 feet front  
1602 yard setback.  
1603

1604 Mr. Wright - Does anyone else desire to speak with reference to this  
1605 case? Would you raise your right hand and be sworn please?  
1606

1607 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1608 truth, the whole truth, and nothing but the truth, so help you God?  
1609

1610 Ms. Baxter - I do. Sherry L. Baxter. When I purchased my home in  
1611 November of 1999, it was one of three houses on the block. It was in total woods. I  
1612 have pictures of when I purchased it, in the shade. I have pictures of what it looks like  
1613 now and the housing development that has come up.  
1614

1615 Mr. Wright - If you want us to consider those, you need to present them.  
1616 We'll have to keep those thirty days in our file.  
1617

1618 Ms. Baxter - My situation is this. When I purchased the property, it was in  
1619 the shade; it was in the woods; it was wonderful. Housing development came in; all the  
1620 woods have been taken out, even down to the pine tree in the front, because it was  
1621 technically on County property. The County came through and took every tree out, all  
1622 the way down to the grass. There's not one piece of shade in the front of my property  
1623 any more. From the moment the sun comes up, to the moment the sun goes down, I  
1624 am in full sun in the front of my property. I would like to put a porch on my property, so  
1625 that I can have some shade to the front of my home. If you look at the pictures of my  
1626 neighborhood now, very nice houses, they all have covered porches or covered stoops,  
1627 even down to the older home that's still on my block. It has a covered porch. I'm the  
1628 only one in full sun. There's not a tree any more. I realize we've had some hurricanes,  
1629 but decisions were made that were beyond my control with the woods being either  
1630 County property or developers' property, and I would like to put a porch on the front of  
1631 my home.  
1632

1633 Ms. Dwyer - One of the things that we've been discussing, Ms. Baxter, is  
1634 the way the Supreme Court has defined what authority this Board has to grant a  
1635 variance. The standard they have set is that if a person has reasonable use of their  
1636 home, then we don't have the authority to grant a variance.  
1637

1638 Ms. Baxter - I have reasonable use of my home. I do not have  
1639 reasonable use of my yard. It's so hot. I used to sit out there in the swings and rock my  
1640 granddaughter. I cannot sit out there and rock anything now, not in the front of my  
1641 home.  
1642

1643 Mr. Wright - Do you have a porch on the back of your house?  
1644  
1645 Ms. Baxter - I do. On the add-on addition, there's a screened porch.  
1646  
1647 Mr. Wright - Where's the sun rise and set with respect to your house?  
1648  
1649 Ms. Baxter - In the front.  
1650  
1651 Mr. Wright - It rises in the front?  
1652  
1653 Ms. Baxter - And it sets in the front. The back stays moist all the time. In  
1654 fact, I'm getting ready to do a change-up of my siding, because in the back it stays  
1655 moist, and it's presenting a rot problem.  
1656  
1657 Mr. Wright - Your porch is shaded in the back?  
1658  
1659 Ms. Baxter - Yes it is.  
1660  
1661 Mr. Wright - Any further questions of the Board? Is anyone here in  
1662 opposition to this request? Hearing none, that concludes the case. A-80-2005.  
1663  
1664 Mr. Kirkland - I move we deny it. The applicant has reasonable use of the  
1665 property.  
1666  
1667 Ms. Harris - Second the motion.  
1668  
1669 Mr. Wright - A-80-2005. The motion's made and seconded to deny it. Is  
1670 there any discussion? Hearing none, all in favor of denial, say aye. Opposed, no. It's  
1671 denied.  
1672  
1673 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
1674 Harris, the Board **denied** application **A-80-2005** for a variance to build a front porch at  
1675 3016 Greenway Avenue (Dumbarton) (Parcel 776-745-4559).  
1676  
1677 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1678 Negative: 0  
1679 Absent: 0  
1680  
1681 The Board denied your request as it found from the evidence presented that there was  
1682 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
1683 Virginia to justify a variance.  
1684  
1685 Mr. Blankinship - Mr. Chairman, the next two cases are companions. Simons  
1686 Hauling Company has had a permit for many years on one site. They got a new use  
1687 permit for a different part of the same parcel, so both of these apply to the same parcel.  
1688

1689 **UP-15-2005** **SIMONS HAULING COMPANY** requests a conditional use permit  
1690 pursuant to Section 24-116(c)(3) to amend conditions at the  
1691 existing landfill at 1820 Darbytown Road (Parcel 809-707-1585  
1692 (part)), zoned M-2, General Industrial District (Varina).  
1693

1694 **UP-16-2005** **SIMONS HAULING COMPANY** requests a conditional use permit  
1695 pursuant to Section 24-116(c)(3) to amend conditions at the  
1696 existing landfill at 1820 Darbytown Road (Parcel 809-707-1585),  
1697 zoned M-2, General Industrial District (Varina).  
1698

1699 Mr. Wright - Does anyone else desire to speak with reference to this  
1700 case? Please stand, and everyone be sworn at the same time. Please raise your right  
1701 hand and be sworn please?  
1702

1703 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1704 truth, the whole truth, and nothing but the truth, so help you God?  
1705

1706 Mr. Cochran - I do. My name is John Cochran; I'm with Youngblood, Tyler  
1707 & Associates, representing Simons Hauling Company. These two landfill cells have  
1708 been previously permitted, and to the best of my knowledge, they are in compliance  
1709 with all the terms and conditions of the permit. One of the conditions restricted the area  
1710 which the landfill cells could accept debris from, and this is construction materials and  
1711 debris. This is not a sanitary landfill. The request is to increase the area from which  
1712 debris may be accepted, and is for several different reasons. One reason is, one of  
1713 Simons Hauling Company's competitors has that condition, and secondly, if you look at  
1714 landfills on a regional basis, what happens is that when a demolition project must take  
1715 its construction debris to a sanitary landfill, you are using up space in a sanitary landfill,  
1716 you are using up space in a sanitary landfill which could otherwise be used for more  
1717 efficient use of that landfill. What my client is asking for is simply an enlargement of the  
1718 area from which they may accept construction debris for these two landfills.  
1719

1720 Mr. Wright - I take it you want a 150-mile radius, is that what you're  
1721 asking for?  
1722

1723 Mr. Cochran - That's correct.  
1724

1725 Mr. Nunnally - You're talking about Maryland and DC and North Carolina?  
1726 It could be coming in from all three of those places.  
1727

1728 Mr. Cochran - Yes, it could. I like to emphasize again, this is construction  
1729 material and debris.  
1730

1731 Mr. Nunnally - But you still have to bring it in on trucks, so do you have any  
1732 idea how many more trucks you'd have coming in each day, down Darbytown Road?  
1733

1734 Mr. Cochran - I think at the present time what we'd find is that the number

1735 of trucks would simply be diverted from another landfill that has the ability to accept this  
1736 material. We don't anticipate a huge increase at this time of additional trucks. I think  
1737 we'll find that this is a competitive situation, and the vehicles which are already using a  
1738 landfill, which is permitted, will simply be able to have a choice of using this as  
1739 competition. We're not going out and necessarily soliciting additional projects to use a  
1740 landfill. It's a competitive situation.

1741  
1742 Mr. Nunnally - Where is it competitive?

1743  
1744 Mr. Cochran - I'm going to let Mr. Wayne Greenwood address that  
1745 situation.

1746  
1747 Mr. Greenwood - I'm Wayne Greenwood, with Simons Hauling. The  
1748 companies that we're dealing with are basically already hauling waste to BFI, which is  
1749 located right next door to us. They have more of the ability to take waste from a larger  
1750 area rather than we do.

1751  
1752 Mr. Wright - You don't need to amend your permit to accept their  
1753 materials, do you?

1754  
1755 Mr. Greenwood - Currently we're restricted to waste inside the Virginia state  
1756 line. This would give us a little more area, mostly in northern Virginia and the DC area.  
1757 The companies that we're dealing with are basically the same companies that cleaned  
1758 up after 9/11. This is all construction and demolition waste.

1759  
1760 Mr. Wright - I thought your permit permitted you to take anything that was  
1761 in Virginia.

1762  
1763 Mr. Nunnally - Yes it does.

1764  
1765 Mr. Greenwood - That's correct.

1766  
1767 Mr. Wright - That's northern Virginia, isn't it?

1768  
1769 Mr. Greenwood - Yes sir, but it does not cover the western Maryland or the  
1770 DC area.

1771  
1772 Mr. Nunnally - Or North Carolina.

1773  
1774 Ms. Dwyer - If we allow debris to come from Maryland, for example,  
1775 within that 150-mile radius, does that mean debris could be hauled from New York to  
1776 Maryland and then Maryland to your facility?

1777  
1778 Mr. Greenwood - No ma'am. The companies we're dealing with are  
1779 companies that work in those areas only. Direct demolition projects in that area.

1780

1781 Ms. Dwyer - Maybe that's something that could be clarified in the  
1782 conditions. Also, there are two cases, and one case limits the debris to construction  
1783 material, and the other does not. I'm looking at # 21, case UP-15, as opposed to case  
1784 UP-16. Up-15 just says landfills shall be used for disposal of material from a 150-mile  
1785 radius, and then condition # 21 in case UP-16 goes into more details as to the materials  
1786 to be deposited shall be limited to construction, demolition, land clearing debris, such as  
1787 stones, bricks, tile, etc. That language is not in the first case, unless it's somewhere  
1788 else.  
1789

1790 Mr. Blankinship - No, it's not. As I said in my opening remarks, these were  
1791 two different cases approved several years apart, and the condition in UP-16 is a later  
1792 and better developed condition. I don't know whether the applicant would have any  
1793 problem with using that same language in both cases now.  
1794

1795 Mr. Cochran - No problem whatsoever.  
1796

1797 Mr. Blankinship - It will improve both cases, I think.  
1798

1799 Ms. Dwyer - For my information, would the applicant show us on the map  
1800 which case applies to which area?  
1801

1802 Mr. Blankinship - That's on our map. Jim, I think it was the UP-15 site. Zoom  
1803 out just a little bit so we can see both labels.  
1804

1805 Ms. Dwyer - Okay, an existing landfill – is that the BFI, or is that your  
1806 facility as well?  
1807

1808 Mr. Greenwood - The two areas in the butterscotch color are the two areas  
1809 we're looking at.  
1810

1811 Mr. Blankinship - The one slightly to the north is the older permit, and the one  
1812 just to the south is the newer permit.  
1813

1814 Ms. Dwyer - And the gray area – is that your facility as well, or is that the  
1815 competitor?  
1816

1817 Mr. Greenwood - That's not our property; that's a different facility.  
1818

1819 Mr. Wright - That's another case.  
1820

1821 Ms. Dwyer - And the green is yours as well, but not part of this case?  
1822

1823 Mr. Greenwood - The green is for future development.  
1824

1825 Mr. Kirkland - How much of an increase do you see coming into these  
1826 landfills from out of state? Do you see the same amount, same process, same

1827 progression, or do you see a big influx? I'm really concerned about the number of  
1828 trucks.

1829  
1830 Mr. Greenwood - If there's any increase in truck traffic, it would be over a large  
1831 period of time. You won't see anything in the very near future.

1832  
1833 Mr. Kirkland - If you had a big job here in the Richmond area, and then you  
1834 had a big construction job up in northern Virginia or DC, they'd be both hitting at the  
1835 same time, vs. you would have only had the one in Richmond at that time by the permits  
1836 we have now. Is that correct?

1837  
1838 Mr. Greenwood - That is correct.

1839  
1840 Mr. Kirkland - If the big building boom took place in northern DC and  
1841 Maryland, and we had a building boom here in Richmond, we would be doubling up if  
1842 they used your facility.

1843  
1844 Mr. Greenwood - There is a potential there for that, but we don't anticipate  
1845 that. And we're already restricted by the number of trucks and the tonnage that we can  
1846 take in, by our DEQ permit.

1847  
1848 Ms. Harris - I come that way during the school year to pick up my  
1849 granddaughter from Baker Elementary, so I'm very familiar, although this is not my  
1850 specific district. Look at the conditions on page 4, # 19. I understand that these  
1851 conditions are the ones that have been in effect for this permit through the years.

1852  
1853 Mr. Cochran - That is correct.

1854  
1855 Ms. Harris - Did you have a date of termination or a date of expiration as  
1856 far as the use permit is concerned? Most of the ones that come before us, there is a  
1857 time limit, and you come back for review.

1858  
1859 Mr. Cochran - The initial permit was issued in 1988, and there was an  
1860 expiration date. That permit was revised about 1991-92.

