

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**  
2 **APPEALS OF HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE**  
3 **COUNTY ADMINISTRATION BUILDING IN THE HENRICO COUNTY**  
4 **GOVERNMENT COMPLEX, ON THURSDAY, JULY 27, 2006, AT 9:00 A.M.,**  
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**  
6 **ON JULY 6 AND JULY 13, 2006.**

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

14  
15 **Also Present:**               **David D. O’Kelly, Assistant Director of Planning**  
16                                   **Benjamin Blankinship, Secretary**  
17                                   **Paul M. Gidley, County Planner**  
18                                   **Priscilla M. Parker, Recording Secretary**

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20 Mr. Nunnally:           Good morning, ladies and gentlemen. Welcome to the July  
21 meeting of the Board of Zoning Appeals of Henrico County, and I will ask you if  
22 you will please stand and join us in the **Pledge of Allegiance to the Flag of Our**  
23 **Country**. Mr. Blankinship, would you please read the rules for the meeting,  
24 please?

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26 Mr. Blankinship:       Good morning, Mr. Chairman, members of the Board, ladies  
27 and gentlemen. The rules for this meeting are as follows: Acting as Secretary, I  
28 will announce each case, and while I am speaking the applicant should come  
29 down to the podium. We will then ask everyone who intends to speak on that  
30 case to stand and be sworn in. Then the applicant will have their opportunity to  
31 speak and after the applicant has spoken, anyone else who wishes to speak will  
32 be given the opportunity. After everyone has spoken, the applicant, and only the  
33 applicant, will have an opportunity for rebuttal.

34  
35 This meeting is being tape recorded, so we will ask everyone who speaks to  
36 speak directly into the microphone on the podium, to state your name and please  
37 spell your last name. After all of the testimony has been taken and the Board  
38 has been asked questions, they will take each case under advisement and they  
39 will render all of their decisions at the end of the meeting. So, if you wish to know  
40 the decision on a specific case, you can either stay until the end of the meeting,  
41 or you can check the Planning Department web site this afternoon. We update  
42 the web site within about half an hour at the end of the meeting, or you can call  
43 the Planning Department later this afternoon. Finally, out in the foyer there are  
44 two binders that contain the staff report for each case, including the conditions  
45 that have been recommended by the staff, and, Mr. Chairman, we do not have  
46 any deferrals or withdrawals on this morning’s agenda.

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Mr. Nunnally: Thank you, sir. Please call the first case.

**UP-9-2004**

**Tidewater Quarries** requests a conditional use permit pursuant to Section 24-52(d) and 24-103 to extract materials from the earth at 11400 Staples Mill Road (Parcels 756-773-3302 and 759-773-4746), zoned A-1 Agricultural District and M-2C, General Industrial District (Conditional) (Three Chopt).

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Mr. Blankinship: We are continuing a Show Cause Hearing from last year concerning a conditional use permit. Mr. Chairman, I am not sure who is going to speak to this. This came to the Board on a series of complaints a year ago, and the people presenting those complaints probably should be the first to speak. I see Mr. Jack Wilson is here to represent Tidewater in response to this complaint. Is there anybody who would like to speak?

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Mr. Nunnally: Is anyone interested in this case? Will you please stand. Are you in opposition?

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Mr. Blankinship: Does anyone else intend to speak on this matter? Please stand so we can swear you in. Would everyone please raise your right hand? Do you swear the testimony you are about to give is the truth and nothing but the truth, so help you God?

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People Standing: I do.

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Mr. Nunnally: Before we get started now, I would like to say we have heard all of the testimony we need to hear. Now, we've got several reports that we received last week, and what we would like to have is one spokesman for each crowd, one for Tidewater and one for the people on the committee. You all had several meetings I am sure during the past year. Is that correct? So, what I want is one spokesman for that committee to speak, and I am going to allow you 10 minutes at the most to go over that. We heard everything last year. We have heard plenty, and we've got plenty of information since then. So, whoever wants to speak, as spokesman, please come forward and tell us your problem.

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Ms. Darr: My name is Tammy Darr.

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Mr. Nunnally: Tell us what you have to tell.

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Ms. Darr: I won't say I am not speaking for the CLC. I am a member of the CLC and have learned all of the things that they have given us to learn about at the meeting was about the blasting operation, about the possibility of what happens to your home as a blast occurs. I am sorry. I am real nervous. I have to say as far as a report on structure response by Ms. Cathy Aimone-Martin that I

87 do not agree, and the reason I don't agree is because she relies solely on the  
88 numbers. No one came into our home until July 10, when Frank (unintelligible)  
89 came in to view what I felt was the problem of a blast occurring on December 7.  
90 Cathy's report also indicated that there was an increase in temple strain in the  
91 second story of my home on that day. So, we had three corners of our tile in our  
92 bathroom come loose on the same day. I think that there is a correlation. They  
93 say it is the humidity. I can't say it is not the humidity, but I feel that if everybody  
94 in this room lives in Henrico County, how many people have in one day seen  
95 their tile pop loose, on this one day on three corners?  
96

97 I also have another issue, despite the fact that no one came in to see if any  
98 damage was occurring or measuring the cracks, or if there were new cracks. I  
99 also have an issue now that is considered with the safety factor and should be  
100 your main issue. As of July 10, there have been two blasts. Now we have a  
101 sheet of drywall above out bed in our bedroom that has come loose from my  
102 ceiling. I have pictures. They are not good, but you are welcome to look at them.  
103 That is just my house. You can imagine all of the people who live around the  
104 quarry who have come and spoken and told you that they think that they have a  
105 problem. The quarry has not come in to see that before blast or after blast, if  
106 anything occurred. And so, we as a community, I speak for Summerbury  
107 Subdivision, and I have talked to a number of the residents, are concerned with  
108 the safety factors of living next to a quarry and nobody coming in to verify that we  
109 have a problem.  
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111 Ms. Dwyer: I have a question, Ms. Darr. When I looked at the report, Dr.  
112 Aimone-Martin, it appeared that extensive (unintelligible) had been done on your  
113 house. We have pictures of your attic, pictures taken from all over your house.  
114 There were measurements taken, lots of instruments, using the house during test  
115 blasts, so I am confused when you say no one has come to your house to  
116 examine it.  
117

118 Ms. Darr: No one has come after the instruments were installed to see  
119 if there was any damage that occurred throughout the test period. They relied  
120 solely on the numbers, and if you look at the places where you get the numbers,  
121 the structure response and damage procedure and ground vibrations from  
122 surface mining blasting at the report of the investigation, 8507, on pages 58 and  
123 59.  
124

125 Ms. Dwyer: Whose report is that?  
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127 Ms. Darr: This is issued by the United States Department of the  
128 Interior. It states in there that their measurements are for 95% of the building.  
129 Five percent could possibly have even small cracking from the blasting,  
130 according to what I understand by that statement on pages 58 and 59.  
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132 Mr. Blankinship: Wasn't that the purpose behind doing specific  
133 measurements on two houses in Henrico County?

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135 Ms. Darr: That was, but they only went by the numbers. The numbers  
136 say we should not have a problem, but nobody came in to verify that the  
137 numbers were correct. There are 5% of buildings that don't respond the way that  
138 all of the numbers say they should. We don't know if we are that 5% because  
139 nobody came in throughout the monitoring to check and see whether or not there  
140 were problems, and that was what we wanted to have done, to have them come  
141 in and make sure that we didn't have problems from the blasting, that these  
142 things aren't related. We still don't know that.

143

144 Mr. Blankinship: You don't feel that the monitoring served that purpose?

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146 Ms. Darr: The monitoring served a purpose to show them that our  
147 house should respond in the way the government says it should, but in the report  
148 it also says 5% of the houses don't, and the only way to determine that is to  
149 come in to see, with your eyes, to see a visual inspection, as to whether or not  
150 anything is going on. Nobody came in. I don't feel that there is a conclusion to  
151 this problem yet. I am concerned with, if my ceiling is dropping down, what about  
152 the people with children and their bedrooms. Is that going to fall down on top of  
153 the kids while they are asleep? I am concerned about it, but it does say in  
154 Kathy's report that there are questions about the structure, the building and the  
155 tresses in our house and Mr. Revels came through and did an inspection at the  
156 home and said there were no problems in the ceiling, the floors, the whole mess,  
157 and you know at that point the ceilings were there. I think that if Mr. Revels did  
158 question that, the second to the last paragraph at the end he states that it could  
159 possibly be the condition of the original construction done that could play a factor  
160 in it. Now my question to you then is, wasn't our house inspected by the County,  
161 you know. Did we not have an inspection? Why were we allowed to move into  
162 our home if it is not meeting, according to Mr. Revels and Ms. Martin, not  
163 meeting the safety criteria? Our house is only seven years old. I am sure that  
164 you all, with seven years living in your home, haven't had to put the ceilings back  
165 up.

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167 Mr. Nunnally: Mr. Blankinship, have we had any complaints over the past  
168 year from these people?

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170 Mr. Blankinship: Most of the complaints over the past year have been  
171 handled directly through Tidewater. They have been through their community  
172 liaison committee they have been communicating directly with the neighborhood,  
173 so we haven't. If we have received complaints, we have just referred them on.

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175 Mr. Nunnally: So it hasn't been that many?

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177 Mr. Blankinship: Not that have come through us.

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Ms. Darr: We have been directed to call the hot line number, and I am sure they have the numbers of how many people have called.

Ms. Dwyer: Ms. Darr, I am just looking at the summary in this 72 page report that was given to us. One of the statements made is that there were 46 blasts, 24 weeks of instrumentation; data collected during this project represents some of the largest data ever collected and analyzed to date on any project in this history of structural monitoring. It seems to me that that is a pretty powerful statement, that your house and all of the other tests that were done on the soil, air blasting, air blast effect and it seems to be one of the most comprehensive data collected, yet you are saying that is irrelevant, that what matters is that no one came in to see if the cracks were...

Ms. Darr: I think Mr. Petit can address that, because we asked that question, too. If this is the most comprehensive, that is even scarier, because he says we only have 46 blasts monitored to see if there is damage. You know, life changes. The weather changes, summer, winter, everything changes, all the aspects; they tell you are a problem or cause and effect. We questioned how we trust a study of only 46 blasts and Mr. Petit clarified for us that it was probably the longest study for Cathy, but there have been ongoing studies, not just Cathy's. They have gone on longer than the 46 blasts. The house in Michigan or Minnesota, someplace they actually blasted it like 2,000 times.

Mr. Kirkland: Ms. Darr, did you or your husband contact Mr. Revels when you got this, when you received this letter from him saying there was no substance damage in your house?

Ms. Darr: Did we contact him afterwards?

Mr. Kirkland: When you received this letter?

Ms. Darr: No. They came in to inspect to make sure there was no structural damage or problems going on. We didn't see a need to contact him afterwards. Did you want us to?

Mr. Kirkland: You had damage. You said the ceiling was falling.

Ms. Darr: Right.

Mr. Kirkland: And he says it is no...

Ms. Darr: At the point of his inspection there wasn't. This has just occurred since July 10 that we have had this along with the December 7 cracking part of the tile on the wall.

224 Ms. Dwyer: Well, there are other factors that could contribute to  
225 structural damage, among them are temperature changes, humidity changes,  
226 human activity. You mentioned the problem, the potential problem with the truss  
227 structure in the attic of your home. Why do you think that the cracks in the  
228 drywall and the other things you have in your home are solely due to the quarry  
229 and not to these other factors?  
230

231 Ms. Darr: I guess if we know other people who live in this area who  
232 don't have the problem and suffer with the same humidity, temperature changes,  
233 who have little kids that run through their house, they don't have the problem. I  
234 have talked to a lot of people who grew up here who said their parents weren't  
235 doing repair work constantly on their house that they grew up here. They know.  
236 I trust that this is a true statement. I feel like if it wasn't, why would the County  
237 not change their Code to accommodate the humidity and temperature changes  
238 just to keep this from happening, because there obviously are going to be cases  
239 similar. Somebody is not going to see that their drywall ceiling is hanging loose.  
240 You know it has come down. You can step on it and it is dust. So, I mean, I feel  
241 like a comparison to other Henrico County residents who are not suffering these  
242 same things in a 7-year old house. According to the bank, it is supposed to last  
243 50 years, you know. I just don't see that the only other connection area is the  
244 blasting. Everybody here has the same room temperature changes. I try and find  
245 really hard every other reason under the sun that it not be the quarry. I mean,  
246 the people at the quarry are decent human beings. This is their livelihood and I  
247 respect that, and I can live in our house and we can live in it. You know who I  
248 think about, the people who have children, the people who have health issues. It  
249 is not just about my health. It is about the community around it. There are  
250 people on the Hanover side who should totally be allowed to speak to this,  
251 because there are issues on their side of the quarry, but this affects everyone  
252 who lives around the quarry. Everybody has similar or the same problems. You  
253 can go outside of this area and people don't have the amount of cracking and  
254 things to come up. OK, we don't know if Eagle Construction used decent  
255 materials in building our house. That was, we were going to go with that. Now,  
256 we are just going to go through the house and do these repairs, but it is like, how  
257 can they be ranked No. 3 in the State of Virginia if this is what you get? It doesn't  
258 make sense.  
259

260 Mr. Nunnally: All right, Ms. Darr. We thank you for your information.  
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262 Ms. Darr: I have one more request. I am requesting that the Tidewater  
263 signs be moved to Staples Mill Road so that anyone who is buying a house in  
264 that area has an option not to buy a house if they don't want to live by a quarry.  
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266 Mr. Nunnally: Thank you.  
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268 Ms. Darr: Thank you.  
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270 Mr. Wilson: Good morning, Mr. Chairman, and members of the Board.  
271 My name is Jack Wilson and I represent Tidewater Quarries again this morning.  
272 By way of housekeeping, I just wanted to make sure that you were certain, as the  
273 Chairman, mentioned that this is a continuation of a previous show cause and  
274 the materials that were submitted last year are a part of this record for purposes  
275 of a decision. Historically, again, as the Chairman mentioned, we did have a  
276 hearing on this about a year ago, June 16, and we've heard a number of citizens'  
277 complaints, a lot of discussion, and I presented a fair amount of information, that  
278 is of pretty technical nature, showing that the quarry was not the cause of the  
279 damage to the individual homes, that there was no link between blasting at the  
280 quarry and the complaints that the neighbors were raising, so that a use permit  
281 could not easily be revoked. At that time, Tidewater committed to forming and  
282 funding a community liaison committee to work with the neighbors and that is  
283 really what has happened over the course of the past year. This community  
284 liaison committee met at least 17 or 18 times over the past year to discuss the  
285 quarry operations and to try to address our citizens concerns. One of the things  
286 that the community liaison committee did was interview and ultimately hire two  
287 experts to perform structural analysis of homes and to review Tidewater's  
288 blasting operations, and I will provide a very brief overview of their findings  
289 shortly. Also, since we were last here, VDOT submitted its report, I think October  
290 7, of 2005, which was in response to some questions by members of the Board  
291 of Zoning Appeals regarding what impact the blasting was having on I-295 and  
292 some of the damage that had been observed on 295. VDOT's conclusion in that  
293 report again was that the blasting was not the cause of any of the damage to I-  
294 295, and as mentioned this morning, Henrico County's building inspector  
295 investigated several of the nearby homes and concluded that there was no  
296 structural damage to any of those homes.

297  
298 Going back now to the actual study, which is really the heart of the work which  
299 the community liaison committee did. Again, they retained, and this was a  
300 community liaison committee's decision as to who the experts would be and  
301 Tidewater funded the study, but they did not pick the experts. The community  
302 group did. The first study, which obviously you have received and have read  
303 fairly detailed was Dr. Cathy Aimone-Martin's report on the structural analysis,  
304 and, in brief there were three questions that she wanted to research in that work.  
305 The first was "Does the U. S. Bureau of Mines state blasting criteria that we  
306 discussed a year ago, do those criteria apply specifically to and protect the  
307 homes and other structures near Tidewater Quarries from damage caused by the  
308 blasting at the quarry?" I am going to put this for reference. (Referring to chart)  
309 By way of reminder, this again is the chart that we had discussed in some detail  
310 a year or so ago, and again that shows the line, essentially the space line. Below  
311 that limit there is no document to cosmetic cracking to any of your structures and  
312 the signs and such that they can be certain to blast below that line will not cause  
313 any cracking of even the weakest materials in a house. That was the first  
314 question that Dr. Aimone-Martin wanted to explore. Does this genre U. S.  
315 Bureau of Mines base blasting criteria apply specifically to these houses or are

316 there any peculiar characteristics of these houses that would suggest that the  
317 criteria doesn't apply?

