

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 26, 2003, AT**
4 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**
5 **DISPATCH ON JUNE 5 AND 12, 2003.**
6

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

Members Absent: Daniel Balfour, Chairman

Also Present: Benjamin Blankinship, Secretary
Lee J. Tyson, County Planner
Priscilla M. Parker, Recording Secretary

7
8 Mr. Wright - Ladies and Gentlemen, welcome to the June meeting of the
9 Henrico County Board of Zoning Appeals. Let's stand, and please join me in the Pledge
10 of Allegiance To The Flag of Our Country. Mr. Secretary, would you read the rules,
11 please.
12

13 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
14 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each
15 case. Then at that time the applicant should come to the podium. I will ask everyone
16 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.
17 The applicants will then present their testimony. After the applicant has spoken, the
18 Board will ask them questions, and then anyone else who wishes to speak will be given
19 the opportunity. After everyone has spoken, the applicant, and only the applicant, will
20 be given the opportunity for rebuttal. After hearing the case, and asking questions, the
21 Board will take the matter under advisement. They will render all of their decisions at
22 the end of the meeting. If you wish to know their decision on a specific case, you can
23 either stay until the end of the meeting, or you can call the Planning Office later this
24 afternoon. This meeting is being tape recorded, so we will ask everyone who speaks, to
25 speak directly into the microphone on the podium, to state your name, and to spell your
26 last name please. And finally, out in the foyer, there are two binders, containing the
27 staff report for each case, including the conditions that have been recommended by the
28 staff. Mr. Chairman, we have one withdrawal on the 9:00 o'clock agenda, which is **A-**
29 **50-2003, PARKER LANCASTER & ORLEANS.**
30

31 **A - 50-2003** **PARKER LANCASTER & ORLEANS** requests a variance from
32 Section 24-95(k) of Chapter 24 of the County Code to build a one-
33 family dwelling at 5401 Woolshire Drive (Hampshire) (Parcel 743-
34 774-1255), zoned R-2AC, One-family Residence District
35 (Conditional) (Three Chopt). The minimum side yard setback is not
36 met. The applicant proposes 24 feet minimum side yard setback,
37 where the Code requires 25 feet minimum side yard setback. The
38 applicant requests a variance of 1 foot minimum side yard setback.
39

40 Mr. Wright - Do I hear a motion on it?
41

42 Upon a motion by Mr. McKinney, seconded by Mr. Kirkland, the Board **approved**
43 **withdrawal** of application **A-50-2003** for a variance to build a one-family dwelling at
44 5401 Woolshire Drive (Hampshire) (Parcel 743-774-1255). The Board granted
45 withdrawal without prejudice at the request of the applicant.
46

| | | |
|-----------------|--------------------------------------|---|
| 47 Affirmative: | Kirkland, McKinney, Nunnally, Wright | 4 |
| 48 Negative: | | 0 |
| 49 Absent: | Balfour | 1 |

50
51 **Deferred from Previous Meeting:**
52

53 **A - 47-2003** **LOPE CASTRO** requests a variance from Section 24-94 of Chapter
54 24 of the County Code to build a patio room over the existing deck
55 at 2216 Flat Branch Court (Ridgefield Green) (Parcel 738-751-
56 3422), zoned R-4C, One-family Residence District (Conditional)
57 (Tuckahoe). The rear yard setback is not met. The applicant has
58 25 feet rear yard setback, where the Code requires 35 feet rear
59 yard setback. The applicant requests a variance of 10 feet rear
60 yard setback.
61

62 Mr. Wright - Please state your name for the record.
63

64 Mr. Castro - My name is Lope Castro.
65

66 Mr. Wright - Do we have any others who intend to testify in this matter?
67 Would you raise your right hand and be sworn please?
68

69 Mr. Blankinship - Do you swear that the testimony you are about to give is the
70 truth, the whole truth, and nothing but the truth, so help you God?
71

72 Mr. Castro - I do. I would like to request a variance from Section 24-94 of
73 Chapter 24 of the County Code to build a patio room over an existing deck at my
74 property, 2216 Flat Branch Court (Ridgefield Green), parcel # 738-751-3422 zoned R-
75 4C. It's a one-family resident district. The rear yard setback is not met, and I have 25
76 feet rear yard setback, where the Code requires 35 feet rear yard setback. I would like

77 to request a variance of 10 feet rear yard setback to build a patio.

78

79 Mr. Nunnally – Is that patio room going to be the same size as your existing
80 deck?

81

82 Mr. Castro - Exactly the same. It's going to be matched the same.

83

84 Mr. Wright - Mr. Castro, have you read the conditions that are suggested
85 for this case? Has he got a copy?

86

87 Mr. Blankinship - The package that we mailed you with the staff report?

88

89 Mr. Castro - No, I did not get a copy of that.

90

91 Mr. Wright - You ought to give him a copy, so he can look at that. I just
92 want to make sure you understand, if this is approved, it will be subject to those
93 conditions.