1861  
1862 Ms. Harris - Do you know when this one needs to be – what's the  
1863 termination date for this? How often do you come before this Board?

1864  
1865 Mr. Cochran - There is no termination date in the current permit.

1866  
1867 Mr. Wright - Is that our policy with this type of permit, Ben?

1868  
1869 Mr. Blankinship - Yes sir. As far as I know, landfills are routinely done that  
1870 way. I don't know whether the state permits are periodic.

1871  
1872 Mr. Wright - But they submit a progress report each year.

1873  
1874 Mr. Blankinship - Yes.  
1875  
1876 Ms. Harris - There is very heavy traffic. One day I just rode and  
1877 monitored the number of trucks (I thought I would use the data at some point) that came  
1878 down Darbytown Road and turned into the landfill, and I picked my granddaughter up at  
1879 2:00 o'clock, and from 1:30 until 2:00, there were 11 trucks coming down Darbytown  
1880 Road, turning in. Traffic was very heavy, is what I'm saying. I'm just concerned about  
1881 the traffic. I have never seen a flagman or a policeman to direct any type of traffic. I  
1882 just see the trucks turn in. I must say that most of them do stop before they come out  
1883 on Darbytown. A few trucks get out in the intersection, and you'd better watch out,  
1884 because it's really dangerous. Look at condition # 19. "No vehicles hauling to or from  
1885 this site shall use Oakland ....." (I've seen trucks turn from Oakland into  
1886 Darbytown). Maybe they were in violation, and you didn't know about it. Condition #  
1887 20, "The facility shall not be used for the disposal ....." but I wonder who  
1888 monitors this because you know the overpass, or the underpass where you come up  
1889 Darbytown and you go a little bit further – whenever we have a heavy rain, there is  
1890 heavy residue on both sides of Darbytown. There's stench there, and you can actually  
1891 see the film, and I'm concerned about the residents who live on the right side, on the  
1892 opposite side from the landfill. I'm concerned about their water, and I'm concerned as  
1893 to whether or not they have well water, because I would suspect there would be strong  
1894 contamination; I suspect they use County water.  
1895  
1896 Mr. Greenwood - Could I address each of those concerns you have?  
1897  
1898 Ms. Harris - Let me give them all to you, and then you can. There are  
1899 only about three more. Condition # 23 – what does that mean, "monitoring of water"?  
1900  
1901 Mr. Greenwood - It means that we monitor the ground water under the site.  
1902  
1903 Ms. Harris - Who does that?  
1904  
1905 Mr. Greenwood - An independent firm does the testing, and the results go to  
1906 the State Department of Environmental Quality on a regular basis.  
1907  
1908 Ms. Harris - Because I could see that film. It's a heavy film. Something  
1909 is not going on right there, and I talked to Mr. Blankinship about it.  
1910  
1911 Mr. Wright - Condition # 26 requires them to clean it up, daily.  
1912 ..... ".....daily monitor and clean up any trash ..... also include the removal  
1913 of dust or mud found on Darbytown Road."  
1914  
1915 Mr. Greenwood - That is correct, and we are inspected by both the County's  
1916 Inspector and the DEQ Inspector, regularly.  
1917  
1918 Mr. Wright - That ought to be taken care of.

1919  
1920 Ms. Harris - Right, I'm talking about monitoring the water, so those are  
1921 just some of my concerns, that I don't feel are being addressed, and I'd like to listen to  
1922 your explanation.  
1923  
1924 Mr. Greenwood - You had a concern, first of all, about the traffic on streets  
1925 other than Darbytown. We're restricted to traffic on Darbytown Road only, and to the  
1926 best of my knowledge, our trucks and our traffic and our customers do come in off of  
1927 Laburnum Avenue and from the city from the opposite direction on Darbytown Road.  
1928 We have a Safety Officer who patrols the entrance regularly, and to the best of my  
1929 knowledge, that has not been a problem.  
1930  
1931 You also had a concern about the entranceway and the number of trucks; there's a  
1932 condition in our permit that allows Henrico County's Department of Traffic Design to  
1933 work with us any way they feel it's needed to improve the entranceway. If they decide  
1934 at some point in time that they want a turning lane there, we will construct it at their  
1935 direction.  
1936  
1937 Any signs they want, they just give us a directive, and they are placed there. We pretty  
1938 much have to abide by that condition that the County has placed upon us. I mentioned  
1939 that ground water is tested by an independent firm regularly, and those results go to  
1940 DEQ. What have I missed?  
1941  
1942 Ms. Harris - I think you covered most of it in your explanation. How many  
1943 trucks a day do you have coming into the landfill now?  
1944  
1945 Mr. Greenwood - We are shut down on bad weather days, so on days when  
1946 there is bad weather, there will be no traffic to the site at all. Other days, we have up to  
1947 40-45-50 trucks.  
1948  
1949 Ms. Harris - I had heard 80, but someone needs to monitor that.  
1950  
1951 Mr. Greenwood - Understood.  
1952  
1953 Mr. Kirkland - Mr. Blankinship, have we had any complaints from our  
1954 environmental people or any of the other County agencies about these two facilities?  
1955  
1956 Mr. Blankinship - Not until this morning. We have now, and I will communicate  
1957 Ms. Harris's concerns to our inspection staff this afternoon.  
1958  
1959 Mr. Cochran - I'd like to point out that there is another company which uses  
1960 this entrance road and Darbytown Road for their operations, and that would be the Cox  
1961 Landfill. If there are violations occurring, I think my client has stated that he believes  
1962 that they are not his vehicles, so there's a possibility if there are violations occurring, it  
1963 would be another company.  
1964

1965 Mr. Kirkland - You're stating that other trucks go in on your entrance road,  
1966 trucks that belong to another landfill?  
1967  
1968 Mr. Blankinship - I think he means coming off of Oakland, onto Darbytown, not  
1969 necessarily his customers – they could be going to Cox, but an inspector could certainly  
1970 determine that, by watching.  
1971  
1972 Ms. Dwyer - I notice that the conditions actually are different in a number  
1973 of ways between these two cases. Would you have any objection to a review of these  
1974 conditions so that they are unified?  
1975  
1976 Mr. Cochran - No problem.  
1977  
1978 Ms Dwyer - So that there's no different situation from one site to the  
1979 other that would require a different condition? I think UP-16 may be updated.  
1980  
1981 Mr. Blankinship - Yes, it was a later case.  
1982  
1983 Ms. Dwyer - I would like to see the updated conditions apply to both.  
1984  
1985 Mr. Wright - If they apply to one, they might just as well apply to both.  
1986 Any further questions of members of the Board or staff? Is there anything further you  
1987 wish to present? Anyone here in opposition to this request? That concludes the case.  
1988  
1989 Mr. Wright - UP-16-2005.  
1990  
1991 Mr. Nunnally - Move we deny it.  
1992  
1993 Ms. Harris - Second.  
1994  
1995 Mr. Wright - Motion's made that we deny it. Any discussion?  
1996  
1997 Ms. Dwyer - I would like to hear some discussion about why.  
1998  
1999 Mr. Nunnally - I think we've got enough of that stuff coming in, especially in  
2000 Henrico County, but in the Commonwealth of Virginia, really, and as far as the debris  
2001 and all that's coming in, all this building that they're going to do down in Varina in the  
2002 next few years, they'll have plenty of debris coming in there without getting it from North  
2003 Carolina and Maryland and Washington, DC, which they can do; they're under a 50-mile  
2004 radius.  
2005  
2006 Mr. Kirkland - Also with the Rockett's Landing project, and all these other  
2007 projects, I'm not saying this landfill would get all that business, but they will probably get  
2008 a portion of it. There will be plenty here in Virginia, for them to use.  
2009  
2010 Ms. Harris - And you almost need to live there, in that area, to see what's

2011 going on. There are so many landfills, so many trucks. I think it's a disservice to  
2012 residents who want healthy environment to rear their families. I think it's a disservice if  
2013 we don't stop it when we can.

2014  
2015 Ms. Dwyer - I guess I'm wondering about the fact that we allow other  
2016 landfills to do this that are adjacent. That concerns me, that we allow some to do it, but  
2017 we would prevent others.

2018  
2019 Mr. Wright - If we take it case by case, it appears to me that one day  
2020 soon or probably in the near future, that landfill will become filled up, and if we allow this  
2021 type of material from other areas, we will denying the right of our people right here at it  
2022 to have a place to dispose of this type of thing. That's what worries me more than  
2023 anything. Is there any further discussion? All in favor of denial, say aye. Opposed, say  
2024 no. It's denied.

2025  
2026 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
2027 Harris, the Board **denied** application **UP-16-2005** for a conditional use permit to amend  
2028 conditions at the existing landfill at 1820 Darbytown Road (Parcel 809-707-1585).

2029  
2030 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2031 Negative: 0  
2032 Absent: 0

2033  
2034 The Board denied your request as it found from the evidence presented that approving  
2035 the permit would be of substantial detriment to adjacent property or would materially  
2036 impair the purpose of the zoning regulations.

2037  
2038 Mr. Wright - UP-15-2005.

2039  
2040 Mr. Nunnally - Move we deny it. Same reason.

2041  
2042 Ms. Harris - Second.

2043  
2044 Mr. Wright - Motion's made, same reason as UP-16, and it's seconded.  
2045 Any further discussion?

2046  
2047 Ms. Dwyer - I didn't see anything in this case that said they could not  
2048 have materials other than construction debris. I think UP-16 limits itself to construction  
2049 debris, but UP-15 does not.

2050  
2051 Mr. Wright - I understood that we were going to get these conditions all  
2052 unified, is that correct?

2053  
2054 Mr. Blankinship - Not if they're denied.

2055  
2056 Ms. Dwyer - They stay the same if they're denied.

2057  
2058 Mr. Wright - That's true. I don't know how we can address that.  
2059  
2060 Mr. Blankinship - That one was approved much earlier. It may have been a  
2061 sanitary landfill at the time; I'm not sure. That's really regulated by their State permit.  
2062  
2063 Mr. Kirkland - Could it change to another type of landfill if it was started as  
2064 a sanitary? Without us knowing about it?  
2065  
2066 Mr. Blankinship - I imagine they could go from a sanitary to a construction  
2067 debris without us knowing anything, because the one includes the other. They certainly  
2068 could not take a construction debris landfill and convert it to a sanitary landfill without  
2069 approval.  
2070  
2071 Mr. Wright - Anything further, Ms. Dwyer.  
2072  
2073 Ms. Dwyer - I just think it would be better to limit this to construction  
2074 debris. That's a cleaner kind of fill than sanitary.  
2075  
2076 Mr. Wright - I don't think they could do otherwise, could they, Ben?  
2077  
2078 Mr. Blankinship - I don't know what their State permit is now.  
2079  
2080 Ms. Dwyer - These conditions don't limit it to construction debris, unless  
2081 it's somewhere different.  
2082  
2083 Mr. Wright - If we determined that they're bringing in other materials, then  
2084 we could have a Show Cause Hearing.  
2085  
2086 Mr. Kirkland - You see the report every year, right Ben?  
2087  
2088 Mr. Blankinship - Honestly, I don't remember reviewing them, but they're  
2089 probably filed.  
2090  
2091 Ms. Dwyer - Who reviews them?  
2092  
2093 Mr. Blankinship - I can't say for certain whether we receive them or review  
2094 them or not. I can check into that for you. If you want to go on, I can review this. I do  
2095 have the groundwater monitoring test; that's the top thing there.  
2096  
2097 Mr. Wright - Do you need some more time to check that out?  
2098  
2099 Mr. Blankinship - Okay, it is licensed as a construction demolition debris  
2100 landfill.  
2101  
2102 Mr. Wright - Any further discussion? Hearing none, all in favor of denial,

2103 say aye. Opposed, no. It's denied.

2104

2105 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.  
2106 Harris, the Board **denied** application **UP-15-2005** for a conditional use permit to amend  
2107 conditions at the existing landfill at 1820 Darbytown Road (Parcel 809-707-1585 (part)).

2108

2109 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2110 Negative: 0

2111 Absent: 0

2112

2113 The Board denied the request as it found from the evidence presented that approving  
2114 the permit would be of substantial detriment to adjacent property or would materially  
2115 impair the purpose of the zoning regulations.