318  
319 The second question she studied was whether there was anything unique about  
320 the geology in this particular area, specifically the soil with the neighbors' homes  
321 that would compromise or have any impact on this criteria.  
322

323 And then the third question was specifically, which was the question we really  
324 wanted to get to, are the blasting operations at the Tidewater Quarries causing  
325 damage to nearby homes. Again, as you saw from the study that has been  
326 discussed so far this morning, the study involves placing sensors on the homes,  
327 observing things that are cracked, taking soil samples, monitoring changes  
328 during the blasts at Tidewater, and did an exhaustive survey of two homes in the  
329 area that had exhibited or had some concerns about that damage. There was a  
330 fairly exhaustive study and I am not going to go into the details of all of that,  
331 because it is in the report that you have. But again, there were three answers  
332 and three questions. The first answer to the first question was, based on her  
333 observations and review, construction materials and the dynamic properties of  
334 these citizens' homes are the same that were used to establish these criteria.  
335 So, this standard does apply to these homes. There is nothing unique about the  
336 homes adjacent to Tidewater Quarry that would say that these criteria shouldn't  
337 apply. It does and that was established in her study.  
338

339 The second answer was that the area soils involved in this geography are not  
340 vibration sensitive. They are not marine clay, so there was nothing unique about  
341 the soils in this area that would suggest that these criteria did not apply, and then  
342 finally she reached the conclusion that was in the study that the air blasting  
343 vibration and over pressure were well below the blasting limits. She established  
344 that during the study period all of the blasts were well within the safe limits and  
345 reviewed historical data that we had reviewed with you a year or so ago, she also  
346 concluded that the historical data show all of the blasts were within the safe limits  
347 of the U. S. Bureau of Mines. So, based on her study she concluded that there  
348 was not sufficient blast to cause cosmetic damage. If it was not sufficient blast to  
349 cause cosmetic damage, then it would not be sufficient blast to cause minor  
350 damage, and if it wasn't enough blast effect to cause minor damage, there clearly  
351 would not be enough blasts to cause structural damage, because they have to  
352 obviously progress. You are not going to get structural damage to a house if you  
353 are not going to get some cosmetic damage. You get cosmetic damage before  
354 you get more intense type damages.  
355

356 Those are the conclusions from the first study.  
357

358 The second study was done by Frank Chiapetta, who did a blasting analysis at  
359 Tidewater Quarry's operation. The purpose of his study essentially was to see  
360 what needed to be done to reduce the impact on neighboring residents. Even  
361 though the blasting is being done well within all of the regulatory limits, Tidewater



362 wanted to be and still wants to be a good neighbor and so it wanted to do  
363 whatever it could to reduce the impact on the neighbors, and that is what Frank  
364 Chiapetta did. He conducted several blasts and then observed several of the  
365 blasts and based on that was able to come up with a number of  
366 recommendations. It is a little fuzzy on the screen, but you can still get the point.  
367 Again, you can still see the same blast criteria, the safety line essentially and this  
368 data just down below that reflects all of the blasts that were conducted between  
369 the end of September of last year through earlier this month. We tried to sharpen  
370 that earlier, but for whatever reasons the screen didn't seem to sharpen it. But  
371 again, the most important thing from there, you can see is that all of the data  
372 points are well below the safe blasting criteria. Of particular significance on this  
373 slide is the two dots right here reflect a blast prior to Frank Chiapetta's work, the  
374 one back in January of 2005 and then another one that was done again prior to  
375 the initiation of his work. Those were the two blasts that if you recall a year ago  
376 generated the most concern from the area residents Those are the ones they  
377 said they felt the most impact from. Based on what Frank's recommendations  
378 were and studies they have done over the course of the past year, Tidewater  
379 Quarry has been significantly able to reduce the effect of the blast well below  
380 even those two that were an anomaly using a year ago, but now we are keeping  
381 all of those blasts well below the safety level.

382  
383 Notwithstanding the fact that Tidewater is complying with all of the regulatory  
384 requirements, Frank Chiapetta did come up with a number of recommended  
385 changes to Tidewater's blasting operation, and, for example, he suggested more  
386 detailed pre-planning for the shot. The more pre-planning that would be done,  
387 the better it would be for the shot. Greater monitoring of the weather conditions  
388 in advance, because as we discussed a year ago, the weather has an impact on  
389 the effects of the blast. Frank Chiapetta recommended that Tidewater purchase a  
390 new laser serving system to better and more accurately layout their blasts. He  
391 also recommended that the explosives there are a number of holes that are  
392 drilled closet to create the blasting in the rock. He recommended that those  
393 explosives be reduced. More drill control, different explosives for a wet over to  
394 the dry hole and rising sinker are pretty technical. More training, more explosive  
395 quality control check, better shot analysis after a blast to see what went well,  
396 what perhaps could be improved on, all of those were done. Those were a  
397 number of the recommended things that Mr. Chiapetta made and Tidewater has  
398 accepted all of those. They are in the process of purchasing the laser equipment,  
399 so I understand that about 90% of the recommended changes have already  
400 taken place, and 100% of them will be, as soon as the equipment comes in. So,  
401 those are all being done. Again, they further lower the blast. All of the blasts are  
402 well within the regulatory criteria and well within the State standards, but again,  
403 for minimizing the impact on the neighbors, Tidewater has gone beyond the  
404 regulatory standard and done what it can to effectively reduce those and more.  
405

406 Ms. Dwyer: I have a question about that. Do all of these changes affect  
407 the actual impact of the blast on structures or do they merely affect the way a  
408 human would perceive those blasts, or both?

409  
410 Mr. Wilson: Well, again, the data shows that there is no impact on the  
411 structures themselves. Most of the effects are felt with the human body, as we  
412 talked about again a year ago. The human body is very sensitive to the over  
413 pressure and the vibration and so this, reducing the over pressure and the  
414 vibrations would affect the impact you would feel if you were in your home, but,  
415 again, there isn't any impact on the home because all of the blasts are below the  
416 safe blasting criteria.

417  
418 Ms. Dwyer: The problem we solved before this one and we talked about  
419 his performance. Can I ask you that again, please.

420  
421 Ms. Harris: You talked here about cracking the weakest material. It  
422 seems that I recall several residents indicated they had a diagonal crack in their  
423 window, and I would think that is the weakest material structurally speaking. Will  
424 you address that?

425  
426 Mr. Wilson: Actually, the glass would be stronger than the gypsum  
427 board. The sheetrock would be the first item to crack if there was actually going  
428 to be cosmetic damage, you would get the cracks in the sheetrock, if I am  
429 correct, before you would ever see it spread to the glass.

430  
431 Ms. Harris: But we heard testimony from several of the residents that  
432 they had in common a diagonal crack in their window. Now, maybe that is  
433 addressed in one of these reports, but I have been unable to find it.

434  
435 Mr. Wilson: And I think the analysis would be that a couple of them may  
436 have identified cracks in windows, but they were unrelated to blasting at the  
437 quarry. Again, because you would not expect to see a crack in windows without  
438 having first observed a significant crack in the sheetrock and other things in that  
439 same house, in the absence of that, you are not going to get the cracking of the  
440 windows related to the blasting activity. Again, you are going up the scale. You  
441 are going to first see cracking in the sheetrock of the house well before you see  
442 cracking of windows and well before you see cracking of glass and foundations in  
443 brick, etc. So a crack in a foundation, in the absence of damage to the  
444 sheetrock, would suggest that crack is unrelated to the blasting at the quarry. It  
445 is caused by something else.

446  
447 Ms. Harris: Again, residents here who experienced cracks in the  
448 windows, I would like to see a show of hands because I think there is something  
449 in common here that they share. You say it is not the weakest material, but this  
450 is going on and I'd like to see a show of hands of people who live in different

451 households on different streets, and have experienced diagonal cracking in their  
452 windows.

453  
454 Mr. Nunnally: Would you raise your hand?  
455

456 Mr. Kirkland: Mr. Wilson, how many complaints have you all addressed  
457 since we met last June?  
458

459 Mr. Wilson: The quarry has set up a hot line and received a number of  
460 calls when a blast occurred, etc. I don't know if they would all be classified as  
461 complaints. A lot of them may have been inquires, but it is probably in the  
462 neighborhood of 30 calls to that hot line over the course of the year, several of  
463 them from the same person, but just inquires, "Was there a blast today." "When  
464 are you going to blast again?" and those types of questions.  
465

466 Mr. Wright: When there was a structural complaint, did you all respond  
467 and go out and fix that?  
468

469 Mr. Wilson: My understanding is every complaint was investigated during  
470 the course of the study. They were addressed and during the course of the time,  
471 the experts were doing their work, obviously to the extent that they felt needed to  
472 be addressed and they were doing their work, and generally that was done as  
473 well.  
474

475 Mr. Kirkland: Were these windows replaced? Mr. Wilson, couldn't you get  
476 in touch with those people, and if they did replace those windows that you could  
477 reimburse them?  
478

479 Mr. Wilson: Again, if it was established by some reason that the quarry  
480 was responsible for the cracks in the window, Tidewater would reimburse them,  
481 but all of the scientific data shows that the cracks in those windows were not  
482 caused by the blasting in Tidewater Quarry.  
483

484 Mr. Nunnally: Well, according to the hands that were raised, I don't think it  
485 is that many, so I don't think it would break them.  
486

487 Mr. Wilson: And I suspect that obviously if they had done anything  
488 wrong, Tidewater will clearly meet with them.  
489

490 Mr. Nunnally: Thank you. I think the Board would like to hear from the  
491 citizens on the Committee. Is someone here to speak for them? Is the  
492 Committee here?  
493

494 Mr. Blankinship: A chairperson, or someone who could speak on behalf of the  
495 Commission.  
496

497 Mr. Wilson: My understanding is that the community liaison committee  
498 specifically met and voted or made a decision among themselves that they would  
499 not speak as a committee, because obviously Ms. Darr was on the committee.  
500 She had some concerns. The other members of the committee who believed  
501 what Tidewater had done was more than adequate and satisfied their concerns,  
502 but as an entity itself, the liaison committee decided they would not speak as a  
503 committee today.

504  
505 Ms. Dwyer: I wonder if just for the record you could have someone from  
506 the committee validate that? Did the committee in fact vote and decide not to  
507 speak today as a committee, and if you are going to speak you need to come  
508 down to the podium and please identify yourself and please only speak if you  
509 have been sworn.

510  
511 Mr. Dunavin: My name is Fred Dunavin. I live at 5536 Wintercreek and  
512 am a member of the committee, along with my wife. My last name is spelled  
513 Dunavin. It is correct. I think Ms. Darr said that she would not speak for the  
514 committee. I don't either. I think we had like 18 members and it was a free  
515 ranging group. The only common denominator was that we felt that there was  
516 something going on in our homes that was related to the quarry. That was No.1,  
517 and No. 2, the fact that the blasts were taking place unannounced created some  
518 emotional situations in homes with children and with pets, and for those of us  
519 who like to have time to ourselves. A blast could jar you out of whatever you  
520 were doing for a moment or two, so unless you could experience what goes on in  
521 our homes, you wouldn't fully understand what the blasting does.

522  
523 Mr. Wilson: So you all voted as a committee not to speak as a  
524 committee?

525  
526 Mr. Dunavin: That was correct. We have never had a chairperson or  
527 anything like that and we've made it a point to not ever speak, as there was no  
528 spokesperson for the committee.

529  
530 Mr. Nunnally: Thank you, sir. All right. That concludes the case.

531  
532 Ms. Dwyer: Mr. Chairman, I just have one question to ask the audience.  
533 We have this report that is so unequivocal in its statements that these blasts are  
534 so – create such a minimal effect on the structures that they could not have  
535 possibly have created any damage, including minimal cosmetic damage. This  
536 wording on page 2, for example, minor and major levels of structure damage are  
537 similarly not possible at these low vibration levels. On page 3, these low  
538 amplifications cannot possibly contribute to the situations with wall cracking. In  
539 all cases, normal everyday human activities produced wall tensile strain and  
540 crack displacements that were greater than those produced by the quarry  
541 blasting. These statements are throughout this report, and the report seems  
542 clear and convincing and absolutely and unequivocal that it is not possible for the

543 blasting and the impact measured from that blasting to have created these, and I  
544 am wondering is there anyone who is claiming that the damage has been caused  
545 by the blasting? Do you have any scientific or objective evidence, anything other  
546 than an opinion, which will support your point of view that the quarry has violated  
547 its conditions?

548  
549 Ma'am. You can't speak from the audience. You all need to come to the podium  
550 if you have a statement to make. And again, I am looking for something  
551 objective, not opinions.

552  
553 Ms. I go back to the z curve with the dots on it. You will see that  
554 that is one of the higher or highest blasts recorded on their chart that you see,  
555 and nobody is arguing that it brought the mirror down, yet they are telling you in  
556 these reports that it is not doing anything to our homes.

557  
558 Mr. Blankinship: No one disputes that the mirror fell. Our question is did the  
559 blasting at the quarry have any relationship to the mirror?

560  
561 Ms. Well, considering that the blast was occurring and then the  
562 mirror came down, I would see that as a direct correlation. Because, obviously, it  
563 came down. The blast was of longer duration than normal, so there is an effect,  
564 and that dot up there. I would like to say, I would like to see you guys lower their  
565 limits to at least that, because we know already that it did affect the house.

566  
567 Ms. Dwyer: What date was that?

568  
569 Ms. January 25 and Tidewater has taken steps to alleviate that  
570 kind of blast. Our concern is that that be made a part of the permit, that it stays  
571 below that level. So, even if Tidewater no longer owns the quarry and somebody  
572 else comes in, then the community doesn't have to come back. At least if you  
573 put some kind of restriction to protect us in that respect, that would be a great  
574 benefit to the community. Thank you.

575  
576 Mr. Nunnally: Thank you. Come on down to the front so you can speak.

577  
578 Ms. Woolwine: My name is Annette Woolwine. I live at 5417 Jones Mill  
579 Drive. The difference is that when there is a blast, it affects my entire house,  
580 whereas when my garage door opens, it only affects the room above the garage.  
581 When my children, who are not supposed to run through the house, do run  
582 through the house, it affects that area where they are in. It does not affect all of  
583 the walls in the house. There are outside walls and inside walls. When there is a  
584 blast, everything in my kitchen cabinet shakes, the glasses, the plates,  
585 everything. The inside wall shakes. The house, I was in the hall one day, it  
586 actually felt like when an elevator goes up and comes back down. Luckily, I put  
587 my hands on the wall or I would have slipped. You cannot stay this does not  
588 affect your house. Now, yes, things have fallen off the bookshelf, mirrors have

589 moved, but from a blast, not when the kids are there. There is a difference. We  
590 had movers come in for furniture and they dropped a piece of furniture right  
591 above the family room. Nothing moved off a bookshelf, but a blast and things do  
592 move.

593  
594 Mr. Nunnally: Thank you. All right, sir. We have gone way over on these  
595 problems here now, so you will be the last one, sir.

596  
597 Mr. Hosten: My name is Chuck Hosten. I live in Hartley Plantation. Mr.  
598 Chairman, this data I would like to (unintelligible) and it should be included, page  
599 7 of the report. Page 7 of the report (unintelligible) and quantity used, and here  
600 we look and the currency is 535 and sound (unintelligible). When you are talking  
601 around 16,000 pounds of explosives on 7,000 square feet.

602  
603 Ms. Dwyer: Where are you on this page?

604  
605 Mr. Hosten: Page 7. Look at the bottom number, 534 pounds, and it is a  
606 29 foot deep hole, and this is 16,000 pounds over 7,000 square feet of  
607 explosives. If you go double that, you go 60 feet, you have 33,000 pounds and  
608 (unintelligible) manager, does anyone check the default, and he said no. They  
609 have no way of controlling (unintelligible) going down, and this was a concern.  
610 (Unintelligible) very good report. If you go through all of that, doing the  
611 recommendation, I think the County and Commission should insist Tidewater  
612 Quarries respect and rely on these recommendations.

613  
614 Mr. Nunnally: Yes, but he says on page 3 that none of these blasts from  
615 2003 to 2006, including the blast during the test program, had vibrations or air  
616 blast levels high enough to have caused damage to the home. That is his  
617 conclusion. You can look at all of that, but that is his conclusion. None of the  
618 blasting exceeded USDM .75 inches per second.

619  
620 Mr. Hosten: I didn't go into the details.

621  
622 Mr. Nunnally: I reviewed this report very, very carefully. That is the bottom  
623 line.

624  
625 Ms. Dwyer: My understanding is that Tidewater has accepted all of his  
626 suggestions with the representation...

627  
628 Mr. Hosten: Yes, Mr. Chairman, and if you do what I am suggesting is  
629 that we and the County that we should insist the Tidewater Quarries in the future  
630 should abide by these rules and recommendations rather than the USDM  
631 recommendation, because it seems the USDM recommendations are much  
632 lenient .

633  
634 Mr. Nunnally: I think they will. They said they will.

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Mr. Hosten: All right. Thank you.

Mr. Nunnally: That concludes the case.

**DECISION:**

Mr. Nunnally: The next case is UP-9-2004, Tidewater Quarries.

Mr. Wright: Mr. Chairman, I would like to make a statement and make a motion. The Board at its last meeting in July, 2005, deferred the case and requested that three reports would be submitted, from which the Board would base its decision, or would be considered for a decision. One was the VDOT report and that report indicated that there are no, that the quarry blasts are not at sufficient levels to cause any direct damage to the concrete paving structures, and the paving is not being impacted by the settlement, and further, there is no evidence that indicates the increased traffic is having is having a role in the damage to nearby residences. That took care of the VDOT report.

The second report that I had was dated May 1, 2006, by Mr. Frank Chiapetta, Explosive Application Engineer from Blasting Analysis International, and to sum up this report from my reading of the report says that none of the blasts between 2003 and 2006, including blasts during the test program, had vibration or air blast levels high enough to have caused damage to the homes. None of the blasts exceeded the United States Bureau of Mines damage threshold, 0.75 inches per second, for drywall it is the nearest inhabited structure. However, there were a few incidental shots which were perceived by some home owners as very loud and annoying or intolerable. The investigating team has recommended a number of field decisions, such as monitoring and blast design changes to minimize the blasting impact on the community. Tidewater Quarries management has agreed to take aggressive action to achieve this goal. All future blasts will incorporate design changes to achieve even lower levels than those required. The targeted comfort levels are expected to be between 1 and 2 inches of magnitude less than the minimum vibration levels required for structural damage in nearby homes. This approach is expected to further reduce the community nuisance factors. Tidewater Quarry Management and its explosive supplier have taken aggressive steps to address all of these issues. At the writing of this report, most of the problems were corrected and some remaining issues are still being worked upon. That was the summary of this blasting expert, Mr. Frank Chiapetta.

Then, the third report was on the structural response and the accumulation of blasting at Tidewater Quarries by Dr. Catherine T. Martin and Victor Rosenham. This report was dated July 5, 2006. A summary of this report is that 46 blasts were conducted and monitored between September 21, 2005 and April 6, 2006. The data collected during this project represents one of the largest data sets ever

681 collected and analyzed to date on any project in the history of structure  
682 monitoring. As such, the data is being complete and representative of the range  
683 of structure responses anticipated for the Darr and Murphy residences. The  
684 velocity gauges were mounted at the Darr residence to the south of the quarry  
685 and at the Murphy residence to the north of the quarry to measure both whole  
686 structure and mid-wall strain from blasting and human activity. All data recorded  
687 at these homes during the tests fell well within the U. S. Bureau of Mines safe  
688 blasting criteria and far below levels that could cause structural or cosmetic  
689 cracking in structures. Minor and major levels of structure damage are similarly  
690 not possible at these low vibration levels. The existing defects in such structures  
691 cannot be related to quarry blasting.

692  
693 From the findings stated on page 4 for this report based on structure and practice  
694 response measurement, the blasting during human activities, and variations in  
695 climate, it concluded that blasting is not the cause of cracking in the Darr and  
696 Murphy structures. Age and normal use of structures along with influence of  
697 weather and human activities are the chief causes of structural materials  
698 cracking. Those causes are normal and expected over the life of a residential  
699 structure. Thus, nearby residents can be assured that blasting from the  
700 Tidewater Quarry is within U. S. Bureau of Mines' recommended guidelines and  
701 does not contribute to any cosmetic or structural damage.