94

95 Mr. Castro - It will definitely match the existing dwelling, as nearly as
96 practical.

97

98 Mr. Wright - Is there any screening between your property and the
99 property to the rear, trees, etc.

100

101 Mr. Castro - Yes, we have a lot of trees.

102

103 Mr. Wright - I see some trees in the picture, just want to say that for the
104 record. Is anyone here in opposition to this case? Thank you very much for coming
105 down.

106

107 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
108 Kirkland, the Board **granted** application **A-47-2003** for a variance to build a patio room
109 over the existing deck at 2216 Flat Branch Court (Ridgefield Green) (Parcel 738-751-
110 3422). The Board granted the variance subject to the following conditions:

111

112 1. The property shall be developed in substantial conformance with the plan filed
113 with the application. No substantial changes or additions to the layout may be made
114 without the approval of the Board of Zoning Appeals.

115

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

117

118 Affirmative: Kirkland, McKinney, Nunnally, Wright 4

119 Negative: 0

120 Absent: Balfour 1

121

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

127

128 **New Applications:**

129

130 **A - 60-2003** **HANOVER ASSOCIATES** appeals a decision of the Director of
131 Planning with respect to two notices of zoning violation at 7202
132 Brook Road (Parcel 784-750-6778), zoned B-3, Business District
133 (Fairfield).

134

135 Mr. Kessler - Good morning, I'm Neil Kessler, an attorney at Troutman
136 Sanders in Richmond, and I represent Hanover Associates, the applicant.

137

138 Mr. Wright - Is there anyone else to be heard on this case, who wishes to
139 speak? Everybody who wishes to speak, please stand and raise your right hand,
140 because everyone has to be sworn for our record, and we'll swear everybody at the
141 same time.

142

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

145

146 Mr. Kessler - I do. We're appealing the decision of the Director of
147 Planning with respect to two notices of violation at 7202 Brook Road. If there were any
148 circumstances which beg for variance, it's the circumstances which exist here. Hanover
149 Associates purchased the trailer park in the summer of 1972. He was represented by a
150 competent, well-known real estate attorney, Jerry Owings (Alfred J. Owings), who took
151 the actions that most attorneys would take for clients who purchase commercial real
152 estate, which is to request a zoning letter from the Zoning Administrator. Although, as
153 you will hear, and in the information you received, the zoning letter was not received
154 until after the purchase closed, Hanover Associates and Mr. Owings had been assured
155 by the Zoning Administrator that the letter would be issued, that it would recognize the
156 existing use of the then current operation of the trailer park as being a non-conforming
157 use. You've got a copy of that letter that Mr. Owings received from the Zoning
158 Administrator, Mr. Clarke at that time.

159

160 We've also provided you with a picture that was taken a few months after the closing
161 occurred in the summer of 1972. The picture shows what the trailer park looked like in
162 January of 1973, and it showed approximately 65 to 69 trailers there, with accessory
163 structures, in the same locations in which they exist today. Based on the assurance
164 that Hanover Associates received from the Zoning Administrator, and other due
165 diligence that it had, they also received a Certificate of Occupancy, although I must
166 admit that nobody's been able to find the Certificate of Occupancy dating back to that
167 period of time. Nevertheless, from 1972 through today, the trailer park has been

168 operating for over thirty years with 65 to 69 trailers and accessory structures in the
169 same place where they are now.

170
171 During that period of time, the trailer park, the residents, and Hanover Associates, have
172 been good law-abiding, tax-paying citizens of the County. You will hear later that there
173 may be some ambiguities in the zoning letter, and I acknowledge to you that looking
174 back at the zoning letter thirty years in hindsight may show that there are some
175 ambiguities. But I want you to please look at the zoning letter and see how a person
176 such as Mr. Holzgrefe, who will be addressing you later, who is the Managing Partner of
177 Hanover Associates, how it could be interpreted, along with advice that he received
178 from his attorney, to indicate that the zoning letter said that the then current operation of
179 the trailer park was a non-conforming use, and that the wording about “presently
180 licensed trailers” could be interpreted as meaning permits for trailers which are currently
181 located there, as well as anything else. With that reliance, the trailer park was
182 purchased in 1972 with the full belief that it could be operated. Indeed, I’m not even
183 sure that Mr. Clarke ever issued any kind of a zoning letter without doing some
184 homework to determine what the current use of any property on which he issued a
185 zoning letter was used for. I know that today certainly, people do make inspections
186 before the zoning letters are issued, and I know that it must have been that way back
187 thirty years ago, although I didn’t start practicing law until the following year.