2116

2117 Mr. Wright - The Board will take a five-minute recess, plus or minus.

2118

2119

2120 **A-82-2005** **ELIZE NAUDE** requests a variance from Section 24-94 to build an  
2121 attached two-car garage at 8329 Fulham Court (Chickahominy  
2122 Bluffs) (Parcel 795-755-8319), zoned R-2, One-family Residence  
2123 District (Fairfield). The minimum side yard setback and total side  
2124 yard setback are not met. The applicant proposes 3 feet minimum  
2125 side yard setback and 34 feet total side yard setback, where the  
2126 Code requires 15 feet minimum side yard setback and 35 feet total  
2127 side yard setback. The applicant requests a variance of 12 feet  
2128 minimum side yard setback and 1 foot total side yard setback.

2129

2130 Mr. Wright - Does anyone else desire to speak with reference to this  
2131 case? Would you raise your right hand and be sworn please?

2132

2133 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2134 truth, the whole truth, and nothing but the truth, so help you God?

2135

2136 Ms. Naude - I do. I'm Elize Naude. We would like to build an attached  
2137 garage, and unfortunately, the way the land is, it seems to me that's the only place  
2138 where we can add this garage.

2139

2140 Mr. Wright - This garage would be on the side of your present residence?

2141

2142 Ms. Naude - Yes, that is what we would like to do, so that we can attach it  
2143 and walk into the house as well.

2144

2145 Mr. Wright - How long have you been living at this residence?

2146

2147 Ms. Naude - Three and a half years. The only reason that I haven't  
2148 applied earlier is I'm new in this country. I just thought anybody can attach whatever

2149 they want. I've since learned you cannot, and when we first moved in, I really did not  
2150 have the money.  
2151  
2152 Mr. Wright - You don't have a garage at all right now?  
2153  
2154 Ms. Naude - Not at all, and honestly, I'm quite tired of having power tools  
2155 and paint in the bedroom.  
2156  
2157 Ms. Harris - Do you have enough land in the rear of your lot to build a  
2158 garage?  
2159  
2160 Ms. Naude - No ma'am, not at all. I know somebody has said they think I  
2161 can build in the rear. If you do a closer inspection and just walk, you will see where a  
2162 specific tree is, the land drops at 45 degrees towards the river. So two-thirds of my yard  
2163 I cannot use at all.  
2164  
2165 Ms. Dwyer - I think we have a photo of that. Photo # 1, is that the drop-  
2166 off?  
2167  
2168 Ms. Naude - Yes, that is Photo # 1, and that space you can see from  
2169 where the steps end, that is literally about three feet.  
2170  
2171 Mr. Wright - This would be a two-car garage?  
2172  
2173 Ms. Naude - Yes, please.  
2174  
2175 Mr. Wright - Could they build a one-car garage, Ben, and not have to get  
2176 a variance? It says only 1 foot total.  
2177  
2178 Mr. Blankinship - Yes, they are requesting 12 feet and 1 foot, and a one-car  
2179 garage is typically twelve feet narrower than a two-car garage.  
2180  
2181 Mr. Wright - You possibly could build a one-car garage without even  
2182 having to get the approval of this Board.  
2183  
2184 Ms. Naude - The whole neighborhood has two-car garages.  
2185  
2186 Ms. Harris - What about your neighbor next door to you? Have you  
2187 spoken to them about it?  
2188  
2189 Ms. Naude - Yes, I spoke to her and they have no objection, and they are  
2190 so far away that, with the trees in between, I don't think he's really going to mind or see  
2191 it.  
2192  
2193 Mr. Wright - Any further questions of the Board? Is anyone here in  
2194 opposition to this request? Hearing none, that concludes the case. A-82-2005.

2195  
2196 Ms. Harris - I move that we deny this variance. The reason for it is, I  
2197 would have felt better if we had had written consent from the next-door neighbor, who  
2198 he would be just three feet from if they constructed this two-car garage. A survey might  
2199 yield there, with all the land that's behind it, it might well be constructed in the rear of the  
2200 property.  
2201  
2202 Mr. Wright - Motion's made that we deny it. Is there a second?  
2203  
2204 Ms. Dwyer - Second.  
2205  
2206 Mr. Wright - It's seconded. Any further discussion? All in favor of denial,  
2207 say aye. Opposed, say no. It's denied.  
2208  
2209 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.  
2210 Dwyer, the Board **denied** application **A-82-2005** for a variance to build an attached two-  
2211 car garage at 8329 Fulham Court (Chickahominy Bluffs) (Parcel 795-755-8319).  
2212  
2213 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2214 Negative: 0  
2215 Absent: 0  
2216  
2217 The Board denied your request as it found from the evidence presented that there was  
2218 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
2219 Virginia to justify a variance.  
2220  
2221 **A-83-2005** **MIKE PINTZ** requests a variance from Section 24-94 to build a  
2222 one-family dwelling at 10908 Greenwood Road (Parcel 776-769-  
2223 6061), zoned A-1, Agricultural District (Brookland). The lot width  
2224 requirement is not met. The applicant has 126 feet lot width, where  
2225 the Code requires 150 feet lot width. The applicant requests a  
2226 variance of 24 feet lot width.  
2227  
2228 Mr. Wright - Does anyone else desire to speak with reference to this  
2229 case? Would you raise your right hand and be sworn please?  
2230  
2231 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2232 truth, the whole truth, and nothing but the truth, so help you God?  
2233  
2234 Mr. Pintz - I do. Mike Pintz is my name. I'm also with Virginia Real  
2235 Estate and Development, Inc. We're very familiar with this property; we've been  
2236 involved with this property before acquiring it, for probably close to five years, in trying  
2237 to resolve an estate here that was rather complicated and had multiple members that  
2238 went through the County court process. We were offered this land, so we acquired it.  
2239 We had constantly tried, and had even been involved with assembling the property and  
2240 at one time even had contracts on the property that became the school property. I'm

2241 very familiar with the total area here. The road alignment, proposed Woodman Road on  
2242 the other side; I've been involved with the Schermerhorn representations and things of  
2243 that nature, so I know the general development, the comprehensive plan, the desire of  
2244 the County, the interest of the County for this area as a whole, I'm very well aware of  
2245 that.

2246  
2247 The reason that we are submitting this proposal before you is that the property has  
2248 some complications, and we met with the County Public Works, and the general area is  
2249 in a overlay area of potential wetland or hydrant soils, and I think your school, upon  
2250 building that, had significant complications with wetland issues, and this property,  
2251 towards, the rear, has more intense hydrology to it. We employed Angela Whitehead,  
2252 who is working through Larry Madison Association and do a wetland walkover. We  
2253 also, and it was very marginal, employed soil scientists to go in. We could not get an  
2254 alternative system there in reference to doing that.

2255  
2256 We had a contract at one time on the adjoining property, to the left of this property,  
2257 standing in the road facing the property. We only had part of the members there; it was  
2258 an estate, and we also conversed with the persons owning the corner property. We've  
2259 made diligent efforts to do otherwise with the property, but I think the more convincing  
2260 scenario was the building of the school, the complications of the wetlands, the  
2261 acknowledgement of the County that to come in here with a sub-development in here  
2262 would encounter considerable difficulties in there, so we worked with David Jannette  
2263 Construction, and he has placed a contract on this property in order to build one high-  
2264 end, single-family home here, and in doing that, we had, in conversing with the County,  
2265 been represented that the probability of bringing a sewage easement over to the edge  
2266 of this property, to the school side, would allow a public sewage there, so in doing that  
2267 we felt like we could facilitate it. At the same time we had been agreeable and would be  
2268 agreeable, if you saw fit, to bring an easement down the north side of this property, to  
2269 Greenwood Road, which would allow the possibility of boring under it if ever at a future  
2270 time, if that would be needed, in order to facilitate some of the properties of which  
2271 Jannette Construction owns on the other side, and also if you wanted to go along  
2272 Greenwood Road towards the present northbound exit of Woodman Road, we would  
2273 allow an easement across this property before liquidating it, in order to facilitate any  
2274 future land use that the County may seek to service there. There was a broadening of  
2275 the road in reference to a highway easement, so some improvements have been  
2276 already resolved in this area.

2277  
2278 We just see this as short or long delays, possible disappointments in the end, with  
2279 wetlands and issues there, as far as the Corps of Engineers, to not be able to use this  
2280 land. It's higher as you approach Greenwood Road, that a nice single family, adjacent  
2281 to the school, the buffering of the school, would probably serve well to go ahead and  
2282 consider its highest and best use. If I thought I could get something in there, of a  
2283 different magnitude in there, certainly as a developer and real estate person, we would  
2284 be able to get a higher yield, equity-wise, out of this property, but I don't see it at this  
2285 time. I see a very high risk and a possibility of a denial in there, even at a future time,  
2286 after spending lots of money, and then being denied by the Corps.

2287  
2288 Mr. Kirkland - Mr. Pintz, you said you'd tried to purchase 10900?  
2289  
2290 Mr. Pintz - We tried to purchase the small, 3-acre lot property, adjacent  
2291 to us, and we had 9 of the 10, we thought it was 10 people who owned the property,  
2292 and we had 9 of those people under contract. We've got those contracts in file; I don't  
2293 know that they're here today. Upon doing a title search on this property, we found out  
2294 that there were heirs to the property outside of the parameters of those 9 people. This  
2295 piece that we acquired had 52 members that had to be dealt with, so we had to go  
2296 through the County with a suitcase in order to allow Lloyd Jones, who was receiving the  
2297 mail and so forth, in order to conduct business and be an administrator. Otherwise, the  
2298 property would have gone up for auction sale. We found that in the piece adjacent,  
2299 there were other issues, liens and things of that nature, outside of those 10. We were  
2300 going to buy it and have 9/10<sup>th</sup>s of ownership and have a partner, with the other 1/10<sup>th</sup>,  
2301 and in doing that, then we could approach the concept of putting a center road in, and  
2302 you would have had enough depth to line lots up according to the comprehensive plan,  
2303 to go ahead and use it as it was suggested. At that time, the school had not been built.  
2304 As I said, I've been working on this property for five years.  
2305  
2306 I did not know the complications that were there with the wetlands. We knew it was  
2307 marginal. We hadn't been in to Public Works and seen the overlay maps that  
2308 represented the comprehensiveness of this property as a whole. We hadn't seen the  
2309 problems and elevations that the school had to be built on, in reference to those  
2310 properties too. With those things and indicators in there, we felt like we needed to look  
2311 at some other alternatives.  
2312  
2313 Mr. Kirkland - Mr. Blankinship, does that adjacent lot have the same width  
2314 problems too?  
2315  
2316 Mr. Blankinship - Yes sir.  
2317  
2318 Mr. Kirkland - So it can't be built on also?  
2319  
2320 Mr. Blankinship - No sir.  
2321  
2322 Mr. Kirkland - It's too bad the school didn't purchase that lot from you.  
2323  
2324 Mr. Pintz - We would have loved to have done that; they never  
2325 approached us. Actually, I put the school in contact with the other property. They  
2326 bought it directly. We've dealt with the County and acquisitions and so forth before. I  
2327 don't think they had a need for it, and as you look at the school, this would have sort of  
2328 been a rectangular piece adjacent to them. What was the purpose of that, as far as  
2329 what they needed. In as far as if something happened, from a County Planning point of  
2330 view, the rear of this property, obviously if we sell it at this time, we're not going to try to  
2331 retain anything for any future. You'd have to go through sub-development and all of  
2332 that. But if anything happened as far as education in the County, they could probably

2333 do things with the court; we couldn't.

2334

2335 Some of those rear lands in there may be more of a public attraction as opposed to  
2336 trying to persevere from a private sector, in order to try to develop those. That property  
2337 is extremely difficult to develop if you talk to your Public Works Department, because  
2338 when you look at the overlay maps, that general area through Henrico, and we've done  
2339 some other things on one of the other adjacent roads down there. We had a contract  
2340 on; we did a wetland walkover on a piece on the other side of I-95, and that hydrology  
2341 area is comprehensive to encounter that area also. You can ride into the school there,  
2342 I'm sure you have, and if you just look at your pad that you have, and then you look over  
2343 past the construction area, and look into the woods, you can see that you've got a good  
2344 three-foot elevation in there.

2345

2346 Ms. Dwyer - Is part of the problem the fact that this is not served by a  
2347 public sewer, and you have trouble with the drain field?

2348

2349 Mr. Pintz - That's not the reason for the variance in here. The drain  
2350 field; there could not be one acquired; could not even be an alternative. We didn't even  
2351 have the 12-inch minimum required by the alternative system, in order to get an  
2352 alternative in there, so we had been advised along that line. Then when the school  
2353 came along, we came in a met with the County, and the County was in compliance to  
2354 try to address the fact that they were trying to facilitate us with sewage there, and if you  
2355 study this area as a whole, where the tears are, the building with Woodman Road and  
2356 Magnolia Ridge, and the elevations of the engineering of your sewage, it falls back this  
2357 way, and so there's an issue on how to service this area, the Woodman Road area. It  
2358 doesn't have that good fall to come from Magnolia Ridge.