702  
703 So, based on these findings and since we have no scientific evidence that would  
704 rebut them, in my opinion, I could find no evidence that Tidewater Quarries  
705 caused the damage to the homes in question nor is it creating an intolerable  
706 situation in nearby communities. Therefore, I move that we approve the use  
707 permit for Tidewater Quarries.

708  
709 Ms. Dwyer: Mr. Wright, I will second that. Is the use permit before us for  
710 approval?

711  
712 Mr. Wright: I guess my motion would be that we would not terminate the  
713 permit. We found no violations. We found no violations to terminate the permit.  
714 It is already in effect. It was before us on consideration that we would revoke it.  
715 My motion is that we not revoke the permit at this time and that it continues as it  
716 exists in its present state.

717  
718 Ms. Dwyer: I would second that motion.

719  
720 Mr. Nunnally: We have a motion from Mr. Wright and a second by Ms.  
721 Dwyer that we not revoke the permit. All in favor say aye.

722  
723 Ms. Harris: I have a question.

724  
725 Mr. Nunnally: A question?  
726



727 Mr. Nunnally: Question by Ms. Harris.  
 728  
 729 Ms. Harris: The expiration of Tidewater Quarries permit is...  
 730  
 731 Mr. Blankinship: 2009.  
 732  
 733 Ms. Harris: Is this a temporary use permit that cannot be renewed?  
 734  
 735 Mr. Blankinship: No, ma'am. This is a different permit, a different category.  
 736  
 737 Ms. Harris: That was my question. Thanks.  
 738  
 739 Mr. Nunnally: OK, all in favor say aye. All opposed say no. The case is  
 740 approved.

741  
 742 After an advertised public hearing and on a motion by Mr. Wright and a second  
 743 by Ms. Dwyer, the Board concluded its hearing on the action to show cause why  
 744 the above-referenced use permit should not be revoked. Based on the evidence  
 745 presented, **the Board determined that Tidewater Quarries has not violated**  
 746 **the conditions of its use permit (UP-9-2004) and there is no basis to revoke**  
 747 **the permit** granted under Section 25-52(d) and 24-103 to extract materials from  
 748 the earth at 11400 Staples Mill Road (Parcels 756-773-3302 and 759-773-4746),  
 749 zoned A-1, Agricultural District and M-2C, General Industrial District (Conditional)  
 750 (Three Chopt).

751  
 752 Affirmative: Dwyer, Kirkland, Nunnally, Wright 4  
 753 Negative: 0  
 754 Abstained Harris 1  
 755  
 756

**A-28-2006 Eugene I. Seargent, Jr.,** requests a variance from Section 24-9 to build a one-family dwelling at 1115 Greenview Drive (Parcel 801-707-1459) zoned R-3, One-Family Residence District (Varina). The public street frontage requirement is not met. The applicant has 0 feet public street frontage, where the Code requires 50 feet public street frontage. The applicant requests a variance of 50 feet public street frontage.

757  
 758 Mr. Blankinship: Mr. Chairman, there was supposed to be an additional  
 759 condition recommended by the staff, and as Mr. Seargent comes to the podium, I  
 760 want to ask you to add that and ask him if he would agree to that condition, which  
 761 is Condition No. 7 that the owner of the property will provide a buffer on the north  
 762 property line consistent with the County's transitional buffer 25.  
 763

764 Mr. Nunnally: Do you agree with that, Mr. Seargent?  
765  
766 Mr. Seargent: I am Eugene I. Seargent, Jr.  
767  
768 Mr. Nunnally: Did you swear everybody in here? Is there anyone else here  
769 interested in this case? If so, will you please stand and be sworn in. OK.  
770  
771 Mr. Blankinship: Raise your right hand, please. Do you swear the testimony  
772 you are about to give is the truth, the whole truth, and nothing but the truth so  
773 help you God?  
774  
775 Mr. Seargent: I do.  
776  
777 Mr. Nunnally: Thank you. Please state your name for the record.  
778  
779 Mr. Seargent: I am Eugene I. Seargent, Jr.; last name S E A R G E N T. I  
780 am in favor of this variance. I am not familiar with the specifics of the buffer that  
781 you are speaking of. I have seen many different buffers, but I don't have a  
782 definitive understanding of which buffer is by this definition, which you just  
783 described.  
784  
785 Ms. Dwyer: While he is looking that up...  
786  
787 Mr. Seargent: Since our last meeting, I have made several attempts to  
788 contact the other property owners to the west of this site. Both of those parties  
789 have been previously communicating with another party and both made it very,  
790 very clear that they had no interest in allowing any easement whatsoever. I am  
791 confident we meet all of the criteria necessary for this parcel to have the  
792 easement granted, and while I am sensitive to the concerns of historical  
793 preservation, I respectfully request that the panel grant my variance and upon  
794 review of the specifics, in terms of trees, although I don't know what value of  
795 these trees may be required, I don't know that I can wholeheartedly agree with  
796 that condition until I have some analysis as to what it may cost, but I would tend  
797 to believe, yes, I am willing to do that. I am not going to bring in 50 foot  
798 Magnolias, but I will come close.  
799  
800 Mr. Nunnally: OK. Any other questions for Mr. Seargent?  
801  
802 Ms. Dwyer: Mr. Seargent, this property is presently being used for  
803 agriculture. Is that correct?  
804  
805 Mr. Seargent: It is presently, to my knowledge, nothing has been done with  
806 it in a while in terms of potential farming or agricultural products. It is simply an  
807 A-1 zoned parcel sitting behind another residential parcel..  
808  
809 Ms. Dwyer: So it has never been used for agriculture?

810  
811 Mr. Seargent: I would imagine over time it is bound to have been. It is just  
812 an acre and a half of field which was perfect for any crop.  
813  
814 Ms. Dwyer: From my aerial photograph it looks as if it has been plowed  
815 as part of some of the surrounding property, and I believe there was testimony.  
816  
817 Mr. Seargent: The last couple of times I have been out there, I have not  
818 noticed any activity presently, and that could be predicated upon the exchange of  
819 the properties and other issues.  
820  
821 Ms. Dwyer: But you are the contact person to go see if they may not be  
822 familiar with it...  
823  
824 Mr. Blankinship: Mr. Seargent, what zoning did you just say the property  
825 was?  
826  
827 Mr. Seargent: R-3. Excuse me. When I said A-1, that was my mind saying  
828 agricultural.  
829  
830 Mr. Blankinship: You kind of threw me off there.  
831  
832 Ms. Harris: Which area is in the process of subdivision approval?  
833  
834 Mr. Seargent: I think they had a hearing of some sort yesterday. The  
835 property is to the west. All of that treed land and then you see the little clearing  
836 up there by Greenview on the corner of New Osborne and Greenview. I did  
837 communicate with the developer there per someone here's instruction or request,  
838 and he economically could not provide me any access to this particular site and  
839 had no interest in doing so. Wally Rowe owns that little 20 foot strip coming off of  
840 Osborne to the south of this particular property, and he was very adamant, as  
841 anyone who knows Wally, when he is adamant, he is not going to release any  
842 easements whatsoever to anyone.  
843  
844 Mr. Nunnally: Any other questions of Mr. Seargent? Thank you, sir. Is  
845 there any opposition?  
846  
847 Mr. Seargent: I thought another gentleman was going to be here.  
848  
849 Mr. Nunnally: We have heard all of the evidence on this case as it is. We  
850 just wanted to hear a report.  
851  
852 Mr. Seargent: OK. He is the agent representing the owner, who has not  
853 had a chance to speak.  
854

855 Ms. Dwyer: We did want to hear anything that happened in the  
856 meantime, if there has been anything.

857  
858 Mr. Wright: We don't want to hear the same thing over and over.  
859

860 Mr. Brosseau: I will be brief. My name is David Brosseau and the debate  
861 seems to be in order for a 50 foot easement that, per my seller, is already  
862 recorded and deeded. That would convey with the property. That is why my  
863 seller doesn't understand why the variance seems to be a pick-up to be granted  
864 to Mr. Seargent.

865  
866 Ms. Dwyer: Well, a variance is not automatic.  
867

868 Mr. Brosseau: I understand, but it says here in the flyer that because of the  
869 lack of road frontage that the requirement is 50 feet. There is a 50 foot easement  
870 that is already deeded and recorded with the property.

871  
872 Ms. Dwyer: Is that the 50 feet we are talking about?  
873

874 Mr. Blankinship: The requirement is that it front on a public street, which it  
875 does not.  
876

877 Mr. Nunnally: Thank you, sir.  
878

879 Ms. Goodwin: Ladies and gentlemen, my name is Ashley Goodwin. I am  
880 attempting to purchase the property here, if you look at the map, and it is north of  
881 the property that Mr. Seargent is requesting. He actually wants access in this  
882 area of the property (unintelligible). During the ensuing time since the last  
883 meeting, as per Mr. Seargent's request, I have made him two written offers of the  
884 amount of money that he asked me for to purchase that property. This is based  
885 on the closing of my home in the western part of the County, which will occur on  
886 August 31. I have had both Mr. Broaddus, my attorney who is present here and  
887 presented the case, and my closing attorney, David Bernhardt, have been in  
888 contact with Mr. Seargent, and I believe my realtor, on the purchase of the house  
889 in the front has called Mr. Seargent in response to his request for information on  
890 the closing of the property that I am selling in the West End. At the time, my  
891 property in the West End closes on August 31, I will proceed on the house here  
892 and at that time, immediately upon the closing of my house, I am prepared to pay  
893 Mr. Seargent the amount he asked me for, for this parcel with the yellow dotted  
894 line around it. Are there any questions?  
895

896 Ms. Dwyer: Has Mr. Seargent accepted your offer, is that what you are  
897 saying?  
898

899 Ms. Goodwin: No, ma'am. Heretofore, he has not accepted my offer.  
900 Actually, the contractor faxed him twice, one with an agreement time of last

901 Friday, and one with an agreement time of this week at 4:30 p.m. At that time,  
902 he told Mr. Bernhardt that he was waiting to hear from the gentleman from whom  
903 he was purchasing the lot to find out whether he could transfer the contract and it  
904 was the suggestion of Mr. Seargent's attorney that he transfer the contract rather  
905 than closing on the lot and then (unintelligible) the lot up.

906  
907 Ms. Dwyer: Does it look like this will be consummated or not?

908  
909 Ms. Goodwin: I'd certainly like it to be. I have done my best to  
910 accommodate him and I hope that we can work positively on this.

911  
912 Mr. Nunnally: We will ask Mr. Seargent now. Anyone else? Mr. Seargent.

913  
914 Mr. Seargent: Thank you. I did receive an offer from Mr. Broaddus an offer  
915 to purchase the property with a contractual offer that was somewhat agreeable,  
916 but I do not own the property and it would have had to been an assign to the  
917 contract. Long story short, in the initial discussions with Ms. Goodwin, and I  
918 know she is being very passionate, she expressed concern about the price that I  
919 was discussing because of the \$40,000 that she took for her present home to  
920 make the repairs and requirements of this existing home in order to house her 94  
921 year old father, that she simply did not have the money. It would put her down to  
922 next to nothing to make it a livable environment. I did speak to her second  
923 attorney, Mr. Barnhart, with \_\_\_\_\_, Gordon and Brown, and asked him if you are  
924 going to do this, I need some evidence, not only as a real estate broker but as a  
925 homeowner I would like some evidence that this is a viable opportunity, and I still  
926 did not have the option or the opportunity to extend this contract any further than  
927 my study period, which is the 30<sup>th</sup>. I made it very clear to her attorney that if I  
928 had evidence that this was a viable opportunity, that she had the money, and it  
929 could be verified with me, verification of the buyer of her Dad's property, or her  
930 property, who her Dad has given to her, that I would still have the opportunity to  
931 discuss it with her, but I did not hear anymore back after talking to her attorney  
932 regarding some evidence, as any mortgage banker might, as to whether this is  
933 viable, given her previous statement.

934  
935 Mr. Nunnally: You will have to get together with the attorneys on that. We  
936 don't have anything to do with it.

937  
938 Mr. Seargent: I tried a couple of days ago. I just want to step forward and  
939 granted, in fact, if we do sell to her, she can do whatever she wants with the  
940 variance, but I propose that I have an answer on my variance.

941  
942 Mr. Nunnally: All right. Thank you, sir. That completes the case.

943  
944 **DECISION:**

945  
946 Mr. Nunnally: Next case is A-28-2006, Eugene I. Seargent, Jr.

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Ms. Dwyer: I move that this variance be denied and I will be glad to state my reasons if you have a second. I will state my reasons since I made the motion.

It seems to me the threshold question that we need to ask under Cochran, the question is, is whether there is a reasonable beneficial use of the property at this time and I think that there is. The property is presently being used for agricultural purposes and has been used for that for a number of years according to the hearing that we had last month. Even if that were not the case, I think that the request for a variance fails for other reasons. First, this is a request that is of a general and recurring nature. It is not something that is unique, and as the Supreme Court has said, the piecemeal granting of variances may ultimately nullify a zoning regulation, in this case the regulation that 50 feet of public street frontage is required for a buildable lot. I think this request is also not in harmony with the zoning ordinance, which not only requires the 50 feet, but also requires due regard for historic property. In the purpose of the zoning ordinance it states that the ordinance is designed to, or should be applied so that it protects against the destruction of or encroachment upon historic areas. I think that the hardship as argued by the applicant in last month's hearing was self-inflicted, that the current owner of the property engaged in these transactions that created a lot that does not have the proper road frontage and has a self-inflicted hardship. I think that this is not a case that warrants the variance.

Mr. Nunnally: All right. We have a motion by Ms. Dwyer to deny. Do I have a second? Any more discussion? Do we have another motion?

Mr. Wright: I move we approve it.

Mr. Kirkland: Second.

Mr. Wright: The basis for my motion is that this property is zoned R-3, Residential, and the highest and best use of this property would be for residential uses, and, therefore, the need for the variance is there, and it will not be able to be used for the highest and best use without the variance. A subdivision is in the process of being approved right next door to this historic site, which will impact more on the site than the house that has been proposed, which would be basically, from my understanding, in keeping with the nature of the property there. That is the basis for my motion.

Ms. Dwyer: If I may just respond to one statement of Mr. Wright's. I don't think the Supreme Court's standard is that a variance is required so that the property can be used at its highest and best use. I think the standard is "Do they have a reasonable use of it now?"

Mr. Wright: That is the same idea.

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Mr. Kirkland: It is R-3 property which is residential, it is zoned residential, and it can't be used for residential purposes unless he has a variance. For the highest and best use, that may have been a mis-statement of the word, but a reasonable use of the property.

Ms. Harris: I have a question. Do we want to add the condition No. 7 that Mr. Blankinship mentioned about the owner of the property shall provide a bus...

Mr. Wright: Yes. I would like to add that condition.

Mr. Nunnally: Motion by Mr. Wright and second by Mr. Kirkland to be approved. Everybody in favor say aye. Opposed say no. The motion is approved.

After an advertised public hearing and on a motion by Mr. Wright and a second by Mr. Kirkland, the Board **granted** application **A-28-2006** a request for a variance from Section 24-9 to build a one-family dwelling at 1115 Greenview Drive (Parcel 801-707-1459) zoned R-3, One-Family Residence District (Varina). The Board granted the variance subject to the following conditions:

1. This variance applies only to the public street frontage requirement. All other applicable regulations of the County Code shall remain in force.
2. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
3. At the time of building permit application, the applicant shall submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.
4. The applicant shall present proof with the building permit application that a legal access to the property has been obtained.
5. The owners of the property, and their heirs or assigns, shall accept responsibility for maintaining access to the property until such a time as the access is improved to County standards and accepted into the County road system for maintenance.
6. The applicant shall diligently pursue attempts to acquire access to the property from the west. If he is successful, the dwelling authorized by this variance shall not be served by the easement crossing 1107 Greenview Drive.

1039  
1040 7. [ADDED] The applicant shall provide a buffer along the north property line  
1041 consistent with the requirements for a transitional buffer 25.  
1042

1043  
1044 Affirmative: Harris, Kirkland, Nunnally, Wright 4  
1045 Negative: Dwyer 1  
1046 Abstained 0  
1047  
1048

**UP-29-2006** **Living Stones Church** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to set up a revival tent at 1921 Darbytown Road (Fussell Heights) (Parcels 808-705-4368 and 6637), zoned A-1, Agricultural District, and R-3, One-Family Residence District (Varina).

1049  
1050 Ms. Harris: Is this the first tent revival you have had at Living Stones  
1051 Church?  
1052

1053 Mr. Bradley: This is the first revival at Living Stone, but it is not the first  
1054 tent revival that we have had.  
1055

1056 Mr. Nunnally: What denomination, sir?  
1057

1058 Mr. Bradley: We are non-denominational. We just believe in Jesus  
1059 Christ. That is it.  
1060

1061 Mr. Wright: Have you read all of the conditions with this case?  
1062

1063 Mr. Bradley: Yes, sir. The conditions were read to me, and that is that 65  
1064 decibels noise level, no direct light shining into windows of any of the surrounding  
1065 residences.  
1066

1067 Ms. Dwyer: Some times a revival can be going on for such a long time,  
1068 and you know, August is hot. How many people are you expecting to come?  
1069

1070 Mr. Bradley: We don't know. We are going to plan for 100, but the tent  
1071 will be open. There will be no sides on it, so it is going to be evening as well, but  
1072 there are also daytime activities. We will be giving hot dogs to the kids during the  
1073 day and just a good fun day for the church. The church is open.  
1074

1075 Ms. Dwyer: Do you have restroom facilities there that are enough to  
1076 handle that many people?  
1077

1078 Mr. Bradley: Yes.  
1079



1080 Ms. Dwyer: And what about water.  
1081  
1082 Mr. Bradley: Water will be there. Two water coolers are in the church and  
1083 we can bring another water cooler. We will have power by a generator and  
1084 power from the church.  
1085  
1086 Mr. Kirkland: I remember you having the church there.  
1087  
1088 Mr. Bradley: Living Stone?  
1089  
1090 Mr. Kirkland: Yes, sir.  
1091  
1092 Mr. Bradley: That I don't know, sir, because I am not a member of Living  
1093 Stone, and I am not, and those are Bible teachers. Some of them run around  
1094 with snake oil and all that. I am not a revival preacher. I have transferred for a  
1095 number of years in Hanover and Henrico and the City of Richmond, and now I  
1096 am into tent revivals. I go all over. I want to go all over the country doing tent  
1097 revivals, but I don't carry any snake oil, and I don't do any of those types of  
1098 things. I just want to reach young people and have a young person's day, and  
1099 elderly, helping them do things, and that is what we want to do.  
1100  
1101 Ms. Dwyer: Mr. Blankinship, I notice on some of the other cases we have  
1102 had we required permits from, electrical permits and permits from the Building  
1103 Inspectors and Health Department if they are going to be serving food, and they  
1104 are going to have a generator, electrical service to the tent, and can you include  
1105 a condition so that you noted that? I am particularly concerned about the  
1106 electrical connection.  
1107  
1108 Mr. Nunnally: That is No. 5.  
1109  
1110 Ms. Dwyer: I know in Lady of Lourdes you specified an electrical permit.  
1111  
1112 Mr. Blankinship: I think we had more detailed information at that time about  
1113 the meeting and electricity.  
1114  
1115 Ms. Dwyer: Now that we know we need electricity, I think you should  
1116 specify electrical as well.  
1117  
1118 Mr. Nunnally: OK. Anyone else interested in this case? Any other  
1119 questions from the Board or staff? Hearing none that concludes the case.  
1120  
1121 **DECISION:**  
1122  
1123 Mr. Nunnally: UP-29-2006, Living Stones Church.  
1124

1125 Ms. Harris: I move that we approve. We know that the date is changed  
1126 to August 18 and August 19 instead of July 28 and July 29.

