

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX, ON THURSDAY, JUNE 28, 2001, AT**
4 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
5 **DISPATCH ON JUNE 7 AND 14, 2001.**
6

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

Also Present: Benjamin Blankinship, Secretary
Susan W. Blackburn, County Planner II
Priscilla M. Parker, Recording Secretary

7
8 Mr. Kirkland - Welcome, ladies and gentlemen, to the June meeting of the
9 Board of Zoning Appeals. Before we get started, I'll have the Secretary read the rules.
10

11 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
12 and gentlemen. The rules for this meeting are as follows. The Secretary, myself, will
13 call each case. Then the applicant will come to the podium to present the case. At that
14 time I'll ask all those who intend to speak, in favor or opposition, to stand, and they will
15 be sworn in. The applicants will then present their testimony. When the applicant is
16 finished, anyone else will be given an opportunity to speak. After everyone has spoken,
17 the applicant, and only the applicant, will be given the opportunity for rebuttal. After
18 hearing the case, and asking questions, the Board will take the matter under
19 advisement. They will render a decision at the end of the meeting. If you wish to know
20 what their decision is, you may stay until the end of the meeting, or you may call the
21 Planning Office at the end of the day. This meeting is being tape recorded, so we will
22 ask everyone who speaks, to speak directly into the microphone on the podium, and to
23 state your name for the record. Out in the foyer, there are 2 binders, which has the staff
24 report for each case, including the conditions suggested by the staff. Mr. Chairman?
25

26 Mr. Kirkland - Do we have any requests for referrals or withdrawals on the
27 9:00 o'clock agenda?
28

29 Mr. Blankinship - No sir.
30

31 Mr. Kirkland - If not, call the first one.
32

33 **A - 77-2001** GARY AND LIMOR SCHWAM request a variance from Section 24-
34 94 of Chapter 24 of the County Code to build an addition at 13116
35 Trinity Place (Ridgemere at Wellesley) (Tax Parcel 46-1-A-20),

June 28, 2001

36 zoned R-4AC, One-family Residence District (Conditional) (Three
37 Chopt). The rear yard setback is not met. The applicants propose
38 32 feet rear yard setback, where the Code requires 35 feet rear
39 yard setback. The applicants request a variance of 3 feet rear yard
40 setback.

41
42 Mr. Kirkland - Is the applicant here? Does anyone else wish to speak on
43 this case? Okay, if you would, raise your right hand and be sworn in.

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

47
48 Mr. Kirkland - Would you state your name for the record please. Have all
49 your notices been turned in according to the County Code? We have them in the file;
50 state your case.

51
52 Ms. Schwam - I do. Limor Glazer Schwam. Yes. We have proposed to
53 add a room to the back of our house, bordering up to the family room, which will be next
54 to it, because we don't have right now a safe place for our children to be able to play
55 with their toys. We have a growing family right now, and our garage enters into the
56 family room, which enters into the kitchen, and right now there's no strategic way to
57 place furniture without losing a walkway or entrance.

58
59 Ms. Schwam, can you describe your lot, how it's laid out?

60
61 Ms. Schwam - We have an angled lot; we're at the end of a cul de sac, and
62 the houses either have their garages going into their kitchen, which makes a whole lot
63 more sense, or into their family rooms, the way they put the houses on the cul de sac.
64 Unfortunately our house has the garage entering into the family room, so the family
65 room becomes a long and thin, I think it's 8 by 12 skinny long walkway. You really can't
66 have people there because it's a walkway from the garage.

67
68 You would say your lot is sort of arched, odd shaped lot?

69
70 Ms. Schwam - It is, and I believe you have a picture. We have planted trees
71 in the back yard, which all of our neighboring neighbors have been very appreciative
72 and very happy, and it has made the area private and would not be an eyesore. I
73 believe our neighbor who would be affected the most by this has sent a letter to you.
74 Mr. and Mr. Ulmer? I have a copy of the notarized letter. They are the neighbors that
75 the addition would be closest to, and they are hoping that we do get the approval
76 because they don't want us to move away.

77
78 Mr. Blankinship - That letter is in the file, Mr. Chairman.

79
80 When was that letter received?

81

82 Mr. Blankinship - About a week ago.

83

84 We couldn't get a copy of it?

85

86 Mr. Blankinship - I think it was just after we'd done the packets. There's a
87 good view of the landscaping on the screen; it's a very dense planting.

88

89 Mr. Kirkland - Any other questions by Board members? Last call, anyone
90 else wish to speak on this case? If not, that concludes the case, ma'am.

91

92 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
93 McKinney, the Board **granted** application **A-77-2001** for a variance to build an addition
94 at 13116 Trinity Place (Ridgemere at Wellesley) (Tax Parcel 46-1-A-20). The Board
95 granted the variance subject to the following condition:

96

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

101

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

103 Negative: 0

104 Absent: 0

105

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

111

112 Mr. Kirkland - Next one, sir.

113

114 **A - 81-2001** **BRIAN W. RATLIEF** requests a variance from Section 24-9 of
115 Chapter 24 of the County Code to build a single family dwelling at
116 2083 Kenyl Knoll Lane (Tax Parcel 233-A-3), zoned A-1,
117 Agricultural District (Varina). The public street frontage requirement
118 is not met. The applicant has 0 feet public street frontage, where
119 the Code requires 50 feet public street frontage. The applicant
120 requests a variance of 50 feet public street frontage.

121

122 Mr. Kirkland - Is the applicant here for this case? If you would sir, come
123 forward. Does anyone else wish to speak on this case? State your name for the record
124 please. Raise your right hand and be sworn in.

125

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

128
129 Mr. Kirkland Have all your notices been turned in? We have them in the
130 file. Thank you. All right, state your case.

131
132 Mr. Ratlief - Brian Ratlief. Yes. Just bought some property about 2 years
133 ago, in the Varina District. Plan on building a home to move back into the County. I
134 presently live in Charles City, and I have no road frontage. I have a 25-foot easement
135 to my property, but I don't have any road frontage, and I'd like to build a home there.

136
137 You've read the conditions on the case? You in agreement
138 with those?

139
140 Mr. Ratlief - Yes. I've had the land perked, and everything has passed up
141 until this point. In order to get started building, I'd have to get this variance done. The
142 road has been done and meets the County specs. The road is in Charles City County
143 and has met all county approval.

144
145 You have 9.31 acres?

146
147 Mr. Ratlief - Yes.

148
149 Mr. Kirkland - Any other questions by Board members? Anyone else wish
150 to speak? That concludes the case, sir. Thank you very much.

151
152 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
153 Wright, the Board **granted** application **A-81-2001** for a variance to build a single family
154 dwelling at 2083 Kenyl Knoll Lane (Tax Parcel 233-A-3). The Board granted the
155 variance subject to the following conditions:

156
157 1. This variance applies only to the public street frontage requirement. All other
158 applicable regulations of the County Code shall remain in force.

159
160 2. Approval of this request does not imply that a building permit will be issued.
161 Building permit approval is contingent on Health Department requirements, including,
162 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
163 of a well location.

164
165 3. At the time of building permit application, the applicant shall submit the
166 necessary information to the Department of Public Works to ensure compliance with the
167 requirements of the Chesapeake Bay Preservation Act and the code requirements for
168 water quality standards.

169
170 4. The applicant shall present proof with the building permit application that a legal
171 access to the property has been obtained.

172

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

176
177 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
178 Negative: 0
179 Absent: 0

180
181 The Board granted this request, as it found from the evidence presented that, due to the
182 unique circumstances of the subject property, strict application of the County Code
183 would produce undue hardship not generally shared by other properties in the area, and
184 authorizing this variance will neither cause a substantial detriment to adjacent property
185 nor materially impair the purpose of the zoning regulations.

186
187 Mr. Kirkland - Next one sir.

188
189 **UP- 18-2001** MOUNT OLIVE BAPTIST CHURCH requests a temporary
190 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
191 24 of the County Code to use a trailer for classroom and meeting
192 space at 8775 Mt. Olive Avenue (Tax Parcel 52-A-72), zoned R-3,
193 One-family Residence District (Fairfield).

194
195 Mr. Kirkland - Is the applicant here for this case? If you would come down
196 please. Anyone else wish to speak? If you would ma'am, raise your right hand and be
197 sworn in.

198
199 Mr. Blankinship - Do you swear that the testimony you are about to give is the
200 truth, the whole truth, and nothing but the truth, so help you God?

201
202 Mr. Kirkland - State your name for the record please. Have all your notices
203 been turned in according to the County Code?

204
205 Ms. Corbin - Yes I do. Mr. name is Mary W. Corbin. Yes. On behalf of
206 Mt. Olive Baptist Church, as was stated, we would like to renew our permit to use a
207 trailer as a temporary classroom for our Sunday school and mid-week services, and to
208 also hold meetings of various ministries. Our church hopes to have additional
209 permanent space in about 12 to 18 months. We have gotten the approval of our POD
210 and hopefully, we will be able to break ground this summer.

211
212 Ms. Corbin, you realize that this extension is approved, it
213 would terminate on April 27 of 2002? That would be the longest we could grant the
214 temporary use permit.

215
216 Ms. Corbin - Yes I do. We understand that.

217
218 Ms. Corbin, you want to use the trailer Monday through

219 Thursday?

220

221 Ms. Corbin - Basically, we said Monday through Thursday, we were
222 looking at the calendar, and those were the requests that we had. Every now and then
223 we have a conflict with a meeting or choir rehearsal on a Saturday, but basically our
224 meetings would be Monday through Thursday, but in the event that we did have to use
225 it, it would be in the hours that would be permissible by the County.

226

227 Ms. Corbin, what would you be doing in the trailer after 9:00
228 or 10:00 o'clock at night?

229

230 Ms. Corbin - Cleaning, basically. The church is usually locked by 10:00
231 o'clock at night, so if anybody's in the trailer after 9:00, 9:30 at the latest, they'd
232 probably be cleaning.

233

234 Is this trailer already there? So you've already placed the
235 trailer there?

236

237 Ms. Corbin - Yes it is. Yes, because we'd already asked for a permit last
238 year, and this is basically for renewal because our new structure is not completed. In
239 fact, they haven't even broken ground, so we found the need to ask for it another year.

240

241 We granted just a year the first time?

242

243 Ms. Corbin - One year, yes, so we're just asking for a renewal?

244

245 Mr. Kirkland - Any other questions by Board members? Anyone else wish
246 to speak? That concludes the case. Thank you.

247

248 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
249 Nunnally, the Board **granted** application **UP-18-2001** for a temporary conditional use
250 permit to use a trailer for classroom and meeting space at 8775 Mt. Olive Avenue (Tax
251 Parcel 52-A-72). The Board granted the use permit subject to the following conditions:

252

253 1. This approval only allows the existing trailer to remain on site. Any additional
254 improvements shall comply with the applicable regulations of the County Code.

255

256 2. The trailer shall remain in the same location unless a new site is approved by the
257 Planning Office.

258

259 3. The trailer shall only be used during the following hours: 8:00 am to 1:00 pm on
260 Sunday, and 5:00 to 10:30 pm Monday through Thursday.

261

262 4. The trailer shall be removed from the site on or before April 27, 2002.

263

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

265 Negative: 0

266 Absent:

0

267

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

270

271 Mr. Kirkland - Next one sir.

272

273 **A - 82-2001** **NATHAN D. ZASLER** requests a variance from Sections 24-95(i)(2)
274 and 24-94 of Chapter 24 of the County Code to allow the existing
275 dwelling, pool and shed at 13458 North Gayton Road (Tree of Life)
276 (Tax Parcel 45-15-A-1 (part)), zoned A-1, Agricultural District (Three
277 Chopt). The accessory structure location requirement and rear yard
278 setback are not met. The applicant has 45.75 feet rear yard
279 setback, 1.0 foot accessory building setback and a pool and shed in
280 the side yard, where the Code requires 50 feet rear yard setback
281 and 3.0 feet accessory structure setback, and allows accessory
282 structures in the rear yard. The applicant requests a variance of
283 4.25 feet rear yard setback and 2.0 feet accessory structure
284 setback, and accessory structures in the side yard.

285

286 Mr. Kirkland - Is the applicant here? If you would, come forward sir.
287 Anyone else wish to speak on this case? Everybody please stand up and raise their
288 right hand and be sworn in.

289

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

292

293 Mr. Kirkland Thank you ma'am. Okay sir, state your name for the record.
294 Have all your notices been turned in according to the County Code? State your case.

295

296 Dr. Zasler - I do. Nathan David Zasler. Yes sir. Basically, we're in the
297 process of subdividing property at the 13458 North Gayton address. It results in the
298 current residence changing orientation so that the current front and back of the house
299 then become the sides of the house, leading to a need for request of variances
300 previously stated, relative to the amount of space behind the residence, which is
301 approximately just over 45 feet, relative to the required 50 feet, and then the side of the
302 house where the pool is, is also a variance issue in terms of the space there and the
303 pool shed.

304

305 You had one big lot, is that what you had to start with, and
306 that was 3.051 acres?

307

308 Dr. Zasler - Well the lot was originally larger. One acre or so was sold off
309 in the back. The current lot is about 3 acres.

310

311 This will be a one-acre lot that remains. And the problem
312 occurs because of the new line that causes these buildings to be too close to the rear, is

313 that correct?
314
315 Dr. Zasler - Correct, the one with the house on it.
316
317 Mr. Blankinship - Currently the front of the property is on North Gayton. After
318 it's subdivided, the front of this lot will be on Favero.
319
320 Oh I see, it turns it around.
321
322 Dr. Zasler - Right, the orientation changes. Practically speaking, it
323 doesn't affect anybody.
324
325 Mr. Blankinship - It doesn't move any of the buildings.
326
327 What's located to the rear of your property?
328
329 Dr. Zasler - A ten-acre historical property owned by Dr. Shields. He has
330 a residence on it. How far is that residence, approximately, from your property line?
331
332 Dr. Zasler - Quite a ways, several hundred feet I would guess.
333
334 What's located to the west of your property, behind the pool?
335
336 Dr. Zasler- Behind the pool, another residence.
337
338 Mr. Blankinship - When was that built, do you know?
339
340 Dr. Zasler - Just within the last year or so.
341
342 Mr. Blankinship - That's why it doesn't show here.
343
344 Dr. Zasler - It's not part of the subdivision, just for the record.
345
346 How far is your pool from that residence?
347
348 Dr. Zasler - Quite a ways; there's a fence that's there now, and the pool
349 from actual residence, again I'm 'guestimating.' I don't have my surveyor here; he might
350 have a better idea, but, he said 120 feet.
351
352 Andy there is a fence there between your property and his,
353 that lot?
354
355 There's nothing constructed on that lot, Dr. Zasler?
356
357 Dr. Zasler - The front lot.?
358

359 The lot behind the pool.

360
361 Dr. Zasler - No, there is a house there, if I'm understanding your question
362 correctly. It was just build?

363
364 So when that house was built, your pool and everything was
365 existing. Or did you put it in after the house?

366
367 Dr. Zasler - No, the house that I am in has been there for over 12 years;
368 the pool was there when this residence was built.

369
370 Mr. Kirkland - Okay, any other questions? Anyone else wish to speak in
371 favor of the case? You in favor or the case ma'am, or are you against the case?

372
373 I have questions.

374
375 Mr. Kirkland - Okay, come forward then. You sit down; you'll have time to
376 rebut any if its against your situation. Would you state your name for the record please.