2359

2360 Ms. Dwyer - So you have public sewer, is that what you're saying?

2361

2362 Mr. Pintz - It's been indicated that we would have public sewer by an  
2363 easement coming from the school.

2364

2365 Ms. Dwyer - As I look at the map, Forest Trace Subdivision goes back  
2366 towards I-295. Do they not have the same wetland issues that this property does?

2367

2368 Mr. Pintz - I do not know the origin of Forest Trace and wasn't around at  
2369 the time of that, whether Forest Trace was prior to, I expect that it was prior to your CBA  
2370 Act, Chesapeake Bay Act of 1988. I expect that some of those houses may have been  
2371 back in 85 or mid-80's range. I don't know that, so I don't know what they did. Don't  
2372 know the origin of Forest Trace, don't know the history of that, but in general  
2373 countenance, Forest Trace presents itself as an older neighborhood. It's more than 10  
2374 years old.

2375

2376 Mr. Blankinship - Just picking one house at random, it shows the year built as  
2377 1995. The first house that I picked, which is toward the interstate, in Forest Trace, was  
2378 built in 1995.

2379  
2380 Ms. Dwyer - So it was after the Chesapeake Bay Act.  
2381  
2382 Mr. Pintz - It was after, but there were some more lenient terms in the  
2383 beginning of the CBA that may have allowed some flexibility, but I can't speak for Forest  
2384 Trace and those properties.  
2385  
2386 Mr. Wright - I want to get right to the point. If this request for a variance  
2387 is denied, what reasonable, beneficial use would you have for this property?  
2388  
2389 Mr. Pintz - Nothing on the short term. The only thing that we would look  
2390 at would be that we would do a wait-and-see type of development scenario. I really feel  
2391 like the County has an interest in realigning the proposed Woodman Road on the other  
2392 side because of the school now coming, and the alignment of Woodman Road. The  
2393 alignment in the north is going to create engineering issues in reference to turns coming  
2394 in and out of those three sections in the short term. All of those things you folks  
2395 certainly know better than I. In reference to that, and people sense that something's  
2396 coming, the corner piece there, adjacent to the Woodman Road North, we contacted  
2397 those folks; I think they lived in Texas at the time. We haven't contacted them in  
2398 several years – they say that someday that's going to be commercial on that corner.  
2399 You know how everybody gets to doing their own planning, short of the comprehensive  
2400 plan. Everybody else plans what they're going to do with their land, and it doesn't make  
2401 sense. There's no reasoning to that.  
2402  
2403 We didn't pay a lot of money for this land in reference to what it is, so we're not hurt by  
2404 it, and we're not hurt if you feel like it serves the interests of the County that we hold  
2405 onto it. We're not being damaged by this property. I do have an elderly partner in  
2406 there, but it's not at a point that it causes any issues or hardships. We'll just hold onto  
2407 it; it's in a viable concentrated area of growth and transition and development, and that's  
2408 why it was attractive to us, to take a chance on it. We knew it had issues. If it didn't  
2409 have issues, either estate-wise, title-wise, or building-wise, it would have been  
2410 liquidated before the contracts didn't go through that we had before, because people  
2411 came in on that piece and the school piece, and they'd do a feasible study, and they'd  
2412 come back to us and they would relinquish their contract, and I'm sure it was from  
2413 service and utilities and other issues that they had encountered in their studies.  
2414  
2415 Ms. Harris - Mr. Blankinship, if the zoning were residential instead of  
2416 agricultural, would that affect the width that would be required to make it a buildable lot?  
2417  
2418 Mr. Blankinship - Yes ma'am, if they could also extend water and sewer to the  
2419 property, then it would become buildable.  
2420  
2421 Ms. Harris - Had you considered seeking rezoning?  
2422  
2423 Mr. Pintz - We had not because of the complications, the time line of  
2424 rezoning, and then if you rezone it, the lot size you probably have to have a variance,

2425 because then it would be something else. There would be a different expectancy to it.  
2426 Rezoning also is going to have to be accommodated by a site plan or a project plan,  
2427 and then that project plan is going to have to be accompanied by the public  
2428 departments of your Public Works and other kinds of things, so it's going to raise those  
2429 issues that we've already done studies on, the County's already admitted to. The  
2430 County gave us those overlay maps that showed this as a hydrology area, and they  
2431 informed us that they had significant issues with the school. The purpose in this  
2432 variance was to avoid what that was going to bring to the table, that you may wind up  
2433 with this property not being able to be used in any form at all. You see in your overlay,  
2434 your aerial, as you approach Greenwood Road, the other side of that, you can see  
2435 yards and things of that nature that have been cultivated, so you can see a little bit of  
2436 elevation close to your Greenwood Road areas that enables some building adjacent  
2437 there. It just begins to taper, as you get back, even looking at the school side, you can  
2438 see towards the rear of that, it's real barren and thins out significantly, and you can see  
2439 some pockets in the subject property, as well as the adjacent property to the opposite  
2440 side of the school. You can see some dark pockets in there, etc., so you don't have the  
2441 green matter in there. You've got some little dried ponds that you see in woods, and  
2442 those kind of things, sort of black that dry up in the summertime, in the wintertime have  
2443 got a little standing water in them, so it's very marginal.

2444

2445 Mr. Wright - Anything further that you wish to present?

2446

2447 Mr. Pintz - Not that I have. I think that I've made you aware of what's  
2448 there.

2449

2450 Mr. Wright - Any further questions of members of the Board or staff? I  
2451 think we'll hear from this gentleman if you'll be seated. Do you desire to speak? In  
2452 other words, he concurs with what you've said. Is anyone here in opposition to this  
2453 request? Hearing none, that concludes the case.

2454

2455 Mr. Wright - A-83-2005.

2456

2457 Mr. Kirkland - I make a motion we deny it.

2458

2459 Ms. Dwyer - Second.

2460

2461 Mr. Wright - All right. Motion's made and seconded that we deny it. Any  
2462 discussion?

2463

2464 Mr. Kirkland - The applicant pretty well stated in his testimony that he could  
2465 sit on it, and it really didn't affect him one way or the other, and I think it kind of would  
2466 not work out right.

2467

2468 Mr. Wright - The question is whether he will have a beneficial use of this  
2469 property. He indicated that he probably would, eventually, in the future. That's the key.  
2470 We've got to decide, if there was no reasonable, beneficial use of this property other

2471 than to grant the variance, I think we'd have to grant the variance, but I think he pretty  
2472 well testified that there is possibly reasonable, beneficial use in the future.

2473  
2474 Ms. Dwyer - And also, it's zoned Agricultural at this point. He could  
2475 harvest the trees, or there are other possible agricultural uses, I suppose. It's even  
2476 clear that this was just a speculative purchase, and he realized that there were a  
2477 number of problems with the property. I'm not sure it's the job of the Board of Zoning  
2478 Appeals to correct or to allow building when there are existing problems with it.

2479  
2480 Mr. Wright - Any further discussion? Hearing none, all in favor of denial,  
2481 say aye. Opposed, no. It's denied.

2482  
2483 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
2484 Dwyer, the Board **denied** application **A-83-2005** for a variance to build a one-family  
2485 dwelling at 10908 Greenwood Road (Parcel 776-769-6061).

2486  
2487 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2488 Negative: 0  
2489 Absent: 0

2490  
2491 The Board denied the request as it found from the evidence presented that there was  
2492 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
2493 Virginia to justify a variance.

2494  
2495 Mr. Wright - Next case.

2496  
2497 Mr. Blankinship - Mr. Chairman, I'm going to call the next five cases together,  
2498 A-84, 85, 86, 87, and 88-2005.

2499  
2500 **A-84-2005** **AUSTIN-DAVIDSON, INC.** requests a variance from Sections 24-  
2501 94 and 24-95(i) to build a one-family dwelling at 4605 Cobblestone  
2502 Landing Terrace (Cobblestone Landing at Twin Hickory) (Parcel  
2503 742-766-5207), zoned R-3C, One-family Residence District  
2504 (Conditional) (Three Chopt). The rear yard setback, rear yard  
2505 setback for deck, and total side yard setback are not met. The  
2506 applicant proposes 28 feet total side yard setback, 30 feet rear yard  
2507 setback and 20 feet rear yard setback for a deck, where the Code  
2508 requires 30 feet total side yard setback, 40 feet rear yard setback  
2509 and 30 feet rear yard setback for a deck. The applicant requests a  
2510 variance of 2 feet total side yard setback, 10 feet rear yard setback  
2511 and 10 feet rear yard setback for a deck.

2512  
2513 Mr. Wright - A-84-2005.  
2514

2515 Ms. Dwyer - I move we deny A-84 because, again, the lot provides  
2516 sufficient square footage to build a house that meets the Zoning Ordinance, so the  
2517 applicant has, as in all these cases, reasonable use.

2518  
2519 Mr. Wright - Is there a second?

2520  
2521 Ms. Harris - Second.

2522  
2523 Mr. Wright - Motion's made and seconded. Any further discussion? All  
2524 in favor of denial, say aye. Opposed, say no. It's denied.

2525  
2526 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
2527 Harris, the Board **denied** application **A-84-2005** for a variance to build a one-family  
2528 dwelling at 4605 Cobblestone Landing Terrace (Cobblestone Landing at Twin Hickory)  
2529 (Parcel 742-766-5207)

2530  
2531 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2532 Negative: 0  
2533 Absent: 0

2534  
2535 The Board denied your request as it found from the evidence presented that there was  
2536 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
2537 Virginia to justify a variance.

2538  
2539 **A-85-2005** **AUSTIN-DAVIDSON, INC.** requests a variance from Sections 24-  
2540 94 and 24-95(i) to build a one-family dwelling at 11400 Country  
2541 Oaks Court (Cobblestone Landing at Twin Hickory) (Parcel 742-  
2542 765-9828), zoned R-3C, One-family Residence District  
2543 (Conditional) (Three Chopt). The rear yard setback and rear yard  
2544 setback for deck are not met. The applicant proposes 26 feet rear  
2545 yard setback and 25 feet rear yard setback for a deck, where the  
2546 Code requires 40 feet rear yard setback and 30 feet rear yard  
2547 setback for a deck. The applicant requests a variance of 14 feet  
2548 rear yard setback for the house and 5 feet rear yard setback for a  
2549 deck.

2550  
2551 Mr. Wright - A-85-2005. Do I hear a motion?

2552  
2553 Ms. Harris - I move that we deny this case.

2554  
2555 Mr. Wright - Is there a second:

2556  
2557 Ms. Dwyer - Second.

2558  
2559 Mr. Wright - Any further discussion? Would you state a reason, Ms.  
2560 Harris.

2561  
2562 Ms. Harris - The Cochran case here, and I feel that we have enough of a  
2563 variation to apply the Cochran case.

2564  
2565 Ms. Dwyer - It seems to me again that he has plenty of space to build a  
2566 house that will meet the required square footage of the Zoning Ordinance.

2567  
2568 Mr. Wright - Any further discussion? Hearing none, all in favor of denial,  
2569 say aye. Opposed, no. It's denied.

2570  
2571 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.  
2572 Dwyer, the Board **denied** application **A-85-2005** for a variance to build a one-family  
2573 dwelling at 11400 Country Oaks Court (Cobblestone Landing at Twin Hickory) (Parcel  
2574 742-765-9828)

2575  
2576 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2577 Negative: 0  
2578 Absent: 0

2579  
2580 The Board denied your request as it found from the evidence presented that there was  
2581 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
2582 Virginia to justify a variance.

2583  
2584 **A-86-2005** **AUSTIN-DAVIDSON, INC.** requests a variance from Sections 24-  
2585 94 and 24-95(i) to build a one-family dwelling at 11505 Country  
2586 Oaks Way (Cobblestone Landing at Twin Hickory) (Parcel 742-765-  
2587 5402), zoned R-3C, One-family Residence District (Conditional)  
2588 (Three Chopt). The rear yard setback and rear yard setback for a  
2589 deck are not met. The applicant proposes 38 feet rear yard  
2590 setback and 27 feet rear yard setback for a deck, where the Code  
2591 requires 40 feet rear yard setback and 30 feet rear yard setback for  
2592 a deck. The applicant requests a variance of 2 feet rear yard  
2593 setback and 3 feet rear yard setback for a deck.

2594  
2595 Mr. Wright - A-86-2005.