1127  
1128 Mr. Nunnally: That needs to be reflected in the conditions.  
1129

1130 Ms. Dwyer: And also in condition No. 2 that July 30 date needs to be  
1131 changed probably to August 21 to allow them to clean up on Monday.  
1132

1133 Mr. Nunnally: Is there a second to the motion?  
1134

1135 Mr. Kirkland: Second.  
1136

1137 Mr. Nunnally: Motion by Ms. Harris to approve and a second by Mr.  
1138 Kirkland. All in favor say aye. All opposed say no. This is with the conditions,  
1139 right?  
1140

1141 Mr. Blankinship: Yes, sir.  
1142

1143 Board: Yes, sir.  
1144

1145 After an advertised public hearing and on a motion by Ms. Harris and a second  
1146 by Mr. Kirkland, the Board **granted** application **UP-29-2006** a request for a  
1147 temporary conditional use permit pursuant to Section 24-116(c)(1) to set up a  
1148 revival tent at 1921 Darbytown Road (Fussell Heights) (Parcels 808-705-4368  
1149 and 6637), zoned A-1, Agricultural District, and R-3, One-Family Residence  
1150 District (Varina). The Board granted the temporary conditional use permit subject  
1151 to the following conditions:  
1152

1153 1. [AMENDED] This approval is for a 30' x 50' tent as part of a revival to be  
1154 held from 12 Noon to 11 PM on Friday, August 18, 2006 and from 12 Noon to 11  
1155 PM on Saturday, August 19, 2006. The tent shall be erected at the location  
1156 shown on the plan filed with the application.  
1157

1158 2. [AMENDED] The tent shall be removed from the site on or before August  
1159 21,2006, at which time this permit shall expire..  
1160

1161 3. Any exterior lighting shall be shielded to direct light away from adjacent  
1162 property.  
1163

1164 4. The applicant must maintain the property so that noise is controlled. The  
1165 sound emanating from the revival shall not exceed 65 decibels at the property  
1166 lines of the nearest residential property.  
1167

1168 5. Any necessary building and electrical permits shall be obtained from the  
1169 Henrico County Office of Building Inspections.  
1170

1171  
 1172 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 1173 Negative: 0  
 1174 Abstained 0  
 1175  
 1176

**UP-30-2006**      **West End Assembly of God** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to erect a temporary box office and a tent at 401 N. Parham Road (Parcel 753-736-0655), zoned R-1, One-family Residence District (Tuckahoe).

1177  
 1178 Mr. Nunnally: Is there anyone out there who desires to speak with  
 1179 reference to this case? If so, please stand and raise your right hand and be  
 1180 sworn. West End Assembly of God.

1181  
 1182 Ms. Dwyer: Can we pass over to the end of the meeting?  
 1183

1184 Mr. Nunnally: Yes, I just wanted to check it to make sure nobody is here.  
 1185 OK, next case, Mr. Blankinship.  
 1186

1187 **DECISION:**  
 1188

1189 Mr. Nunnally: UP-30-2006. That has been deferred.  
 1190  
 1191

**UP-31-2006**      **Gillies Creek Industrial Recycling, LLC** requests a conditional use permit pursuant to Sections 24-89(c) and 24-103 to extract materials from the earth at 5500 White Oak Drive (Parcels 863-706-3470, 860-709-5622 and 864-704-2093), zoned C-1, Conservation District (Varina).

1192 Mr. Nunnally: If there is anyone here interested in this case, please stand  
 1193 and raise your right hand.  
 1194

1195 Mr. Blankinship: Do you swear the testimony you are about to give is the  
 1196 truth, and nothing but the truth, so help you God?  
 1197

1198 Mr. Nunnally: All right. Would you please come forward? State your name  
 1199 for the record, ma'am, and tell us what you are requesting.  
 1200

1201 Ms. Fisher: Good morning, Mr. Chairman and members of the Board.  
 1202 My name is Courtney Fisher and I am with Engineering Design Associates and I  
 1203 have with me today two employees of Gillies Creek Industrial Recycling, LLC,  
 1204 Shelby Morgan and Lou Bryant, and as for my application, Gillies Creek is the  
 1205 contract purchaser of three parcels of land totaling approximately 500 acres.

1206 Gillies Creek proposes to and is here to request from the County to extract  
1207 materials from approximately 69 acres of those 500 acres. They hope and  
1208 estimate that they will extract 1,700,000 cubic yards of sand from this site. The  
1209 land is a previously mined site and what is left on the land are large pits that are  
1210 filled with water, and what they propose to do is de-water the pits and then go  
1211 and extract the remaining material from the bottom of the pit. Gillies Creek  
1212 adamantly states it will not blast and that is so proposed and stated on sheet 1 of  
1213 the site plan that was submitted. They are going to use dozers and shovels, and  
1214 then if necessary, they will use buckets and cranes, but under no circumstances  
1215 will they blast. I understand that the Chairman has not received any complaints  
1216 or inquiries about this, but I will be honest, I did receive one call from a land  
1217 owner and I called the gentleman back and sent him the site plan and that was  
1218 his concern, if there was going to be blasting, and I explained to him no. It is  
1219 stated as such on the site plan and that seemed to satisfy his concerns. I guess  
1220 his other concern was how the vehicles were going to enter the site and, again, I  
1221 explained that to him, that they are down there off of Route 60 in New Kent  
1222 County, and they would not come through the subdivision, and that is written on  
1223 the site plan as well and the application. So, again, I think his concerns were  
1224 satisfied.

1225

1226 Mr. Blankinship: We have also recommended a condition to that effect. We  
1227 have received one or two phone calls from neighbors who are concerned solely  
1228 about the access and to make sure it wouldn't come through the subdivision,  
1229 and, of course, that was never the proposal.

1230

1231 Ms. Fisher: I did send the application to New Kent County and they have  
1232 a copy of that. I have talked with VDOT asking them if they would have any  
1233 concerns and they are probably going to require a turn lane, so we will certainly  
1234 make application to VDOT for the appropriate permit to install turn lanes off of  
1235 Route 60.

1236

1237 Mr. Nunnally: Have you read the conditions proposed for this case?

1238

1239 Ms. Fisher: Yes, sir, I have, and my clients agree with them. The one  
1240 condition, No. 26, I would ask and suggest that, I think this is somewhat of a  
1241 standard condition, and I think I have asked on previous cases that I have been  
1242 before you, for your extraction permit. Now, this seems to be somewhat of a  
1243 burden. It is a condition inherent within the permit once they extract, that they  
1244 will reclaim the land and inherent in that materials will be brought back in, and it  
1245 seems somewhat burdensome to request prior to every truck coming in, and I  
1246 ask that my clients be allowed to submit a monthly report detailing where they  
1247 are getting their material. Other than that, they have read through this, through  
1248 the conditions, the proposed conditions, and are in agreement with them.

1249

1250 Mr. Nunnally: I understand, Mr. Blankinship, that that is not every truck, but  
1251 in general, where are they going to get the material and ensure that only proper  
1252 materials would be brought in.

1253  
1254 Mr. Blankinship: We have had a request to bring in thousands of yards of  
1255 material and we have signed off on it, all at once, so we have, also, at Ms.  
1256 Fisher's request in previous cases, written a substitute condition that rather than  
1257 stating no off-site materials shall be brought in unless it is previously approved,  
1258 you could state that they have to get approval. I believe it was either monthly or  
1259 quarterly. They have to submit a report of any off-site materials that were  
1260 brought to the site and certify that it is nothing hazardous and nothing that would  
1261 decay.

1262  
1263 Mr. Nunnally: That is the applicant's request.

1264  
1265 Ms. Fisher: It is also inherent and in our best interest, we only want to  
1266 bring in inert material. The ultimate goal of the site, after reclamation, we would  
1267 like to turn this into a wetland mitigation bank so to plant and spend thousands  
1268 upon thousands of dollars for permitting and replanting, we certainly would not  
1269 want to place anything hazardous in there, or anything that could decay and sink  
1270 the ground level while we are trying to achieve a particular elevation. So, it is  
1271 inherent to us to restore the property properly.

1272  
1273 Mr. Nunnally: Any other questions of Ms. Fisher from the Board?

1274  
1275 Ms. Harris: Ms. Fisher, you explained that they are purchasing 500  
1276 acres and you plan to use 69 acres, so the other 431 acres you are telling us you  
1277 are going to use them, and you have a two-year permit here. Are you saying,  
1278 what are you trying to do with the rest of the acreage?

1279  
1280 Ms. Fisher: We may try to use some of that for mitigation. It may be.  
1281 We have had some preliminary discussions with the Army Corps of Engineers  
1282 concerning a mitigation bank and it may be that the open water they want us to  
1283 restore back to exact current conditions, we are better off doing that exactly and  
1284 using the remainder of land, those that are not wetlands, to turn that into a bank  
1285 rather than turn what is now open water into mitigation. We may do that.

1286  
1287 Ms. Dwyer: You will be extracting materials from the areas that have  
1288 already had material extracted from them and that are below the water table now,  
1289 and consequently, the pits are filled up with water.

1290  
1291 Ms. Fisher: Yes, ma'am.

1292  
1293 Ms. Dwyer: Are you going to dewater the pit and continue to extract and  
1294 water would continue to flow in, and you will have to keep pumping the water out  
1295 to extract the new materials?

1296  
1297 Ms. Fisher: Yes, ma'am.  
1298  
1299 Ms. Dwyer: So, I guess I am wondering about the effect of that on the  
1300 water table, the surrounding houses and the wells in the area. Can you speak to  
1301 that?  
1302  
1303 Ms. Fisher: The water will be pumped out to adjacent property, so it will  
1304 be allowed to recharge back into the ground nearby.  
1305  
1306 Ms. Dwyer: Do you pump it out of the pit onto the ground, or...  
1307  
1308 Ms. Fisher: Into the ground nearby, or even if they mine from Pit 4, they  
1309 pump it to No. 3.  
1310  
1311 Ms. Dwyer: I see.  
1312  
1313 Ms. Fisher: They just need it to be dry temporarily to do the extraction.  
1314  
1315 Ms. Dwyer: And your reclamation plan, you really don't know yet,  
1316 because it might be wetland creation, it might be restoring it to ground level and  
1317 seeding it.  
1318  
1319 Ms. Fisher: Correct. We have just initiated talks with the Army Corps of  
1320 Engineers. Ultimately, they would like to get the highest use out of the property,  
1321 which would be after the mine is complete to turn it into mitigation. The question  
1322 is where is the mitigation to take place if the Corps deems it a good idea. If they  
1323 shoot the idea down completely, which I do not think they will do, we will build  
1324 something on the property and restore it back to its original condition, which is  
1325 the plan for this application, should they choose to go forward and be allowed to  
1326 go forward to do mitigation, a separate erosion and sediment control plan would  
1327 have to be submitted to the County. That is not anything that would have to  
1328 come to you all, just to the Department of Public Works and to the Army Corps,  
1329 the VMRQ and DEQ. Certainly it has its own...  
1330  
1331 Ms. Dwyer: But a good point, you are planning to try to go the mitigation  
1332 route to keep it for the highest use.  
1333  
1334 Mr. Nunnally: Any more questions of Ms. Fisher?  
1335  
1336 Ms. Fisher: Sir, I would like to state on behalf of my client that you all  
1337 have issued construction permits to them before. I think they have been good  
1338 neighbors, good to the County, and they have no outstanding violations with the  
1339 Department of Mines and Energy. I appreciate your time and attention. Thank  
1340 you.  
1341

1342 Mr. Nunnally: Any opposition to this request? Please come forward  
1343

1344 Ms. Bailey: Good morning. My name is Sandra Bailey. I live at 9012  
1345 Brieryle Road in Henrico County and this is my husband, Ray Bailey, same  
1346 address. We are Henrico County taxpayers as well as New Kent County  
1347 taxpayers, having also owned some property adjacent to this, just on the other  
1348 side of the Chickahominy River, about 72 acres, and I feel it is important for both  
1349 of the counties to work together on this program. It seems to me, I know there  
1350 are advantages for Henrico County, and as a taxpayer I welcome that, but as a  
1351 New Kent County land owner I am also concerned about the growth and  
1352 development along Route 60. We are looking to bringing sewer and water, and  
1353 as property owners we will be spending large amounts of money to do that. It is  
1354 very exciting how eastern Henrico is growing and new shopping developments  
1355 are coming in. We would like to see that happen in New Kent, as well, and I am  
1356 a little concerned that the use of this property is going back to another point in  
1357 time, and we are trying to move forward. It seems to me that the developers  
1358 have covered well to appease the land owners in the Scandia Lake area, saying  
1359 that everything is coming out to 60, but you see, that is right where we are, and I  
1360 am a little concerned about the use of an unauthorized bridge being made a main  
1361 route where the egress and ingress of this area and this will send a precedent  
1362 that we can all start putting bridges across the Chickahominy for future use. I  
1363 guess my biggest concern, I don't even have notes with me today, is because I  
1364 just got this letter on July 16. This is not my full-time job and I barely had time to  
1365 go into it. I just want to make sure that New Kent County Planning has had time  
1366 to look at this and that it is conducive to what we are planning to do along Route  
1367 60, to really upgrade the area instead of looking at hotels and offices and retail. I  
1368 have some concerns about big trucks going up and down this area. If the hours  
1369 of operation end at 5:00, do the trucks run all night? Dump trucks only go 5 or 10  
1370 miles an hour. Is this going to cause problems when we are trying to build  
1371 sewers? So, I guess I just wish there was more time to look at this more closely  
1372 and for both counties to really work together to really make it a good area and not  
1373 go back to a time when, "Oh yes, New Kent is just not an up and coming area for  
1374 good use." And that is all I had to say.

1375  
1376 Mr. Nunnally: Thank you, ma'am.  
1377

1378 Mr. Bailey: There are a couple of things I would mention. When I  
1379 reviewed that application, that was the first opportunity I had to indicate that  
1380 these folks were going to burrow those pits and cover them with grass and other  
1381 plantings and today the committee of (unintelligible) what they are going to do  
1382 and what they are not going to do.

1383  
1384 Mr. Nunnally: I can't hear you. Can you get closer to that mike?  
1385

1386 Mr. Bailey: Is this better? OK, I am sorry. Then, the question of this  
1387 bridge. Who owns the bridge? Is that Henrico or does New Kent own it or do the

1388 adjoining property owners own it? Has VDOT approved rebuilding this bridge or  
1389 allowing it even to stay in place, then, if I recall, on the application it also said that  
1390 they are either going to use a flag person down where this gravel road is going to  
1391 come out to New Kent on Route 60 to direct the traffic. That is a 65 mph speed  
1392 limit through there. Somebody out there with a flag stands no chance of stopping  
1393 anybody. The least thing they can do is put another traffic light down there,  
1394 assuming they locate the road where it can be put in there. Again, we own 72  
1395 acres, nominally five or six thousand feet in property from where the Bottom's  
1396 Bridge is on the eastbound side of 60 all the way down to the red light, and we've  
1397 got some significant development plants in there. We are looking at some  
1398 crossovers where the parking lot is and .....there will be another crossover up  
1399 past the red light (unintelligible)...and again, we are talking to lots of restaurants  
1400 and some hotel people, some office people, a medical center, that are pretty  
1401 significant developments to us, but by the same token if I am going to be looking  
1402 at trucks, and I really don't know what size these trucks are, what are we talking,  
1403 120,000 pound trucks, single-tandem trucks. I mean, obviously, for this to be a  
1404 cost effective thing, they want to use the largest trucks they can use to move as  
1405 much of a product as they can, and all of this is not apparent to me when they  
1406 come out on 60, are they going to take a left and come down in front of my place,  
1407 or are they going right and go towards Tidewater. If they are going to the  
1408 interstate, they sure are not going to go through the scales up there on 64, so  
1409 they have to go one way or the other, but they are not going back on 64 to go  
1410 across the scales. These are small things, but, again, we have preliminarily had  
1411 a chance to look at it, given the short fuse they were on, and that is some of the  
1412 concerns that I have, and I know we are talking about New Kent property as  
1413 opposed to Henrico property, but I think these are some things that need to be  
1414 thought through a little bit better before a decision is made. Thank you.

1415  
1416 Ms. Harris: I have a question, Mr. Bailey. Could you point out on this  
1417 map where your property is located and also where the bridge is located?

1418  
1419 Ms. Dwyer: Is there an aerial photograph? Does that show where it is  
1420 coming in?

1421  
1422 Mr. Bailey: It ends...

1423  
1424 Mr. Blankinship: Here is the bridge right there.

1425  
1426 Mr. Bailey: OK, and my property is, this is Hanover County property.

1427  
1428 Mr. Blankinship: Yes, that is mis-labeled. I apologize for that.