377
378 Ms. McAfee - My name is Eileen McAfee. I'm a resident of Granville
379 South, which is a subdivision that abuts the Zasler property, known as the Tree of Life.
380 Actually, Granville South more than abuts. The Zasler property is in fact, part of the
381 entrance to Granville South, so whatever happens to this property will have a direct
382 impact on our entrance. To back up a little bit and to give you a little history, you may
383 already be aware, the Tree of Life, Dr. Zasler's residence and property is a group home
384 for individuals with brain injuries. We initially were told that these injuries were the
385 result of trauma, but we've subsequently learned during the course of the County's
386 approval process, several years ago, that the patient population could also include
387 individuals suffering from a variety of psychoses, ostensibly controlled by medication
388 however. I have to say though that the Tree of Life has basically been a good neighbor.
389 There has never been any excessive noise coming from the home; there's never been
390 any problem associated with the home, such as anything that would require police
391 intervention, and this is to the best of my knowledge anyway, and the knowledge of the
392 neighbors that I have asked, as well. They even have a very nice, large dog named
393 Apollo, who lives on the premises, and he rarely barks, he never runs loose, and in fact
394 is better behaved than many people. Now having said all that, I'm here today because
395 I'm concerned and have some questions about the issue before you, not just the
396 variance for the pool and the pool house, but also I have a question about the lot being
397 subdivided. I think it's important, before voting on something piecemeal or
398 incrementally, and then finding out at the end of the day that something has been
399 approved that's very different and probably unacceptable than we thought was on the
400 table

401
402 Let me stop you for a moment. We don't have anything to do
403 with the subdivision. He has a perfect right to do that. That's not the issue before this
404 Board. The only issue before this Board, when it was subdivided , it changed the

405 orientation of his lot. What's been there for 12 years is still going to be there. He's not
406 changing anything. It will have no further impact on any property than it's had for 12
407 years.

408
409 Ms. McAfee - Well I have a question. Here's my question. If I could just
410 throw this out. I understand that the subdivision is not before you now
411 well it will probably come before another Board, and I'll have a chance to address it
412 then. If I could just finish, because it does tie in here. My first question is, if the pool
413 variance means changing the Tree of Life address, from North Gayton Road, to Favero
414 Road, is Dr. Zasler going to build a driveway to his property from Favero Road, or is he
415 going to continue to use the existing driveway from North Gayton Road. And if I
416 understand, and again I know that this is not coming before you right now, but I think
417 that the overall picture may end up being quite different from what's before you right
418 now. But if I understand the plat correctly, it would appear that he plans to sell off the
419 front portion of his land, which I understand that he's got a perfect right to, it's his
420 property, but it's hard for me to imagine that a private individual would purchase this
421 land and build a private residence, given that a group home would be directly in their
422 back yard. So my second question is, is Dr. Zasler planning to sell this land to a private
423 individual, or is there a plan to sell to another entity, another corporation, who would
424 build possibly another group home.

425
426 I don't think that's before us either. That has nothing to do
427 with this case. What he does with his land is something else. That's his right, as long
428 as it's done within the requirements of the law.

429
430 Ms. McAfee - Right. And I understand when someone does build
431 eventually something there, I will have an opportunity, when they file for a permit, to ask
432 questions, but I just thought, you know, when we saw the notice of the hearing, the
433 notice looked very benign. It was a simple request to get a variance on the pool,
434 because as I understand it, changing the address of his home now puts the pool and
435 pool shed at the side of his property, which is against Code, and that's why he needs a
436 variance. I understand this other issue of subdividing is not before you now, but I am
437 curious to know about a driveway up to his house, which will now have a Favero Road
438 address.

439
440 Did you call the Dr. about any of these questions? Why
441 didn't you call him – you probably could have resolved all this in your mind.

442
443 Ms. McAfee - Well I'll tell you why. Our Homeowners President, as well as
444 our architectural committee chairman, have tried to talk to Dr. Zasler, because we have
445 an overall plan for our front entrance, and we were all going to be individually assessed
446 to cover this plan. It's quite an extensive planting and tree planting project, and our
447 President and our Committee Chairman, have had a pretty hard time reaching Dr.
448 Zasler to discuss this. So I'm not saying I'm opposed to what he's doing, what he
449 proposes, but I did want to make you aware of the community's concern. When the
450 project was first discussed several years ago, the County was very helpful to us in

451 answering our questions, and taking our concerns. Of course we had concerns about a
452 group home going in. It's proved to be a good neighbor. So I'm just here as a
453 representative of the neighborhood, to pose some questions and concerns.

454
455 I don't think that's material to the case either, where he puts
456 his driveway, is it Mr. Blankinship?

457
458 Mr. Blankinship - It's certainly a good question.

459
460 Well, we can ask him. I don't know what it has to do with
461 this, but we can certainly ask him.

462
463 Mr. Kirkland - When everybody finishes, we'll ask him. When you finish,
464 we'll ask him where he's going to put his driveway, if he's going to put one, or if he's
465 going to change anything. Anyone else wish to speak? Yes sir. If you would, state
466 your name for the record. Where do you live?

467
468 Mr. Stephens - Ed Stephens. I live right next door. I own lot number 2,
469 that's to the west of Dr. Zasler's property.

470
471 The new house?

472
473 Mr. Stephens - Yes, the new house that's still under construction. I have a
474 very fundamental question – what is the purpose of a setback. The reason I am asking
475 that question is, at this point, Dr. Zasler's pool pump house is barely a foot from my
476 fence, and so is there a need for someone to walk back there, because if that's the
477 case, once my fence is fully constructed, as he will complete, there really won't be any
478 space for anyone to walk back there. I need to know what's the purpose of a setback.

479
480 Mr. Blankinship - There are several different purposes, but one of them is just
481 to provide an area for maintenance, if he needs to maintain that pool house, he needs
482 to be able to stand between it and the property line, without going onto your property.

483
484 Mr. Stephens - He's going to be pretty hard pressed, because I know my
485 fence is one foot off the line, but his fence is also one foot off that property line, and so I
486 think there needs to be some clarification as to how much space really exists, and I
487 guess a surveyor might be the best person to address that.

488
489 It's been that way for 12 years.

490
491 Mr. Stephens - Interestingly enough, when my builder bought this piece of
492 land, while I was in Dallas, we came to find out that part of Dr. Zasler's property had
493 encroached on my 1.001 acre, and so I had already worked with him to move his pump
494 house off of my property, which he did I guess, a foot, and this was before this came up,
495 so now I'm asking the question, does that pump house need to be moved any further,
496 and if he took the time to move the pump house one time, perhaps it should have been

497 moved to Code.
498
499 Mr. Blankinship - Is there some agreement under way between you to adjust
500 that property line?
501
502 Mr. Stephens - To adjust the property line? No.
503
504 Mr. Blankinship - Would you put up photo 2 please. When we were visiting the
505 property, mention was made that that jog in the fence was going to be straightened out.
506 Where is the fence now. Does it go partly onto your property?
507
508 Mr. Stephens - The wood fence is my fence because I have a pool, and we
509 had to jog that fence out because the pump house was back further and prevented us
510 from doing a straight line shot with the wooden fence.
511
512 Mr. Kirkland - So then he moved it?
513
514 Mr. Stephens - Right. Then we've asked him to move it, and then he moved
515 it some time later. But my question still remains, if you see the space between the
516 metal fence and the wooden fence, it's really, really tight, and the question is, what is
517 the true purpose of a setback, and will that be any kind of violation of a setback
518 function? That's it. Thank you.
519
520 Mr. Kirkland - We shall ask him that question, about the pool house. Does
521 anyone else wish to speak? Okay, Dr. Zasler, come forward.
522
523 Dr. Zasler - May I ask Mr. Floyd to come up if there are any questions?
524
525 Mr. Kirkland - Was he sworn in? If you'll come forward, we'll swear you in.
526
527 Mr. Blankinship - Do you swear that the testimony you are about to give is the
528 truth, the whole truth, and nothing but the truth, so help you God? And your name?
529
530 Mr. Floyd - I do. Kevin Floyd.
531
532 Mr. Kirkland - Dr. Zasler, I know some of the questions, the driveway was a
533 question.
534
535 Dr. Zasler - Right. If I can just respond on a few levels, if I may. I think
536 certainly I would like to correct for the record a couple of statements made by the first
537 speaker. I have never told anyone that I have psychiatric patients, e.g. people with
538 primary diagnoses that are psychiatric. All the clients who are at Tree of Life are people
539 who have had brain injuries. Some of those people may have behavioral impairments,
540 but none of them would be admitted to the program if I felt they were out of control or
541 unsafe or a danger to my clients or staff or the neighbors. So just for the record, I want
542 to clarify that statement.

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588

Mr. Blankinship - You are licensed through the State?

Dr. Zasler - Yes, through Social Services, as an adult care residence. I think again, I need to leave that up to other people, but that we've made an attempt to be good neighbors. There have been no problems as previously testified to. I have been very communicative with Mr. Fitzpatrick, who lives 2 houses away from me, regarding the plans to change the plantings at the entrance. I own property on both sides of the entrance to the neighborhood. I am not part of the neighborhood, but as a good neighbor, I have been in communication with Mr. Fitzpatrick, as well as my immediate neighbor, Mr. Stephens, and addressed issues that we had, and have tried to work in a neighborly fashion with him to address those concerns. Any comment regarding lack of availability or communication, I think is a misrepresentation of fact, and I'd like to correct that for the record. I remain available; they can call me at my office, leave a message at the house, if there are any issues that the neighbor or neighbors wish to address. The street issue, if it is an issue, we are not planning to have an entrance of Favero; the entrance will remain on North Gayton. To address that concern, again, this is the first time I am hearing that concern, which also bothers me that it wasn't addressed earlier. We could have avoided all the time taken. I don't know the answer to Mr. Stephens' question, but we're willing to address those issues as you feel that needs to be addressed.

Let me ask you a question. This has just come out. Your pool house was moved; you agreed with him to move it once. How long ago was that?

Dr. Zasler - Within the last 6 months.

So it's only a foot from the line now, is that correct.

Dr. Zasler - About that, Kevin do you know.

Mr. Floyd - Yes, originally it had encroached slightly, so we moved it.

Why didn't you move it a little further away from the line? Is there any problem with doing that?

Mr. Floyd - I assume that there was already a slab there, and we were trying to utilize what was there. The structure had a slab underneath it, and we wanted to make sure that we didn't have to pour any additional slab, so we were trying to utilize what was there originally.

Dr. Zasler - The concrete foundation for the pool house.

But you would not be able to maintain it if it's only a foot between the pool house and the line. I mean if you had to paint it or something on the other side, how would you do it?

589
590 Mr. Kirkland - If he straightens that fence all the way through, which he's
591 got a right to do.

592
593 Dr. Zasler - Right. I guess we need to cross that bridge if you tell us we
594 need to cross it and address that issue. I'm not unwilling to do that.

595
596 That violated the ordinance to start with, didn't it?

597
598 Mr. Blankinship - Well it was on the other property to start with, so yes sir. But
599 that is part of the variance request, so if you want to separate that out, of course you
600 can approve the variance except for that.

601
602 When he owned all of this property, it was not an issue, is
603 that what you're saying?

604
605 Mr. Blankinship - Right. When Mr. Stephens lot was divided.....

606
607 That was before this subdivision was in question, so that
608 created a problem when that lot was conveyed off.

609
610 So the 2-foot structure setback is the request to leave the
611 pool house where it is, I guess.

612
613 Yes sir, which is going to put him no way to paint the side of
614 his house or whatever he needs to do, because he's going to have to get on the other
615 man's property. So we can separate the request.

616
617 Mr. Kirkland - Any other questions? Any other questions?

618
619 Mr. Blankinship - I must have missed the answer to the driveway question.

620
621 He said it was going to stay where it is.

622
623 Mr. Kirkland - Anybody else have any questions? If not, that concludes the
624 case.

625
626 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
627 Balfour, the Board **granted** application **A-82-2001** for a variance allow the existing
628 dwelling at 13458 North Gayton Road (Tree of Life) (Tax Parcel 45-15-A-1 (part)). The
629 Board granted the variance subject to the following condition:

630
631 1. This variance applies only to the existing dwelling located on the property. All
632 other improvements on the property shall comply with the applicable requirement of the
633 County Code.

634

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

638
 639 The Board granted this request, as it found from the evidence presented that, due to the
 640 unique circumstances of the subject property, strict application of the County Code
 641 would produce undue hardship not generally shared by other properties in the area, and
 642 authorizing this variance will neither cause a substantial detriment to adjacent property
 643 nor materially impair the purpose of the zoning regulations.

644
 645 Mr. Kirkland - Next case sir.

646
 647 **A - 83-2001** **LOIS MCGUIRE DURRETTE** requests a variance from Section 24-
 648 95(i)(2) of Chapter 24 of the County Code to build a detached
 649 garage at 1050 Kukymuth Road (Tax Parcel 191-A-20), zoned A-1,
 650 Agricultural District (Varina). The accessory structure location
 651 requirement is not met. The applicant proposes a detached garage
 652 in the front yard, where the Code allows accessory structures in the
 653 rear yard.

654
 655 Mr. Kirkland - Applicant come forward, please. Anyone else wish to speak
 656 on this case? Raise your right hand and be sworn in, all of you.

657
 658 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 659 truth, the whole truth, and nothing but the truth, so help you God?

660
 661 Mr. Kirkland - If you would, state your name for the record, please. Have
 662 all your notices been turned in according to the Code? We have them in the file. One
 663 of you proceed with the case.

664
 665 Mr. Hood - I do. Joe E. Hood. Yes sir.

666
 667 Ms. Durette - I do. Lois McGuire Durette.

668
 669 Mr. Hood - I brought some additional pictures. I don't know if they're
 670 necessary or not. I'll be glad to

671
 672 Mr. Kirkland - If we take those pictures, we have to keep them for 30 days,
 673 is that all right?

674
 675 Mr. Hood - That would be fine. The pictures may clear up a little bit from
 676 what we got aside from the 2 pictures that the County took. First of all, the need for the
 677 garage is that, Mrs. Durette and I are to be married, and I'm planning on moving in with
 678 her. Of course, being a senior citizen, I have acquired a few things through life, and of
 679 course my car has never been out of cover, always been under cover, and I have some
 680 shop equipment, and I do work in stained glass to some degree, and other

681 miscellaneous equipment I need the roof on. Of course the obvious place for a garage
682 is at the end of the driveway. This driveway's been there for 35 years. Unfortunately,
683 the house is oriented different from the County usage, but the end of the house borders
684 on Kukymuth, whereas the County of course classifies that as the front. The lot is so
685 located that it's more land from back to front, what we consider back to front is the
686 largest portion, that would be side to side. The County views it as the front to back
687 being the shallow side. Well, the front of the house, of course, I'll speak in terms of
688 County location. The front of the house has the driveway going up bordering Kukymuth
689 – that's where we want to put the garage. The right side of the house is the long portion
690 of the property, which slopes downward. The drain fields and septic tank are located
691 out there. At the extreme lower edge, the field opposite this property drains, and during
692 heavy rains, it floods, it's a miniature lake down there until it all has a chance to drain
693 off. The other side of the property is bordered pretty much by a power line, and it's the
694 shallow side, and water does stand during heavy rains back there, and the proposed
695 location, according to County standards, is at the back of the House, which would be
696 closer to that neighbor. We would have to remove about 7 or 8 large cedar trees, and
697 also that portion of the property during heavy rains is a flood area. Rainwater rushes
698 down there. Also there on the right side of the house, back over towards that end of the
699 house, is the well, so we really don't have room to put the building anywhere except at
700 the head of the driveway along Kukymuth.

701

702 Could you move it over behind the house?

703

704 Mr. Hood - Technically you could, but the boundaries, it would be right
705 up almost against the house in going back to the power line variance of 10 feet. You
706 just don't have room for proper orientation of the building, really anywhere on the
707 property except the proposed location.

708

709 Sir, that's a rather large garage.

710

711 Mr. Hood - Yes sir, as I stated, I have not only for the garage use, but
712 also for my equipment.

713

714 Mr. Wright - Suppose you turned it around and oriented it behind the
715 house so you'd come in like this; you come into the front of it with a 30-foot area turned
716 around. It would give you more room.