2596  
2597 Ms. Harris - I move that we approve this variance; it's so close, the 2 feet  
2598 and 3 feet are so close to the setback requirements, and I think that sometimes we have  
2599 to be practical about our decisions.

2600  
2601 Mr. Wright - Is there a second to that motion? Hearing no second, then  
2602 the motion dies. Do I hear another motion?

2603  
2604 Mr. Kirkland - I make a motion we deny it, based on the Cochran case and  
2605 the reasonable use of the property, a home can be built there, and I think all these  
2606 cases stem from monetary gains as well as aesthetics. A home can be built there and

2607 sell for a good price, so reasonable use will take place.

2608  
2609 Ms. Dwyer - Second. I think the problem with all these cases is they want  
2610 to take the existing plans that they have and make them fit these lots, and the lots are  
2611 unusually shaped. They just need to design a house that will fit all the way around.  
2612 **(Unintelligible, too many voices at one time)**

2613  
2614 Mr. Wright - This all could have been determined when they laid out the  
2615 subdivision.

2616  
2617 Ms. Dwyer - Precisely. And when they purchased the lot, it was clear  
2618 what the shape of the lot was.

2619  
2620 Mr. Wright - Did we get a second to your motion?

2621  
2622 Mr. Blankinship - Yes, Ms. Dwyer seconded it.

2623  
2624 Mr. Wright - Any further discussion? All in favor of denial, say aye.  
2625 Opposed, no.

2626  
2627 Ms. Harris - No.

2628  
2629 Mr. Wright - Okay, one "no."

2630  
2631 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.  
2632 Dwyer, the Board **denied** application **A-86-2005** for a variance to build a one-family  
2633 dwelling at 11505 Country Oaks Way (Cobblestone Landing at Twin Hickory) (Parcel  
2634 742-765-5402).

2635		
2636	Affirmative:	Dwyer, Kirkland, Nunnally, Wright 4
2637	Negative:	Harris 1
2638	Absent:	0

2639  
2640 The Board denied your request as it found from the evidence presented that there was  
2641 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
2642 Virginia to justify a variance.

2643  
2644 **A-87-2005**                    **AUSTIN-DAVIDSON, INC.** requests a variance from Sections 24-  
2645 94 and 24-95(i) to build a one-family dwelling at 11600 Cobblestone  
2646 Landing Court (Cobblestone Landing at Twin Hickory) (Parcel 742-  
2647 764-4968), zoned R-3C, One-family Residence District  
2648 (Conditional) (Three Chopt). The rear yard setback and rear yard  
2649 setback for a deck are not met. The applicant proposes 33 feet  
2650 rear yard setback and 22 feet rear yard setback for a deck, where  
2651 the Code requires 40 feet rear yard setback and 30 feet rear yard  
2652 setback for a deck. The applicant requests a variance of 7 feet rear

2653 yard setback and 8 feet rear yard setback for a deck.  
2654  
2655 Mr. Wright - A-87-2005. Do I hear a motion?  
2656  
2657 Ms. Dwyer - I move that we deny this case as well. There is again ample  
2658 room to place a home and reasonably use the property in accordance with the Zoning  
2659 Ordinance, and under Cochran, they have reasonable use.  
2660  
2661 Mr. Wright - All right. Any second?  
2662  
2663 Ms. Harris - Second.  
2664  
2665 Mr. Wright - It's been seconded. Any discussion? Hearing none, all in  
2666 favor, say aye. Opposed, no. It's denied.  
2667  
2668 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
2669 Harris, the Board **denied** application **A-87-2005** for a variance to build a one-family  
2670 dwelling at 11600 Cobblestone Landing Court (Cobblestone Landing at Twin Hickory)  
2671 (Parcel 742-764-4968).  
2672  
2673 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2674 Negative: 0  
2675 Absent: 0  
2676  
2677 The Board denied your request as it found from the evidence presented that there was  
2678 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
2679 Virginia to justify a variance.  
2680  
2681  
2682 **A-88-2005** **AUSTIN-DAVIDSON, INC.** requests a variance from Section 24-94  
2683 to build a one-family dwelling at 11500 Country Oaks Way  
2684 (Cobblestone Landing at Twin Hickory) (Parcel 742-764-7093),  
2685 zoned R-3C, One-family Residence District (Conditional) (Three  
2686 Chopt). The rear yard setback and total side yard setback are not  
2687 met. The applicant proposes 29 feet total side yard setback and 29  
2688 feet rear yard setback, where the Code requires 30 feet total side  
2689 yard setback and 40 feet rear yard setback. The applicant requests  
2690 a variance of 1 foot total side yard setback and 11 feet rear yard  
2691 setback.  
2692  
2693 Mr. Wright - Does anyone else desire to speak with reference to this  
2694 case? Would you raise your right hand and be sworn please?  
2695  
2696 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2697 truth, the whole truth, and nothing but the truth, so help you God?  
2698

2699 Mr. Burgess - I do. My name is John Burgess; I'm with Austin-Davidson,  
2700 the builder of these and the owner of the said properties. What it amounts to, is we took  
2701 all of our plats that we had for the subdivision and put all of the houses that we had.  
2702 We've gotten down to, I believe it's five or six lots, that none of the houses will fit, to  
2703 maintain the same architectural value that's in the subdivision. The only other choice  
2704 we had was to apply for variances, and some, two houses that we've applied for, for the  
2705 lots, we've been able to reduce to a certain level to try to not impact the setbacks but so  
2706 much. We're trying to maintain the same square footage as out there, so as not to hurt  
2707 the values also.  
2708

2709 Mr. Wright - I think you've got a POD approval on all these lots, is that  
2710 correct?  
2711

2712 Mr. Burgess - Subdivision.  
2713

2714 Mr. Wright - My understanding is that you could build a house on each  
2715 one of these lots that would satisfy the requirements of the POD.  
2716

2717 Mr. Burgess - Yes sir, I can do that. The square footage is going to be  
2718 considerably less than what is out in the subdivision, not just by us, but by the other  
2719 builder in that same section.  
2720

2721 Mr. Wright - The POD requires a minimum of 2,000 square feet.  
2722

2723 Mr. Burgess - Yes sir, and the average out there now is 3,200 to 3,300  
2724 square feet.  
2725

2726 Mr. Wright - That's the size that you're putting on the other houses?  
2727

2728 Mr. Burgess - Yes sir, that's what I'm trying to do, stay in the same, in fact I  
2729 think we've been able to reduce them to 3,100 to try to minimize the setback problems.  
2730

2731 Mr. Wright - What is the largest house square footage that you could put  
2732 on these lots without getting a variance?  
2733

2734 Mr. Burgess - Because of the shape of some of these lots, I'm not even  
2735 really sure, because they're so oddly shaped. You do have a couple of the lots that are  
2736 hurting me on my setback problems, but they're so oddly shaped, that I'm guessing  
2737 probably 2,500, 2,400 square feet, tops, without even having an attached garage to the  
2738 house either.  
2739

2740 Mr. Blankinship - We've determined that, case by case, and they're in the staff  
2741 reports.  
2742

2743 Mr. Wright - I just wanted to have it in the record, whatever it is, so let's  
2744 go through them.

2745  
2746 Ms. Dwyer - Maybe we should look at each one.  
2747  
2748 Mr. Wright - Let's take a look. Let's go back to A-84.  
2749  
2750 Ms. Dwyer - Sir, was your company aware of the shape of these lots  
2751 when they were purchased?  
2752  
2753 Mr. Burgess - It was all done by a lottery. In other words, we were the  
2754 other builder with Centex Homes. The lots come available in the entire section. They  
2755 take one, we take one, and it just goes on. We didn't know about the buildable area  
2756 footprint at the time.  
2757  
2758 Ms. Dwyer - But you're a builder, so you know if you have a trapezoidal  
2759 lot, it's going to present a little different challenge than if you have a square or  
2760 rectangular-shaped lot.  
2761  
2762 Mr. Burgess - True. Yes ma'am.  
2763  
2764 Ms. Dwyer - And I understand that your existing floor plans may not fit  
2765 these unusual lots, but couldn't you redesign your houses and maybe have a slight wing  
2766 on one end to take advantage of a little buildable space on one area of a lot, where you  
2767 may not have it on another. You could custom design a floor plan that would fit these  
2768 buildable spaces.  
2769  
2770 Mr. Burgess - Yes ma'am, I can do that. Very true. They would not blend  
2771 with the architecture of the rest of the houses, and that's something that's going to have  
2772 to go in front of the developer, which is HHHunt, and that has nothing to do with me.  
2773  
2774 Ms. Dwyer - I'm not talking about building materials; I'm talking about the  
2775 footprint.  
2776  
2777 Mr. Burgess - Yes ma'am, if you look at the plats, in the case of the first  
2778 one you're referring to, it's lot 8. Yes ma'am, I can probably design something to go  
2779 there, but it's not going to maintain the same architectural styles of the houses that are  
2780 in that subdivision. Yes, it would be a custom-designed house.  
2781  
2782 Ms. Dwyer - I guess I'm wondering if you change the footprint, why does  
2783 that necessarily change the architectural style?  
2784  
2785 Mr. Burgess - Most people don't put two-story houses, like you see in the  
2786 picture, and then put a ranch-style house in the middle of it.  
2787  
2788 Ms. Dwyer - If you change the footprint, why would that prevent you from  
2789 having a two-story house instead of a one-story house?  
2790

2791 Mr. Burgess - I can design a new house to go there; I don't think it's going  
2792 to match the square footage minimum that's out there, is what I'm trying to tell you.  
2793  
2794 Mr. Kirkland - But you will meet the minimum requirements.  
2795  
2796 Mr. Burgess - I'll meet the 2,000 square feet, but right now your house sale  
2797 prices out there are running in the \$500,500 to \$500,580, we just sold another one  
2798 yesterday for \$580,000. If I put a 2,000 square foot house out there when your average  
2799 square footage is 3,300, with people not even finishing their attics, it brings them up to  
2800 4,000, I'm going to have a lot of complaints. That's why I went door-to-door, checking  
2801 with the homeowners out there now.  
2802  
2803 Mr. Wright - I'm going to get back to my question. A-84, Mr. Blankinship,  
2804 show me in there where you have a statement to what size house could be built on that  
2805 lot.  
2806  
2807 Mr. Blankinship - The buildable area varies from 53 feet wide .....  
2808  
2809 Mr. Wright - I know that, but that doesn't tell me what square footage the  
2810 house could be built on the lot. That's what I'm looking at.  
2811  
2812 Mr. Blankinship - That would depend a lot on the specific design and whether  
2813 it's two stories or two and a half. I'm sorry, I didn't answer that question.  
2814  
2815 Mr. Wright - All we know then is that a minimum of 2,000 square foot  
2816 house could be put on the lot, but the testimony is somewhere around 2,400 to 2,500.  
2817  
2818 Mr. Burgess - Probably the most that I'm going to be able to do, the  
2819 minimum is 2,000 square feet, but the average is – we're just trying to maintain what is  
2820 out there without impacting the other residents that are out there, financially, is what  
2821 we're trying to do.  
2822  
2823 Ms. Dwyer - For example, you could add a basement, and that would add  
2824 square footage.  
2825  
2826 Mr. Burgess - Yes, but on some of the lots, certain lots are prone to having  
2827 basements; others are not really. A flat lot is really not conducive to putting a basement  
2828 in. Yes, they can be done.  
2829  
2830 Mr. Wright - For purposes of the record, A-84, the buildable area of the  
2831 lot is 53 to 72 feet width, and depth from 32 to 37 feet, that's what you're saying.  
2832  
2833 Mr. Blankinship - Right, so 32 by 50 would be a little over 1500 square feet,  
2834 and if you built that in two stories, it would be about 3,000. If you look at A-86, Jim  
2835 would you project the site plan for A-86, you can see there that only very minor  
2836 adjustments would have to be made to get that house to fit on this lot. That's probably

2837 the closest of the five to being in compliance. All they have to do there is adjust their  
2838 floor plan to being a foot and a half narrower. We probably went to A-85; A-86 is what  
2839 we should be looking at.

2840  
2841 Mr. Wright - I've actually taken that into consideration with our plats and  
2842 shrunk them. It's not going to serve a purpose in a \$500,000 neighborhood, to have a  
2843 12 by 12 dining room. I have to look at the size of certain rooms also. I did reduce it,  
2844 and hopefully, in this particular case, I kicked the bay window out on the side in the  
2845 breakfast area, because I reduced the size of the kitchen.

2846  
2847 Ms. Dwyer - You could actually put a room off to the side; you have  
2848 enough space to do that.