1429  
1430 Mr. Bailey: This, I believe, is the Texaco Station and the hardware store,  
1431 the interchange and red light should be right there. I am from here back to the  
1432 bridge (referring to rendering). And you are going to come out here and get on a  
1433 four-lane highway and you are going to go down Route I-64, I am sorry, Routes



1434 288 or 64, or you are going to come up here at Bottom's Bridge and get back  
1435 over on I-64, or you are going to go to the right to a transfer station. I don't know  
1436 how good this would work down to the next interchange, which is Talleyville and  
1437 back on to 64. I am not sure, again. My property starts right here to the river and  
1438 goes all the way to the bridge.  
1439

1440 Ms. Harris: This is Route 60 and you think that a flag man would be out  
1441 here on Route 60?  
1442

1443 Mr. Bailey: It indicates it. Yes, ma'am, right here.  
1444

1445 Mr. Blankinship: The conditions require that have to provide a flag man at the  
1446 request of the police or VDOT, and that is one of our standard conditions. I don't  
1447 know that we have ever requested it or that the police have ever requested a flag  
1448 man to be present at a mine, but it is just a way to protect us if it turns out to be a  
1449 problem with trucks entering the highway, but we can require them to do that.  
1450

1451 Mr. Bailey: You have already got a significant amount of truck traffic on  
1452 this road because they are dodging the scales. This is, I think, a Food Lion or  
1453 Kroger or food store in there, and from this red light, which is a 55 mph speed  
1454 limit, and they run higher than that, and you are going to take a truck, quad  
1455 tandem kind of a dump truck and it is going to have to stop, and it is not going to  
1456 get across that road very quickly, and I just think that could be a big problem.  
1457 These people in these cars, they will be doing 55 mph by the time they get there,  
1458 and I know that VDOT is going to say, OK, you have got to put the turn lane in  
1459 here and you'd have to put a turn lane up there and all that stuff is pretty  
1460 standard, but I am not sure how much traffic that would cause.  
1461

1462 Ms. Harris: Were you there in the 1970s when they were mining this  
1463 property?  
1464

1465 Mr. Nunnally: All right. Thank you, sir. I want to ask a question, Ms.  
1466 Fisher. How long do you propose this mining operation will go on?  
1467

1468 Ms. Fisher: I am going to have to defer to my client.  
1469

1470 Mr. Nunnally: I mean, how much sand is left? It has been mined once.  
1471

1472 Ms. Fisher: They approximate it at over 1,000,000 cubic yards.  
1473

1474 Mr. Nunnally: How long will it take to take that in? Come to the  
1475 microphone. State your name, sir.  
1476

1477 Mr. Morgan: Shelby Morgan. We estimate approximately five years  
1478 depending on economy and growth in the area.  
1479

1480 Mr. Nunnally: So, basically that would conclude the operation, five years?  
1481  
1482 Mr. Morgan: That is correct, and then the majority of the property is  
1483 (unintelligible) which is no future development in that area.  
1484  
1485 Ms. Fisher: First of all, I'd like for Mr. and Ms. Bailey to coordinate with  
1486 New Kent County. Again, I will let them know that I sent the application to New  
1487 Kent County. I actually, approximately two years ago, I was an employee of New  
1488 Kent County. I was their Environmental Programs Manager, and in discussions  
1489 with my client, we definitely thought since we'd be entering onto Route 60, it was  
1490 a good idea to coordinate and he certainly did agree. So, New Kent is aware of  
1491 this situation.  
1492  
1493 Mr. Nunnally: Have you had any discussions with any officials from New  
1494 Kent County about this application?  
1495  
1496 Ms. Fisher: I spoke to Rodney Hathaway prior to filing the application to  
1497 let him know what we were going to do. Rodney Hathaway is the Planning  
1498 Manager in the Community Development part of New Kent. Again, I let him know  
1499 that we were going to file the application and asked him if he would like a copy of  
1500 the application, and then, indeed, did send it to him. I haven't heard anything  
1501 from them, because they are very busy down there with Patriot's Landing and  
1502 they are overwhelmed with development going on down there in New Kent  
1503 County. As to trucks on Route 60, again I talked with VDOT and they did  
1504 indicate that we would probably have to put in turn lanes. I'd like to say it is a  
1505 public highway, but you know VDOT will allow public trucks to enter and travel on  
1506 the roadway. I have worked with them very recently on a project further east on  
1507 Route 60 near the Talleyville exit. This particular client of mine was beginning a  
1508 portable asphalt plant. Actually, he has now turned it into a permanent asphalt  
1509 plant. He has a lot of contact with the State VDOT and VDOT is making them  
1510 put in a left-hand turn lane, and that is right up at the Talleyville exit. Again,  
1511 there were concerns about the heavy trucks on Nail Castle Road with this  
1512 ingress/egress onto Route 60 for this project, and my client, in that case, agreed  
1513 to do any upgrades necessary and is working with VDOT to ensure that the  
1514 roads can handle the truck traffic.  
1515  
1516 Mr. Nunnally: Did the officials at New Kent County know that we were  
1517 having this hearing today?  
1518  
1519 Mr. Blankinship: We notified them.  
1520  
1521 Mr. Nunnally: You did?  
1522  
1523 Mr. Blankinship: Yes, we did.  
1524  
1525 Mr. Nunnally: So they were notified?

1526  
1527 Ms. Dwyer: Tell us about the bridge.  
1528  
1529 Ms. Fisher: John Deal is an attorney working with my client, also.  
1530 Apparently that bridge was put in 30 some years ago, possibly unpermitted, and  
1531 Mr. Deal is working with VMRC, the Corps and DEQ to actually go ahead and get  
1532 that permitted. It is an existing bridge with deeded access.  
1533  
1534 Ms. Dwyer: Until the deed is approved. If you use the bridge, you can't  
1535 extract any material.  
1536  
1537 Ms. Fisher: No, ma'am. It is existing. We are just doing that on our own  
1538 accord, because we know a lot of scrutiny is placed on this type of project, as  
1539 existing non-permitted. There aren't any stop work orders and there are no legal  
1540 actions against use of the property. Does that make sense?  
1541  
1542 Mr. Blankinship: From an access point of view, it is just a private bridge on a  
1543 private road. It is not the County or State's responsibility in terms of traffic.  
1544  
1545 Ms. Fisher: Correct.  
1546  
1547 Mr. Blankinship: It is just the wetlands. It is just the wetlands permitting now  
1548 that wasn't followed through.  
1549  
1550 Ms. Fisher: There were a few concerns about dodging the scale on  
1551 Route I-64. There are scales on Route 60, and the signs I'd venture forth to say  
1552 that my clients are aware of the signs and dodging scales and it is in their best  
1553 interest. Again, as a business entity, they follow the rules and regulations.  
1554  
1555 Mr. Blankinship: Do you know where this material will go and whether they  
1556 will be turning right or left, or does that just depend on...  
1557  
1558 Ms. Fisher: I would say it depends on the market and I guess a little  
1559 further in response to the development in New Kent County in Bottoms Bridge,  
1560 you'd certainly, and with the environmental background I do have, you would  
1561 certainly want some open, preserved land, and I think it goes along with Henrico  
1562 County's Comprehensive Plan, and it is certainly a commendable end use to do  
1563 this. My client could try to pursue a rezoning to rezone to an M-1 or M-2, but that  
1564 is going to generate a heck of a lot of traffic, and there is going to be traffic down  
1565 there for the next 10 years, I would venture to say, with the development going  
1566 on at Bottoms Bridge.  
1567  
1568 Ms. Harris: Is Patriot's Landing 500 plus homes?  
1569

1570 Ms. Fisher: I am not sure. There are a lot of plans down in the Bottoms  
1571 Bridge area and heavy truck traffic is expected in that area for some time yet to  
1572 come.

1573

1574 Mr. Kirkland: Do you have any perspective clients for use of this sand, at  
1575 this point or is it up in the air?  
1576

1577 Mr. Morgan: Right now it is up in the air. The sand is going to be used as  
1578 a burrow material more so, and it won't be washed. It won't be concrete or brick  
1579 sand, so it will be multiple users, rather than a specific end user.  
1580

1581 Mr. Nunnally: Then they don't have anything in mind right now?  
1582

1583 Mr. Morgan: No, sir.  
1584

1585 Ms. Dwyer: One question about reclamation. If you cannot use this as  
1586 wetland mitigation and you have to fill it in and seed it, will it be restored to the  
1587 same grade of the surrounding land or do you plan to mound it?  
1588

1589 Ms. Fisher: Right now they are planning to restore it to the same grade.  
1590 I know I have come before you before asking to mound. This is restoring to the  
1591 same grade.  
1592

1593 Mr. Blankinship: This is in the floodplain, too. It probably wouldn't be allowed  
1594 to increase the grade.  
1595

1596 Mr. Nunnally: Any other questions from the Board by staff. Hearing none,  
1597 that concludes the case.  
1598

1599 **DECISION:**  
1600

1601 Mr. Nunnally: UP-31-2006, Gillies Creek?  
1602

1603 Mr. Kirkland: I move we approve it.  
1604

1605 Mr. Wright: Second.  
1606

1607 Mr. Nunnally: Motion by Mr. Kirkland and seconded by Mr. Wright to  
1608 approve. All in favor say aye.  
1609

1610 Mr. Wright: Wait. Condition No. 26, that was going to be rewritten by Mr.  
1611 Blankinship, I believe.  
1612

1613 Mr. Blankinship: Would you like that revised so they have permission to bring  
1614 all types of materials so long as they notify us monthly what it is for.  
1615

1616 Mr. Kirkland; That will be fine.  
1617  
1618 Ms. Dwyer: Has your experience been that that worked well, or...  
1619  
1620 Mr. Blankinship: As far as we know.  
1621  
1622 Ms. Dwyer: I sense some reticence on staff's part.  
1623  
1624 Mr. Morgan: I would just like to say they are going to have a big group of  
1625 people overseeing them, CMRS and that group to keep a real tight eye on this  
1626 project. They dot their i's and the Corps, too.  
1627  
1628 Mr. Nunnally: Motion by Mr. Wright and seconded by Mr. Kirkland to  
1629 approve. All in favor say aye. All opposed say no. The motion is approved.  
1630  
1631 After an advertised public hearing and on a motion by Mr. Wright and a second  
1632 by Mr. Kirkland, the Board **granted** application **UP-31-2006** for a conditional use  
1633 permit pursuant to Sections 24-89(c) and 24-103 to extract materials from the  
1634 earth at 5500 White Oak Drive (Parcels 863-706-3470, 860-709-5622 and 864-  
1635 704-2093), zoned C-1, Conservation District (Varina). The Board granted the  
1636 conditional use permit subject to the following conditions:  
1637  
1638 1. This use permit is subject to all requirements of Section 24-103 of Chapter  
1639 24 of the County Code. The operation shall be conducted in accordance with the  
1640 plans and narrative submitted with the application, except as noted below.  
1641  
1642 2. Before beginning any work, the applicant shall provide a financial guaranty  
1643 in an amount of \$3,000 per acre for each acre of land to be disturbed, for a total  
1644 of \$207,000, guaranteeing that the land will be restored to a reasonably level and  
1645 drainable condition. This permit does not become valid until the financial  
1646 guaranty has been approved by the County Attorney. The financial guaranty  
1647 may provide for termination after 90 days notice in writing to the County. In the  
1648 event of termination, this permit shall be void, and work incident thereto shall  
1649 cease. Within the next 90 days the applicant shall restore the land as provided  
1650 for under the conditions of this use permit. Termination of such financial  
1651 guaranty shall not relieve the applicant from its obligation to indemnify the County  
1652 of Henrico for any breach of the conditions of this use permit. If this condition is  
1653 not satisfied within 90 days of approval, the use permit shall be void.  
1654  
1655 3. Before beginning any work, the applicant shall submit erosion control  
1656 plans to the Department of Public Works (DPW) for review and approval.  
1657 Throughout the life of the operation, the applicant shall continuously satisfy DPW  
1658 that erosion control procedures are properly maintained, and shall furnish plans  
1659 and bonds that DPW deems necessary. The applicant shall provide certification  
1660 from a licensed professional engineer that dams, embankments and sediment  
1661 control structures meet the approved design criteria as set forth by the State. If

1662 this condition is not satisfied within 90 days of approval, the use permit shall be  
1663 void.

1664

1665 4. Before beginning any work, the applicant shall obtain a mine license from  
1666 the Virginia Department of Mines, Minerals and Energy. If this condition is not  
1667 satisfied within 90 days of approval, the use permit shall be void.

1668

1669 5. Before beginning any work, the areas approved for mining under this  
1670 permit shall be delineated on the ground by five-foot-high metal posts at least five  
1671 inches in diameter and painted in alternate one foot stripes of red and white.  
1672 These posts shall be so located as to clearly define the area in which the mining  
1673 is permitted. They shall be located, and their location certified, by a certified land  
1674 surveyor. If this condition is not satisfied within 90 days of approval, the use  
1675 permit shall be void.

1676

1677 6. In the event that the approval of this use permit is appealed, all conditions  
1678 requiring action within 90 days will be deemed satisfied if the required actions are  
1679 taken within 90 days of final action on the appeal.

1680

1681 7. The operator shall begin excavation by April 1, 2007, and diligently pursue  
1682 the mining and reclamation of the site thereafter, or the use permit shall be void.

1683

1684 8. The applicant shall comply with the Chesapeake Bay Preservation Act and  
1685 all state and local regulations administered under such act applicable to the  
1686 property, and shall furnish to the Planning Department copies of all reports  
1687 required by such act or regulations.

1688

1689 9. Hours of operation shall be from 7:00 a.m. to 5:30 p.m. Monday through  
1690 Saturday.

1691

1692 10. No operations of any kind are to be conducted at the site on Sundays or  
1693 national holidays.

1694

1695 11. All means of access to the property shall be from the established entrance  
1696 onto US Route 60 in New Kent County. There shall be no access to the  
1697 extraction operation through Scandia Lakes or any other subdivision in Henrico  
1698 County.

1699

1700 12. The applicant shall erect and maintain gates at all entrances to the  
1701 property. These gates shall be locked at all times, except when authorized  
1702 representatives of the applicant are on the property.

1703

1704 13. The applicant shall post and maintain a sign at the entrance to the mining  
1705 site stating the name of the operator, the use permit number, the mine license  
1706 number, and the telephone number of the operator. The sign shall be 12 square  
1707 feet in area and the letters shall be three inches high.

- 1708  
1709 14. The applicant shall post and maintain "No Trespassing" signs every 250  
1710 feet along the perimeter of the property. The letters shall be three inches high.  
1711 The applicant shall furnish the Chief of Police a letter authorizing the Division of  
1712 Police to enforce the "No Trespassing" regulations, and agreeing to send a  
1713 representative to testify in court as required or requested by the Division of  
1714 Police.  
1715
- 1716 15. Standard "Truck Entering Highway" signs shall be erected on US Route  
1717 60 on each side of the entrances to the property.  
1718
- 1719 16. The applicant shall post and maintain a standard stop sign at the entrance  
1720 to US Route 60.  
1721
- 1722 17. The applicant shall provide a flagman to control traffic from the site onto  
1723 the public road, with the flagman yielding the right of way to the public road traffic  
1724 at all times. This flagman will be required whenever necessary.  
1725
- 1726 18. The entrance road shall be paved from its intersection with US Route 60  
1727 for a distance of 300 feet and a width of 24 feet. All roads used in connection  
1728 with this use permit shall be effectively treated with calcium chloride or other  
1729 wetting agents to eliminate any dust nuisance.  
1730
- 1731 19. The operation shall be so scheduled that trucks will travel at regular  
1732 intervals and not in groups of three or more.  
1733
- 1734 20. Trucks shall be loaded in a way to prevent overloading or spilling of  
1735 materials of any kind on any public road.  
1736
- 1737 21. The applicant shall maintain the property, fences, and roads in a safe and  
1738 secure condition indefinitely, or convert the property to some other safe use.  
1739
- 1740 22. If, in the course of its preliminary investigation or operations, the applicant  
1741 discovers evidence of cultural or historical resources, or an endangered species,  
1742 or a significant habitat, it shall notify appropriate authorities and provide them  
1743 with an opportunity to investigate the site. The applicant shall report the results  
1744 of any such investigation to the Planning Department.  
1745
- 1746 23. If water wells located on surrounding properties are adversely affected,  
1747 and the extraction operations on this site are suspected as the cause, the  
1748 effected property owners may present to the Board evidence that the extraction  
1749 operation is a contributing factor. After a hearing by the Board, this use permit  
1750 may be revoked or suspended, and the operator may be required to correct the  
1751 problem.  
1752

- 1753 24. Open and vertical excavations having a depth of 10 feet or more, for a  
1754 period of more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to  
1755 protect the public safety.  
1756
- 1757 25. Topsoil shall not be removed from any part of the property outside of the  
1758 area in which mining is authorized. Sufficient topsoil shall be stockpiled on the  
1759 property for respreading in a layer with five inches of minimum depth. All topsoil  
1760 shall be stockpiled within the authorized mining area and provided with adequate  
1761 erosion control protection. If the site does not yield sufficient topsoil, additional  
1762 topsoil shall be brought to the site to provide the required five-inch layer of cover.  
1763 All topsoil shall be treated with a mixture of seed, fertilizer, and lime as  
1764 recommended by the County after soil tests have been provided to the County.  
1765
- 1766 26. [AMENDED] Any off-site materials to be deposited on the site shall be  
1767 limited to imperishable materials such as stone, bricks, tile, sand, gravel, soil,  
1768 asphalt, concrete and like materials, and shall not include any hazardous  
1769 materials as defined by the Virginia Hazardous Waste Management Regulations.  
1770 The operator shall submit a report stating the origin, nature and quantity of any  
1771 off-site material deposited on the property, certifying that no contaminated or  
1772 hazardous material was included.  
1773
- 1774 27. A superintendent, who shall be personally familiar with all the terms and  
1775 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the  
1776 terms and conditions of this use permit, shall be present at the beginning and  
1777 conclusion of operations each work day to see that all the conditions of the Code  
1778 and this use permit are observed.  
1779
- 1780 28. A progress report shall be submitted to the Board on August 1, 2007. This  
1781 progress report must contain information concerning how much property has  
1782 been mined to date of the report, the amount of land left to be mined, how much  
1783 rehabilitation has been performed, when and how the remaining amount of land  
1784 will be rehabilitated, and any other pertinent information about the operation that  
1785 would be helpful to the Board.  
1786
- 1787 29. Excavation shall be discontinued by August 1, 2008, and restoration  
1788 accomplished by not later than August 1, 2009, unless a new permit is granted  
1789 by the Board of Zoning Appeals.  
1790
- 1791 30. The rehabilitation of the property shall take place simultaneously with the  
1792 mining process. Rehabilitation shall not be considered completed until the mined  
1793 area is covered completely with permanent vegetation.  
1794
- 1795 31. All drainage and erosion and sediment control measures shall conform to  
1796 the standards and specifications of the Mineral Mining Manual Drainage  
1797 Handbook.  
1798



1799 32. Failure to comply with any of the foregoing conditions shall automatically  
1800 void this permit.