188
189 However, it wasn’t until recently that the trailer park has been cited for zoning violations,
190 and that has occurred only after two civic associations began their efforts. One is the
191 North Chamberlayne Civic Association, the other is the Brook Road Enhancement
192 Advisory Committee, and they began their efforts, basically to cause the trailer park to
193 close down, because, as is in one of the letters, it says that the trailer park allegedly is
194 “one of the biggest detractors to the area.” Hanover Associates is just as interested as
195 anybody else in improving the quality of life in the County and to revitalized areas of the
196 County. Revitalization does not permit some citizens to violate the rights of others. Just
197 because a particular use of the property is deemed to be objectionable by some, does
198 not mean that they have the rights to prevent others from using their own property for
199 permitted uses. In this case, two civic groups, with laudable goals, but neither of which
200 has any members who live in the area or who work within the general vicinity of the
201 trailer park, these people are seeking to come up with ways to put this trailer park, and
202 the trailer park across the street, out of business. Make no mistake about it. Reducing
203 the number of trailers, which is what the application seeks to do, down to the number
204 that allegedly was approved back in 1943, is going to put the trailer park out of
205 business. These civic groups want to make it economically unfeasible for the trailer
206 park to be in operation. It’s not a matter of just reducing the number of trailers in that
207 park; it’s a matter of getting rid of the park entirely to revitalize the area. This might be
208 valid if the operation of a trailer park was not a non-conforming use, but it is a non-
209 conforming use. It exists today, and it’s operated for over thirty years in the same way
210 that it is today, with the same number of pad sites, with the same number of accessory
211 buildings. Obviously this is an abuse of the legal system. Virginia law provides, as you
212 know, that a variance should be granted when a property owner can show that his
213 property was acquired in good faith. Obviously, this was the case here. A purchaser

214 represented by a well-known, competent real estate lawyer, relying on a letter from the
215 Zoning Administrator, and other assurances, he bought the property, in true reliance on
216 these factors. Virginia law also says that a variance should be granted where the
217 granting of the variance will alleviate a hardship approaching confiscation. This is a
218 clear-cut case, where if a variance is not granted, there will be a hardship, and there will
219 be confiscation.

220
221 Mr. Wright - Mr. Kessler, has an application been filed for a variance?
222

223 Mr. Kessler - Our thought is that we are here asking the Board of Zoning
224 Appeals to permit the continued existence of this trailer park, the way that it is now, as a
225 means of overturning the decision that was initially made by the planning staff.
226

227 Mr. Wright - On the basis that it's a non-conforming use, that it's been in
228 use for thirty-some years?
229

230 Mr. Kessler - Yes sir. My understanding is, and it may not be correct, but
231 my understanding is that one way you can do that is by permitting a variance to be
232 issued to permit this. The strict application of the 1943 ordinance will produce an undue
233 hardship. The hardship will not be shared generally by other properties in the vicinity,
234 and the authorization of the variance and your letting us continue operating there, will
235 not be substantially detrimental to adjacent properties in the character of the zoning
236 district. It's been in use for over thirty years. I brought with me today Mr. William
237 Holzgreffe, who's the Managing Partner for Hanover Associates; he's been there since
238 the inception of Hanover Associates, over thirty years ago. There are also owners of
239 businesses who are going to speak here today, and residents who are speaking on our
240 behalf.
241

242 Mr. McKinney - Mr. Kessler, had you given any thought to trying to ask Earl
243 Clarke to come in this morning and explain his letter dated July 21, 1972?
244

245 Mr. Kessler - I really didn't know how to find Mr. Clarke.
246

247 Mr. McKinney - The County does. He's retired now; he's a nice gentleman.
248

249 Mr. Kessler - I didn't know how to find him, but we feel as though, certainly
250 based upon the number of people who've lived in the park for over thirty years, and the
251 assurances that Mr. Holzgreffe perceived when he bought the trailer park, that it would
252 have been nice to have Mr. Clarke here; I agree with you.
253

254 Mr. McKinney - I have another question. On the letter dated May 14, 2003,
255 from the North Chamberlayne Civic Association, in which they state their boundaries
256 that they represent, they say the boundaries of Brook Road to the west, I would take
257 that as Brook Road being the dividing line. The trailer park is on the other side of Brook
258 Road. I belong to the Chamberlayne Civic Association. They say they represent 2500
259 families; I think they might have 100 members.