2849  
2850 Mr. Burgess - Yes, and here again, you'll notice that all the plans, I've only  
2851 picked two plans, a Savoy and a Portsmouth. They were the least restrictive on the  
2852 setbacks of all the plans that we had.

2853  
2854 Ms. Dwyer - I guess what I'm suggesting is that if you look at A-86, for  
2855 example, there is buildable area that you're not using with this plan, so what might be  
2856 required for you to boost your square footage?

2857  
2858 Mr. Burgess - Well, I reduced the main body of the house to 3,200; it was  
2859 originally 3,400.

2860  
2861 Ms. Dwyer - For example, you could add a room on the back and use  
2862 some of that buildable space that's not being shown here.

2863  
2864 Mr. Burgess - I guess I could add it off the corner of that house, yes ma'am  
2865 I could, but then I'd have to look at how does that look for the house. That's why we  
2866 went ahead and added a bay window here; that will give me some square footage and  
2867 try to reconfigure the inside, because the Savoy typical plan, that's the kitchen, so I've  
2868 moved the kitchen to the middle of the house, redesigned it and put the breakfast area  
2869 over there with the bay window.

2870  
2871 Mr. Wright - Do we need to take each one of these separately, Mr.  
2872 Blankinship, to get the information in the record?

2873  
2874 Mr. Blankinship - It would probably be safe to do so, yes.

2875  
2876 Mr. Wright - I'm looking at A-85, with 48 to 71 feet, and varies in depth  
2877 from 29 to 41 feet.

2878  
2879 Mr. Blankinship - The plan that they've shown clearly is not going to fit on that  
2880 lot, but if they took off the front porch and just made that a stoop, they could bring the  
2881 whole house forward several feet.

2882

2883 Mr. Burgess - I don't have a problem doing that, but what I'm looking at is if  
2884 I do that, my outside corners, my right and left front corners are going to be outside the  
2885 buildable area.  
2886  
2887 Mr. Blankinship - You might have to make an adjustment there as well.  
2888  
2889 Mr. Burgess - Here again, it's the Savoy; I've already cut off two feet off of  
2890 that house just to get me inside the front and back. I'm not against the uncovered stoop  
2891 area. But I'm starting to reduce it too much in width, and I can't go any further in depth.  
2892  
2893 Ms. Dwyer - I think what you're assuming is that you need to use your  
2894 existing plans, and what we're suggesting is that when you have a very odd-shaped lot,  
2895 you might have to have a custom plan instead of trying to fit a square peg into a round  
2896 hole.  
2897  
2898 Mr. Burgess - Very true. Because we are builders and developers and  
2899 designers, I have been looking and looking and trying to design a plan that's going to fit  
2900 on these lots and not that's not going to throw the architecture out in the entire  
2901 subdivision.  
2902  
2903 Mr. Blankinship - You want to go to A-87, Jim. There again, if you remove the  
2904 stoop and pull the whole building forward, then you just have the issue with the corners.  
2905 You'd just have to find some way to adjust those front corners, but it looks, just  
2906 eyeballing it, like you'd bring the rear into compliance.  
2907  
2908 Mr. Burgess - I even looked at trying to take the house and shifting the  
2909 house in that buildable area. Then it sits so you're looking at the left front corner of the  
2910 house .....

2911  
2912 Mr. Wright - You're looking at A-87 now, 47 to 86 feet in width and 40 to  
2913 51 feet in depth.  
2914  
2915 Ms. Dwyer - So this house also meets the minimum 2,000 square foot  
2916 requirement of the Zoning Ordinance?  
2917  
2918 Mr. Blankinship - Oh, yes, these are all under 3,200 square feet.  
2919  
2920 Mr. Burgess - They're actually reduced, because my houses now are  
2921 hitting at 3,000, instead of the average that's out there, but yes, it is over the larger  
2922 minimum that I have to have.  
2923  
2924 Ms. Dwyer - Do they have finished attics?  
2925  
2926 Mr. Burgess - The Savoy does have a portion of attic that can be finished,  
2927 yes ma'am.  
2928

2929 Mr. Blankinship - Do you want to go to A-88? It's difficult.  
2930  
2931 Mr. Wright - A-88, width 48 to 75 feet, varies in depth from 35 to 68 feet.  
2932  
2933 Mr. Blankinship - This is a very awkward-shaped lot, but there again, as Ms.  
2934 Dwyer was saying, it's just a matter of starting with the lot and designing the house to fit  
2935 it, rather than starting with the house plan and trying to find a way to get it on that lot.  
2936  
2937 Mr. Wright - That's all of them, isn't it. A-88 is the last one. All right, I  
2938 think we've got the problem surrounded.  
2939  
2940 Mr. Burgess - I actually sought, because of the impact, we sent letters to  
2941 every one of the homeowners out there, which you'll see you have copies of. There  
2942 were a couple of people who were against it, and one of them backed up to I-295.  
2943 There's a big berm there. Everybody else was for it. They just don't want to be building  
2944 smaller houses.  
2945  
2946 Ms. Harris - So for these homes, you are advocating the Savoy or the  
2947 Portsmouth plan; that's the problem.  
2948  
2949 Mr. Burgess - Yes ma'am, of the houses that we've built out there, which is  
2950 seven styles, those were the least restrictive, or the least going against the setback  
2951 requirements. And even those I actually reduced down some, so they are hitting less  
2952 than the actual standard Savoy plan that was built out there. So I have made some  
2953 changes to those.  
2954  
2955 Mr. Wright - Any further questions of the Board? Is anyone here in  
2956 opposition to this request? Hearing none, that concludes the case. Let's take these  
2957 separately, so there won't be any question. A-88-2005. Do I hear a motion?  
2958  
2959 Ms. Dwyer - I move that A-88 be denied because it's undeveloped  
2960 property, there's sufficient space to build a home that more than meets the  
2961 requirements of the Zoning Ordinance.  
2962  
2963 Ms. Harris - Second the motion.  
2964  
2965 Mr. Blankinship - There's a motion to deny by Ms. Dwyer, seconded by Ms.  
2966 Harris.  
2967  
2968 Mr. Wright - Any discussion? All in favor, say aye. Opposed, no. It's  
2969 denied.  
2970  
2971 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
2972 Harris, the Board **denied** application **A-88-2005** for a variance to build a one-family  
2973 dwelling at 11500 Country Oaks Way (Cobblestone Landing at Twin Hickory) (Parcel  
2974 742-764-7093).

2975  
 2976 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 2977 Negative: 0  
 2978 Absent: 0

2979  
 2980 The Board denied the request as it found from the evidence presented that there was  
 2981 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
 2982 Virginia to justify a variance.

2983  
 2984 Mr. Wright - Next case.

2985  
 2986 **A-89-2005 ST. JAMES BAPTIST CHURCH** requests a variance from Section  
 2987 24-104(d)(2) to install a larger sign at 2169 New Market Road  
 2988 (Parcel 811-690-3827), zoned A-1, Agricultural District (Varina).  
 2989 The sign area requirement is not met. The applicant proposes 40  
 2990 square feet of sign area, where the Code allows 20 square feet of  
 2991 sign area. The applicant requests a variance of 20 square feet sign  
 2992 area.

2993  
 2994 Mr. Wright - Does anyone else desire to speak with reference to this  
 2995 case? Would you raise your right hand and be sworn please?  
 2996

2997 Ms. Harris - Mr. Chairman, I'd like to disqualify myself from this case.  
 2998

2999 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
 3000 truth, the whole truth, and nothing but the truth, so help you God?  
 3001

3002 Rev. Redmond - I do. I'm Wayne Redmond, the Minister of Business  
 3003 Administration for St. James Baptist Church. We are requesting to replace our current  
 3004 marquee with a larger marquee. Since 1984 we've added two structures to our  
 3005 property, which is now extended to a campus style. We're requesting that we be able to  
 3006 place a 5 by 8 sign, which will allow for 4-inch letters, versus 2-inch letters, and we feel  
 3007 that this is reasonable because, 1) of the increased traffic flow on Route 5. Route 5 is a  
 3008 two-lane highway, and because of the building in the Varina District, there has been a  
 3009 significant increase in traffic. There also remains to be a 55-mile per hour speed limit  
 3010 out there, so therefore to read 2-inch letters or less, it's very difficult at that speed. We  
 3011 also want to maintain the high standards that have been set as that being a Virginia  
 3012 Byway, and as we've constructed the two other buildings, we've worked very closely  
 3013 with the County and the Beautification Committee to make sure that those buildings are  
 3014 aesthetic. We also feel that the larger sign in a different place will be more aesthetically  
 3015 placed, versus the three buildings that we have now, versus when it was placed there  
 3016 when we had only the one earlier structure. We've looked at the surrounding areas,  
 3017 and there would be no immediate impact to our neighbors on either side or in front of  
 3018 the church, because there is a considerable distance from the houses that are  
 3019 immediately in front of the church, and the property beside us is basically vacant and we  
 3020 use it as parking.

3021  
3022 Mr. Wright - How long have you been at this location?  
3023  
3024 Rev. Redmond - One hundred and twenty-seven years. I've been there for  
3025 twenty-seven years.  
3026  
3027 Mr. Wright - This facility, however has been updated. When was the last  
3028 time you had new construction?  
3029  
3030 Rev. Redmond - The last building was 1996.  
3031  
3032 Mr. Wright - So the building that is there now, was built in 1996? All the  
3033 buildings?  
3034  
3035 Rev. Redmond - The last building, yes sir. The third building that you can see  
3036 up here, the kind of odd-shaped building, that was the last building. The middle building  
3037 is our sanctuary, and then the first building on my left is the original building that was  
3038 constructed.  
3039  
3040 Mr. Wright - Have you had any problems with anyone complaining about  
3041 the fact that they didn't know where the church was, or couldn't find the church, or  
3042 anything like that?  
3043  
3044 Rev. Redmond - People tend to pass by, and then they have to either turn  
3045 around and come back or because of the original sign that's out there now.  
3046  
3047 Mr. Wright - Of course your members know where your church is.  
3048  
3049 Rev. Redmond - Yes, but not the people that we would like to entice.  
3050  
3051 Ms. Dwyer - There are two signs. Mr. Blankinship, what's the total  
3052 square footage that's allowed?  
3053  
3054 Mr. Blankinship - The Code allows 20 square feet for a church, and an  
3055 additional sign of 12 square feet if there is a child care or a school in the church  
3056 building.  
3057  
3058 Ms. Dwyer - So in any event, the Code doesn't allow a sign larger than 20  
3059 square feet, but does allow the two?  
3060  
3061 Mr. Blankinship - Right.  
3062  
3063 Ms. Dwyer - The new sign would be taller than the existing sign, as I look  
3064 at the diagram?  
3065  
3066 Rev. Redmond - Yes, the new sign would be approximately ten feet tall. It's

3067 on a pedestal, and the sign itself is 5 by 8, and there's a pedestal that elevates it.  
3068  
3069 Ms. Dwyer - You're proposing a five-foot pedestal, and a five-foot sign?  
3070  
3071 Mr. Kirkland - This is illuminated?  
3072  
3073 Rev. Redmond - Yes.  
3074  
3075 Mr. Kirkland - No lights on the ground shining up; it's inside lighting?  
3076  
3077 Rev. Redmond - It's inside light.  
3078  
3079 Mr. Kirkland - Looks like to me in the picture, you've got a banner up there  
3080 too. Is that part of yours too?  
3081  
3082 Rev. Redmond - Yes, we use the banners for special occasions, so the  
3083 banner that might be out there now, I believe is for the enrollment of our summer camp  
3084 program.  
3085  
3086 Mr. Kirkland - So this new sign with the marquee that changes, you won't  
3087 need banners any more, will you?  
3088  
3089 Rev. Redmond - We could possibly not use banners, if that would be  
3090 objectionable, but primarily the banner tends to draw attention, even outside of the  
3091 regular signage. Most of the churches out there use banners for special occasions.  
3092  
3093 Mr. Nunnally - Do they have any limit on those banners, Mr. Blankinship?  
3094  
3095 Mr. Blankinship - I was just looking that up. Actually, in the commercial  
3096 districts we allow banners for ten days a quarter in the A-1 and R districts. I'm not sure  
3097 that's actually allowed except for temporary real estate signs.  
3098  
3099 Mr. Wright - But those are just up for a short period of time, like vacation  
3100 bible school, and then when it's over, you take the banner down.  
3101  
3102 Ms. Dwyer - Till the next special function. All churches do it.  
3103  
3104 Mr. Nunnally - If we approved it, we could put a time limit on it, couldn't we,  
3105 on a banner, thirty days or two weeks or something like that?  
3106  
3107 Mr. Blankinship - I think the Board could do that, yes sir.  
3108  
3109 Mr. Wright - Any further questions of the Board? Anything further you  
3110 wish to present, sir? Is anyone here in opposition to this request? Hearing none, that  
3111 concludes the case. A-89-2005?  
3112