717

718 Mr. Hood - You talking about locating in the same place, but just

719

720 Mr. Wright - No, and moving it over behind the house to get it away from
721 the road.

722

723 Mr. Hood - The trouble with that is, is the distance that you have
724 between the house and the power line variance and the fact that her house runs
725 lengthwise, so that all that whole side of that house, in essence, you're looking from
726 one, out the window, into a structure, which is of course detrimental to the value of the

727 property, as well as objectionable to those who live there.
728
729 Mr. Wright - That would be toward the back of the house, wouldn't it?
730
731 Mr. Hood - Well in the true sense it's toward the back of the house, yes
732 sir.
733
734 Mr. Wright - The way the house is situated.
735
736 Mr. Blankinship - The side of the lot is back of the house.
737
738 Mr. Hood - But I have to be careful as to say back and front

739
740 Mr. Wright - But I'm saying the garage would be behind, to the back of the
741 house.
742
743 Mr. Hood - The true value of the house, yes it would.
744
745 Mr. Kirkland - See the little hands moving on the picture up there. Put it
746 right there and turn it lengthwise on the drawing.
747
748 Mr. Wright - Looks like to me that would be less of a problem.
749
750 Mr. Hood - As you can see now, as you can see from the picture here,
751 the driveway goes straight up.
752
753 Mr. Wright - Yes, but you can turn the driveway into the garage. You
754 could still go up the driveway, but just turn it into the garage if you moved it around and
755 reoriented the garage.
756
757 Mr. Hood - Yes, that can be done, I guess, if the property, I don't know
758 how much slope is there, because I really haven't looked at it, but the objectionable part
759 of that is, you're looking from the kitchen and the dining room in that particular area, and
760 the bathroom, into a building. And when I say "into it," we're talking about 10 feet or so,
761 in order to accommodate the building from the line to the house, or in that
762 neighborhood. I don't know, it may not be exactly 10 feet.
763
764 Looks like to me a little bit more than that
765
766 Mr. Hood - It may be sir.
767
768 You've got 8 feet now, and you'd add another 12 feet, so it'd
769 be 20 feet.
770
771 Mr. Hood - Well like I said, I hadn't really stepped it off exactly. Now I
772 think the power line, I noticed that after I submitted, the power line does come in on a

773 slight angle, which I really didn't notice at the time, but I don't think that's appreciable,
774 but nevertheless it does to some degree.

775
776 Mr. Hood, what kind of equipment do you use in this garage,
777 you say you want something for your equipment?

778
779 Mr. Hood - Well, I have woodworking equipment, and I need a place to
780 put my desk to work on stained glass, lawnmowers, shredder, just some equipment.

781
782 But it looks like the garage is about as big as the house, isn't
783 it?

784
785 Mr. Hood - No sir.

786
787 Square footage wise? You talking about 42 by 30?

788
789 Mr. Hood - Yes sir. Well when you put woodworking equipment in it,
790 and I have one area

791
792 Is this a hobby of yours, or do you sell

793
794 Mr. Hood - No it's a hobby. I'm going to have one area of the building,
795 12 by 30 , devoted to this project, I hope. The rest of it will be for cars or equipment to
796 be stored in. At my age, it's not the easiest thing to move everything.

797
798 Mr. Kirkland - Any other questions by Board members? Anyone else wish
799 to speak? Are you for or against?

800
801 I'm opposed.

802
803 Mr. Kirkland - Okay, you will have time to rebut any questions she may ask.
804 Yes ma'am, if you would, state your name for the record.

805
806 Ms. Thomas - I'm Ann Watson Vail Thomas.

807
808 Mr. Kirkland - Where do you reside?

809
810 Ms. Thomas - Where I reside is 6401 River Road, Richmond, Virginia. I
811 own this property along Kukymuth Road, to the east, the farmland and 3 houses on the
812 property. I received your letter from Mr. Blankinship, certified mail dated June 7. I've
813 been out of town. I don't really have any prepared remarks, but I'm generally opposed
814 to anything that you would be allowed to do to your property that might devalue it and all
815 those, and set a precedence, for other people to come and put a garage or what other
816 type of structures in front of their home.

817
818 Mr. Kirkland - Ma'am, let me interrupt you right now. When we hear the

819 cases that we hear each month, each case is judged on its own merits and from both
820 sides of who's discussing it. We don't set precedent here, and I'd like that to be made
821 known. Every case is its own merit, and we listen to it, and that's the way we do it.

822
823 Let me ask you, do you own the property that's adjacent to
824 this property?

825
826 Ms. Thomas - I own the property that's across the street. Kukymuth Road,
827 and then Osborne Turnpike, the acreage, and the houses. 951 Kukymuth Road would
828 be the closest one would be the closest one to Mrs. Durette and her fiancé.

829
830 You say you're across the street, directly across, or further
831 down Kukymuth Road?

832
833 Ms. Thomas - It would be further down.

834
835 From Osborne Turnpike, you would pass their property to get
836 to yours?

837
838 Ms. Thomas - Yes sir; they would be on the right; I would be on the left and
839 elevated. The power lines that run behind their property also run through my property.

840
841 Your property is vacant?

842
843 Ms. Thomas - Vacant? No sir.

844
845 Structures on it? Home on it?

846
847 Ms. Thomas - Yes, there are 3 improvements – a main house, a guest
848 cottage and then another house, and they all have occupants.

849
850 How much land do you own there ma'am?

851
852 Ms. Thomas - It's right under 500 acres.

853
854 Small parcel.

855
856 What would your solution be?

857
858 Ms. Thomas - Well, I'm not for them having to take down any cedar trees; I
859 understand how they feel, but right now my fields are up, and in the fall, winter and
860 spring, before there is any growth out there on Kukymuth, I would see a very large
861 structure that might not be in keeping with generally what's in the area, and we're
862 agricultural, and I don't want to see any potential shop. I didn't know that it could be a
863 sizeable structure, so I'm concerned, and I would be opposed. Was that the question?
864 I don't think I actually answered what you asked me.

865
866 You're beating on the edges of it. I was asking where you
867 thought he ought to put his structure.

868
869 Ms. Thomas - Well I can ride out there and look.

870
871 But you know he's got his septic tank in one area, and he's
872 got a well in another.

873
874 Ms. Thomas - Yes, and I've never actually met them, and I feel for them,
875 because I would like to be able to do, with any of my properties , what I need to do, so I
876 would be willing to do that. But I could see that at any future date that if I would want to
877 do any subdivision, or do anything with my property, that where you would have
878 entrances along Kukymuth Road, that a large shop structure would devalue my
879 property.

880
881 Mr. Kirkland - Thank you ma'am. Would you like to add anything?

882
883 Mr. Hood - Yes sir. Well first of all, I think it's important, she doesn't live
884 across the road from this property. It's a big, beautiful field there. I don't know, I would
885 have guessed 200 to 400 acres, beautiful field, and facing Kukymuth Road you can see
886 no houses at all from Mrs. Durette's property. Also, I understand that she has a private
887 lane leading off of Osborne Pike to these rental properties that she has.

888
889 What type of structure is this going to be, brick or

890
891 Mr. Hood - No sir, it would be frame, and it's a garage.

892
893 Beyond the fact that you didn't like the suggestion because
894 you'd have to look out your window at it if you put it in the back, what other objections
895 do you have to it?

896
897 Mr. Hood - Well sir, it limits us to where it can go due to the orientation
898 of the house

899
900 I understand that, the suggestion I think that Mr. Wright made
901 was that you could put it to the right of where this piece of equipment is in the picture; in
902 other words, you could drive out where it is and make it turn right and put it along side
903 the rear of your house, or the side of the house, whichever.

904
905 Mr. Hood - Well, yes it could be put there. It's not, as you can see, a
906 favorable location for it.

907
908 I understand. But we have to weigh every side, and if the
909 lady subdivides her land one day and puts homes there, her value is going to be
910 decreased perhaps, because people are going to say they don't want their entrance or

911 their house, looking at a “shop” across the street.
912
913 Mr. Hood - Well it would be a garage; it just happens to be a little larger
914 garage than conventional, but that doesn’t change the fact that it’s going to be a garage.
915
916 You charge? You do shop work for other people?
917
918 Mr. Hood - No sir, strictly a hobby. Just as a kind of do-it-yourselfer.
919
920 Mr. Hood, what’s the eave height of this garage proposed?
921 Do you know what I’m speaking of?
922
923 Mr. Hood - The eave height? I think you’re talking about the top
924
925 No that’s the ridge.
926
927 Mr. Hood - The eave would – I guess it’s going to be an 8-foot ceiling.
928
929 Eight feet – so you don’t plan on putting a backhoe in it? I
930 saw it sitting out there
931
932 Mr. Hood - No, that’s for sale. That was just a play toy for some years. I
933 just brought it up there and put a sign on it to see if I could sell it there.
934
935 I thought I’d let you know, because you can only go 15 feet to
936 the middle of the gable.
937
938 Mr. Hood - This would be 8 feet, just a conditional building with a 2-inch
939 fall, and 8-inch fall
940
941 So you’re going to put a flat roof on it.
942
943 Mr. Hood - No, I’m not going to put a flat roof on it
944
945 (unintelligible) You’re going to put an A on it? Like 6,7,8, 12
946 pitch?
947
948 Mr. Hood - Just a conventional fall, yes sir. It’s going to be a garage.
949
950 Mr. Kirk
951 - Any other questions by Board members?
952
953 How about on the opposite end of where you want to put it?
954 It’s not enough space over there, I don’t guess, as big as it is?
955
956 Mr. Hood - No sir, there isn’t. And that’s the earlier where the cedar

957 trees, if it could be located there, and I'm not really sure on account of the well, but
958 there's where the beautiful cedar trees are. They are back there.

959
960 You'd have to take them all down? (unintelligible)

961
962 Mr. Hood - Just about, yes sir. To use that end of the place, if you could
963 do it, I would assume you would have to cut straight on Kukymuth Road, which is a
964 bank, and if you cut into that bank, then in going out on Kukymuth Road, you would
965 have a blind entrance onto the road. The driveway, unfortunately, is not shown here.
966 Well you can see the house there and come on down. Mr. Blankinship was there, so he
967 knows that the driveway starts 3/4 of the way of the width of the property, something of
968 that nature.

969
970 Mr. Kirkland - Okay, if no other questions, that concludes the case.

971
972 Upon a motion by Mr. Nunnally, seconded by Mr. Wright, the Board **denied** application
973 **A-83-2001** for a variance to build a detached garage at 1050 Kukymuth Road (Tax
974 Parcel 191-A-20).

975
976 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
977 Negative: 0
978 Absent: 0

979
980 The Board denied the request, as it found from the evidence presented, that authorizing
981 this variance would be of substantial detriment to adjacent property or would materially
982 impair the purpose of the zoning regulations.

983
984 Mr. Kirkland - Next case.

985
986 **UP- 19-2001 ABUNDANT LIFE CHURCH OF CHRIST** requests a temporary
987 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
988 24 of the County Code to use a trailer for classroom space at 3300
989 Neale Street (Tax Parcel 119-A-8D), zoned A-1, Agricultural
990 District (Fairfield).

991
992 Mr. Kirkland - Applicant here for this case? If you would, come forward
993 please. Anyone else wish to speak on this case? If you would, raise your right hand
994 and be sworn in.

995
996 Mr. Blankinship - Do you swear that the testimony you are about to give is the
997 truth, the whole truth, and nothing but the truth, so help you God?

998
999 Mr. Kirkland - Would you state your name for the record please. Have all
1000 your notices been turned in according to the County Code? All right, we've got them in.
1001 Proceed with your case.

1002

1003 Mr. Davis - Yes. Rudolph Davis.
1004
1005 Mr. Edgerton - Isaac B. Edgerton.
1006
1007 Mr. Davis - We're going to be expanding out building in 2003 to house a
1008 main sanctuary and also 10 additional educational classrooms. At this time we're
1009 busting the seams, and we need some more educational room for some of the adult
1010 classes, and also some of the youth classes. We have services Wednesday night and
1011 also on Sunday, and we also have rehearsals and activities throughout the week, even
1012 Monday through Saturday. We're at this point having to have some additional room.
1013 We do understand that it's until June 27, 2003, if it's approved.
1014
1015 Mr. Kirkland - Have you read all the other conditions for this case? In
1016 agreement with them? Any other questions by Board members.
1017
1018 Mr. Davis, Mr. Edgerton - Yes sir.
1019
1020 Mr. McKinney - Mr. Davis, how about your hours of operation?
1021
1022 Mr. Davis - Hours of operation? Monday through Friday we have day
1023 care; the hours are, I believe, from 7:30 to 5:30. We have church on Wednesday night;
1024 normally we're out by 9:30. We have 2 services on Sunday, 8:30 and 10:30 services on
1025 Sunday.
1026
1027 Mr. McKinney - That goes till what time? The service on Sunday?
1028
1029 Mr. Davis - The 10:30 service normally runs to maybe about 1:30. Also
1030 sometimes there's an evening service, depending on if there's a conference. They're
1031 usually 7:00 pm till about 9:30, 10:00.
1032
1033 Mr. McKinney - Do you use, would you be using this trailer during the
1034 Sunday service?
1035
1036 Mr. Davis - Probably not.
1037
1038 Mr. McKinney - When is the actual time you'd want to use the trailer?
1039
1040 Mr. Davis - The actual time would be Monday through Friday, we're
1041 probably looking at the 7:30 through the 5:30 time frame, and you may have to use it
1042 some nights on Wednesday night, because on Wednesday night we have different
1043 classes, youth classes, and things like that, and right now we're kind of cramped for
1044 space. We using the conference room, everything, trying to occupy ...
1045
1046 Mr. McKinney - On Wednesdays, you use it till 10:00 at night?
1047
1048 Mr. Davis - Well I'll say by 9:30. Normally on Wednesday night our

1049 services are over at 9 o'clock.
1050
1051 You can clean up in a half hour? Remember we asked the
1052 other lady, and she said 10 o'clock. Don't cut yourself short (unintelligible).
1053
1054 Mr. Davis - Well I would say, on the safe side, say 10 o'clock.
1055
1056 Mr. Blankinship, is cleaning considered a use? I wouldn't
1057 think so.
1058
1059 Mr. Blankinship - Yes, we like to have the building empty after the hours of
1060 operation.
1061
1062 I mean you've got people coming in office buildings after
1063 midnight.
1064
1065 Mr. Blankinship - But we don't want our inspectors to have to go out and
1066 determine why the people are in the building. It's easier if they can just say "the building
1067 was in use; the building was not in use."
1068
1069 Mr. McKinney - Now Monday through Friday, 7:30 to 5:30 – is it your
1070 intention of using this trailer for day care?
1071
1072 Mr. Davis - Yes.
1073
1074 Mr. McKinney - So you don't have any problem with the condition, Monday
1075 through Friday, from let's say 7:00 am, in case you need someone there prior to your
1076 day care, till 6:00?
1077
1078 Mr. Davis - 7:00 am to 6:00 pm? That's fine.
1079
1080 Mr. Blankinship - And then Wednesdays extended till 10:00 pm.
1081
1082 Mr. Kirkland - Mr. McKinney, do you want to extend Wednesdays till 10:00?
1083
1084 Mr. McKinney - That's fine. And Wednesday would be till 9:30, because
1085 you've already got from 7:00 till 6:00, so Wednesday would be till 10:00. Okay?
1086
1087 Mr. Kirkland - Get that Mr. Blankinship?
1088
1089 Mr. Blankinship - Yes sir. What do you want to do on Sunday?
1090
1091 Mr. Mckinney - Sunday he says he goes till 1:30, so just go from 7:00 till
1092 2:00 o'clock.
1093
1094 Mr. Kirkland - He says he uses it sometimes on Sunday night too.