260
261 Mr. Kessler - That's my understanding sir, but I didn't have enough time to
262 find out the information as to what their members consist of.
263
264 Mr. Wright - Your statement is, that when this park was originally built, it
265 had 60 trailers in it?
266
267 Mr. Kessler - No sir, that's not my statement. I really don't know; nobody
268 remembers, back in 1943, exactly what the situation was. We do know, based on some
269 information that has been dug up by the staff, that in 1943 there was apparently a
270 permit for 20 or 25 trailers.
271
272 Mr. Wright - From what I understand, 20.
273
274 Mr. Kessler - Yes sir, so all I can tell you, and what I am testifying to here
275 with you is that, certainly in 1972 when it was purchased, there were 69 sites, and I
276 think there are currently 65 sites, and frankly, we would have 69, but for the fact that
277 there have been some applications for permits made by Hanover Associates to the
278 County, and the County has denied those uses. That disturbs us quite a bit too,
279 because if you read the zoning letter, it says that if a pad is not used for a period of a
280 year, then we lose the right to use that. The problem is, is that we've made applications
281 over the years to fill spots where trailers have been moved or have been destroyed or
282 damaged, and the County did not give us the permits to fill those spots within the year
283 period. We've been good citizens about it; we should have complained about it at the
284 time, but they did not because they did not want to rock the boat. You'll see when you
285 talk to Mr. Holzgreffe in a second, that he's not the type of person to rock the boat. This
286 is such an egregious situation here, that he feels compelled, and it hasn't been an easy
287 decision on his part to fight this, but he feels compelled to have to fight it.
288
289 Mr. Wright - I'm looking at Mr. Clarke's letter of 1972, in which he says
290 that the park could continue to operate as it is presently, and that's when you had 60 at
291 that time.
292
293 Mr. Kessler - We had at least 65, and I think Mr. Holzgreffe would say 69.
294
295 Mr. Wright - At that time?
296
297 Mr. Kessler - Yes sir.
298
299 Mr. Wright - And then he goes on to say, "...if the number were
300 decreased for a year or more it would have to continue operating with the decreased
301 number...." I don't know what "decreased" means. Does that mean, if it sat idle for a
302 year or if you put somebody else in there, whether it was permitted or not, somebody
303 was there, is that correct?
304
305 Mr. Kessler - I'm not sure exactly how to interpret it; the way we interpret it

306 is just the way that I mentioned, is that, if for some reason, there was not a trailer there,
307 because it had been destroyed or somebody had moved out, in order for us to replace it
308 with another trailer, we had to get a permit, and the County would not issue the permit.
309 That's where I'm disturbed, because as I read that letter, the fact that it had not been
310 used for over a year, might mean that we have to forfeit our right to be able to replace it.

311
312 Mr. Wright - Did you apply for permission to occupy the space?

313
314 Mr. Kessler - Yes sir, and somebody here will be able to say that there
315 have been attempts to apply for placement of trailers, and the permits have been
316 denied.

317
318 Mr. Wright - How many trailers do you have now in place?

319
320 Mr. Kessler - I believe we have 65 there now, but again, Mr. Holzgreffe, or
321 one of the other people who are here can attest to that.

322
323 Mr. McKinney - Mr. Kessler, are you saying that since this was purchased in
324 1972, that there have been some trailers that were destroyed and so forth, or through
325 attrition?

326
327 Mr. Kessler - Yes sir, there have been some that have burned or moved
328 out.

329
330 Mr. McKinney - You applied for a permit to replace them, and the County
331 refused to give you a permit after '72?

332
333 Mr. Kessler - Yes sir. It's been more recent than in the past.

334
335 Mr. McKinney - Do you have a record since '72 how many have been
336 replaced, or did you get permission to replace them? Or have you lost 4, you said it
337 was down from 69 to 65 now, so that four of them were destroyed or whatever?

338
339 Mr. Kessler - That's a good question; I'm sorry I don't have the
340 information, and maybe when one of the speakers from Hanover Associates is up here,
341 maybe they can answer that question.

342
343 Mr. Wright - All right, to continue your case, you wanted someone else to
344 speak?

345
346 Mr. Kessler - Yes sir.

347
348 Mr. Holzgreffe - My name is William Holzgreffe. In July 1972 I purchased the
349 property at 7202 Washington Highway, now known as Hanover Associates Limited
350 Partnership. The deed regarding that closing was done by Jerry Owings, who is in the
351 firm of Spinella and Spinella. The Certificate of Occupancy for 69 trailers was approved

352 between Henrico County and Jerry Owings, and that information was given to me with a
353 letter to follow. To the best of my memory, if that permit or piece of paper came, there
354 was so much going on, I think the head office up front, and that paper may have been
355 nailed up on the wall so it could be seen. In September of '72 a site plan was made,
356 showing the location of all the trailers, sewer, water, and electrical conduits in that park.
357 I had the plan made, and I have a copy of it here, which I'll be happy to leave with you.
358 This was done in the field with a plane table and an alidade, which is the way the work
359 was done back thirty or more years ago, and this shows what existed then. That's the
360 best proof that I have, and I'd be happy for you to keep that. On the strength of that, I
361 proceeded to get the electrical work upgraded, so in April of '73 the electrical
362 construction plans were made by Chewning and Wilmer, I think they're still in business,
363 and the work that was done was the underground installation for these 69 units. I
364 wouldn't have put in 69 electrical connections if I didn't have use for them. I had the
365 working plans, the as-built plans, the construction plans, for Chewning and Wilmer. I'll
366 let you look at these; I don't want you to have them.