3113 Mr. Nunnally - I move we approve it.  
3114  
3115 Mr. Wright - Do I hear a second?  
3116  
3117 Mr. Kirkland - Second, but I'd like to discuss one thing, to make sure that  
3118 the banners that are placed meet the requirements of the County Zoning Ordinance.  
3119  
3120 Mr. Wright - That the banners be included in the sign?  
3121  
3122 Mr. Kirkland - No, that the banners on the property meet the requirements  
3123 of the Zoning Ordinance, whether it's a 10-day thing per quarter, that's what it does; if  
3124 they're not allowed at all, they can't be there. I want that as a condition with the sign.  
3125  
3126 Mr. Wright - Any further discussion?  
3127  
3128 Ms. Dwyer - I just had a concern that we're putting a 10-foot tall, a 10 by  
3129 8 foot structure sign along this historic quarter, among what really is a residential area.  
3130 Doubling the size of the allowable sign is of concern to me. I hate to go against the  
3131 church in any way, but we do have to look at the impact of this on the community, and it  
3132 can tend to set a precedent, and this is a fairly undeveloped area, so I have concerns  
3133 about the size of the sign.  
3134  
3135 Mr. Kirkland - Mr. Blankinship, how far off the road will this sign be? Do  
3136 you have any idea?  
3137  
3138 Mr. Blankinship - I don't believe we have any precise location.  
3139  
3140 Mr. Kirkland - We don't have a plot plan of anything here.  
3141  
3142 Mr. Blankinship - No, what they submitted was diagrammatic, illustrative.  
3143  
3144 Mr. Wright - Could we require it? It's got to be near enough so people  
3145 can see it, if it's going to be there at all.  
3146  
3147 Ms. Dwyer - The object of a sign is to get attention, so for it to function, I  
3148 guess it can't be but so far back.  
3149  
3150 Mr. Kirkland - That's what I was saying – it's going to be illuminated.  
3151  
3152 Mr. Wright - They can't put it in the easement area, can they? It would  
3153 have to be on their property.  
3154  
3155 Mr. Blankinship - It would have to be on their property.  
3156  
3157 Mr. Wright - That will get it back off the road.  
3158

3159 Mr. Kirkland - Are the signs that are there now on their property?  
3160  
3161 Mr. Blankinship - I presume so; I don't have a survey or anything.  
3162  
3163 Mr. Wright - Any further discussion? All in favor, say aye. Opposed, no.  
3164 It's approved.  
3165  
3166 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
3167 Kirkland, the Board **granted** application **A-89-2005** for a variance to install a larger sign  
3168 at 2169 New Market Road (Parcel 811-690-3827). The Board granted the variance  
3169 subject to the following conditions:  
3170  
3171 1. This variance applies only to the sign area requirement. All other applicable  
3172 regulations of the County Code shall remain in force.  
3173  
3174 2. [ADDED] There shall be no banners or temporary signs on the site, except as  
3175 allowed by the Henrico County Code.  
3176  
3177 Affirmative: Kirkland, Nunnally, Wright 3  
3178 Negative: Dwyer 1  
3179 Abstain: Harris, 1  
3180  
3181 The Board granted this request, as it found from the evidence presented that, due to the  
3182 unique circumstances of the subject property, strict application of the County Code  
3183 would produce undue hardship not generally shared by other properties in the area, and  
3184 authorizing this variance will neither cause a substantial detriment to adjacent property  
3185 nor materially impair the purpose of the zoning regulations.  
3186  
3187 Mr. Wright - We've got one more. Next case.  
3188  
3189 **UP-17-2005** **PIERCE PROMOTIONS** requests a temporary conditional use  
3190 permit pursuant to Section 24-116(c)(1) to hold a car show at  
3191 11400 W Broad Street (Parcel 740-762-9925), zoned B-3C,  
3192 Business District (Conditional) and WBSO, West Broad Street  
3193 Overlay District (Three Chopt).  
3194  
3195 Mr. Wright - Does anyone else desire to speak with reference to this  
3196 case? Would you raise your right hand and be sworn please?  
3197  
3198 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3199 truth, the whole truth, and nothing but the truth, so help you God?  
3200  
3201 Ms. Payne - Yes I do. My name is Belinda Payne, representing Wal-  
3202 Mart. They said that someone had to represent the store if there were any questions  
3203 pertaining to the case.  
3204

3205 Mr. Wright - It's not a matter of questions. You've got to present your  
3206 case. Tell us what you're requesting. This has to be recorded, and it's part of the  
3207 record.  
3208

3209 Ms. Payne - Pierce Promotions has requested a conditional use permit to  
3210 have this car show in our parking lot. It's going to be a promotional type thing for Coca  
3211 Cola, Kellogg's. It's going to have a 10-foot pop-up tent that will take up approximately  
3212 30 to 40 parking spaces in our parking lot.  
3213

3214 Mr. Wright - Has this ever been done before at this location?  
3215

3216 Ms. Payne - I believe we have had one. We had a Star Wars one that we  
3217 had to come through the County to get permission for.  
3218

3219 Mr. Wright - Where is this to be located in the parking lot.  
3220

3221 Ms. Payne - It's going to be, I'm guessing, up near the Wendy's .....

3222

3223 Ms. Dwyer - You're guessing?  
3224

3225 Ms. Payne - I'm looking at the - I'm trying to see the picture.  
3226

3227 Mr. Wright - There's Wendy's, Jiffy Lube, and it looks from the diagram  
3228 that it's going to be opposite Wendy's and Jiffy Lube, on that access road.  
3229

3230 Ms. Payne - Yes, it's going to be at the top part of our parking lot.  
3231

3232 Ms. Dwyer - And that's the last drive aisle, is that correct. There's  
3233 parking where the arrow is now, there's a drive aisle, and then there's the access road  
3234 to the entrance road. My concern is that it's too close. It's a very congested area, with  
3235 people coming from all those drive aisles trying to get out of, not only the Wal-Mart, but  
3236 out of that whole shopping center onto Pouncey Tract, so you have traffic from the Jiffy  
3237 Lube, a lot of traffic generally coming from the Wendy's, and then all the traffic from  
3238 Wal-Mart funneling into that one point, right where this is supposed to be. It's often a  
3239 back-up, trying to get onto the entrance road to the shopping center from Pouncey  
3240 Tract, so I think maybe that's not the best place to have it, because there's so much  
3241 traffic congestion in that area already.  
3242

3243 Ms. Payne - We can move it and put it anywhere in that parking lot that  
3244 you see fit.  
3245

3246 Mr. Wright - Looks like to me that it would be better to move it north,  
3247 away from Wendy's and up in that area, beyond the access road.  
3248

3249 Ms. Dwyer - Toward the Jiffy Lube?  
3250

3251 Mr. Wright - Beyond the access road, do you know what I'm saying?  
3252  
3253 Ms. Payne - Going towards the Captain D's?  
3254  
3255 Mr. Wright - That area is not very busy because there's not a lot of traffic  
3256 coming and going outside going to Wal-Mart, if you go past that turn-in there. I go by  
3257 there quite frequently, and very rarely are there any cars parked in that area.  
3258  
3259 Mr. Kirkland - Mr. Wright, are you saying that you want it at the yellow line?  
3260  
3261 Mr. Wright - The yellow line, yes  
3262  
3263 Mr. Kirkland - Right where the arrow's jumping up and down?  
3264  
3265 Ms. Dwyer - Somehow we need to quantify that for our conditions.  
3266  
3267 Mr. Kirkland - That area, right there, because I think on the other side of  
3268 that line, that belongs to the next trust, doesn't it Mr. Blankinship, or the next owner?  
3269  
3270 Mr. Blankinship - Yes, that would be a property line. That yellow boundary is  
3271 a property line.  
3272  
3273 Mr. Wright - But it could be inside that line.  
3274  
3275 Mr. Blankinship - Up against the northern end of this parcel, on the outside of  
3276 the drive aisle.  
3277  
3278 Mr. Wright - You see, there's an access road back down near where  
3279 they've got the green thing there. If you have it beyond that access road, there's not a  
3280 whole lot of traffic.  
3281  
3282 Ms. Dwyer - I would say as far beyond as possible, where the arrow was,  
3283 to the extreme northern boundary of the Wal-Mart property as it's shown on our map  
3284 here.  
3285  
3286 Mr. Wright - What is the duration of this request?  
3287  
3288 Mr. Blankinship - There are two separate events; one was August 11 and 12,  
3289 and the other is September 10.  
3290  
3291 Mr. Wright - So it's one day and two days.  
3292  
3293 Ms. Dwyer - The staff report says that you do not advertise this event – is  
3294 that true?  
3295  
3296 Ms. Payne - We do not advertise it, no.

3297  
3298 Ms. Dwyer - Does anyone advertise it?  
3299  
3300 Ms. Payne - If anyone advertises it, it's going to be Pierce Promotions.  
3301  
3302 Ms. Dwyer - Because that was one of the statements made that indicated  
3303 they do not advertise the event, and I took that to mean no one advertises the event.  
3304 It's just intended to be for regular Wal-Mart shoppers. I think that would make a  
3305 difference; I think if it were advertised, you might have a lot more traffic problems. I  
3306 would like to see that as a condition.  
3307  
3308 Ms. Harris - What is the size? Are you renting car space sizes – I see 70  
3309 by 100 on one page and then 40 by 80.  
3310  
3311 Mr. Blankinship - There are two different events.  
3312  
3313 Mr. Wright - One takes 20 parking spaces; the other takes 60, but they've  
3314 put in many more parking spaces than they needed. Our records show that POD  
3315 approved, required 1,062 parking spaces, and they actually put in 1,507, so it appears  
3316 they have plenty of additional parking.  
3317  
3318 Mr. Kirkland - I would assume that the event on September 10 must  
3319 coincide with NASCAR being here in Richmond.  
3320  
3321 Mr. Blankinship - Yes sir.  
3322  
3323 Mr. Wright - Is it possible, Mr. Blankinship, to detail the area if we were to  
3324 approve this, to change it and detail the area that it would take place in?  
3325  
3326 Mr. Blankinship - Yes sir, I think you've made that clear, and we can convey  
3327 that to Wal-Mart as well as to Pierce Promotions.  
3328  
3329 Mr. Wright - It's a minimum of one event for two days, and then the big  
3330 event is only one day.  
3331  
3332 Mr. Blankinship - Yes sir.  
3333  
3334 Ms. Dwyer - And the maximum number of parking spaces that would  
3335 need to be taken up would be 20 in August and 60 in September? That could also be a  
3336 condition, since it's been represented.  
3337  
3338 Mr. Wright - Is that in the conditions – let me take a look.  
3339  
3340 Ms. Dwyer - I didn't see it in there.  
3341  
3342 Mr. Wright - Have you looked at the conditions that have been proposed

3343 for this, if this is approved?  
3344  
3345 Ms. Payne - I don't have any conditions.  
3346  
3347 Mr. Wright - Mr. Blankinship will give them to you. If we approve this, we  
3348 establish certain conditions that must be complied with, and I want to be sure that you  
3349 understand those.  
3350  
3351 Ms. Payne - Yes sir.  
3352  
3353 Mr. Wright - See the times of operation, the hours of operation, the fact  
3354 that all tents and accessory structures shall be removed by August 15, and September  
3355 12, with respect to the second, at which time this permit will expire, so it's for that limited  
3356 period. We have certain requirements for the Henrico County Division of Police that  
3357 have to be complied with, and if we want to add another condition, Ms. Dwyer, what was  
3358 it?  
3359  
3360 Ms. Dwyer - Actually a couple. One was no advertisement as  
3361 represented by anyone, Wal-Mart or the promoter, or anyone else. The location would  
3362 be moved as we've discussed, to the northwest corner of the Wal-Mart lot, as we see it  
3363 on our plan.  
3364  
3365 Mr. Wright - I don't know if that would be a condition or that would be  
3366 substance of approval if we put it in a certain place. I don't know how we would handle  
3367 that, Ben. How would that be?  
3368  
3369 Mr. Blankinship - We can work that out. I think your intent is clear.  
3370  
3371 Ms. Dwyer - The third thing would be the number of parking spaces that  
3372 would be taken up.  
3373  
3374 Mr. Wright - Yes, put the number that we've set forth, 20 for August and  
3375 60 for September.  
3376  
3377 Ms. Dwyer - So no more than those.  
3378  
3379 Mr. Wright - And no advertising.  
3380  
3381 Mr. Wright - Any further questions of the Board? Is anyone here in  
3382 opposition to this request? Hearing none, that concludes the case.  
3383  
3384 Mr. Wright - Do I hear a motion?  
3385  
3386 Mr. Nunnally - I move we approve it.  
3387