1095
1096 Mr. Davis - Sometimes there's a Sunday evening service.
1097
1098 What would you like on Sundays?
1099
1100 Mr. Davis - On Sundays usually most things are contained in the main
1101 building for evening services, so really maybe on Sunday night there may not be much
1102 of a need for it on Sunday night as there would be on Wednesday night.
1103
1104 Mr. McKinney - I think maybe you might need it for babysitting or something
1105 like that.
1106
1107 Mr. Kirkland - We just want to make sure you've got all the bases covered.
1108
1109 In other words, do you want to make it Wednesday and
1110 Sunday?
1111
1112 Mr. Davis - Yes sir.
1113
1114 Mr. Blankinship - 7:00 in the morning till 10:00 in the evening, Wednesday and
1115 Sunday, and then 7:00 till 6:00, Monday, Tuesday, Thursday and Friday. Is that all
1116 right?
1117
1118 Mr. Davis - Yes sir. That's fine.
1119
1120 Mr. Kirkland - Any other questions by Board members? Anyone else wish
1121 to speak on this case? If not, that concludes the case sir.
1122
1123 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1124 Nunnally, the Board **granted** application **UP-19-2001** for a a temporary conditional use
1125 permit to use a trailer for classroom space at 3300 Neale Street (Tax Parcel 119-A-8D).
1126 The Board granted the use permit subject to the following conditions:
1127
1128 1. Only the improvements shown on the plan filed with the application may be
1129 constructed pursuant to this approval. No substantial changes or additions to the layout
1130 may be made without the approval of the Board of Zoning Appeals. Any additional
1131 improvements shall comply with the applicable regulations of the County Code.
1132
1133 2. The trailers shall be removed from the site on or before June 27, 2003.
1134
1135 3. At the time of building permit application, the applicant shall submit the
1136 necessary information to the Department of Public Works to ensure compliance with the
1137 requirements of the Chesapeake Bay Preservation Act and the code requirements for
1138 water quality standards.
1139

1140 4. Approval of this request does not imply that a building permit will be issued.
1141 Building permit approval is contingent on Health Department requirements.
1142

1143 5. A detailed landscaping and lighting plan shall be submitted to the Planning Office
1144 with the building permit for review and approval.
1145

1146 6. All exterior lighting shall be shielded to direct light away from adjacent property
1147 and streets.
1148

1149 7. All landscaping shall be maintained in a healthy condition at all times. Dead plant
1150 materials shall be removed within a reasonable time and replaced during the normal
1151 planting season.
1152

1153 8. The trailer shall be occupied only during the following hours: Monday, Tuesday,
1154 Thursday and Friday, 7:00 AM to 6:00 PM; Wednesday and Sunday, 7:00 AM to 10:00
1155 PM.
1156

1157 Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5	
1158 Negative:			0
1159 Absent:			0

1160
1161 The Board granted the request because it found the proposed use will be in substantial
1162 accordance with the general purpose and objectives of Chapter 24 of the County Code.
1163

1164 Mr. Kirkland - Next case.
1165

1166 **A - 85-2001** **TIMOTHY J. AND BRENDA DOLAN** request a variance from
1167 Section 24-95(i)(2) of Chapter 24 of the County Code to build an in-
1168 ground swimming pool at 11500 Bridgetender Drive (Barrington)
1169 (Tax Parcel 47-6-B-19), zoned R-5C, General Residence District
1170 (Conditional) (Three Chopt). The accessory structure location
1171 requirement is not met. The applicants propose an in-ground pool
1172 in the side yard, where the Code allows accessory structures in the
1173 rear yard.
1174

1175 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,
1176 raise your right hand and be sworn in.
1177

1178 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1179 truth, the whole truth, and nothing but the truth, so help you God?
1180

1181 Mr. Kirkland - State your name for the record. Have all your notices been
1182 turned in according to the Code? We have them in the file. Proceed with your case.
1183

1184 Mr. Dolan - I do. Timothy J. Dolan. Yes sir. Looking at the plat, I would
1185 just point out that the proposed pool is going to remain within the confines of the plan

1232 2. The pool shall be shielded from view from Glades End Lane by a privacy fence
1233 six feet tall.

1234
1235 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1236 Negative: 0
1237 Absent: 0

1238
1239 The Board granted this request, as it found from the evidence presented that, due to the
1240 unique circumstances of the subject property, strict application of the County Code
1241 would produce undue hardship not generally shared by other properties in the area, and
1242 authorizing this variance will neither cause a substantial detriment to adjacent property
1243 nor materially impair the purpose of the zoning regulations.

1244
1245 Mr. Kirkland - Next one sir.

1246
1247 **UP- 20-2001 EASTERN HENRICO RURITAN CLUB** requests a temporary
1248 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
1249 24 of the County Code to operate a turkey shoot at 3812 Nine Mile
1250 Road (Tax Parcel 146-A-18 (part)), zoned A-1, Agricultural District
1251 (Varina).

1252
1253 Mr. Kirkland - Everybody's standing up already. Anyone else wish to
1254 speak? If you would, raise your right hand and be sworn in.

1255
1256 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1257 truth, the whole truth, and nothing but the truth, so help you God?

1258
1259 Mr. Kirkland - Okay, if you would, state your name for the record. Have all
1260 your notices been turned in? Got them right here. Okay, state your case.

1261
1262 Mr. Stewart - Yes sir. Stanley Stewart. Yes sir. We're just applying for a
1263 turkey shoot permit.

1264
1265 Same as last year?

1266
1267 Mr. Kirkland - Same as last time?

1268
1269 Mr. Stewart - Yes sir.

1270
1271 How long has that thing been going on down there, Mr.
1272 Stewart?

1273
1274 Mr. Stewart - About 40 years.

1275
1276 You've read the conditions and all that?

1277

1278 Mr. Stewart - Yes sir.
1279
1280 You're not running out of turkeys, are you?
1281
1282 Mr. Stewart - I'd just as soon we did.
1283
1284 You have to take extra care not to mess up that ball field
1285 down there.
1286
1287 Mr. Stewart - We understand that.
1288
1289 Mr. Kirkland - Any other questions by Board members? Anyone else wish
1290 to speak? That concludes the case.
1291
1292 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1293 Wright, the Board **granted** application **UP-20-2001** for a temporary conditional use
1294 permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to operate a
1295 turkey shoot at 3812 Nine Mile Road (Tax Parcel 146-A-18 (part)). The Board granted
1296 the variance subject to the following conditions:
1297
1298 1. The turkey shoot shall be at least 300 feet from any lot occupied by a dwelling or
1299 from a building other than buildings on the same parcel.
1300
1301 2. No shooting shall be done in or along any road or street or within 100 yards
1302 thereof, as required by the Code of Virginia.
1303
1304 3. The land shall be properly posted to show the particular area in which the
1305 shooting is occurring.
1306
1307 4. Sufficient off-street parking shall be provided for all cars visiting the premises.
1308
1309 5. No beer, wine or any other alcoholic beverages shall be consumed on the area of
1310 the shooting. A sign to this general effect must be posted on the property.
1311
1312 6. Restrooms shall be provided.
1313
1314 7. Hours of firing shall be restricted to the period 6:00 p.m. and 10:00 p.m. on
1315 Fridays during October through December and on the Wednesday before Thanksgiving
1316 during the calendar years 2001 and 2002.
1317
1318 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1319 Negative: 0
1320 Absent: 0
1321
1322 The Board granted the request because it found the proposed use will be in substantial
1323 accordance with the general purpose and objectives of Chapter 24 of the County Code.

1324
1325 Mr. Kirkland - Next case.
1326
1327 **A - 86-2001** **KFC/TACO BELL** requests a variance from Section 24-104(l)(5) of
1328 Chapter 24 of the County Code to build a second freestanding
1329 sign, 150 square feet, at 8340 Brook Road (Hungary Brook SC)
1330 (Tax Parcel 63-15-A-2), zoned B-3, Business District (Fairfield).
1331 The number of freestanding signs and sign area requirement are
1332 not met. The applicant proposes a second freestanding sign, 150
1333 square feet in area, where the Code allows one freestanding sign,
1334 100 square feet in area per shopping center. The applicant
1335 requests a variance of one additional freestanding sign and 50
1336 square feet of sign area.
1337
1338 Mr. Kirkland - Anyone else wish to speak? Okay, if you will, raise your right
1339 hands and be sworn in.
1340
1341 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1342 truth, the whole truth, and nothing but the truth, so help you God?
1343
1344 Mr. Kirkland - Okay, would you state your name for the record. All your
1345 notices have been turned in according to the Code?
1346
1347 Mr. Haggerty - I do.
1348
1349 Mr. McKechnie - I do. My name is Jim McKechnie. I'm a staff engineer with
1350 LandMark Design Group. That is correct, and we do have additional photos to present.
1351
1352 Mr. Kirkland - We have to keep those for 30 days.
1353
1354 Mr. McKechnie - We understand that. That's fine.
1355
1356 Mr. Kirkland - If you would, hand them to the Secretary, and he can pass
1357 them out while we're listening.
1358
1359 Mr. McKechnie - Okay, at this point in time, I'd like to introduce Mr. Tim
1360 Haggerty as your Real Estate Manager for Tricon Global Restaurants, Inc., with the
1361 Tidewater and Richmond area, and he can present more on this case, and I'll stand by
1362 as a legal representative if he needs any additional assistance.
1363
1364 Mr. Kirkland - State your name sir.
1365
1366 Mr. Haggerty - Good morning, my name is Tim Haggerty, Real Estate
1367 Manager with Tricon. We are the parent corporation for KFC/Taco Bell and Pizza Hut. I
1368 have prepared some remarks that I guess I could also turn in to the group if you'd like to
1369 accept those. Basically, what I've done is put together some information that feeds off

1370 of the Planning staff report that was submitted. The first thing I'd like to do is clarify in
1371 paragraph 1 that it states that we're requesting a second freestanding sign. To clarify,
1372 we're requesting 1 freestanding sign that's dedicated to the KFC/Taco Bell Restaurant.
1373 We do not have any freestanding signage at this time. The second thing I'd like to
1374 show, and the reason for passing out the photographs, is the photograph that's shown
1375 up there right now is definitely showing that particular restaurant at its more
1376 advantageous viewpoint from the sidewalk. If you're standing right in front of it on the
1377 sidewalk, yes that is the view you get; however, the enclosed photographs show
1378 visibility of the building when you're traveling south on Brook Road. It's evident that the
1379 building has no visibility until after you pass the Athens Road intersection, at which time
1380 it is almost impossible to turn into the center. All the competitors in other restaurants in
1381 the area have freestanding signage that's very visible, which allows the customers the
1382 opportunity to maneuver on the road to get within the center. One of the other key
1383 points made in the staff report is that we claim that the restaurant is less profitable than
1384 expected, which it is, but that we offer no supporting evidence to show that that's due to
1385 a lack of signage, and that's true. It would be almost impossible for us to say that it's
1386 due to a lack of signage; however we can look at some other operational and trade area
1387 questions about the restaurant that show that it's not due to some other factors. Some
1388 of the other factors that we've looked at are, is the trade area conducive to this type of
1389 restaurant? The information that we have is clearly "yes." We build over many
1390 hundreds of restaurants a year. We operate over 30,000, so we've got a good
1391 database to know when a trade area's conducive to a particular operation. This one fits
1392 our criteria very well. Is the restaurant possibly operated poorly from a customer
1393 satisfaction standpoint, causing people not to come in? We do 2 mystery shops per
1394 month that people are not aware of in the store, completely on a random basis, and the
1395 scores that I've got in this information show that this restaurant performs on par with all
1396 the Kentucky Fried Chicken and Taco Bell restaurants within the Richmond market and
1397 the mid-Atlantic region. So it's not due to the operation of a particular restaurant . Is
1398 the restaurant constrained from a facility standpoint, in other words, can it not meet the
1399 kind of volume that we expect? It's a prototypical restaurant, with a standard number of
1400 seats and parking spaces and an adequate drive-thru flow. In other words, there's no
1401 facility constraints that make it under perform. In summary, the trade area, the
1402 operation, the customer satisfaction, and the facility are all on standard and are
1403 adequate to allow that restaurant to meet the goals. The one obvious component that is
1404 missing from a typical successful KFC/Taco Bell restaurant is lack of signage and a
1405 particular lack of visibility to southbound traffic. One of the other paragraphs in the
1406 report states that making an exception without sufficient reason will lead to visual clutter
1407 and confusion. We agree that exceptions should require sufficient reasoning, and we
1408 think that we're presenting that type of information to allow you to judge this particular
1409 request on its own merits. In addition, we believe that adding a freestanding sign will
1410 reduce confusion to consumers, especially those traveling south on Brook Road.
1411 Finally, the report states that there's nothing to distinguish this case from others, and it
1412 hints that approval of this request will create recurring issues. As I mentioned, we're
1413 clearly asking the Board to make an exception to the general rule, based on the merits
1414 of this information. In this particular case, all the competitors in the immediate area
1415 have very visible freestanding signs. We believe that our request is reasonable based

1416 on the existing signage along Brook Road. As far as creating a precedent, it is clear
1417 that the Board evaluates each and every variance request on its own merits. If another
1418 applicant can provide the type of information that is compelling enough to warrant an
1419 appeal, then the Board would be happy to consider it. In cases where existing
1420 conditions do not warrant such an appeal, then the Board has a duty to deny it; we
1421 understand that. I've also included some information on the number of employees and
1422 the type of taxes that we pay there, and frankly, if we don't do something to address and
1423 make the restaurant as successful as it needs to be, I'm not going to say it's going to
1424 close down, but it's clearly not as successful as we'd like it to be, and it is threatened,
1425 endangering the continued operation of the store. We've clearly made a very strong
1426 investment in the community, and we're seeking to insure the ability to continue to serve
1427 the community successfully.

1428
1429 Mr. Kirkland - Can I ask you one question, that is unless Mr. McKinney
1430 wants to ask you first.

1431
1432 Mr. McKinney - Yes, I've got one. Mr. Haggerty, you purchased this
1433 property, correct?

1434
1435 Mr. Haggerty - It's leased.

1436
1437 Mr. McKinney - It's leased from the owner of the Hungary Brook?

1438
1439 Mr. Haggerty - Yes sir.

1440
1441 Mr. McKinney - When you went into your lease, did you read the ordinance
1442 on signage?

1443
1444 Mr. Haggerty - Unfortunately I was not the real estate representative who
1445 did this particular deal. In all honesty, there was some confusion. It was a different
1446 firm, actually, I think, or was it Landmark?

1447
1448 Mr. McKechnie - I believe it was Landmark. Their representative who did that
1449 feasibility report no longer works with us, and I believe when he did the feasibility report
1450 he was checking on the signage, and at that point in time, I believe he got the
1451 information in the feasibility that said the signage would be allowed.

1452
1453 Mr. Haggerty - In other words, it was our understanding when the feasibility
1454 study was done, we thought there would be freestanding signage allowed. It was
1455 planned for; it was on the plans. We broke ground to build the restaurant. Once we got
1456 the building permit, we had not secured a signage permit yet. The restaurant was
1457 already under construction when we realized that we would not get any freestanding
1458 signage. I understand that that was in the ordinance, and that was a mistake
1459 somewhere between

1460
1461 Mr. Kirkland - And you did understand that you were part of the shopping

1462 center, correct?

1463

1464 Mr. Haggerty - We did not. Hence the reason for the confusion. We did not
1465 understand that we were part of the shopping center, and in fact, we pay our rent to a
1466 different entity other than Hungary Brook Shopping Center. We don't pay any common
1467 area maintenance or anything to the shopping center, and frankly, we're not treated as
1468 any type of out-parcel to the shopping center.