1801  
1802  
1803  
1804  
1805  
1806  
1807

Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
Negative:		0
Abstained		0

**A-30-2006**

**John R. Russo** requests a variance from Section 24-94 to build an addition at 4605 Brookemere Drive, (Crawford Park at Greenbrooke) (Parcel 745-765-3002), zoned R-3C, One-Family Residence District (Conditional) (Three Chopt). The rear yard setback is not met. The applicant proposes 35 feet rear yard setback, where the Code requires 40 feet rear yard setback. The applicant requests a variance of 5 feet rear yard setback.

1808

1809 Mr. Nunnally: Is anyone else here interested in this case? If so, please  
1810 stand and raise your right hand.

1811

1812 Mr. Blankinship: Raise your right hand please. Do you swear the testimony  
1813 you are about to give is the truth, the whole truth, and nothing but the truth, so  
1814 help you God?

1815

1816 Mr. Russo: I do.

1817

1818 Mr. Nunnally: Please state your name for the record, sir, and tell us what  
1819 you are requesting.

1820

1821 Mr. Russo: Good morning, ladies and gentlemen. My name is John  
1822 Russo. I am requesting a 35-foot setback on my home. Right now it is zoned for  
1823 a 40-foot setback for a difference of five feet, actually looking for 4 feet, 6 inches.  
1824 I'd like to begin by how I found myself in this situation. This is a brand new  
1825 home. I just closed on it approximately three weeks ago. I am from Long Island.

1826

1827 I don't know if we have an aerial map, but we had a choice of any lot on this  
1828 particular cul-de-sac block that I bought on and chose this lot because of the size  
1829 and the privacy of it, but I also had a choice of a home on either side of me,  
1830 which I chose not to do based on the selling agent for the builder who gave me,  
1831 led me to believe, I think is the proper term, that I would be able to make  
1832 modifications and work with the builder. Those many modifications, 15 to 20,  
1833 some of which were met, most of which were not, but the modifications to expand  
1834 this home, the work that I am looking to do now with Kent Wood, my contractor,  
1835 was denied to me. At that point I was in the process of past contract and I was  
1836 committed with my family and my son, hoping to go through with the home and to

1837 apply for a variance when I moved in, so that is what brought me to this point  
1838 today. What I was looking to do was make the home commensurate with the  
1839 home I came from. I came from a 3,800 square foot home. This home is  
1840 approximately 3,000 square feet and I am looking for this rear extension to bring  
1841 it up to what it was. Again, I could have purchased a home on either side of me  
1842 which are deeper homes and more square footage homes, as well, but the  
1843 likeliness of the builder accommodating me led me to the purchase of this home,  
1844 so I find myself in no other situation but to apply for this variance. Now, my lot is  
1845 actually oversized. The four lots on the bubble in the cul-de-sac are oversized  
1846 and could handle this expansion very nicely, and it is completely private and  
1847 wooded in the back, where there would be no one viewing it, and the homes on  
1848 either side, again, are deeper and would be commensurate with those homes.  
1849 My contractor, Kent Wood, has assured me he can do this with materials and  
1850 colors of like kind and quality, since it is a new home and they are all readily  
1851 available, and the architectural plans out by my house, in fact, even shows you  
1852 are in according with the natural line of the home and the homes in the  
1853 neighborhood, so it should be seen less through the community, however, again,  
1854 no one is really back there to view that. Basically, I would like for you to consider  
1855 my request. At this point, I am out of options, other than to sell and buy a new  
1856 home, and I wouldn't want to do that and displace my son and my family who  
1857 have settled in quite nicely.

1858  
1859 Mr. Nunnally: Mr. Russo, did the Planning Office discuss with you the case  
1860 of Cochran versus The Fairfax County Board of Zoning Appeals?  
1861

1862 Mr. Russo: Yes, they did.  
1863

1864 Mr. Nunnally: Do you really understand with that case, you have  
1865 information here that you signed, stating that you understood that. Based on that  
1866 Supreme Court case, although everything you say sounds good, this Board has  
1867 no authority to grant you a variance. The Supreme Court has taken that away  
1868 from us since you have a reasonable use of the property without the variance.  
1869 You already have a home on it, and that was the whole basis of the case before  
1870 the Supreme Court, and we just don't have the authority as the Board of Zoning  
1871 Appeals. If you have a reasonable use of the property, which you do. Since you  
1872 have a home already on it, then this Board has no authority to grant you a  
1873 variance.  
1874

1875 Mr. Russo: I just felt like I was in a compromising situation.  
1876

1877 Mr. Nunnally: I can understand where you are coming from and I am  
1878 sensitive to what you say, but we just don't have the authority for this.  
1879

1880 Mr. Russo: I understand. One final question. I do have a foot on my  
1881 plot plan where I can build back to the buildable lot line. My architects had

1882 asked, and I will try to work with him in that, but is it possible to cantilever over  
1883 that a foot to two foot?

1884  
1885 Mr. Nunnally: To do what?

1886  
1887 Mr. Russo: To cantilever over the buildable lot line one foot to two foot.

1888  
1889 Mr. Nunnally: I don't think so. That is pretty strict. The Ordinance is pretty  
1890 strict on that.

1891  
1892 Mr. Blankinship: You can go right to the building line.

1893  
1894 Mr. Russo: But you can't cantilever over that? OK. Thank you.

1895  
1896 Mr. Nunnally: Thank you, sir.

1897  
1898 **DECISION:**

1899  
1900 Mr. Wright: I move to deny it.

1901  
1902 Ms. Harris: Second.

1903  
1904 Mr. Wright: Grounds for denial is that the owner has reasonable use of  
1905 the property without the granting of the variance under the Cochran decision.  
1906 We have no authority to consider the case further.

1907  
1908 Mr. Nunnally: Motion by Mr. Wright and second by Ms. Harris that it be  
1909 denied. All in favor say aye. All opposed say no. The case is denied.

1910  
1911 After an advertised public hearing and on a motion by Mr. Wright and a second  
1912 by Ms. Harris, the Board **denied** application **A-30-2006** for a variance from  
1913 Section 24-94 to build an addition at 4605 Brookemere  
1914 Drive, (Crawford Park at Greenbrooke) (Parcel 745-765-3002), zoned R-3C,  
1915 One-Family Residence District (Conditional) (Three Chopt).

1916  
1917  
1918 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1919 Negative: 0

1920 Abstained 0

1921  
1922

**A-31-2006** **Terry and Jennifer McGirt** request a variance from  
Section 24-9 to build a one-family dwelling at 7243 Hughes  
Road, zoned A-1, Agricultural District, (Varina). The public  
street frontage requirement is not met. The applicant has 0  
feet public street frontage. The applicant requests a

variance of 50 feet public street frontage.

1923

1924 Mr. Nunnally: Is there anyone else here interested in this case? If you will  
1925 please stand and raise your right hand and be sworn.

1926

1927 Mr. Blankinship: Do you swear the testimony you are about to give is the  
1928 truth, the whole truth, and nothing but the truth so help you God?

1929

1930 Mr. and Ms. McGirt: We do.

1931

1932 Mr. Nunnally: Please state your name for the record, sir, and tell us what  
1933 you are requesting.

1934

1935 Mr. McGirt: My name is Terry McGirt. I am requesting to build a single-  
1936 family dwelling on a lot I am giving to my daughter. We have no public street  
1937 frontage, where the County requires 50 feet. I own 20 acres on Hughes Road,  
1938 which is a private road, and I plan on giving my daughter almost two acres, I  
1939 think, 1.75 acres, to build a single-family dwelling. I am just requesting a  
1940 variance.

1941

1942 Mr. Nunnally: Is that close to where you live, what you are going to give  
1943 your daughter?

1944

1945 Mr. McGirt: Yes, sir. I have a house on the property. I have lived there  
1946 17 years now. Well, she is probably a thousand feet from me. I am giving her  
1947 the lot.

1948

1949 Ms. Harris: How wide is that private road?

1950

1951 Mr. McGirt: The road itself is probably, the gravel part is 20 feet, but we  
1952 have a 50 foot right of way. The gravel road itself is probably 20 feet.

1953

1954 Ms. Harris: And is that road an extension of Hughes Road?

1955

1956 Mr. McGirt: Yes, ma'am.

1957

1958 Ms. Harris; Is this County improvement just before your property?

1959

1960 Mr. McGirt: Yes, I am approximately maybe  $\frac{3}{4}$ 's of a mile from the hard  
1961 surface road, the County road.

1962

1963 Ms. Dwyer: Is this on the Henrico Major Thoroughfare Plan? Do you  
1964 know?

1965

1966 Mr. McGirt: I do not know. I hope so, but I do not know.

1967

1968 Mr. Nunnally: This looks like a road that is used by a lot of folks. Is there  
1969 any indication that the County will make this a public road?  
1970  
1971 Mr. Blankinship: Well, it is public up to a point, as he said, about ¾'s of a mile  
1972 before his home, and you will see on the site map that there is actually a new  
1973 subdivision proposed right there at the end of County maintenance, but we are  
1974 not aware of any plans to extend the County portion of the road any further. It  
1975 does serve, do you remember we had a variance case on the south side of the  
1976 road, two or three years ago, and I remember counting at that time, 18,19 or 20  
1977 homes served by the private portion of this road. It is a well constructed and well  
1978 maintained private road.  
1979  
1980 Mr. Nunnally: It looks like it is crying to be made a public road.  
1981  
1982 Ms. Dwyer: If this were a development as part of the subdivision plan,  
1983 wouldn't the developer be required to build the road themselves? And that is one  
1984 of the reasons for the subdivision ordinance is that developers could benefit by  
1985 zoning and developing land and selling lots, and would also bear some of the  
1986 costs of providing access to the road?  
1987  
1988 Mr. Nunnally: Where is this subdivision?  
1989  
1990 Mr. Blankinship: The area in there. What color is that? Right where that street  
1991 meets Hughes Road. You see a little line across there that indicates the end of  
1992 the County portion of Hughes Road.  
1993  
1994 Mr. Nunnally: That would extend it but that wouldn't really help.  
1995  
1996 Ms. Dwyer: This developer will have to extend Hughes all the way to the  
1997 end of their property.  
1998  
1999 Mr. McGirt: Would he go to the entrance road?  
2000  
2001 Mr. Blankinship: I don't know that. Do you, Mr. O'Kelly?  
2002  
2003 Mr. O'Kelly: Yes, there is a parcel that fronts on that portion of Hughes  
2004 Road that is not owned by the subdivision developer, the majority of the property,  
2005 so they are not responsible to extend it.  
2006  
2007 Ms. Dwyer: This 20 acres, Mr. McGirt, or 25 acres that you purchased,  
2008 has it been subdivided under the subdivision ordinance or are you taking it  
2009 piecemeal in getting a variance for each lot that you want to develop?  
2010  
2011 Mr. McGirt: Well, it is a family subdivision and they said I didn't have to  
2012 go through subdivision rules.  
2013

2014 Ms. Dwyer: If you are creating five lots from those 25 acres?  
2015  
2016 Mr. McGirt: Well, I don't know if I will create five lots or not. I am going  
2017 to give her a lot and I have three other daughters. If they would want to live on  
2018 the property with us, I would be back before the Board requesting another  
2019 variance.  
2020  
2021 Mr. Nunnally: In a question of interest, Mr. Blankinship, if Mr. McGirt were  
2022 to subdivide this in accordance with the ordinance, would he be required to  
2023 extend Hughes Road and go back all the way up and extend it all the way down  
2024 to his property?  
2025  
2026 Mr. Blankinship: Yes.  
2027  
2028 Mr. Nunnally: I mean, not just at his property, but he would have to go all  
2029 the way back up and that is a considerable distance.  
2030  
2031 Ms. Dwyer: Well, if the other subdivider didn't have to extend the road  
2032 because he didn't own property on the road, why would he?  
2033  
2034 Mr. Blankinship: Any new lots that are created would have to front on a public  
2035 street that connects to a public road.  
2036  
2037 Mr. O'Kelly: Ms. Dwyer, the subdivision ordinance wouldn't apply in this  
2038 case. It is a family division.  
2039  
2040 Mr. Blankinship: If he wanted to do that, if it were not a family division, and if  
2041 he just wanted to come in and build a subdivision and just put it on the market...  
2042  
2043 Ms. Dwyer: The five lots.  
2044  
2045 Mr. O'Kelly: He would have to front on a public road.  
2046  
2047 Mr. Blankinship: He would have to go back to the existing public portion of  
2048 Hughes Road.  
2049  
2050 Mr. Nunnally: Wow. That would be quite an expense.  
2051  
2052 Mr. Blankinship: Yes, it would.  
2053  
2054 Mr. Nunnally: Any other questions from the Board or staff? Anyone here  
2055 in opposition? Hearing none, that concludes the case. Thank you, sir.  
2056  
2057 Mr. McGirt: Thank you.  
2058  
2059 **DECISION:**

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Ms. Harris: I move we approve.

Mr. Wright: Second.

Mr. Nunnally: We have a motion by Ms. Harris to approve and a second by Mr. Wright. All in favor say aye.

Ms. Harris: This is a situation here where a private road is an extension of a County road and it seems practical that it would be too expensive an ordeal for them to make this extension due to the fact that this is a family division. History will bear out that we do hear some consideration for that type of case.

Mr. Nunnally: Motion by Ms. Harris and second by Mr. Wright to be approved. All in favor say aye. All opposed say no. Approved.

After an advertised public hearing and on a motion by Ms. Harris and a second by Mr. Wright, the Board **granted** application **A-31-2006** a variance from Section 24-9 to build a one-family dwelling at 7243 Hughes Road, zoned A-1, Agricultural District, (Varina). The Board granted the variance subject to the following conditions:

1. This variance applies only to the public street frontage requirement. All other applicable regulations of the County Code shall remain in force.
2. Approval of this request does not imply that a building permit will be issued. Building permit approval is contingent on Health Department requirements, including, but not limited to, soil evaluation for a septic drainfield and reserve area, and approval of a well location.
3. At the time of building permit application the owner shall demonstrate that the parcel created by this division has been conveyed to members of the immediate family, and the subdivision ordinance has not been circumvented. Ownership of the parcel shall remain in the immediate family for a minimum of five years.
4. The applicant shall present proof with the building permit application that a legal access to the property has been obtained.
5. The owners of the property, and their heirs or assigns, shall accept responsibility for maintaining access to the property until such a time as the access is improved to County standards and accepted into the County road system for maintenance.

Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright

5

2106 Negative: 0  
2107 Abstained 0  
2108  
2109

**UP-32-2006**      **Our Lady of Lourdes Catholic Church** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to hold a festival at 8200 Woodman Road (Parcel 776-754-8470), zoned R-3, One-Family Residence District, (Brookland).

2110 Mr. Nunnally:      Is there anyone else here who is interested in this case?  
2111 Please stand and raise your right hand.

2112  
2113 Mr. Blankinship:      Do you swear the testimony you are about to give is the  
2114 truth, and nothing but the truth, so help you God?

2115  
2116 Mr. Griffin:      I do.

2117  
2118 Mr. Nunnally:      Please state your name for the record, sir, and tell us what  
2119 you are requesting.

2120  
2121 Mr. Griffin:      Good morning. My name is Bob Griffin, Robert H. Griffin. I  
2122 am a deacon and administrator of Our Lady of Lourdes Catholic Church. Here  
2123 with me this morning is also Dr. Emanuel Eugenio, who is the director of the  
2124 festival we are asking permission to have at our parish. This is our first annual  
2125 festival that we have decided to have. We have a strong Filipino community and  
2126 we have decided to have this celebration of the Filipino culture at our parish for  
2127 two purposes, one is to bring our community together to work on this project,  
2128 and, of course, the other purpose is, hopefully, to raise some funds, although that  
2129 is a secondary purpose. We have reviewed the suggested conditions that you  
2130 have indicated and I would like to just address a couple of items that we thought  
2131 were kind of critical to the request that we have been concerned with and to  
2132 make sure we were covering. One is the parking. We have approximately 450 to  
2133 475 spaces designated at our place, permanent parking as well as grass parking  
2134 now that we have identified. We also are going to use off-site parking for all of  
2135 our volunteers and shuttle them back and forth, so we feel like we have  
2136 reasonable parking. Security: We are possibly engaging three police officers  
2137 with a supervisor. We happened to have a supervisor who is a member of the  
2138 parish and we'll have three police offers, so we will have four officers on the  
2139 premises the entire time of the festival.

2140  
2141 Sound: We have engaged a professional sound person to provide the sound and  
2142 to monitor the sound during the whole course of the festival, and health  
2143 concerns, I think I heard earlier that this is an August 12 date. We are concerned  
2144 with the heat and so we have plenty of water provided all around the grounds.  
2145 We are planning on having a couple of tents and we also have EMTs in our



2146 parish that have volunteered. We have a practitioner, who is going to be  
2147 available, and we have contacted the Lakeside Rescue Squad to let them know  
2148 what is going on, but we have adequate services in our County and our Festival  
2149 Director happens to be a physician, who will be on the premises all day, so those  
2150 were the issues that we felt. The food service. We are exempt from that particular  
2151 code section, which I can cite for you if you like. So, we think this group, this has  
2152 been a tremendous amount of work and a lot of fun and a lot of work, and a lot of  
2153 people in our parish have participated. We probably have well over a hundred,  
2154 more than a hundred volunteers and we are looking this weekend to solicit more  
2155 volunteers, so we hope it will be an exciting day, but it has been a lot of work in  
2156 preparation and a lot has gone into it, the planning. I will be happy to respond to  
2157 any questions.