367
368 Mr. Wright - We have to keep those for thirty days if they're part of the
369 evidence.

370
371 Mr. Holzgreffe - Yes sir, just so it's more important for me in thirty days for all
372 the underground stuff that exists. In May '73 the Department of Highways got into the
373 picture, and they replaced the culvert and resurfacing of the driveways, which you get a
374 permit for that, you can't work in the highway without a permit. All these things were
375 done with a permit; you don't do electrical work either without a permit. In 1973, as
376 many as I can remember, those accessory structures existed. I couldn't say how many;
377 I really don't know. I would like to tell you here that the real estate taxes that I pay on
378 this property is \$10,582 a year, which I think is right good money. The trash collection
379 I've paid for myself. I get no assistance from the County, trash collection; I have BFI,
380 and I pay them \$8,097 a year. One other thing, with the 69 units out there, there's only
381 one water connection to serve these people. Only one bill is sent out every two
382 months. The County doesn't have to send out 69 bills; they just send one to me, and
383 that water runs about \$40,000 a year. Just recently, what got me, after about thirty
384 years, to my surprise, the County tells me that I have permission for only twenty trailers
385 and toilets, and that was issued in '43. That's frightening. Gentlemen, I don't know.
386 Being a good citizen and a good landlord and 87 years old and all that stuff, just one
387 question -- why does the County harass me? That's about all I can say today.

388
389 Mr. Wright - Thank you, Mr. Holzgreffe. Any further questions from the
390 Board?

391
392 Mr. Holzgreffe - Do you want these; I'll be happy to leave them.

393
394 Mr. Wright - Yes sir, give them to the Secretary there. Mr. Kessler, is
395 there anybody else to speak sir? All we ask is that you not be repetitious because
396 we've got a long docket, and we've got a lot of people to speak.

397

398 Mr. Robinson - My name is Ernest Robinson. I help Bill Holzgreffe with the
399 trailer park; I've been helping him for years, and if there's any questions that you have
400 regarding the trailer park and the operations of it, I'll be glad to try to answer. I'm just
401 more or less like a manager in there, and we have another person in there who collects
402 our rents and stuff like that, and I just transfer it over to the banks and so forth in
403 Hanover Associates' name.

404
405 Mr. Wright - I think one question was raised that some trailers have been
406 destroyed or moved and others put in during this period of time.

407
408 Mr. Robinson - We have a trailer, I think it's number 12, that this party here
409 has applied for a permit, and that permit has been denied. We've had several of them,
410 when we applied for a time, and the County just won't give us any permits to bring in
411 any trailers, so we're at a standstill there. We have a trailer slot there, number 39, a
412 man wanted to come in there, maybe six months to a year back, and he asked for a
413 permit, and I told him to go down and apply at the County and get one, and he went
414 down and applied, and they refused to give it to him.

415
416 Mr. McKinney - What was the reason, Mr. Robinson?

417
418 Mr. Robinson - I don't know, because he was the one who went in to apply
419 for the permit. All I did was just tell him what to do. Another one we had was lot 3-A; it's
420 a small lot, and we had a trailer in there at one time, and just recently it was emptied,
421 and a guy went and put one in there, and evidently he didn't go down there and get the
422 permit. One of the County guys came into the trailer park, and he told us that if we
423 didn't get the trailer out of there, he was going to cite us and put us in court on it. The
424 man said he went down there and applied for it, and they wouldn't give it to him.

425
426 Mr. McKinney - How about this last one that burned? The trailer that was on
427 fire – has that been removed?

428
429 Mr. Robinson - No sir. It has not been removed. The County is still holding
430 it for investigation of this trial that's coming up, and they won't let us do anything with it.
431 It's been boarded up and sits there. We have asked the fire marshal to let us take it out
432 of there, but they won't let us do it, so it's sitting there.

433
434 Mr. McKinney - Will they let you renovate that trailer on site?

435
436 Mr. Robinson - Sir, you can't renovate that trailer; it's just burnt to pieces.
437 The whole top is caved in on it. It definitely has to be removed, and another has to go in
438 there, but we can't do anything until we get a permit or they let us take it out.

439
440 Mr. McKinney - But you don't know why they won't issue you a permit. Is it
441 because this is pending?

442
443 Mr. Robinson - This right here is pending on that, that's correct, yes sir.