1469

1470 Mr. Blankinship, on the agenda, what Mr. Haggerty said, they
1471 don't have a free-standing sign, and you said proposes a second free-standing sign
1472

1473

1474 Mr. Blankinship - And the question is "who is 'they'"? Hungary Brook
1475 Shopping Center has a freestanding sign, and the shopping center is allowed one
1476 freestanding sign. When I say 'second,' I mean in addition to the Hungary Brook
1477 Shopping Center. As provided by Code, the Hungary Brook Shopping Center sign does
1478 not identify any of the tenants.

1479

1480 Mr. McKinney - So in other words, this is kind of circumventing the Code,
1481 isn't it?

1482

1483 Mr. Blankinship - Well that's the purpose of the variance is to relieve them from
1484 that requirement of the Code.

1485

1486 Mr. McKinney - But the Code is pretty specific on signage, isn't it?

1487

1488 Mr. Blankinship - Yes sir.

1489

1490 Mr. Kirkland - There's nothing to say Hungary Brook couldn't change their
1491 sign and include all the tenants on it, is there? Like a reader board?

1492

1493 Mr. Blankinship - The practice on that is a little bitThe Code strictly does
1494 not allow it, but we have interpreted it as there's an extensive regulation on how it can
1495 be done. We will allow it under some circumstances.

1496

1497 Mr. Haggerty - We've actually looked into that with Jim Eicher, and looked
1498 into the feasibility of that, and actually he ran it by, I'm not sure, you or who, but it was
1499 discussed, and the issues were pretty extensive with doing something in line with the
1500 Hungary Brook Shopping Center, and it was suggested to us that we pursue a hardship
1501 variance request.

1502

1503 Mr. McKinney - Mr. Haggerty, who are the other businesses you stated have
1504 freestanding signs?

1505

1506 Mr. Haggerty - We have some of the other photographs that show, but
1507 you've got Wendys, McDonalds, Hardees, and Waffle House, in particular, all have very

1508 visible signs.
1509
1510 Mr. McKinney - Hardees is not part of the shopping center.
1511
1512 Mr. Haggerty - No, you're right, Hardees is across the street.
1513
1514 Mr. Kirkland - Neither are Wendys or McDonalds – they're not either.
1515
1516 Mr. Haggerty - My understanding is that everyone else has the freestanding
1517 signs

1518
1519 Mr. McKinney - But they're not part of the shopping center.
1520
1521 Mr. Haggerty - They are right

1522
1523 Mr. McKinney - But they're not part of the shopping center.
1524
1525 Mr. Haggerty - That is correct; they are not an out-parcel to the shopping
1526 center.
1527
1528 Mr. McKinney - And you are.
1529
1530 Mr. Haggerty - Yes. I don't know.
1531
1532 Mr. Blankinship - I'm going to put this up on the screen

1533
1534 I want to see where this sign would be on this photo,
1535 because that's clearer to me than all these diagrams. Lighten it up a bit?
1536
1537 Mr. McKinney - It's out of focus there, Mr. Blankinship. If you top that tree
1538 out, you could see that KFC.
1539
1540 Why don't you top that tree down?
1541
1542 Mr. Haggerty - Actually you're still – this is taken at the far end of the
1543 intersection of Athens Road, so you still really couldn't see the store coming down the
1544 road when you get to the intersection of Athens Road.
1545
1546 Where would this sign be in that photo?
1547
1548 Mr. Haggerty - I believe your documentation shows that pretty much the sign
1549 would go, is it right next to the tree Jim?
1550
1551 Mr. McKechnie - That's correct.
1552
1553 Mr. McKinney - Well that tree is at the end of the motel, isn't it?

1554
1555 Mr. Haggerty - Excuse me just a second. Let me look at the
1556
1557 Show me where the sign would be
1558
1559 Mr. Blankinship - This thing doesn't want to point where I want it to.
1560
1561 Mr. Kirkland - Mr. Wright, it looks like it's going to be where the tree is.
1562
1563 Mr. Blankinship - Actually it's going to be the other tree, but this thing won't
1564 point.
1565
1566 Are you talking about the tree in front of KFC?
1567
1568 Mr. Haggerty - Is it possible to put that up?
1569
1570 Mr. Blankinship - Yes, we can do that, but what he wants to see is how it's
1571 going to look in elevation. He's got the plan.
1572
1573 I've got your plan, but I want to see where it fits on this photo.
1574
1575 On the site plan.
1576
1577 All right, there you go. Is that the tree?
1578
1579 Mr. Haggerty - It's in the area near that tree. No it's going to be actually on
1580 the opposite side.
1581
1582 I can't see. You're blocking. Show us.
1583
1584 Mr. Haggerty - It's going to be right around this particular tree, just inside of
1585 that tree, meeting the setback.
1586
1587 That's on the motel property.
1588
1589 Mr. Haggerty - No it's not, it's within our property. In the parking lot.
1590
1591 They show that in the plan.
1592
1593 Mr. Haggerty - There's a drawing that shows
1594
1595 I've got that; I just want to see how it would look approaching
1596 it from
1597
1598 So in other words it would be just the sign post itself would
1599 be actually just past that corner of KFC property.

1600
1601 Mr. McKinney - This photograph was taken, and you're going to need to
1602 speak into the mike, because they can't get you on tape, was it taken from the
1603 stoplight?
1604
1605 Mr. Haggerty - That was actually taken from the passenger side of the
1606 vehicle, coming down the center lane of Brook Road,
1607
1608 At the intersection?
1609
1610 Mr. Haggerty - That's correct. What we did was, the series of photographs
1611 that you see that show us getting closer to the property, were taken from the passenger
1612 side of the car.
1613
1614 Okay, I see the stoplight up there now. You've gone further
1615 north from the intersection, up by the Waffle House, correct?
1616
1617 He's heading south.
1618
1619 I know, but he's from the north, so his right-hand side would
1620 be the Waffle House.
1621
1622 Mr. Haggerty - That's correct. The Waffle House, we have actually passed
1623 the Waffle House.
1624
1625 Just passed it.
1626
1627 Mr. Haggerty - Into the intersection (unintelligible).
1628
1629 That sign wouldn't be visible coming from the south, would
1630 it?
1631
1632 Mr. Haggerty - Traveling north? Actually it would be. There's one
1633 photograph that I showed Frankly it would be primarily Our biggest
1634 concern is people traveling south, not knowing that we're there. It's too late to make a
1635 turn into Athens Road, and it's very difficult to know that we're there, so you're already
1636 past us when it's time to turn into the center. So that's our greatest concern.
1637
1638 When was this restaurant built?
1639
1640 Mr. Haggerty - It opened in November of 1999, and frankly, it's running at
1641 about 82% of its plan.
1642
1643 Was that a relocation from Azalea Avenue?
1644
1645 Mr. Haggerty - No sir.

1646
1647 (unintelligible)
1648
1649 Wasn't there one on Staples Mill at about the same time?
1650
1651 Mr. McKinney - There was one on Azalea that closed down.
1652
1653 No I don't think it did close down.
1654
1655 (unintelligible) It's been renovated.
1656
1657 Mr. McDonald - Mac McDonald is the local KFC office person.
1658
1659 Mr. Kirkland - If you would, sir, come to the microphone.
1660
1661 Mr. McKinney - Doesn't he have to be sworn in?
1662
1663 Mr. Kirkland - He's been sworn. Would you state your name.
1664
1665 Mr. McDonald - My name is William McDonald. The Azalea restaurant was
1666 not closed; the Azalea is currently open. The restaurant that we have in the Azalea
1667 Shopping Center is still open.
1668
1669 Mr. McKinney - I think that was a relocation for one on the other side of
1670 Chamberlayne Avenue? Was there ever one there?
1671
1672 Mr. McDonald - No sir. Never one there. No, this was a new restaurant.
1673
1674 The problem I've got with this, and you'll have to convince
1675 me, is we would be amending the County Ordinance, which we don't have the authority
1676 to do.
1677
1678 Mr. Kirkland - That's what we'd be doing.
1679
1680 We would be amending, and that's a matter for the Board of
1681 Supervisors, and we're being asked to amend the County Ordinance.
1682
1683 Mr. McDonald - I'm not sure I fully understand. What would be the difference
1684 between just granting a variance to the existing ordinance, versus actually creating an
1685 amendment? Are you saying that then it would apply to any other out-parcel of a
1686 shopping center?
1687
1688 It would. We would have hundreds of applications in here
1689 because

1690
1691 Mr. Kirkland - We would review each one on its merits, but we'd have a

1692 tremendous amount

1693
1694 because everybody would like to have a
1695 freestanding sign where the Code doesn't allow it, and that's the problem. If attention or
1696 something needs to be done about it, it needs to be addressed to the Board of
1697 Supervisors to amend the Ordinance, to expand it somehow or another. It looks to me
1698

1699
1700 Mr. McDonald - Well my understanding is that the existing Code is in place
1701 just to manage the proliferation of signs, so being that we're presenting information to
1702 ask you to provide a variance because of a hardship that we're under versus the
1703 competition in this particular area, I guess my question is why wouldn't that be
1704 considered just a variance to the existing ordinance rather than an amendment to the
1705 ordinance?
1706

1707 Mr. Kirkland - Because right now you're in a shopping center, and the
1708 ordinance says they can only have one freestanding sign. You're in a shopping center.
1709 If we say you can have it, we have now amended that ordinance. A variance is like
1710 you're moving it 3 feet or 4 feet, and it's okay to have it there in the first place.
1711

1712 Mr. McDonald - Okay. I was going to ask how is that different from saying if
1713 you've got a 50-foot building setback, you can put something at 45, but I see what
1714 you're saying.
1715

1716 If you've already got it, you're just varying it.
1717

1718 Mr. McDonald - But we don't have it. I mean we don't have the signage.
1719 Technically we are part of the shopping center, is their point, even though we're not
1720 right at the mouth of the shopping center, and we're not functionally part of the shopping
1721 center.
1722

1723 Mr. Kirkland - Well under the Planning report, you know the staff reports,
1724 and the way the POD and everything was done, you're part of the shopping center.
1725 Unfortunately in 1999 you guys should have been a little bit better informed, it looks like.
1726 All right, any other questions by Board members? Anyone else wish to speak? All
1727 right, that concludes the case.
1728

1729 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1730 Wright, the Board **denied** application **A-86-2001** for a variance build a second
1731 freestanding sign, 150 square feet, at 8340 Brook Road (Hungary Brook SC) (Tax
1732 Parcel 63-15-A-2).
1733

1734 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1735 Negative: 0
1736 Absent: 0
1737

1738 The Board denied your request as it found from the evidence presented that authorizing
1739 this variance would be of substantial detriment to adjacent property or would materially
1740 impair the purpose of the zoning regulations.

1741
1742 Mr. Kirkland - We will take a 10-minute break.

1743
1744 Is everybody ready? The meeting's back in session. If you would sir, read the rules
1745 again in case some of the new people came in.

1746
1747 Mr. Blankinship - Yes sir, Mr. Chairman. The rules for this meeting are as
1748 follows. The Secretary, myself, will call each case, and at that time the applicant should
1749 come to the podium. I will ask everyone who intends to speak on that case, to stand
1750 and be sworn in. The applicant will present their testimony. After that, anyone else will
1751 be given an opportunity to speak. When everyone has had an opportunity to speak, the
1752 applicant, and only the applicant, will have an opportunity for rebuttal. After hearing the
1753 case, and asking questions, the Board will take the matter under advisement. They will
1754 render all of their decisions at the end of the meeting. If you wish to know what their
1755 decision was on a specific case, you can stay until the end of the meeting, or you can
1756 call the Planning Office toward the end of the day. This meeting is being tape recorded,
1757 so we will ask everyone who speaks, to speak directly into the microphone on the
1758 podium, and to state your name. Out in the foyer there are 2 binders that include the
1759 staff reports for each case, including the conditions that have been proposed by the
1760 staff.

1761
1762 Mr. Kirkland - Okay sir, if you would, call the next case. Do we have any
1763 withdrawals?

1764
1765 Mr. Blankinship - Well the ladies and gentlemen are still here from the other
1766 case. They did made a request of me to allow additional testimony after the hearing
1767 has been closed.

1768
1769 Mr. Kirkland - Ma'am, and sir, note, we do not take any further information
1770 after the hearing is closed. That's just the rules of the meeting. I'm sorry, but that's just
1771 the way it is.

1772
1773 Mr. Blankinship - We do not have any withdrawals or deferrals for the 10:00
1774 o'clock agenda. The next 3 cases are companion cases. Would you like me to call
1775 them together?

1776
1777 Mr. Kirkland - Yes, let's do that.

1778
1779 **A - 87-2001 HHHUNT WYNDHAM DEVELOPMENT CORP.** requests a
1780 variance from Section 24-94 of Chapter 24 of the County Code to
1781 build a single-family dwelling at 5536 Holman Drive (Wyndham
1782 Forest) (Tax Parcel 10-6-D-8), zoned R-3C, One-family Residence
1783 District (Conditional) (Three Chopt). The lot width requirement is

1784 not met. The applicant has 76.49 feet lot width, where the Code
1785 requires 80 feet lot width. The applicant requests a variance of
1786 3.51feet lot width.

1787
1788 **A - 88-2001 HHHUNT WYNDHAM DEVELOPMENT CORP.** requests a
1789 variance from Section 24-94 of Chapter 24 of the County Code to
1790 build a single-family dwelling at 5532 Holman Drive (Wyndham
1791 Forest) (Tax Parcel 10-6-D-9), zoned R-3C, One-family Residence
1792 District (Conditional) (Three Chopt). The lot width requirement is
1793 not met. The applicant has 73.61 feet lot width, where the Code
1794 requires 80 feet lot width. The applicant requests a variance of 6.39
1795 feet lot width.

1796
1797 **A - 89-2001 AUSTIN HAMLIN HOMES** requests a variance from Section 24-94
1798 of Chapter 24 of the County Code to build a single-family dwelling
1799 at 5540 Holman Drive (Wyndham Forest) (Tax Parcel 10-6-D-7),
1800 zoned R-3C, One-family Residence District (Conditional) (Three
1801 Chopt). The lot width requirement is not met. The applicant has
1802 79.13 feet lot width, where the Code requires 80 feet lot width. The
1803 applicant requests a variance of 0.87 feet lot width.

1804
1805 Mr. Kirkland - Does anyone else wish to speak on this case? If you would,
1806 raise your right hand and be sworn in.

1807
1808 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1809 truth, the whole truth, and nothing but the truth, so help you God?

1810
1811 Mr. Kirkland - State your name for the record sir. Do we have all your
1812 notices? We've got them in the file. State your case.

1813
1814 Mr. Richardson - Yes sir. Frank Richardson. Yes sir. I'm here on behalf of H.
1815 H. Hunt, the developer. I am with the engineer of record for the subdivision, Jordan
1816 Consulting Engineers. This particular section, section 7, the tentative approval was
1817 received in June of 1999. These 3 lots in particular are based on that layout. A month
1818 later, August 10, 1999, the ordinance changed. Prior to that change, you could have
1819 more, or you could have flag lots on a street other than a cul de sac. After the
1820 ordinance changed, it was restricted to a cul de sac. As we went through the design
1821 process and getting recorded the record plat for section 7 for these 3 lots, through
1822 strictly an oversight on our part, we never caught that these lots did not meet the
1823 changed zoning ordinance. We're here today asking for a variance to allow these 3 lots
1824 to remain as is.

1825
1826 Mr. McKinney - Mr. Richardson, how many other lots do you have like this?

1827
1828 Mr. Richardson - These are the only 3 lots that I know of in section 7.