3388 Mr. Kirkland - Second. And that's with all the changes and conditions and  
3389 the location.

3390  
3391 Mr. Blankinship - Moved by Mr. Nunnally, seconded by Mr. Kirkland.  
3392

3393 Mr. Wright - Any further discussion? Hearing none, all in favor, say aye.  
3394 Opposed, no. It's approved.  
3395

3396 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
3397 Kirkland, the Board **granted** application **UP-17-2005** for a temporary conditional use  
3398 permit to hold a car show at 11400 W Broad Street (Parcel 740-762-9925). The Board  
3399 granted the variance/use permit subject to the following conditions:

3400  
3401 1. This approval is only for two events scheduled for August 11-12 and September  
3402 10, 2005.  
3403

3404 2. The applicant shall satisfy all requirements of the Henrico County Division of  
3405 Police concerning the security of the site and the patrons of the event. The applicant  
3406 shall employ off-duty police officers for each of the three days.  
3407

3408 3. The applicant shall satisfy all requirements of the Henrico County Department of  
3409 Health and the Henrico County Department of Building Inspections.  
3410

3411 4. Hours of operation shall be limited to 12:00 Noon to 6:00 PM August 11-12, 2005  
3412 and 11:00 AM to 5:00 PM September 10, 2005.  
3413

3414 5. All tents and accessory structures shall be removed from the site by August 15,  
3415 2005, and again on September 12, 2005, at which time this permit shall expire.  
3416

3417 6. [ADDED] The August event shall occupy no more than 20 parking spaces. The  
3418 September event shall occupy no more than 60 parking spaces.  
3419

3420 7. [ADDED] Both events shall be located in the northwest corner of the parking lot  
3421 and away from the entrance drives into the parking lot.  
3422

3423 8. [ADDED] The events shall not be advertised except to customers on the Wal-  
3424 mart premises.  
3425

3426 Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
3427 Negative:		0
3428 Absent:		0

3429  
3430 The Board granted the request because it found the proposed use will be in substantial  
3431 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
3432

3433 Mr. Wright - All right, you want to start from the back and go forward,

3434 since we have some folks here. Let's start with UP-17-2005.  
3435  
3436 Mr. Wright - That concludes the Agenda. We've already ruled on UP-9-  
3437 2005, and A-58-2005 was withdrawn.  
3438  
3439 Minutes – let's start with the April 28, 2005, minutes – I have page 29, line 1295 – it  
3440 says at the end of that sentence, "there's to need for me to cross the line," and I think it  
3441 should have been "no need." Page 43, top of the page, "The reason the Board denied  
3442 the request is that it found from evidence presented, that authorizing this variance would  
3443 be of substantial detriment to adjacent property or would materially impair the purpose  
3444 of the Zoning Ordinance." I had a question about that Ben, "or would materially" –  
3445 shouldn't it be and if you're going to have both of those?  
3446  
3447 Mr. Blankinship - Yes, if you believe both are present.  
3448  
3449 Mr. Wright - Either one or the other.  
3450  
3451 Mr. Blankinship - It's not actually testimony, so whatever you want it to read.  
3452  
3453 Mr. Wright - What the Board thinks, but I just, it looks like to me it can't be  
3454 one or the other, it can't be both, or we ought to state one. That was my concern. I  
3455 think if it reads .....  
3456  
3457 Ms. Dwyer - Are we saying that it would violate the zoning regulation, and  
3458 it would impair the application of the zoning ordinance in an even-handed way if we  
3459 granted this exception to it. That takes care of the second part of the sentence, and I  
3460 think we did find that the garage would be detrimental to the adjacent property owners,  
3461 so both would be true.  
3462  
3463 Mr. Wright - So why don't we say and instead of or – that's my point.  
3464  
3465 Mr. Blankinship - What's the line number?  
3466  
3467 Ms. Dwyer - 1923.  
3468  
3469 Mr. Wright - Does anybody else have any corrections.  
3470  
3471 Ms. Harris - Page 16, line 722, "thought" instead of "though." Also  
3472 "based on the fact that everyone thought." Page 27, line 1197, this is questionable.  
3473 Should this be "to be insured"?  
3474  
3475 Mr. Wright - It should be "to be sure." Any other corrections to these  
3476 minutes?  
3477  
3478 Ms. Dwyer - I have two. Page 15, line 635, "where," instead of "were."  
3479 On page 52, it looked like we were missing something, maybe missing some lines. Line

3480 2343, it's the answer's not responsive, and that may be just the way it was. "So you've  
3481 used this property for 20 years as a home," and then the response is, "We've got to  
3482 meet Mr. Stringer this afternoon; it may not perk." It just seemed to me that maybe we  
3483 were missing something there.

3484  
3485 Mr. Wright - I think a line got left out.  
3486

3487 Ms. Dwyer - Or maybe he was just ignoring my question, but it might be  
3488 worth checking.  
3489

3490 Mr. Kirkland - A little nod in the control room back there.  
3491

3492 Mr. Wright - The first question, "how long have you lived in this house,"  
3493 he says "20 years," "so you've used this property for 20 years as a home," – I imagine  
3494 his answer was "yes."  
3495

3496 Ms. Dwyer - Maybe, but it's odd that he would respond in that way,  
3497 because his answer looks like he's responding .....

3498  
3499 Mr. Kirkland - He's gone from the home to the septic tank real quick.  
3500

3501 Mr. Blankinship - We'll check.  
3502

3503 Mr. Wright - Any other corrections to the April 28<sup>th</sup> meeting? Do I hear a  
3504 motion we approve these minutes as corrected?  
3505

3506 Ms. Harris - I so move.  
3507

3508 Mr. Wright - Second?  
3509

3510 Ms. Dwyer - I second.  
3511

3512 Mr. Wright - Discussion? All in favor say aye. Approved.  
3513

3514 On a motion by Ms. Harris, seconded by Ms. Dwyer, the Board **approved as**  
3515 **corrected**, the Minutes of the **April 28, 2005**, Henrico County Board of Zoning Appeals  
3516 meeting.  
3517

3518 Mr. Wright - Next let's take June 16, first the 7:00 pm Tidewater Quarries,  
3519 Inc. Show Cause Hearing Minutes.  
3520

3521 Mr. Kirkland - Page 31, line 1345, "mind" should be "mine." Then on page  
3522 52, line 2313, "I believe we were at the evening hour when this was discussed, which  
3523 were left on the table for you this evening." Isn't this the night meeting?  
3524

3525 Mr. Blankinship - I probably said "morning." The record should show what I  
3526 said.  
3527  
3528 Mr. Wright - That's not crucial though.  
3529  
3530 Ms. Dwyer - You can put "sic" beside it though.  
3531  
3532 Ms. Harris - Page 6, line 242, "not much" instead of "now."  
3533  
3534 Mr. Wright - While we're on that page, that's okay, I just underlined that  
3535 for emphasis. It's hard to prove. That's no problem.  
3536  
3537 Ms. Harris - Page 32, line 1415, "they were looking." Page 35, line 1542,  
3538 what should that be? "Each of these grafts," should be "graphs." Page 43, 1890, did  
3539 we say Petersburg, that's a type of granite, right? Okay, I found it out later. Page 48,  
3540 2115, I think that was meaningful, should be one word, instead of meaning full.  
3541  
3542 Ms. Dwyer - It's not necessarily going to be grammatically correct if they  
3543 didn't say it right.  
3544  
3545 Ms. Harris - Line 787, page 18, there's something wrong with that I also,  
3546 when a blast occurs .....  
3547  
3548 Ms. Dwyer - I think it was just a sentence fragment.  
3549  
3550 Ms. Harris - Okay, he was getting ready to say something and changed  
3551 his mind? That's okay?  
3552  
3553 Mr. Wright - Interesting when people – I find myself saying things I didn't  
3554 think I said.  
3555  
3556 Ms. Dwyer - We decided there was no error.  
3557  
3558 Ms. Harris - The final one I have for this set of minutes, page 25, line  
3559 1068, "don't know where it's coming from," instead of form. The second line here.  
3560  
3561 Mr. Wright - I have a few. I think you caught all the ones I caught.  
3562 Anybody have any others? Motion we approve the minutes of the 7:00 o'clock meeting  
3563 on June 16, 2005?  
3564  
3565 Ms. Dwyer - So moved.  
3566  
3567 Ms. Kirkland - Second.  
3568  
3569 Mr. Wright - Any further discussion? All in favor, say aye. It's approved.  
3570

3571 On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **approved as**  
3572 **corrected**, the Minutes of the **June 16, 2005, 7:00 pm, Show Cause Hearing for**  
3573 **Tidewater Quarries, Inc.**, Henrico County Board of Zoning Appeals meeting.  
3574

3575 Mr. Wright - Now let's do June 16, 2005, at 6:00 pm. I have several. Let  
3576 me get mine out of the way first. Page 1, at the bottom, line 30, "set forth in the  
3577 ordinance," not audience. Page 9, line 376, "where an ordinance application to a  
3578 particular property is not, should be unconstitutional, not uncommon. Page 9, line 379,  
3579 "it didn't have an impact on the neighborhood," instead of unintelligible. Page 9, line  
3580 386, "I think there is going to be an uproar." Page 10, up at the top, line 402, "I think it is  
3581 going to cause a hue and cry," not unintelligible. Line 411, it should be affect. Line 421,  
3582 "could adopt an amendment and changes the ordinance." Line 425, "could you go  
3583 down," not do down. Page 12, I think this is line 523, who is Ms. Hill?  
3584

3585 Ms. Harris - That should be Ms. Harris.  
3586

3587 Mr. Wright - Page 13, line 555, I think it should be "are there conditions  
3588 you want to impose," – it's spelled right. Page 14, line 586, I think it should be "anything  
3589 that would impose on the rear yard setback." That's all I have.  
3590

3591 Ms. Harris - Page 11, line 470, what was "unintelligible"? Those are your  
3592 words. We don't know, do we.  
3593

3594 Mr. Blankinship - That's what happens when you lean away from your  
3595 microphone; you become "unintelligible."  
3596

3597 Mr. Wright - Any other corrections that anyone has to the 6:00 o'clock  
3598 meeting? Do I hear a motion we approve them as amended?  
3599

3600 Mr. Kirkland - So moved.  
3601

3602 Ms. Harris - Second.  
3603

3604 Mr. Wright - Any discussion? Hearing none, all in favor, say aye.  
3605

3606 On a motion by Mr. Kirkland, seconded by Ms. Harris, the Board **approved as**  
3607 **corrected**, the Minutes of the **June 16, 2005, 6:00 pm, Cochran v. Fairfax County**  
3608 **BZA Case**, Henrico County Board of Zoning Appeals meeting.  
3609

3610 Mr. Blankinship - We appreciate having help from other staff in the  
3611 Department to handle those minutes. We're happy that Ms. Parker didn't have to type  
3612 those herself.  
3613

3614 Ms. Harris - Was she taking shorthand?  
3615

3616 Mr. Blankinship - She does take shorthand, but she didn't do these minutes.

3617  
3618 Mr. Wright - Now we've got to approve the 2006 calendar. November 16  
3619 and December 21, for 2006.

3620  
3621 Ms. Dwyer - I move we meet on those days, change the calendar.

3622  
3623 Mr. Kirkland - Second.

3624  
3625 Mr. Wright - Motion's made and seconded we approve those dates. Any  
3626 discussion. Hearing none, all in favor, say aye. Opposed, no.

3627  
3628 On a motion by Ms. Dwyer, seconded by Mr. Kirkland, the Board **approved the**  
3629 **proposed changes in meeting dates for 2006 to November 16 and December 21.**

3630  
3631 There being no further business, and on a motion by Ms. Dwyer, seconded by Mr.  
3632 Nunnally, the Board adjourned until **August 25, 2005**, at 9:00 am.

3633  
3634  
3635  
3636  
3637  
3638 Russell A. Wright, Esq.

3639 Chairman

3640

3641

3642 Benjamin Blankinship, AICP

3643 Secretary

3644