2158  
2159 Mr. Wright: How many tents are you going to have on your property?  
2160

2161 Mr. Nunnally: If you would, come to the mike and give us your name.  
2162

2163 Dr. Eugenio: I am Emanuel Eugenio and at the moment, sir, we have 13  
2164 tents.  
2165

2166 Mr. Wright: And they will be erected on what day?  
2167

2168 Dr. Eugenio: They would be erected on August 11, the day before and  
2169 they will be erected by a professional company.  
2170

2171 Mr. Wright: When are they coming down?  
2172

2173 Dr. Eugenio: They are coming down Monday, the final day everything will  
2174 be off of the property, Monday, August 14.  
2175

2176 Mr. Wright: Mr. Blankinship, do you need to extend the permit days for  
2177 the tents, if it is Friday through Monday?  
2178

2179 Mr. Nunnally: Well, the conditions say Monday, August 14  
2180

2181 Ms. Dwyer: It doesn't say anything about Friday.  
2182

2183 Mr. Blankinship: We can certainly add that language to that.  
2184

2185 Mr. Griffin: I thought we had applied and said we were going to set the  
2186 tents up on a Friday.  
2187

2188 Mr. Wright: I just want to make sure it is specified in the conditions.  
2189

2190 Ms. Dwyer: Do we need condition 4 that says the food service shall be  
2191 inspected when they are exempt?

2192  
2193 Mr. Griffin: The Code and I mentioned that Code Section 35.1-25  
2194 exempts us from that requirement, because we are preparing the food on the  
2195 premises. I have got a copy of that code section if you would like it.  
2196  
2197 Mr. Blankinship: Do you want to just delete the condition or amend it in some  
2198 way.  
2199  
2200 Mr. Griffin: I think somewhere in your paper work it says that we are  
2201 exempt.  
2202  
2203 Ms. Dwyer: Well, you can say “unless exempted,” but it is unnecessary.  
2204  
2205 Mr. Nunnally: Unless exempted.  
2206  
2207 Ms. Dwyer: How many people are you expecting?  
2208  
2209 Mr. Griffin: We are preparing for 2,000. This is the first time we have  
2210 done this and we don’t know.  
2211  
2212 Ms. Dwyer: It says in your electrical condition that you will be using  
2213 existing. You don’t have electrical connections all around on the grassy area?  
2214  
2215 Mr. Griffin: We do not.  
2216  
2217 Ms. Dwyer: So you don’t have cords.  
2218  
2219 Mr. Griffin: We have to have an electrical connection for the pavilion, but  
2220 we have got an electrician that we have, that we are working with, and he and Dr.  
2221 Eugenio and some members of the committee are going to work on the site plan,  
2222 putting the cords, we are actually going to use probably a generator. We are  
2223 very conscious of running cords and, of course, we applied to the Fire Marshall  
2224 and we are aware of all of those restrictions. We have one of our members of  
2225 the committee who is in charge of safety for us and he is a member of the Fire  
2226 Department in Henrico County, so he is coordinating that for us, and helping us  
2227 make sure that we do what we need to do.  
2228  
2229 Ms. Harris: I notice in your hours of operation information that you filed  
2230 by June 23 for a permit from the Alcohol Beverage Commission. Have you  
2231 received that?  
2232  
2233 Mr. Griffin: We have received that permit.  
2234  
2235 Ms. Harris: So, you will be selling alcohol on premises?  
2236  
2237 Mr. Griffin: We will.

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Ms. Harris: Would you have any objections to our putting the security plans that you mentioned to us about the one security patrol officer and the three police officers in the conditions?

Mr. Griffin: Oh, no. Absolutely not. We have already requested that. It is not a security officer. Actually it is four Henrico County police officers. As I understand it, whenever you engage three police officers, you have to have a supervisor, and so our particular person in our parish happens to be a sergeant in your police force and he will provide the supervision.

Ms. Harris: Also, Mr. Blankinship, will we put the information about the emergency help and personnel in the conditions? You mentioned that they would have these people on hand. Do we need to just write it down as a condition?

Ms. Dwyer: Why don't we incorporate the whole plan? We have an operation plan that they have submitted and we can just incorporate that in the plan.

Mr. Blankinship: No. 6 can be plan.

Mr. Griffin: We are certainly open to any suggestions that you have, because we, I hope you could see that we have done a lot of work to prepare for this, at least we think we have. You may have, obviously, you may have different experiences.

Mr. Blankinship: This is the best application of this type that I have seen.

Mr. Griffin: Well, we appreciate that. I am a deacon in the Catholic Church. I do not rove anywhere.

Mr. Blankinship: It is No. 25.

Ms. Harris: I just cannot imagine an audience on a Saturday of 2,000 people and they are going to serve alcohol on the premises. I know you will conform with the ABC requirements, but it is going to be interesting.

Mr. Griffin: Well, you know, one of the thoughts here, and we have no idea how this will go, is that we have had a Greek Festival and a Lebanese Festival, but we do not have a Filipino Festival in our community, and so this was one of the thoughts that we had. Whether that will ever take place, but in the meantime, we are looking to gather people together in the community to have a good time. We will be very, very careful of that, and that is why we are going to have the police officers there, and we have many volunteers, so we are very aware of that, and we will certainly be conscious of that and be careful.

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Mr. Nunnally: Any other questions from the Board or staff? Is anyone in opposition? Hearing none, that concludes the case. Thank you for coming, sir.

Mr. Griffin: Thank you all.

**DECISION:**

Mr. Kirkland: I move we approve it, and Mr. Blankinship, I would like to comment that was the best report I have ever seen.

Mr. Blankinship: It put us in an awkward position. Of course, he mentioned there are other festivals similar to it to take place and they never apply for permits. So, when they applied, some staff suggested that we not process the application, but it was just too good. He put so much work into it.

Ms. Dwyer: Also, do we want to change the first condition to allow Friday as setup?

Mr. Blankinship: Correct.

Ms. Dwyer: And didn't we decide to eliminate No. 4.

Mr. Kirkland: We want to include that plan of operation as a condition.

Mr. Blankinship: That is No. 7 and No. 4, I made a note that we would eliminate it unless they were exempt. So, if it turns out they are not exempt, we have it covered.

Ms. Harris: I noticed that operation plan does not mention the emergency health personnel that they will have on hand. Do you need to mention that? It is not in the operations plan.

Mr. Kirkland: Was it not in there?

Ms. Dwyer: It is in there.

Ms. Harris: Where?

Ms. Dwyer: In case of medical emergency, the person concerned will be brought to the first aid area and they have a volunteer nurse.

Ms. Harris: I didn't see that. That is fine.

Mr. Nunnally: A motion by Mr. Kirkland. Do I hear a second?

2330 Ms. Dwyer: Second.  
2331  
2332 Mr. Nunnally: A motion by Mr. Kirkland and a second by Ms. Dwyer. All in  
2333 favor say aye. All opposed say no. The motion passes.  
2334

2335 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by  
2336 Ms. Dwyer, the Board **granted** application **UP-32-2006** for a temporary  
2337 conditional use permit pursuant to Section 24-116(c)(1) to hold a festival at 8200  
2338 Woodman Road (Parcel 776-754-8470), zoned R-3, One-Family Residence  
2339 District, (Brookland). The Board granted the temporary conditional use permit  
2340 subject to the following conditions:  
2341

2342 1. [AMENDED] This approval is only for the proposed Filipino Festival to be  
2343 held on Saturday, August 12, 2006 from 10 AM until 8 PM. The tents shall be  
2344 erected no earlier than Friday, August 11, 2006. Cleanup shall occur no later  
2345 than Monday, August 14, 2006, at which time this permit shall expire.  
2346

2347 2. The church's main parking lot shall be kept open in order to provide  
2348 parking for attendees.  
2349

2350 3. All necessary building and electrical permits shall be obtained from the  
2351 Henrico County Office of Building Inspections.  
2352

2353 4. [AMENDED] All food service shall be inspected and approved by the  
2354 Henrico County Health Department, unless it is exempt from such regulation.  
2355

2356 5. The applicant must maintain the property so that noise is controlled. The  
2357 sound emanating from the festival shall not exceed 65 decibels at the property  
2358 lines of the nearest residential property.  
2359

2360 6. Any exterior lighting shall be shielded to direct light away from adjacent  
2361 property and streets.  
2362

2363 7. [ADDED] The festival shall be conducted in accordance with the  
2364 operations plan submitted with the application.  
2365

2366  
2367 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2368 Negative: 0  
2369 Abstained: 0  
2370  
2371

**UP-33-2006** **Country Club of Virginia** requests a conditional use permit pursuant to Section 24-12(c) to build a storage and maintenance building at 709 South Gaskins Road (Parcel 739-732-9785), zoned R-0, One Family Residence District

(Tuckahoe).

2372

2373 Mr. Nunnally: Is anyone else here interested in this case. If so, please  
2374 stand and raise your right hand and be sworn.

2375

2376 Mr. Blankinship: Do you swear the testimony you are about to give is the  
2377 truth, the whole truth, and nothing but the truth, so help you God?

2378

2379 Mr. Lewis: I do.

2380

2381 Mr. Nunnally: Please state your name for the record, sir, and tell us what  
2382 you are requesting.

2383

2384 Mr. Lewis: My name is Monty Lewis and I am with E. D. Lewis and  
2385 Associates and I am representing the applicant in this case. This is for a  
2386 maintenance building that is going to be nestled in the middle of a bunch of other  
2387 maintenance buildings, and actually there are two old buildings that were built,  
2388 probably before the 1930's. They are going to be taken down once this is  
2389 erected. The buildings that will be taken down are north of the maintenance  
2390 building that you see on your plan, right around here (referring to rendering) and  
2391 that is not part of the application, since that goes to Building Inspections. This is  
2392 just a general overview of that. We are not really increasing anything out there.  
2393 We are just replacing, trading an old building for a new building. The photo that  
2394 you probably see there is a reconstruction of a building that they had a fire in.  
2395 We are adjoining that building. They are going to be attached to that building.  
2396 The building that we are putting in going right, attached to that building to the left,  
2397 takes out that tree and will take out also that little metal shed that you see on the  
2398 right of that photo. The building will be almost identical to the ones that you see.  
2399 It is going to be painted CMU metal and we will have two roll up doors and the  
2400 others will be open bay for storage of lawn equipment.

2401

2402 The chemicals that we are presently storing and will be storing in the building that  
2403 is under construction, they are general herbicides and pesticides used for golf  
2404 course maintenance.

2405

2406 Mr. Nunnally: Have you read the conditions proposed?

2407

2408 Mr. Lewis: Yes, sir, we have, and we have no problem with those.

2409

2410 Ms. Dwyer: As I look at condition 5, it says "The applicant shall work with  
2411 the Division of Fire." Have you contacted them, since you are storing chemicals  
2412 and you have already had a fire? Have you contacted them?

2413

2414 Mr. Lewis: Yes. We met with David Seay, the Fire Marshall, who  
2415 reviews the site plans, and we also met with Ralph Claytor with Public Utilities in

2416 regards to if fire protection was required, and it was not, because the majority of  
2417 our building is open and we only have two roll up doors.

2418  
2419 Ms. Dwyer: When you say fire protection, do you mean sprinklers?  
2420

2421 Mr. Lewis: Fire hydrants. The nearest fire hydrant is up at the club  
2422 house, but we don't have any fire hydrants near here, although we have some  
2423 ponds that we told them that we could put some dry hydrants in if they needed to.  
2424 They said that they are really getting away from dry hydrant use because it kind  
2425 of contaminates the tanks, and they are afraid of cross connection and  
2426 contamination of water somewhere else where they might hook up in Henrico.  
2427 But, we have met with the Fire Department and Public Utilities and worked all of  
2428 that out.

2429  
2430 Ms. Dwyer: Just for the record, Mr. Blankinship, I think it is kind of  
2431 ambiguous to say "The applicant shall work with." I would prefer something like  
2432 "shall contact."

2433  
2434 Mr. Blankinship: They made the specific request of the Division of Fire and  
2435 perhaps we should have edited it.

2436  
2437 Ms. Dwyer: I have no further questions.

2438  
2439 Ms. Harris: Mr. Lewis, you were here previously on an addition to the  
2440 Country Club of Virginia, were you not?

2441  
2442 Mr. Lewis: Yes, ma'am, when we tore down the old clubhouse and built  
2443 a new clubhouse. We came before you all probably, I don't know, numerous  
2444 times trying to get a maintenance building built somewhere, and they kept on  
2445 moving this building. Those were on the other side of Gaskins Road. We had  
2446 one, two, three sites out there and the reason that didn't work is a larger building  
2447 that had offices in it, was completely enclosed, and utilities was a requirement to  
2448 bring water lines about 4,000 feet down to that for fire protection, which meant  
2449 this was not economically feasible. They have been a real asset to the people  
2450 who live along there, because they don't have fire protection, but we couldn't  
2451 make it work. The water line was costing half as much as the building.

2452  
2453 Mr. Nunnally: Any other questions by the Board or the staff? Anyone in  
2454 opposition? Hearing none, that concludes the case. Thank you.

2455  
2456 **DECISION:**

2457  
2458 Mr. Nunnally: UP-33-2008, Country Club of Virginia.

2459  
2460 Ms. Dwyer: I move we approve.  
2461

2462 Ms. Harris: Second.

2463

2464 Ms. Dwyer: It appears to be an appropriate development and all of the  
2465 safety issues seem to be taken care of. It doesn't seem to have any impact  
2466 negatively on the adjacent neighbors. It is well planned and removed from  
2467 residences.

2468

2469 Mr. Nunnally: Motion by Ms. Dwyer and a second by Ms. Harris to  
2470 approve. All in favor say aye. All opposed say no. The case is approved.

2471

2472 After an advertised public hearing and on a motion by Dwyer, seconded by Ms.  
2473 Harris, the Board **granted** application **UP-33-2006** a conditional use permit  
2474 pursuant to Section 24-12(c) to build a storage and maintenance building at 709  
2475 South Gaskins Road (Parcel 739-732-9785), zoned R-0, One Family Residence  
2476 District (Tuckahoe). The Board granted the conditional use permit subject to the  
2477 following conditions:

2478

2479 1. Only the improvements shown on the plan filed with the application may  
2480 be constructed pursuant to this approval. Any additional improvements shall  
2481 comply with the applicable regulations of the County Code. Any substantial  
2482 changes or additions may require a new use permit.

2483

2484 2. The new construction shall match the existing building as nearly as  
2485 practical in materials and color.

2486

2487 3. At the time of building permit application, the applicant shall submit the  
2488 necessary information to the Department of Public Works to ensure compliance  
2489 with the requirements of the Chesapeake Bay Preservation Act and the code  
2490 requirements for water quality standards.

2491

2492 4. Prior to construction, the applicant must obtain a building permit. As part  
2493 of this process, the applicant shall satisfy all the requirements of the Department  
2494 of Public Works and the other review agencies.

2495

2496 5. The applicant shall work with the Division of Fire to ensure that all  
2497 chemicals kept in the maintenance facility are properly stored.

2498

2499

2500 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

2501 Negative: 0

2502 Abstained: 0

2503

2504

**UP-34-2006** **Christ Church Episcopal** requests a temporary conditional  
use permit pursuant to Section 24-116(c)(1) to install  
temporary classrooms at 5000 Pouncey Tract Road (Parcel



738-769-3891) zoned A-1, Agricultural District (Three Chopt).

2505

2506 Mr. Nunnally: Anyone else here interested in this case? If so, please stand  
2507 and raise your right hand.

2508

2509 Mr. Blankinship: Do you swear the testimony you are about to give is the  
2510 truth, the whole truth, and nothing but the truth, so help you God?

2511

2512 Ms. Akens: Good morning. My name is Karen Akens, and I am a  
2513 member of the Vestry Board of Christ Church. We are proposing to place three  
2514 temporary trailers on our property to meet our expanded classroom needs on  
2515 Sunday morning, and also to be used at various times during the week. We are  
2516 currently in the process of developing some plans for a new parish life center,  
2517 which will permanently take care of our expanded needs, and we fully expect to  
2518 submit these plans to the Planning Department well before the August 31, 2007  
2519 condition that was proposed. I would like to address the recommendation of the  
2520 Planning Department.

2521

2522 As far as placement of the trailers, when we initially submitted this application we  
2523 had proposed to place them about where the word church is located on the  
2524 current slide. After discussion with Paul Gidley, his recommendation, and  
2525 discussing with our long-term planning commission about where our proposed  
2526 building was going to go and knowing that the County was going to recommend  
2527 that we move the trailers to the back of the property, we looked at a variety of  
2528 locations and came up with the proposal in this location right now. We feel it is  
2529 the best location on our property because it is close to the other buildings and  
2530 provides access for bathrooms. There is a sidewalk that you cannot see on this  
2531 slide, but there are sidewalks that lead directly to that parking area, so the ramps  
2532 that would need to be built to access the trailers would be directly connected to  
2533 the parking lot. The sidewalks are providing a way to access the trailers. We are  
2534 fully aware that putting a trailer there takes out 21 parking spaces and our Board  
2535 met last week and gave me approval to come before you today and say that we  
2536 are, even this week, working on getting bids to expand the parking lot and we  
2537 realize that it requires a POD process. We are also at the back area of the  
2538 overflow parking lot, closest to the trees, which is gravel right now. We intend to  
2539 pave that and that is 93 spaces there in addition to the 50 in the front part of the  
2540 parking lot that are also paved. So, we are moving as fast as we physically can  
2541 to replace the parking that would be covered by these trailers and we certainly  
2542 hope to have that in place before the holidays if we were at a point where we  
2543 could use, and we will need to have the most parking possible to accommodate  
2544 our congregation.