444
445 Mr. McKinney - Going back to the letter from Mr. Clarke, who was the Zoning
446 Administrator in 1972, you have up to a year, he says as a County official, to replace it if
447 something goes wrong. If you don't do it within a year, you've lost the use of that spot.
448
449 Mr. Robinson - It's kind of hard to put a trailer in a spot when you can't get a
450 permit for it.
451
452 Mr. McKinney - What I'm saying is, Mr. Clarke said you could in 1972, and
453 apparently the County is going against this letter. Thank you sir. How long have you
454 been a manager there?
455
456 Mr. Robinson - Probably about 15 years.
457
458 Mr. Kessler - We've just got four or five more speakers.
459
460 Mr. Wright - We don't want repetition. Anything you can add to it will be
461 welcome.
462
463 Mr. Kessler - I've made sure; at least I hope there's no repetition. I've
464 tried to avoid that.
465
466 Ms. Seward - My name is Brenda Seward. I'm here speaking on behalf of
467 all the residents of our community, and if they would all stand. We understand the
468 concerns that the County has expressed, and on many levels, we share those
469 concerns. It is our community; we live there on a day-to-day basis, and we see both the
470 good and the bad. We realize as a group that we must rely on each other to effect any
471 changes that need to be made for the better. To that end, we have taken the following
472 steps.
473
474 We have organized a neighborhood association that will be conducting fundraisers,
475 clean-up parties, etc. in order to take care of any cosmetic work that needs to be done
476 and that the residents may need assistance with. This includes, but is not limited to,
477 exterior painting, yard work , hauling, etc. We have also organized volunteers willing to
478 do the work for those who are not able to do it on their own.
479
480 We have selected a Board of Resident Supervisors that will meet every two months to
481 address any concerns or problems regarding the park and/or its residents. This Board
482 has instituted a three-strikes policy that pertains to the violations of the rules and the
483 lease agreement. Any resident who doesn't comply is given thirty days notice, no
484 exceptions. We realize that the ultimate responsibility for the maintenance and general
485 appearance of our neighborhood falls, not on the shoulders of the landowners, but the
486 residents. It is to that end that we have taken the aforementioned steps. We hope that
487 they, the owners, will aid us in whatever way that they can, but we, the residents, have
488 taken it upon ourselves to shoulder that responsibility as a group. We realize that good
489 intentions do not always end up with the desired result, but we ask that you give us a

490 reasonable amount of time to implement our plans and show you the results of our
491 determination. When all is said and done, these are people's homes, for some the only
492 one they can afford. In the past we may have lacked the proper organizational basis to
493 get things done, but that has changed. We have concrete plans for improvements, one
494 that will not only address the County's concerns, but will improve the overall
495 atmosphere for the residents who live there, residents who are, for the most part,
496 hardworking, law abiding people, who simply want a roof over their heads and a safe
497 environment for their children.

498
499 Mr. Wright - How many members are there of your association?

500
501 Ms. Seward - There are four Board members so far, and we're hoping to
502 expand that.

503
504 Mr. Wright - Do you have an association of the members who own the
505 trailers?

506
507 Ms. Seward - At this point it's just getting started.

508
509 Mr. Wright - How are you electing your Board members?

510
511 Ms. Seward - They were chosen by the Manager. She asked me if I would
512 serve, and I said yes. It's mainly based among the people who own the trailers at this
513 point, although we want to get a representative from the people who are renting, who
514 don't own their own trailer in the park as well.

515
516 Mr. Wright - What I was trying to get at – you have a group of owners
517 who have come together to form an association, where you could assess whatever you
518 need to do.

519
520 Ms. Seward - Whatever problems, or we feel that it will just help everyone,
521 and it will help alleviate the County's concerns that they've had in the past and have
522 now, that the overall general appearance, and there are some people there who either
523 can't afford to do work that needs to be done on their homes, or they're infirm or
524 whatever, and that's part of this association's goals, also to organize events to help the
525 community as a whole. We feel that it's a community, and we realize that there are
526 problems, and that's what the association is for, to address those.

527
528 Mr. Wright - I understand that. My point is that, unless you get all of the
529 owners together as a group and form some sort of legal association, whatever you do
530 as an appointed Board could have no binding effect upon them. Is that what you're
531 attempting to do?

532
533 Ms. Seward - We're working in conjunction with the managers.