1829

1830 Mr. McKinney - How about in other sections?
1831
1832 Mr. Richardson - None that I know of.
1833
1834 You're with Jordan Consulting, the engineer?
1835
1836 Mr. Richardson - Yes sir.
1837
1838 So you would know?
1839
1840 Mr. Richardson - Yes sir.
1841
1842 Mr. Kirkland - All right, any other questions by Board members? Anyone
1843 else wish to speak? All right, that concludes the case.
1844
1845 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
1846 McKinney, the Board **granted** application **A-87-2001** for a variance to build a single-
1847 family dwelling at 5536 Holman Drive (Wyndham Forest) (Tax Parcel 10-6-D-8). The
1848 Board granted the variance subject to the following condition:
1849
1850 1. This variance applies only to the lot width requirement. All other applicable
1851 regulations of the County Code shall remain in force.
1852
1853
1854 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1855 Negative: 0
1856 Abstention: Balfour 1
1857 Absent: 0
1858
1859 The Board granted this request, as it found from the evidence presented that, due to the
1860 unique circumstances of the subject property, strict application of the County Code
1861 would produce undue hardship not generally shared by other properties in the area, and
1862 authorizing this variance will neither cause a substantial detriment to adjacent property
1863 nor materially impair the purpose of the zoning regulations.
1864
1865 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
1866 McKinney, the Board **granted** application **A-88-2001** for a variance to build a single-
1867 family dwelling at 5532 Holman Drive (Wyndham Forest) (Tax Parcel 10-6-D-9). The
1868 Board granted the variance subject to the following condition:
1869
1870 1. This variance applies only to the lot width requirement. All other applicable
1871 regulations of the County Code shall remain in force.
1872
1873 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1874 Negative: 0
1875 Abstention: Balfour 1

1876 Absent: 0

1877

1878 The Board granted this request, as it found from the evidence presented that, due to the
1879 unique circumstances of the subject property, strict application of the County Code
1880 would produce undue hardship not generally shared by other properties in the area, and
1881 authorizing this variance will neither cause a substantial detriment to adjacent property
1882 nor materially impair the purpose of the zoning regulations.

1883

1884

1885 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
1886 McKinney, the Board **granted** application **A-89-2001** for a variance build a single-family
1887 dwelling at 5540 Holman Drive (Wyndham Forest) (Tax Parcel 10-6-D-7). The Board
1888 granted the variance subject to the following condition:

1889

1890 1. This variance applies only to the lot width requirement. All other applicable
1891 regulations of the County Code shall remain in force.

1892

1893 Affirmative: Kirkland, McKinney, Nunnally, Wright 4

1894 Negative: 0

1895 Abstention: Balfour 1

1896 Absent: 0

1897

1898 The Board granted this request, as it found from the evidence presented that, due to the
1899 unique circumstances of the subject property, strict application of the County Code
1900 would produce undue hardship not generally shared by other properties in the area, and
1901 authorizing this variance will neither cause a substantial detriment to adjacent property
1902 nor materially impair the purpose of the zoning regulations.

1903

1904 Mr. Kirkland - Next case.

1905

1906 **A - 90-2001** **KIMBERLY S. MAGNANO** requests a variance from Section 24-94
1907 of Chapter 24 of the County Code to build a screened porch at
1908 12352 Morning Creek Road (Morning Creek at Millstone) (Tax
1909 Parcel 9-14-E-23), zoned R-2C, One-family Residence District
1910 (Conditional) (Three Chopt). The rear yard setback is not met. The
1911 applicant has 44 feet rear yard setback, where the Code requires
1912 45 feet rear yard setback. The applicant requests a variance of 1-
1913 foot rear yard setback.

1914

1915 Mr. Kirkland - Does anyone else wish to speak on this case? Would you
1916 raise your right hand and be sworn in?

1917

1918 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1919 truth, the whole truth, and nothing but the truth, so help you God?

1920

1921 Mr. Kirkland - Would you state your name for the record. Have all your

1922 notices been turned in according to the County Code? We've got them. Proceed with
1923 your case.

1924
1925 Ms. Magnano - I do. Kim Magnano. Yes sir. We just want to build a
1926 screened porch on top of the existing deck that's in our back yard. At one point, way in
1927 the corner of the deck, the rear setback is not met. It's supposed to be 45 feet, and
1928 ours is 44 feet and a couple of inches, so we need a variance of 1 foot.

1929
1930 It appears that that's because your rear line is not parallel to
1931 the house.

1932
1933 Ms. Magnano - Yes, it's a weird shaped lot. See how it's on an angle. If it
1934 just went straight across, there would be no problem, and toward the right-hand side of
1935 the deck there is no problem with the rear setback. The homeowners association has
1936 approved the screened in porch, and so have, obviously, all my neighbors that live in
1937 the vicinity.

1938
1939 Mr. Kirkland - Anyone else wish to speak? Any other questions by Board
1940 members? That concludes the case ma'am.

1941
1942 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
1943 Nunnally, the Board **granted** application **A-90-2001** for a variance build a screened
1944 porch at 12352 Morning Creek Road (Morning Creek at Millstone) (Tax Parcel 9-14-E-
1945 23). The Board granted the variance subject to the following condition:

1946
1947 1. Only the improvements shown on the plan filed with the application may be
1948 constructed pursuant to this approval. No substantial changes or additions to the layout
1949 may be made without the approval of the Board of Zoning Appeals. Any additional
1950 improvements shall comply with the applicable regulations of the County Code.

1951
1952 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1953 Negative: 0
1954 Absent: 0

1955
1956 The Board granted this request, as it found from the evidence presented that, due to the
1957 unique circumstances of the subject property, strict application of the County Code
1958 would produce undue hardship not generally shared by other properties in the area, and
1959 authorizing this variance will neither cause a substantial detriment to adjacent property
1960 nor materially impair the purpose of the zoning regulations.

1961
1962 Mr. Kirkland - Next one sir.

1963
1964 **UP- 21-2001 VULCAN CONSTRUCTION MATERIALS** requests a conditional
1965 use permit pursuant to Sections 24-52(d) and 24-103 of Chapter 24
1966 of the County Code to extract materials from the earth at 5090 New
1967 Market Road (Tax Parcel 270-A-1), zoned A-1, Agricultural District

1968 (Varina).
1969
1970 Mr. Kirkland - Anyone else wish to speak on this case? If you would, raise
1971 your right hand and be sworn in.
1972
1973 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1974 truth, the whole truth, and nothing but the truth, so help you God?
1975
1976 Mr. Kirkland - Have all your notices been turned in according to the County
1977 Code? If you would, state your name for the record.
1978
1979 Mr. Lewis - I do. Yes sir. I've also got the green slips. My name is
1980 Monte Lewis. I'm with Lewis and Associates; we're the civil engineers on the project.
1981 We're asking for an additional area of 63.46 acres that are adjacent to an existing
1982 mining operation that we call Area F. Area F will come before you again, because we
1983 have to reapply to extend that mining permit in the next 2 months. You'll probably hear
1984 it in September. The operation will remain the same as it is now. There are 2
1985 conditions that we see on this new application that are different from the conditions that
1986 are on us on all the other 3 active mining sites, that we'd like you to consider. Condition
1987 # 9 states that no operations of any kind are to be conducted at the site on Saturdays,
1988 Sundays, or national holidays. We'd like to remove the word 'Saturday' from that. With
1989 the existing permit, we're allowed to work on Saturdays; we're not allowed to work on
1990 Sundays or national holidays. The other condition is # 11, that requires a gate to be
1991 erected at all entrances into the property, and maintained. This is a new condition; I'm
1992 not sure why it's being required, other than it might just be a standard condition that's on
1993 all mining applications. This is a little bit different situation, because this is an active
1994 farm. They have an active hunt club; there's a residence there. We don't want a gate
1995 on the property. All of our activity is within the site; we don't have trucks leaving and
1996 going from the site with material. All material from all mining operations goes down to
1997 the barge area on the James. Therefore, we would like to remove condition 11. Other
1998 than that, we have no problems with all the other conditions that are on the project.
1999
2000 Mr. Kirkland - Mr. Blankinship, was there any reason for putting in condition
2001 # 11, or is that just a standard formality?
2002
2003 Mr. Blankinship - That was just a standard condition, same as # 9.
2004
2005 Mr. Kirkland - Okay, thank you. Any other questions by Board members?
2006
2007 Did we have no operation on Saturdays on the other one, Mr.
2008 Blankinship?
2009
2010 Mr. Blankinship - Apparently not. Mr. Lewis has a copy of the '89 conditions,
2011 and it doesn't show on them. Again, this is just our standard condition, for you to modify
2012 as you see fit.
2013

2014 Mr. Lewis - On the old permit, condition # 3, it states that 'no operations
2015 of any kind are to be conducted at the site on Sundays nor on national holidays. We'd
2016 just like to have the same condition remain.

2017
2018 Everything else you're in agreement with?

2019
2020 Mr. Lewis - Yes sir.

2021
2022 Mr. Kirkland - Any complaints, Mr. Blankinship?

2023
2024 Mr. Blankinship - No sir.

2025
2026 Mr. Kirkland - Oh, this is a good one. All right, any other questions? That
2027 concludes the case.

2028
2029 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2030 McKinney, the Board **granted** application **UP-21-2001** for conditional use permit to
2031 extract materials from the earth at 5090 New Market Road (Tax Parcel 270-A-1). The
2032 Board granted the use permit subject to the following conditions:

2033
2034 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of
2035 the County Code.

2036
2037 2. Before beginning any work, the applicant shall provide a financial guaranty in an
2038 amount of \$2000.00 per acre for each acre of land to be disturbed, for a total of
2039 \$126,920.00, guaranteeing that the land will be restored to a reasonably level and
2040 drainable condition. This permit does not become valid until the financial guaranty has
2041 been approved by the County Attorney. The financial guaranty may provide for
2042 termination after 90 days notice in writing to the County. In the event of termination, this
2043 permit shall be void, and work incident thereto shall cease. Within the next 90 days the
2044 applicant shall restore the land as provided for under the conditions of this use permit.
2045 Termination of such financial guaranty shall not relieve the applicant from its obligation
2046 to indemnify the County of Henrico for any breach of the conditions of this use permit. If
2047 this condition is not satisfied within 90 days of approval, the use permit shall be void.

2048
2049 3. Before beginning any work, the applicant shall submit erosion control plans to the
2050 Department of Public Works for review and approval. Throughout the life of the
2051 operation, the applicant shall continuously satisfy the Department of Public Works that
2052 erosion control procedures are properly maintained, and shall furnish plans and bonds
2053 that the department deems necessary. The applicant shall provide certification from a
2054 licensed professional engineer that dams, embankments and sediment control
2055 structures meet the approved design criteria as set forth by the State. If this condition is
2056 not satisfied within 90 days of approval, the use permit shall be void.

2057

- 2058 4. Before beginning any work, the applicant shall obtain a mine license from the
2059 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied
2060 within 90 days of approval, the use permit shall be void.
2061
- 2062 5. Before beginning any work, the areas approved for mining under this permit shall
2063 be delineated on the ground by five-foot-high metal posts at least five inches in diameter
2064 and painted in alternate one foot stripes of red and white. These posts shall be so
2065 located as to clearly define the area in which the mining is permitted. They shall be
2066 located, and their location certified, by a certified land surveyor. If this condition is not
2067 satisfied within 90 days of approval, the use permit shall be void.
2068
- 2069 6. In the event that the Board's approval of this use permit is appealed, all
2070 conditions requiring action within 90 days will be deemed satisfied if the required actions
2071 are taken within 90 days of final action on the appeal.
2072
- 2073 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2074 state and local regulations administered under such act applicable to the property, and
2075 shall furnish to the Planning Office copies of all reports required by such act or
2076 regulations.
2077
- 2078 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
2079 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
2080
- 2081 9. No operations of any kind are to be conducted at the site on Sundays or national
2082 holidays.
2083
- 2084 10. All means of access to the property shall be from the James River.
2085
- 2086 11. The applicant shall post and maintain a sign at the entrance to the mining site
2087 stating the name of the operator, the use permit number, the mine license number, and
2088 the telephone number of the operator. The sign shall be 12 square feet in area and the
2089 letters shall be three inches high.
2090
- 2091 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
2092 along the perimeter of the property. The letters shall be three inches high. The applicant
2093 shall furnish the Chief of Police a letter authorizing the Division of Police to enforce the
2094 "No Trespassing" regulations, and agreeing to send a representative to testify in court
2095 as required or requested by the Division of Police.
2096
- 2097 13. The applicant shall post and maintain a standard stop sign at the entrance to
2098 New Market Road.
2099
- 2100 14. The applicant shall maintain the property, fences, and roads in a safe and secure
2101 condition indefinitely, or convert the property to some other safe use.
2102

2103 15. If, in the course of its preliminary investigation or operations, the applicant
2104 discovers evidence of cultural or historical resources, or an endangered species, or a
2105 significant habitat, it shall notify appropriate authorities and provide them with an
2106 opportunity to investigate the site. The applicant shall report the results of any such
2107 investigation to the Planning Office.

2108
2109 16. If water wells located on surrounding properties are adversely affected, and the
2110 extraction operations on this site are suspected as the cause, the effected property
2111 owners may present to the Board evidence that the extraction operation is a contributing
2112 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
2113 the operator may be required to correct the problem.

2114
2115 17. Open and vertical excavations having a depth of 10 feet or more, for a period of
2116 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the
2117 public safety.

2118
2119 18. Topsoil shall not be removed from any part of the property outside of the area in
2120 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
2121 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
2122 within the authorized mining area and provided with adequate erosion control
2123 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
2124 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
2125 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
2126 tests have been provided to the County.

2127
2128 19. No offsite-generated materials shall be deposited on the mining site without prior
2129 written approval of the Director of Planning. To obtain such approval, the operator shall
2130 submit a request stating the origin, nature and quantity of material to be deposited, and
2131 certifying that no contaminated or hazardous material will be included. The material to
2132 be deposited on the site shall be limited to imperishable materials such as stone, bricks,
2133 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any
2134 hazardous materials as defined by the Virginia Hazardous Waste Management
2135 Regulations.

2136
2137 20. A superintendent, who shall be personally familiar with all the terms and
2138 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms
2139 and conditions of this use permit, shall be present at the beginning and conclusion of
2140 operations each work day to see that all the conditions of the Code and this use permit
2141 are observed.

2142
2143 21. A progress report shall be submitted to the Board on June 28, 2002. This
2144 progress report must contain information concerning how much property has been
2145 mined to date of the report, the amount of land left to be mined, how much rehabilitation
2146 has been performed, when and how the remaining amount of land will be rehabilitated,
2147 and any other pertinent information about the operation that would be helpful to the
2148 Board.

2149
2150 22. Excavation shall be discontinued by June 28, 2003 and restoration accomplished
2151 by not later than June 28, 2004, unless a new permit is granted by the Board of Zoning
2152 Appeals.

2153
2154 23. The rehabilitation of the property shall take place simultaneously with the mining
2155 process. Rehabilitation shall not be considered completed until the mined area is
2156 covered completely with permanent vegetation.

2157
2158 24. All drainage and erosion and sediment control measures shall conform to the
2159 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
2160 drainage structures in place prior to October 14, 1992 and which do not conform to the
2161 Mineral Mining Manual Drainage Handbook may remain in place until such time as any
2162 reconstruction is required at which time said structures shall be brought into
2163 conformance with the Mineral Mining Manual Drainage Handbook.

2164
2165 25. Failure to comply with any of the foregoing conditions shall automatically void this
2166 permit.

2167
2168 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2169 Negative: 0
2170 Absent: 0

2171
2172 The Board granted the request because it found the proposed use will be in substantial
2173 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2174
2175 Mr. Kirkland - Next one.