2545

2546 Mr. Wright: Would you have any problems if we would add that as a  
2547 condition?

2548

2549 Ms. Akens: None whatsoever. We have to have that.  
2550  
2551 Mr. Blankinship: Would the present parking facilities include enough area to  
2552 take care of that?  
2553  
2554 Ms. Akens: Yes. That is fine.  
2555  
2556 Ms. Harris: Are there no trailers with bathroom or restroom facilities?  
2557  
2558 Ms. Akens: There are trailers available. Our current situation is that we  
2559 are on a septic tank and we are pretty much at a maximum capacity for that  
2560 septic tank. In my discussion with other members of the County, they think we  
2561 would not be allowed to add any capacity to that septic tank. We are in  
2562 negotiations and Tom can speak to this with the developers just to the north of  
2563 our property to bring in a sewer line so that we can connect our property and if  
2564 you have anymore questions about that, I am sure Tom can go over that.  
2565  
2566 Mr. Balzie: Tom Balzie, Building and Grounds Ministry, and I would just  
2567 like to say that the trailers are used for just an hour for meetings, so it is not  
2568 something that the people would be in there all day long, and need a bathroom  
2569 during the day, so I think that is one of the reasons that we are not planning to  
2570 have the bathroom in addition to the cost of running the sewer to the trailer.  
2571  
2572 Mr. Nunnally: You were going to address further the question of your  
2573 connection to the sewer system of the development next to your property.  
2574  
2575 Mr. Balzie: Right. We have agreements with the developer. See where  
2576 that cul-de-sac comes. He is going to put a manhole right there and then we can  
2577 connect this, this little dome here, that is where our septic system is and right  
2578 now what we do is we pump our sewerage, this is after it has been in there  
2579 settling, we pump the sewerage up to the area, and this is our septic system, so  
2580 all we would have to do is take those pumps and pump it up to this manhole  
2581 here.  
2582  
2583 Mr. Nunnally: And that is something that seems to be underway?  
2584  
2585 Mr. Balzie: It is underway and it is all graded out. They are proposing to  
2586 have some houses, I think, by the end of this year.  
2587  
2588 Ms. Dwyer: Mr. Wright, you got the applicant to agree to the condition  
2589 relating to the parking. I am not sure exactly what you wanted.  
2590  
2591 Mr. Wright: This would be to extend the parking, the present parking, to  
2592 pick up at least 21 parking spaces that are being taken up by the trailer, and the  
2593 testimony was that they are going to remove some trees and expand the parking

2594 lot from its present situation, not just the temporary parking, but to allow 21 more  
2595 spaces.

2596  
2597 Ms. Akens: Just to clarify that a little, our current plan is actually at a  
2598 bare minimum what this area right in here could accommodate, the 21 to 25  
2599 additional spaces. What we intend to do is, you actually expand back here  
2600 almost to the property line. To build another lot, this lot here is 93 spaces, and  
2601 we would, for foreseeable growth, our intention is to actually put in more than the  
2602 21, and at a minimum it would be the 21 spaces, and that also addresses  
2603 another issue where Planning's recommendation was to possibly locate these  
2604 here to the south of the parking lot. We have a long term planning committee  
2605 that met with planners at the County in, I believe, January or February, and went  
2606 over the full long-range plan and if we put the trailers here, that would be in the  
2607 way of eventual building. I do have a question about conditions offered for my  
2608 clarification, so that we understand it exactly right. I am looking at No. 3, "The  
2609 trailers shall be removed from the property on or before August 31, 2008 at which  
2610 time the permit will expire. The permits will not be renewed."

2611  
2612 Mr. Blankinship: That is a requirement of the County Code. A temporary  
2613 conditional use permit can only be approved for a period up to 24 months.

2614  
2615 Ms. Akens: OK. At that time, as I said before, we fully intend to submit  
2616 construction plans which would negate the need for the trailers, but knowing how  
2617 construction goes, if at that time, is there a possibility to apply for another permit?

2618  
2619 Mr. Blankinship: No. That is why that sentence is in there.

2620  
2621 Ms. Akens: Just so I am very clear.

2622  
2623 Mr. Blankinship: The previous condition is there, too, to make sure that  
2624 halfway through we checked with you and everybody is sure.

2625  
2626 Ms. Akens: I just want to be very clear that when I go back to my Board  
2627 that this is a deadline in stone that we must meet. Thank you.

2628  
2629 Mr. Nunnally: Any other questions from the Board or staff. Anyone in  
2630 opposition? Hearing none, that concludes the case. Thank you for coming.

2631  
2632 **DECISION:**

2633  
2634 Mr. Nunnally: UP-34-2006.

2635  
2636 Mr. Wright: I move we approve it with the new condition that they would  
2637 expand the parking to include at least 21 spaces to offset the parking that would  
2638 be taken away by the use of parking the trailers on the parking lot. The basis for  
2639 this, of course, is that I don't see where this would impact adjoining property.

2640 The safety issues have been dealt with and I think they would be within the  
2641 purview of the ordinance.

2642  
2643 Mr. Kirkland: Second.

2644  
2645 Mr. Nunnally: Motion by Mr. Wright and a second by Mr. Kirkland to  
2646 approve. All in favor say aye. All opposed say no. The case is approved.

2647  
2648 After an advertised public hearing and on a motion by Wright, seconded by Mr.  
2649 Kirkland the Board **granted** application **UP-34-2006** for a temporary conditional  
2650 use permit pursuant to Section 24-116(c)(1) to install temporary classrooms at  
2651 5000 Pouncey Tract Road (Parcel 738-769-3891) zoned A-1, Agricultural District  
2652 (Three Chopt). The Board granted the temporary conditional use permit subject  
2653 to the following conditions:

- 2654
- 2655 1. This approval is only for the temporary use of the three trailers as shown  
2656 on the site plan submitted as part of this request. Any additional improvements  
2657 shall comply with the applicable regulations of the County Code. Any substantial  
2658 changes or additions may require a new use permit. This approval is not for the  
2659 proposed building or parking lot expansion.
  - 2660
  - 2661 2. On or before August 31, 2007, the applicant shall submit a report to the  
2662 Planning Department describing their plans for permanent classroom space.
  - 2663
  - 2664 3. The trailers shall be removed from the property on or before August 31,  
2665 2008, at which time this permit shall expire. This permit shall not be renewed.
  - 2666
  - 2667 4. A detailed landscaping and lighting plan shall be submitted to the Planning  
2668 Department with the building permit for review and approval. Approved  
2669 landscaping shall be installed as soon as the weather permits. All landscaping  
2670 shall be maintained in a healthy condition at all times. Dead plant materials shall  
2671 be removed within a reasonable time and replaced during the normal planting  
2672 season.
  - 2673
  - 2674 5. All exterior lighting shall be shielded to direct light away from adjacent  
2675 property and streets.
  - 2676
  - 2677 6. The applicant shall satisfy the Department of Public Works that adequate  
2678 sight distance has been provided.
  - 2679
  - 2680 7. If the building permit plans show more than 2,500 square feet of land  
2681 disturbance, the applicant shall provide an Erosion and Sediment Control plan to  
2682 the Department of Public Works for review and approval. Plans may be  
2683 submitted with the building permit or separately.
  - 2684

2685 8. The trailers shall be skirted on all sides with a durable material as required  
2686 by the building code for a permanent installation.

2687  
2688 9. [ADDED] The applicant shall diligently pursue plans to increase the  
2689 capacity of the paved parking lot by at least 21 spaces to compensate for the  
2690 spaces that will be obstructed by the trailers.

2691  
2692  
2693 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2694 Negative: 0  
2695 Abstained: 0

**UP-35-2006** **Mount Gerizim World Outreach Ministries** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to install a temporary classroom trailer at 4700 Oakleys Lane (Parcel 818-716-4343), zoned A-1, Agricultural District (Varina).

2696  
2697 Mr. Nunnally: Is there anyone else here interested in this case? Is so,  
2698 please stand and raise your right hand and be sworn.

2699  
2700 Mr. Blankinship: Do you swear the testimony you are about to give is the  
2701 truth, the whole truth, and nothing but the truth, so help you God?

2702  
2703 Mr. Jefferson: I do.

2704  
2705 Mr. Nunnally: Please state your name for the record and tell us what you  
2706 are requesting.

2707  
2708 Mr. Jefferson: Good morning. My name is Brian Jefferson and I am here for  
2709 Mount Gerizim World Outreach Ministries, and I am part of the building  
2710 committee and am here to ask for a trailer to put on our property to  
2711 accommodate our use as classrooms for both Sunday mornings and possibly  
2712 some Wednesday nights, Wednesday evening services. The size of the trailer  
2713 we are proposing is actually 28 x 60. I believe in the paper work here it stated it  
2714 was two trailers, both 14 x 60, and actually it is one trailer that will accommodate  
2715 us with our two-section trailer.

2716  
2717 Mr. Blankinship: What is the size again?

2718  
2719 Mr. Jefferson: 28 x 60, 28 feet by 60 feet. Yes, sir. One trailer.

2720  
2721 Mr. Nunnally: Have you read the conditions that are proposed for this  
2722 case?

2723

2724 Mr. Jefferson: Yes, I have, and we don't take an exception to any of what  
2725 has been proposed or suggested.

2726  
2727 Ms. Harris: Are there facilities in this trailer?

2728  
2729 Mr. Jefferson: Not in the trailer, no.

2730  
2731 Ms. Harris: But you have it.

2732  
2733 Mr. Jefferson: In the church, yes. At one time we were proposing it, but we  
2734 are not now. Thank you.

2735  
2736 Mr. Nunnally: Any other questions from the Board or staff? Anyone in  
2737 opposition? Hearing none, that concludes the case. Thank you for coming, sir.

2738  
2739 Mr. Jefferson: Thank you.

2740  
2741 **DECISION:**

2742  
2743 Mr. Nunnally: The last case is UP-35-2006.

2744  
2745 Ms. Harris: I move we approve and strike condition No. 8.

2746  
2747 Mr. Nunnally: Condition 8?

2748  
2749 Ms. Harris: Yes, there are no sanitary facilities in the trailer.

2750  
2751 Mr. Kirkland: The condition should also be changed to reflect there is only  
2752 one trailer.

2753  
2754 Ms. Harris: Yes, one trailer 28 feet by 60 feet.

2755  
2756 Mr. Kirkland: Yes, but it says the trailers shall be removed.

2757  
2758 Ms. Harris: Wherever we have trailers, make it singular, please.

2759  
2760 Mr. Kirkland: Second.

2761  
2762 Mr. Nunnally: Motion by Ms. Harris and seconded by Mr. Kirkland to  
2763 approve. All in favor say aye. All opposed say no. The case is approved.

2764  
2765 After an advertised public hearing and on a motion by Ms. Harris, seconded by  
2766 Mr. Kirkland, the Board **granted** application **UP-35-2006** for a temporary  
2767 conditional use permit pursuant to Section 24-116(c)(1) to install a temporary  
2768 classroom trailer at 4700 Oakleys Lane (Parcel 818-716-4343), zoned A-1,

2769 Agricultural District (Varina). The Board approved the temporary conditional use  
2770 permit subject to the following conditions:

2771  
2772 1. Only the improvements shown on the plan filed with the application may  
2773 be constructed pursuant to this approval. Any additional improvements shall  
2774 comply with the applicable regulations of the County Code. Any substantial  
2775 changes or additions may require a new use permit.

2776  
2777 2. [AMENDED] The trailer shall be removed from the site on or before  
2778 August 1, 2008, at which time this permit shall expire. This permit shall not be  
2779 renewed.

2780  
2781 3. On or before August 1, 2007, the applicant shall submit a report to the  
2782 Planning Department describing their plans for permanent office space.

2783  
2784 4. A detailed landscaping and lighting plan shall be submitted to the Planning  
2785 Department with the building permit for review and approval. Approved  
2786 landscaping shall be installed as soon as the weather permits. All landscaping  
2787 shall be maintained in a healthy condition at all times. Dead plant materials shall  
2788 be removed within a reasonable time and replaced during the normal planting  
2789 season.

2790  
2791 5. All exterior lighting shall be shielded to direct light away from adjacent  
2792 property and streets.

2793  
2794 6. If the building permit plans show more than 2,500 square feet of land  
2795 disturbance, the applicant shall provide an Erosion and Sediment Control plan to  
2796 the Department of Public Works for review and approval. Plans may be  
2797 submitted with the building permit or separately.

2798  
2799 7. [AMENDED] The trailer shall be skirted on all sides with a durable  
2800 material as required by the building code for a permanent installation.

2801  
2802  
2803 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2804 Negative: 0  
2805 Abstained: 0

2806  
2807  
2808 Mr. Blankinship: Mr. Chairman, we passed over **UP-30-2006**. Would you like  
2809 to call that again?

2810  
**UP-30-2006** **West End Assembly of God** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to erect a temporary box office and a tent at 401 N. Parham Road (Parcel 753-736-0655), zoned R-1, One-Family

Residence District (Tuckahoe)

2811  
2812 Mr. Nunnally: Is there anyone here for UP-30-2006, West End Assembly of  
2813 God?  
2814  
2815 Ms. Dwyer: I move we defer it until next month.  
2816  
2817 Mr. Kirkland: Second.  
2818  
2819 Mr. Nunnally: Motion made to defer by Ms. Dwyer and seconded by Mr.  
2820 Kirkland. All in favor say aye. All opposed say no. The case has been deferred.  
2821  
2822 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by  
2823 Mr. Kirkland, the Board **deferred** application **UP-30-2006**, until August 24, 2006.  
2824  
2825 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2826 Negative: 0  
2827 Abstained: 0  
2828  
2829 Mr. Nunnally: How about the minutes? I have here one I want to get  
2830 straight. It is on page 19.  
2831  
2832 Mr. Wright: What line?  
2833  
2834 Mr. Nunnally: Page 19, line 856. It says, "Mr. Nunnally, did you vote in  
2835 opposition to this motion?" and I said yes. I didn't say. I don't know how you got  
2836 this. I think it should have been the Board voted against it. I voted for it. And  
2837 then back on the next page, page 20, "Ms. Dwyer, so you agree that it should be  
2838 denied?" and it said Mr. Nunnally "yes", but I said...  
2839  
2840 Mr. Wright: I think you were saying that you...  
2841  
2842 Mr. Nunnally: I was for it. And then he said, "I am sorry, I thought you  
2843 voted against the motion." I said I did vote against it, so it should be 4 and 1.  
2844  
2845 Mr. Blankinship: It was a motion to deny and you voted against the motion to  
2846 deny.  
2847  
2848 Mr. Nunnally: That is right.  
2849  
2850 Mr. Blankinship: It should be 4 and 1.  
2851  
2852 Mr. Wright: My question is the way, the basis for the decision. If you go  
2853 back, I think the basis for the decision should be that the Board has no authority  
2854 to hear the case under the Cochran decision. And I don't think this is the proper  
2855 basis for the decision.



2856  
2857 Ms. Dwyer: What page? But, if we didn't say that.  
2858  
2859 Mr. Nunnally: Somebody did.  
2860  
2861 Ms. Dwyer: Where?  
2862  
2863 Mr. Kirkland: I had it in here somewhere, because I asked the gentleman  
2864 about if he was instructed about it. Is that the right one? In line 869, I said "I am  
2865 sympathetic and I wish we could help, but I don't think we have the authority to  
2866 do it. The Court took that away from us." On line 776, Mr. Kirkland: "Mr. Tomlin,  
2867 when you went to the County Permit Center to apply for this permit, were you  
2868 instructed about the Cochran vs. Fairfax?"  
2869  
2870 Mr. Kirkland: Yes. Look at line 833 on page 19. Mr. Kirkland: "I move we  
2871 deny, the reason being that Mr. Palmer has reasonable use of the property since  
2872 1973 and under the Cochran vs. Fairfax County case, that is why I make the  
2873 motion to deny." That is the basis for it, not what was stated.  
2874  
2875 Ms. Dwyer: What was stated?  
2876  
2877 Mr. Blankinship: It was stated "It is the essence of the Cochran case."  
2878  
2879 Mr. Kirkland: Is that the Code section that states the Cochran case?  
2880  
2881 Mr. Nunnally: Why don't we say what you normally say Ben? Is this what  
2882 you are normally saying in those cases?  
2883  
2884 Mr. Blankinship: Yes. That is our standard. That is the shortest way and the  
2885 simplest way that I have managed to state.  
2886  
2887 Mr. Kirkland: He was talking about hardship.  
2888  
2889 Mr. Blankinship: That is what the Cochran case is about.  
2890  
2891 Mr. Kirkland: No, it isn't. The Cochran case, first you've have got to get  
2892 past the threshold question of whether there was a reasonable use of the  
2893 property taken as a whole. That is not talking about hardship. You have got to  
2894 get past that.  
2895  
2896 Mr. Blankinship: I disagree, but I will certainly change it.  
2897  
2898 Mr. Kirkland: How can you disagree when you read the Cochran case?  
2899  
2900 Mr. Blankinship: The Cochran case defines hardship approaching  
2901 confiscation as a situation in which there is no reasonable use of the property.

2902 That is what constitutes a hardship that approaches confiscation. But we will  
2903 certainly change it to the language that Mr. Kirkland actually used when making  
2904 the motion.

2905  
2906 Ms. Harris: On page 13, I need you to change a couple of things. On  
2907 line 576, it is a different instead of different ...

2908  
2909 Mr. Blankinship: OK

2910  
2911 Mr. Wright: I move we approve the minutes as corrected.

2912  
2913 Ms. Harris: I second the motion.

2914  
2915 Mr. Nunnally: Motion by Mr. Wright and seconded by Ms. Harris. The  
2916 minutes are approved. All in favor say aye. All opposed say no. The minutes are  
2917 approved as corrected.

2918  
2919 The vote was as follows:

2920  
2921 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2922 Negative: 0  
2923 Abstained: 0

2924  
2925 **Meeting Schedule:**

2926  
2927 Mr. Wright: I move we approve the meeting schedule as proposed.

2928  
2929 Ms. Dwyer: Second.

2930  
2931 Mr. Blankinship: Did you see that we moved Thanksgiving and Christmas, but  
2932 we did not have to move October this year.

2933  
2934 Mr. Nunnally: Mr. Wright, did you make a motion that we approve that?

2935  
2936 Mr. Wright: I make a motion to approve the schedule for 2007.

2937  
2938 Mr. Nunnally: And Ms. Harris, you seconded it?

2939  
2940 Ms. Harris: Ms. Dwyer seconded it.

2941  
2942 Mr. Nunnally: All in favor say aye. All opposed say no. The meeting  
2943 schedule for 2007 is approved.

2944  
2945 On a motion by Mr. Wright and seconded by Ms. Dwyer, the **2007 Meeting**  
2946 **Schedule** for the Board of Zoning Appeals of Henrico County was **approved**.

2947

2948 The vote was as follows:  
 2949  
 2950 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
 2951 Negative: 0  
 2952 Abstained: 0  
 2953  
 2954 Mr. Nunnally: Is there a motion we adjourn?  
 2955  
 2956 Ms. Harris: So moved.  
 2957  
 2958 The Board adjourned until August 24, 2006.  
 2959  
 2960  
 2961 James W. Nunnally  
 2962  
 2963 Chairman  
 2964  
 2965  
 2966  
 2967  
 2968  
 2969 Benjamin Blankinship, AICP  
 2970  
 2971 Secretary  
 2972  
 2973  
 2974  
 2975  
 2976  
 2977  
 2978  
 2979  
 2980  
 2981  
 2982  
 2983  
 2984