534
535 Mr. McKinney - Ms. Seward, you stated you have a three strike rule. Who is

536 putting these rules into place?
537
538 Ms. Seward - The rules that that pertains to is part of the lease agreement
539 that each of the residents

540
541 Mr. McKinney - That's signed by the owner? So the owner enforces

542
543 Ms. Seward - We just act as a liaison on that part. We just help police that
544 part of it. We call attention to any problems that they may have. Anything else?
545

546 Mr. Wright - Thank you very much. Someone else, Mr. Kessler?

547
548 Mr. Kessler - Yes sir, I'm sorry. We have just a couple of people.
549

550 Mr. Wright - If you would be ready to come down when someone
551 finishes. If you've got a couple more who want to speak, come on down so you'll be
552 ready to speak, and we won't delay the process here.
553

554 Mr. Hannah - My name is James L. Hannah. I live in number 62, and I've
555 been under the impression there's been some controversy about utility sheds and the
556 distance they should be from a unit. I bought my mobile home and parked it there in
557 1968, and directly after that I was interested in purchasing a utility building, so I called
558 the Fire Department and asked them what were the laws. They quoted me it had to be
559 no closer than four feet from the adjoining trailer or my trailer. I've heard some
560 controversy about that, but that's what they quoted me, and that was in 1968.
561

562 Mr. Wright - So you've been there since 1968? I don't know anything
563 about that, but I appreciate your testimony.
564

565 Mr. McKinney - You say the Fire Department quoted you that?

566
567 Mr. Hannah - Yes sir, they did.
568

569 Mr. McKinney - Usually that comes under Planning and Zoning for your
570 setbacks, which comes down usually from the Fire Department. Do you remember to
571 whom you talked?
572

573 Mr. Hannah - No sir, I do not. That was in 1968, and I don't remember. I
574 called them.
575

576 Mr. Kessler - One of the reasons that this testimony is so important is
577 because one of the violations relates to the accessory buildings being closer than ten
578 feet to each trailer.
579

580 Mr. McKinney - Maybe Mr. Blankinship can shed some light on that. When
581 did that come into effect? Do you know, Mr. Blankinship?

582
583 Mr. Blankinship - It was part of the 1960 Code.
584
585 Mr. McKinney - The Comprehensive Rezoning?
586
587 Mr. Blankinship - The ten-foot requirement was in effect in 1968.
588
589 Mr. McKinney - So this was after that, in 1968.
590
591 Ms. Hawn - My name is Cheryl Hawn. I've been living at the trailer park
592 since 1999. I work across the road at Advance Auto, and basically all of our people get
593 their parts for their vehicles and stuff like that from Advance Auto. We're all good law-
594 abiding people and just want to do what we need to do.
595
596 Mr. Wright - All right. Thank you ma'am.
597
598 Mr. Wiltshire - I am Bobby Wiltshire, and I own Carousel Signs, which is
599 basically in front of the trailer park, and I've been there since 1977. As far as trailers,
600 I've seen very few come and go. The trailer park basically looks exactly the same as it
601 did in 1977. As far as the business, we do a lot of truck lettering and this type of thing,
602 and we have several trucks that sit out front and will stay there for several days
603 sometimes. There's never been any mischief around my shop, never any scratches or
604 anything on any of the vehicles, and everybody's always looked out for us.
605
606 Mr. Wright - All right, thank you.
607
608 Ms. King - My name is Latanya King. I'm one of the residents there at
609 the trailer park. I've been fortunate to own my own place over there for about three
610 years now, and it's our home. That's pretty much what I have to say; not everything
611 over there is degradable, because you have respectable people of the community there.
612 You have business owners, maybe some senior citizens, but you do have respectable
613 people there, and you have even local ministers within the park there, so just give us a
614 chance. Thank you.
615
616 Mr. McKinney - Ms. King, it looks like you're happy to live there. Do you like
617 it?
618
619 Ms. King - That's my home – yes.
620
621 Mr. McKinney - What would you do if you were dislocated?
622
623 Ms. King - Oh, good Lord, I don't know. I hope it doesn't come to that
624 point. I don't even want to think about that.
625
626 Mr. McKinney - Thank you.
627

628 Mr. Wright - All right, Mr. Kessler, is it just one more?

629

630 Mr. Kessler - Yes sir.

631

632 Ms. Hale - My name is Suzie Hale. Mr. Robinson came to me after we
633 had a very difficult situation and asked me if I would take over as Resident Manager
634 there. I did, and I am the one who is attempting to start the association of the
635 neighborhood. As of today, we have people working on all of the problems that were
636 cited to me yesterday when the gentleman from the County came and sat down and
637 talked with me. We are working very hard on it. It is our home. We do have single
638 mothers, pregnant women, single people, married couples, elderly, retired and disabled
639 people, I'm disabled myself, and it is our home. The main thing is that we have
640 children, and I just want to make one point. When I had this large thing come to me,
641 and the children have volunteered. I have children who are cleaning up by the brook; I
642 have children who are going around picking up the trash, volunteering to cut the grass,
643 to do the weed eating, and to make the place a better place. I understand the concerns
644 that it doesn't look very well, but we are at this point now, changing that. I just wanted
645 to address that to you.