2176
2177 **A - 91-2001** **JOHN AND ANN KENT** request a variance from Section 24-94 of
2178 Chapter 24 of the County Code to build a screened porch at 2800
2179 Woodmark Court (Woodmark) (Tax Parcel 46-3-B-21), zoned R-
2180 3AC, One-family Residence District (Conditional) (Three Chopt).
2181 The rear yard setback is not met. The applicants have 27 feet rear
2182 yard setback, where the Code requires 35 feet rear yard setback.
2183 The applicants request a variance of 8 feet rear yard setback.

2184
2185 Mr. Kirkland - Anyone else wish to speak? If you would sir, raise your right
2186 hand and be sworn in.

2187
2188 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2189 truth, the whole truth, and nothing but the truth, so help you God?

2190
2191 Mr. Kirkland - Would you state your name. Have all your notices been turn
2192 in? Okay, state your case.

2193
2194 Mr. Silver - I do. It's Bobby Silver, with Cavalier Construction. Yes sir.

2195 The customer wishes our firm to erect a screened porch on their existing deck, and the
2196 rear yard setback is not met. As you see, there's the deck right there; we want to
2197 enclose part of it with a screened room.

2198
2199 Would this be just the existing deck, no extensions?

2200
2201 Mr. Silver - Yes sir. No sir.

2202
2203 Are you familiar with the property? Have you looked at it?

2204
2205 Mr. Silver - Yes sir.

2206
2207 It looks like there is a real screen behind it, the trees and
2208 heavy brush.

2209
2210 Mr. Silver - That's correct.

2211
2212 It looks like you can't even see the property behind it.

2213
2214 Mr. Kirk' - Okay, any other questions by Board members? Anyone else
2215 wish to speak? That concludes the case sir.

2216
2217 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
2218 Nunnally, the Board **granted** application **A-91-2001** for a variance build a screened
2219 porch at 2800 Woodmark Court (Woodmark) (Tax Parcel 46-3-B-21). The Board
2220 granted the variance subject to the following condition:

- 2221
2222 1. This variance applies only to the proposed addition and its rear yard setback
2223 requirement. All other applicable regulations of the County Code shall
2224 remain in force.

2225
2226 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2227 Negative: 0
2228 Absent: 0

2229
2230 The Board granted this request, as it found from the evidence presented that, due to the
2231 unique circumstances of the subject property, strict application of the County Code
2232 would produce undue hardship not generally shared by other properties in the area, and
2233 authorizing this variance will neither cause a substantial detriment to adjacent property
2234 nor materially impair the purpose of the zoning regulations.

2235
2236 Mr. Kirkland - Next case sir.

2237
2238 **A - 92-2001** **J. R. WALKER & CO.** requests a variance from Section 24-94 of
2239 Chapter 24 of the County Code to allow the existing dwelling to
2240 remain at 12160 Morestead Court (Preston at Wyndham) (Tax

2241 Parcel 1-3-A-48), zoned R-4, One-family Residence District (Three
2242 Chopt). The minimum side yard setback is not met. The applicant
2243 has 9.79 feet minimum side yard setback, where the Code requires
2244 10.00 feet minimum side yard setback. The applicant requests a
2245 variance of 0.21 feet minimum side yard setback.
2246

2247 Mr. Kirkland - Anyone else wish to speak on this case? If you would, raise
2248 your right hand and be sworn in.

2249
2250 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2251 truth, the whole truth, and nothing but the truth, so help you God?

2252
2253 Mr. Kirkland - Would you state your name for the record. Have all your
2254 notices been turned in according to the County Code? In the file. Okay, state your
2255 case.

2256
2257 Mr. Walker - I do. I'm Jim Walker, James R. Walker.

2258
2259 Mr. Shade - I do. Charles Shade.

2260
2261 Mr. Walker - We have, in error, built a home too close to the right-hand
2262 property line. We establish the footing points for our homes with the help of an
2263 engineer. He uses a 6-inch tolerance, in terms of his – he'll set something up within a
2264 6-inch range of that property line, or minimum side yard setback, is what I'm trying to
2265 say. In this instance, we believe that he was at the edge of his tolerance when we
2266 made an error in our construction. We used an eco-block foundation block for the
2267 basement, which is an insulated concrete form, and failed to take into consideration that
2268 that particular system uses a brick ledge rather than having the brick set on top of it. As
2269 a result, when we veneered our building, the brick veneer extended beyond the
2270 tolerance.

2271
2272 Did you have a good chisel?

2273
2274 Mr. Walker - Yes sir. These homes are challenging. This is a 6800
2275 square foot dwelling, and it hits against 3 of the building lines; they're really a squeeze
2276 fit sometimes.

2277
2278 Mr. Blankinship - It's a very deep lot.

2279
2280 Mr. Kirkland - Any other questions? Anyone else wish to speak? That
2281 concludes the case sir.

2282
2283 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
2284 McKinney, the Board **granted** application **A-92-2001** for a variance allow the existing
2285 dwelling to remain at 12160 Morestead Court (Preston at Wyndham) (Tax Parcel 1-3-A-
2286 48). The Board granted the variance subject to the following condition:

2287
2288 1. This variance applies only to the minimum side yard requirement. All other
2289 applicable regulations of the County Code shall remain in force.

2290
2291 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2292 Negative: 0
2293 Absent: 0

2294
2295 The Board granted this request, as it found from the evidence presented that, due to the
2296 unique circumstances of the subject property, strict application of the County Code
2297 would produce undue hardship not generally shared by other properties in the area, and
2298 authorizing this variance will neither cause a substantial detriment to adjacent property
2299 nor materially impair the purpose of the zoning regulations.

2300
2301 Mr. Kirkland - Okay, next one sir.

2302
2303 **A - 93-2001** **ROY CRAIG HART** requests a variance from Section 24-94 of
2304 Chapter 24 of the County Code to allow two carports to remain &
2305 build an addition at 5202 Antigo Road (Hechler Village) (Tax Parcel
2306 147-9-BB-35), zoned R-3, One-family Residence District (Fairfield).
2307 The minimum side yard setback and total side yard setback are not
2308 met. The applicant has 4 feet minimum side yard setback and 9
2309 feet total side yard setback, where the Code requires 12 feet
2310 minimum side yard setback and 30 feet total side yard setback.
2311 The applicant requests variances of 8 feet minimum side yard
2312 setback and 21 feet total side yard setback.

2313
2314 Mr. Kirkland - Does anyone else wish to speak on this case? Would you
2315 raise your right hand and be sworn in.

2316
2317 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2318 truth, the whole truth, and nothing but the truth, so help you God?

2319
2320 Mr. Kirkland - Okay, if you would, ma'am, I'll call on you, let him present the
2321 case, and then you can come down. Okay? Sir too. If you would, state your name for
2322 the record. Have all your notices been turned in according to the County Code?

2323
2324 Mr. Hart - I do. I'm Craig Hart with Champion Window Company.
2325 There was a problem with the notices; they were mailed to me to be sent out, and I
2326 never received them. They have been taken physically to the individuals that needed to
2327 see them and signed.

2328
2329 Mr. Kirkland - Mr. Blankinship, do you want to check that before we hear
2330 the case?

2331
2332 Mr. Blankinship - We discussed this with them the other day; we were aware it

2333 was coming.
2334
2335 Mr. Hart - One is a letter from Guminick.
2336
2337 Mr. Kirkland - Here's a list of streets. You want to check the streets? You
2338 want this list here that's in the file?
2339
2340 Mr. Blankinship - Yes, that would be helpful. Yes sir, they're all here. Present
2341 and accounted for.
2342
2343 Mr. Kirkland - Okay. Since everything is done, we can listen to the case.
2344 Proceed.
2345
2346 Mr. Hart - Okay. Apparently the 2 carports that are on the property
2347 right now, the contractor who built them before, whether knowingly or unknowingly,
2348 we're not sure, when he applied for the permit, put in numbers on the plat when he
2349 applied, that showed that they were further away from the property than they are. We're
2350 trying to build a sunroom for Mr. and Mrs. Harris, and when I went out to survey the
2351 property so we could apply for the permit, I always walk my plans through so I catch
2352 things like this up front, and at that time we found out that the existing carports were too
2353 close already, and that the sunroom was also going to be too close to the property line.
2354 That's why we're here today, to try to get the carports cleared up and also for them to
2355 be allowed to build their sunroom. If you have any questions about any of these parts,
2356 they're here, they're who you saw standing in the back. If you have any questions for
2357 me

2358
2359 Mr. Kirkland - Maybe you can answer this question. Is that a garage in the
2360 back yard?
2361
2362 Mr. Hart - Yes, I believe it is.
2363
2364 Mr. Kirkland - And they drive through the carport to get to the garage?
2365
2366 Mr. Hart - Yes.
2367
2368 Where is the sunroom going, Mr. Hart?
2369
2370 Mr. Hart - It's shown on the plat.
2371
2372 Okay, I see it.
2373
2374 So that sunroom will extend no further, no closer to the
2375 sideline than the house already is?
2376
2377 Mr. Hart - Than the existing house structure, that's correct.
2378

2379 It just takes up a little bit more

2380

2381 Mr. Hart - A little bit more side, really, I guess, back yard space, I

2382 guess, is the reality of it, but it's considered side yard encroachment.

2383

2384 Also it appears that the side line is on an angle at that point,

2385 somewhat.

2386

2387 Mr. Hart - As best as I can tell from what staff has here, it looks a little

2388 more rectangular, but from the information that I have, the property is more of a pie

2389 shape.

2390

2391 Mr. Blankinship - Do you have a survey of this property?

2392

2393 Mr. Hart - I don't have a physical survey of the property, no sir.

2394

2395 Mr. Kirkland - Mr. Blankinship, may I ask you a question. I asked him

2396 about the one garage. The picture at the bottom that we have in our staff report, with

2397 the green-looking car, or black, or whatever it is, is that another garage behind that too,

2398 or is that the same one. I can't really tell.

2399

2400 Mr. Hart - That's the other property. That's the neighbors,

2401

2402 The house behind it

2403

2404 Mr. Kirkland - Is that I house behind it, is that what that is?

2405

2406 Mr. Hart - I'm sorry, that's a tool shed.

2407

2408 Two carports. Carports on both sides. Fills up the back yard

2409 with 2 more buildings.

2410

2411 He's closed in the carport on the left.

2412

2413 M. Hart - The little tool shed is actually, if you look at the plat, the tool

2414 shed is actually to the rear of the home. It is past the rear of the home. It is not up into

2415 towards where the sunroom is. If you draw a line down, it is actually several feet back

2416 past the rear of the home.

2417

2418 Mr. Kirkland - I'm just looking for a plat too, Mr. Blankinship. I didn't have

2419 one with all that drawn in.

2420

2421 Without a survey we really don't know how close that is to

2422 the line, do we?

2423

2424 Mr. Kirkland - That's what I was asking. I don't understand.

2425
2426 Mr. Hart - The information that I'm using is that I've been told that the
2427 fence lines that are there are the property lines; that's what I've been using.
2428
2429 You didn't see any pins or rods or anything?
2430
2431 Mr. Hart - Couldn't find any pins.
2432
2433 What you're telling us is that this proposed sunroom will be
2434 perfectly in line with the addition to the house. It will protrude no further, no closer to the
2435 line, than that house?
2436
2437 Mr. Hart - That's correct. And we're asking to clear up these other
2438 issues while we're at it.
2439
2440 Mr. Wright - Mr. Blankinship, without a survey, how do we know how
2441 close it is?
2442
2443 Mr. Blankinship - You don't, Mr. Wright.
2444
2445 Mr. Wright - Suppose we grant it, and it's in error?
2446
2447 Mr. Blankinship - You have a good educated guess – would you go back to the
2448 photos, please, Susan. I shot these, attempting to look down the property line.
2449 Not that one, but the other 2. I'm just eyeballing by the improvements out there, and I
2450 felt fairly confident that I was looking down the property line on each of these 2. Go to
2451 the last one, if you would Susan. Looking down the other one there. But you know how
2452 that is. You've been practicing law long enough to know that sometimes people think a
2453 fence is on a property line, and it's not there.
2454
2455 Mr. McKinney - Were these carports added after they were already in the
2456 home?
2457
2458 Mr. Hart - Yes.
2459
2460 Mr. Blankinship - One of these building permits is a '99, Mr. McKinney, and it
2461 shows side yards of 15 feet and d13 feet.
2462
2463 Mr. McKinney - They did have a plat then.
2464
2465 Mr. Blankinship - Well that's very imaginative fiction I think.
2466
2467 It doesn't look like a plat; it's just a drawing.
2468
2469 But I'm talking about to get the building permit.
2470

2471 Mr. Hart - This is all that's required to get a building permit, is to go in
2472 with I do this all the time, if a homeowner doesn't have an existing plat,
2473 I'll draw something, tell them to tell me the shape of the property, and I'll do my best to
2474 come up with accurate information. That's what I came up with here, and when I
2475 applied for it, this is what we came up with. When they researched it, they found out
2476 that when these carports were built, and they had 15-yard (sic) setbacks drawn on
2477 them, and that's not the case

2478
2479 Mr. Hart, are you speaking of Henrico County? Because
2480 when you apply for a building permit in Henrico County, it's got to be routed through all
2481 the departments, especially planning, let me finish, it's required to have a plat plan so
2482 that they know whether it meets the setbacks or not.

2483
2484 Mr. Hart - This is the exact same I'm sorry

2485
2486 Mr. Blankinship - And there is a drawing here that shows setbacks of 15 and
2487 13 on the 2 sides?

2488
2489 But is it a certified plat?

2490
2491 Mr. Blankinship - We do not require a certified plat.

2492
2493 Mr. Hart - This drawing, this plat, this drawing or type of plat that you
2494 see here today is typical of what I personally, and everybody else in the field as far as I
2495 know, have to do a lot of times to apply for a building permit, rather than actually have a
2496 survey done. We actually draw it and measure to the best of our knowledge, where the
2497 property lines are. We're not usually dealing in this close of quarters, obviously, but
2498 sometimes we are. This is not uncommon for us, as far as applying for a building
2499 permit, to have something like this. I can show you

2500
2501 How long have the Harrises been in this house?

2502
2503 Mr. Hart - I'm not sure.

2504
2505 Mr. Harris - Thirty years.

2506
2507 Mr. Kirkland - If you would sir, come down and speak to the mike. Did you
2508 hear him okay?

2509
2510 He said 30 years, so I know he had a plat when the
2511 mortgage was put on it 30 years ago, but that's probably over and done with.

2512
2513 Mr. Kirkland - In 1999, one of the permits was in 1999, Mr. Blankinship?

2514
2515 Mr. Blankinship - Yes sir.

2516

2517 Mr. Kirkland - And you submitted this little yellow sheet of paper in 1999?
2518
2519 Oh these are the homeowners, I thought they were in
2520 opposition.
2521
2522 Mr. McKinney - No, they're the homeowners. They own it.
2523
2524 Mr. Kirkland - Is that what you submitted in 1999? I guess the contractor or
2525 whoever did the work for you did that?
2526
2527 Ms. Harris - The contractor did.
2528
2529 Mr. Kirkland - Was there a final inspection on that?
2530
2531 I'm sure there was. Should have been.
2532
2533 Mr. Kirkland - Because it would have been picked up immediately.
2534
2535 Mr. Wright - Not necessarily.
2536
2537 Mr. Blankinship - No, not if it was just a building inspection. We would
2538 normally send a zoning inspector on just a carport.
2539
2540 Mr. Hart - Well, it would have been picked up when I applied for the
2541 permit. I will say this. The permit hasn't actually been applied for; I'm not allowed to
2542 apply for a permit once we find there's been a violation on the property.
2543
2544 Mr. Kirkland - We understand that. I'm like Mr. Wright here. I don't know if
2545 the dimensions on that sketch are correct, and if I don't see a real plat, I don't know
2546 what I'm giving a variance to, on the carports.
2547
2548 We're giving a variance that conforms to a side area there,
2549 which we already know is not in compliance, it sounds like, because they're not
2550 extending beyond the carport that's already there.
2551
2552 Mr. Hart - We have no intention to extend beyond what's already there,
2553 that's correct.
2554
2555 Mr. Kirkland - Yes, but I don't know if the variance meets what's in the
2556 description here. I don't know if these figures are correct.
2557
2558 Mr. Hart - At the very least, could we put a condition that that be
2559 verified?
2560
2561 That's what I said. As Mr. Wright stated, this Board really
2562 can't act if it doesn't know, and we wouldn't know unless we had a certified plat, which I

2563 think we could probably put a condition on it, say, to have it surveyed, and if all this is
2564 correct, it's okay.

2565
2566 Are you sure that if you look back in the records to see that
2567 there never was a survey recorded on this?

2568
2569 Mr. Hart - I have not gone to the courthouse and looked up the records.

2570
2571 Mr. Blankinship - There has to be at least a subdivision plat.

2572
2573 I can't believe that someday, one time or another, there had
2574 to be a survey of some sort. Thirty years ago.

2575
2576 Mr. Hart - I'm not saying there's not. I'm saying it's standard practice
2577 that when a homeowner doesn't have a copy of their plat, for us to do just exactly what
2578 we've done here today. It's just not in this situation here very often.

2579
2580 The good news is that the houses on either side of this
2581 property seem to have a good distance between the carport on either side and the
2582 house. These pictures show

2583
2584 You can probably, inexpensively, locate that side line from
2585 the 2 rods.

2586
2587 If you can find them.

2588
2589 Mr. McKinney - Oh you can find them. Do that.

2590
2591 Sometimes they're pulled up.

2592
2593 Mr. Hart - Whatever you decide in the conditions how we need to locate
2594 it, that will be fine with us, because we're comfortable that we know where the property
2595 lines are.

2596
2597 I say let's grant it with the condition, if you want, they verify it,
2598 like Mr. McKinney suggested, because they're not trying to extend beyond what's
2599 already there as far as side line setbacks it doesn't look like.

2600
2601 Mr. McKinney - But the former builder built the carports out beyond the
2602 setbacks, and now when this house is sold later, it's going to have to come back in here
2603 if somebody puts a mortgage on it, and they're going to have a survey done on it, and
2604 it's going to show it protrudes.

2605
2606 Mr. Hart - We will be glad to do a survey, but that's why we're trying to
2607 clear up, get a variance for the carports now, so if they did decide to sell the property
2608 later, that this isn't an existing issue.

2609
2610 Mr. McKinney - Right, that everything will be okay. We could put a condition
2611 on it that the facts and figures we have are correct, subject to a survey. If they're not,
2612
2613
2614 Mr. Hart - Then we've got to go through all this again, or something.
2615
2616 If it meets it okay, you're on your way.
2617
2618 Mr. Kirkland - Why not defer it for 30 days, have a survey done and come
2619 back.
2620
2621 Why don't you defer it for 30 days. Go ahead and do that so
2622 you won't have to keep coming back later and refiling and repay another fee and all
2623 that. Want to do that?
2624
2625 Mr. Kirkland - Have a survey done and come back in 30 days. Won't cost
2626 you any more money, other than to show up, and we can end it right then and there,
2627 and that way, you don't have to come back.
2628
2629 Mr. Hart - We'll do that.
2630
2631 Or if he could satisfy the Planning Office that he finds some
2632 rods or stakes
2633
2634 But if he doesn't find them, and it is sticking out further
2635
2636
2637 Mr. Hart - Then we don't have a second chance coming back here.
2638
2639 (unintelligible, too many talking at once)
2640
2641 If you can locate the rods, then you can work from there,
2642 rather than have a survey done.
2643
2644 Mr. McKinney - Is that what you'd like to do, defer it for 30 days?
2645
2646 Mr. Hart - Let's defer it for 30 days.
2647
2648 Upon a motion by Mr. McKinney, seconded by Mr. Wright, the Board **deferred A-93-**
2649 **2001** application for a variance build two carports and an addition at 5202 Antigo Road
2650 (Hechler Village) (Tax Parcel 147-9-BB-35). The case was deferred for 30 days, at the
2651 applicant's request, from the June 28, 2001, until the July 26, 2001, meeting,
2652
2653 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

2654 Negative: 0
2655 Absent: 0

2656
2657 Mr. Kirkland - Next case.

2658
2659 **A - 94-2001** **JANET R. PARHAM** requests a variance from Section 24-94 of
2660 Chapter 24 of the County Code to build an addition at 2900 Dillard
2661 Drive (Deer Springs) (Tax Parcel 31-12-B-1), zoned R-2AC, One-
2662 family Residence District (Conditional) (Brookland). The rear yard
2663 setback is not met. The applicant has 30 feet rear yard setback,
2664 where the Code requires 45 feet rear yard setback. The applicant
2665 requests a variance of 15 feet rear yard setback.

2666
2667 Mr. Kirkland - Does anyone else wish to speak on this case? If not, ma'am,
2668 raise your right hand and be sworn in.

2669
2670 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2671 truth, the whole truth, and nothing but the truth, so help you God?

2672
2673 Mr. Kirkland - Would you state your name for the record. Have all your
2674 notices been turned in according to the County Code. If you could, speak a little closer
2675 to the mike. All right, if you would, state your case.

2676
2677 Ms. Parham - I do. Janet Parham. I am asking to be granted a variance to
2678 be allowed to build an addition onto my home, where the existing deck is. I want to
2679 come out, joining the house, I want the total space to be 40 feet. We need to have 45
2680 feet from the rear property line to the end of the house, and in doing this addition, if we
2681 go out 40 feet, it's only going to leave us 30 feet. The addition is for my mother, who
2682 has moved in with me for health and safety reasons. She cannot get upstairs, so we
2683 need to have her living quarters on one floor, and this would allow us enough space to
2684 provide a sitting area, a bedroom, and a bathroom for her, which is all handicapped
2685 accessible.

2686
2687 Ms. Parham, what are you going to do with the deck? Is that
2688 going to be eliminated?

2689
2690 Ms. Parham - The deck will be eliminated; that will be part of the addition.

2691
2692 What's located to the rear of this proposed construction, in
2693 the way of screening? It looks like there's some trees there in this picture.

2694
2695 Ms. Parham - There's some trees. There's a 6-foot privacy fence, and to
2696 the right of this picture, there are very tall Leyland pines planted, so there's some
2697 screening there. Basically, what you'd be doing, is coming into the driveway and the
2698 addition would be facing, well actually it would be coming out. It would not change the
2699 way the driveway is set up or the garage entrance.

2700
2701 What are the dimensions of the proposed

2702
2703 Ms. Parham - 16 by 40.
2704
2705 15 by 40?
2706
2707 Ms. Parham - 16 by 40.
2708
2709 16 by 40. And what would you have in there? What would
2710 be contained in the

2711
2712 Ms. Parham - Well about where the deck steps are now at the driveway,
2713 there would be a doorway there, a door going in. The door that you see on the deck to
2714 the left would become a doorway; that's the utility room, and then once you get into the
2715 door, there would be a door on the right side that would go into the living quarters for my
2716 mother, and she would have a bathroom, a bedroom and a sitting area.
2717
2718 No kitchen?
2719
2720 Ms. Parham - No kitchen. No, she wouldn't be doing any cooking. I think
2721 we've been told we could have like a little wet bar area with a sink, and she could
2722 maybe have a microwave.
2723
2724 It's got to be a one-, single-family.
2725
2726 Ms. Parham - Right. No, she would not be doing any cooking.
2727
2728 What are the dormers above it? What's upstairs, above the
2729 addition.
2730
2731 Ms. Parham - That would just be attic space. There are 3 dormers on the
2732 sketch. The 2 dormers on the ends would actually be skylights down into her living
2733 quarters, and the center one would just be a window for the attic space.
2734
2735 So they're decorative, more or less?
2736
2737 Ms. Parham - Yes, just to make the house look a little better.
2738
2739 Mr. Kirkland - Okay, any other questions? Anyone else wish to speak?
2740 That concludes the case.
2741
2742 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2743 Nunnally, the Board **granted** application **A-94-2001** for a variance build an addition at
2744 2900 Dillard Drive (Deer Springs) (Tax Parcel 31-12-B-1). The Board granted the
2745 variance subject to the following condition:

2746
2747 1. Only the improvements shown on the plan filed with the application may be
2748 constructed pursuant to this approval. Any additional improvements shall
2749 comply with the applicable regulations of the County Code.

2750
2751 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2752 Negative: 0
2753 Absent: 0

2754
2755 The Board granted this request, as it found from the evidence presented that, due to the
2756 unique circumstances of the subject property, strict application of the County Code
2757 would produce undue hardship not generally shared by other properties in the area, and
2758 authorizing this variance will neither cause a substantial detriment to adjacent property
2759 nor materially impair the purpose of the zoning regulations.

2760
2761 Mr. Kirkland - Mr. Blankinship, we have another matter to come up, but I
2762 would like to clear the cases before we discuss that. Do the Board members have any
2763 problem with that? Okay, let's start at the rear since I'm on that page.

2764
2765 Mr. Kirkland - Now, Mr. Moore, you can come up. Mr. Blankinship, I would
2766 like for you to do a little background information before he starts talking on what he's
2767 getting ready to discuss, or hand out that information.

2768
2769 Mr. Blankinship - I'm going to hand out a copy of your rules, and as soon as
2770 you receive them, if you'll turn to page 4 and look toward the bottom of the page, you'll
2771 see Article 4, which is entitled "Re-Hearing." Mr. Moore is going to ask you to re-hear
2772 one of last month's cases. Briefly, paragraph 1 says that a re-hearing can only be had
2773 on a motion by one of the Board members who voted on the prevailing side. The vote
2774 was unanimous, so any of you can make this motion. It has to be carried by at least 3
2775 affirmative votes; it has to be done at this meeting. If you do not agree to re-hear it at
2776 this meeting, there can be no re-hearing. Then turning to page 5, paragraph 2 states
2777 the requirement, "no motion for a re-hearing shall be entertained unless new evidence is
2778 submitted which could not reasonably have been presented at the original hearing. I
2779 believe everybody has had a chance to read the letter that Mr. Moore presented us with
2780 just this morning. So you'll have to make the judgment whether that contains additional
2781 information that could not reasonably have been presented last month. Finally, if you
2782 do make that motion, the vote this morning would only be to reconsider the case, and
2783 it'll go on the July agenda, and in July you'll have a public hearing on the new
2784 information, and then you'll decide whether or not you want to change the decision that
2785 was made last month.

2786
2787 Mr. McKinney- We're before the deadline of filing for this, to be advertised
2788 and so forth?

2789
2790 Mr. Blankinship - Yes sir, we can still get it into the agenda. We're past the
2791 public deadline, but we can still do this.

2792
2793 Mr. Wright- On number 2, the requirement that unless new evidence is
2794 submitted which could not reasonably have been presented at the original hearing –
2795 that doesn't seem to cover where information was presented by the County which was
2796 erroneous, does it?
2797
2798 Mr. McKinney- I would think any of it is.
2799
2800 Mr. Blankinship- I guess one would argue that the correct information wasn't
2801 available last month.
2802
2803 Mr. Balfour- That would be new evidence then.
2804
2805 Mr. Blankinship- In the case that there was incorrect evidence last month,
2806 which I'm not sure whether there was.
2807
2808 Mr. Wright- I just want to make sure we understand that.
2809
2810 Mr. Kirkland - Okay, do we need to hear the motion from one of our Board
2811 members first, or do we need to listen to Mr. Moore first?
2812
2813 Mr. McKinney- Let's listen to Mr. Moore.
2814
2815 Mr. Moore - Mr. Chairman, Members of the Board, I was just brought into
2816 this yesterday.
2817
2818 Mr. McKinney- Are you sworn in?
2819
2820 Mr. Kirkland - Raise your right hand and be sworn in.
2821
2822 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2823 truth, the whole truth, and nothing but the truth, so help you God?
2824
2825 Mr. Kirkland - State your name too.
2826
2827 Mr. Moore - I do. Yes sir. I'm Glenn Moore. We have been retained by
2828 Richmond Yacht Basin, Inc. to represent its interests in connection with the appeal by
2829 an adjoining property owner of the Planning Director's decision with respect to the
2830 Richmond Yacht Basin and whether or not it is legitimately located on its property. As I
2831 said, we were just brought into it yesterday afternoon. I know that's not your problem;
2832 that's my problem, but I will tell you that perhaps I'm not going to be as fully prepared on
2833 this as I probably should be, but I have read over some materials that have been
2834 presented to me, and I would say that with respect to the representation of the property
2835 owners' interests in a case like this, I haven't looked at the County's file, I have read the
2836 transcript of the hearing, at least a draft of the transcript, it hasn't been approved, and I
2837 would say that I don't believe the property owner was prepared to protect its interests

2838 and therefore present all the facts and evidence that needed to be presented to fully
2839 substantiate the position that actually the Director of Planning had reached, which was
2840 that the provisional use permit was not necessary for this project, given its long-standing
2841 establishment as a marina and the fact that the improvements were not that material,
2842 not that dramatic. Mr. Wright, as others of you did, asked a number of questions about
2843 that – I just did not see where that evidence was appropriately presented, and maybe
2844 not evidence of all building permits either. I know I have a copy of a building permit that
2845 was issued in '91, and I didn't see any mention of that in the hearing. It might have
2846 been relevant to this Board. I know you have your rules, and you have to follow your
2847 rules in making a determination as to whether or not it's appropriate to re-hear this, and
2848 we ask that you make that finding and re-hear, and give us a chance to present some
2849 additional information on this.

2850
2851 Mr. Wright- Didn't this come before us in the posture that it was the
2852 County's responsibility to argue and uphold its ruling, and not the property owner? The
2853 property owner could add to it, but wasn't it basically the County's responsibility to
2854 present the case to support its ruling?

2855
2856 Mr. Blankinship - The County was the respondent in the case, yes sir.

2857
2858 Mr. Wright- So basically what's happened is the information, the County
2859 didn't present us all the information we should have had.

2860
2861 Mr. Blankinship - The argument is that there was information in the Yacht
2862 Club's files that the County did not have access to, and the Yacht Club did not have
2863 adequate time to do the research necessary to protect their interest.

2864
2865 Mr. McKinney- I'd like to make a motion that we re-hear it.

2866
2867 Mr. Kirkland- Using the information given by Mr. Moore, that

2868
2869 Mr. McKinney- That new information has been presented to us today.

2870
2871 Mr. Kirkland - Do I have a second to that motion?

2872
2873 Mr. Nunnally- Second.

2874
2875 Mr. Kirkland - Mr. McKinney has made the motion; Mr. Nunnally has
2876 seconded, that we re-hear the case at the next meeting in July. All those in favor say
2877 "aye." All those opposed? It's unanimous; we'll hear it next month.

2878
2879 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
2880 Negative: 0
2881 Absent: 0

2882

2883 Mr. Kirkland - Next business on the agenda here, is the minutes that we
2884 have, that we received at our last meeting. Any changes, deletions?

2885
2886 On a motion by Mr. McKinney, seconded by Mr. Nunnally, the Board **approved**,
2887 with changes, the Minutes of the January 25, 2001, Henrico County Board of
2888 Zoning Appeals meeting.

2889
2890 On a motion by Mr. Balfour, seconded by Mr. McKinney, the Board **approved**, as
2891 corrected, the Minutes of the February 22, 2001, Henrico County Board of Zoning
2892 Appeals meeting.

2893
2894 There being no further business, and on a motion by Mr. Wright, seconded by
2895 Mr. Nunnally, the Board adjourned until July 26, 2001, at 9:00 am.

2896

2897 Richard Kirkland,
2898 Chairman

2899

2900

2901 Benjamin Blankinship, AICP
2902 Secretary