646

647 Mr. Wright - Thank you very much.

648

649 Mr. Kessler - The last thing I would like to give to you gentlemen, and
650 thank you for the time that you have given these people to speak, it means a lot to
651 them, and I hope you've heard their words, but I have a letter here from a gentleman
652 who could not be here today. He's the President (Duncan Thomas) of Q-Markets Inc.,
653 which is a convenience store located across the street from the trailer park on Brook
654 Road. Basically, he says that the folks who live across the street have been our main
655 customers. While every residential community may have a few bad elements, we have
656 an excellent relationship with the residents at this trailer park. We could not do without
657 their business. They are basically very decent people who live there, and they are very
658 good customers at our store. I'll leave this with you. I just wanted to use that as an
659 emphasis, gentlemen, along with the sign person who you just heard. Yet some people
660 in some other civic associations may believe that this is not a good business area, yet
661 there are some people who believe that it is.

662

663 Mr. Wright - Does that complete your case?

664

665 Mr. Kessler - Yes sir.

666

667 Mr. McKinney - Mr. Kessler, this sounds like a variance case to me. I'm
668 going to ask Mr. Blankinship, when this came up, were they advised to say, as it stands
669 now, you probably need to go in and ask for a variance for relief on this, or were they
670 told to just come in and appeal the Planning Director's decision on it.

671

672 Mr. Blankinship - They were served a notice of violation, and as the state law
673 requires, we state in that notice of violation that they have the right to appeal it to the

674 BZA within thirty days. I don't know that we ever had the conversation, what is the best
675 way to go about this. I was thinking appeal, the notice states that they have the right of
676 appeal, and I think that was what we advised for that reason. If they had come to us
677 without a notice and said that they had discovered that there was a discrepancy
678 between what was originally approved and what we have out there now, and we want to
679 apply for a variance, I'm not sure how we would have handled that, because as you
680 know, the State Code does not allow you to authorize a variance for use, so we would
681 have to discuss whether that application really goes to a use variance, or whether it's
682 something that is covered by the State Code definition for a variance.

683
684 Mr. McKinney - How do we find out?
685

686 Mr. Blankinship - I would ask Mr. Tokarz.
687

688 Mr. Tokarz - Members of the Board, ladies and gentlemen, my name is
689 Tom Tokarz; I'm Assistant County Attorney. I am appearing today to represent the
690 Director of Planning. If I could start with the question that Mr. McKinney just asked of
691 Mr. Blankinship and address that, and then I'll follow on to the second point related to
692 the posture of this case before the Board. I do not believe that this is a case that is
693 properly before the Board as a variance case for two reasons. First of all, there has
694 been no application for a variance. What you have before you is an appeal from a
695 decision of the Zoning Administrator, which is authorized by State Law and County
696 Code and is properly before you. The only issue before you today is whether the
697 Zoning Administrator, the Director of Planning, is correct in finding that there is a
698 violation of the trailer park by having more than twenty units as authorized by the Board
699 of Zoning Appeals in 1948.

700
701 Mr. Wright - That's not the full answer to the question.
702

703 Mr. Tokarz - No sir, that's part 1 of the answer. Part 2 of the answer is
704 that we don't believe that this would be properly before the Board of Zoning Appeals,
705 even if there were a variance application submitted, because under State Law, the
706 definition of "variance" means that, "in the application of a zoning ordinance, it is a
707 reasonable deviation from those provisions regulating the size of area of a lot or parcel
708 of land, where the size, area, bulk or location of a building or structure, when the strict
709 application of the ordinance would result in unnecessary or unreasonable hardship to
710 the property owner, and such need for a variance would not be shared generally by
711 other properties." That is, as Mr. Blankinship has told you, different from what would be
712 requested here, which would be a use variance, because the issue before the Board of
713 Zoning Appeals is whether a use in excess of twenty units is permitted under the Zoning
714 Ordinance. I'm going to present evidence to you in just a moment, that a use in excess
715 of twenty units is not authorized by the Zoning Ordinance, and that the Director of
716 Planning's decision was correct.

717
718 Mr. Wright - How about amending the use permit?
719

720 Mr. Tokarz - That's not currently permitted under the ordinance as
721 amended. They could have done so in 1948, any time up until 1960, when the
722 Comprehensive Zoning Ordinance was adopted, but in 1960, the zoning on the property
723 changed, and the provisions on the ordinance changed, and so at this point, I think that
724 the only remedy is rezoning before the Board of Supervisors. What you have before
725 you is

726
727 Mr. Wright - So what you're saying is you can amend the ordinance and
728 throw all these people out? You mean there's no relief that the County can give to
729 people who've been there for thirty-some, forty years?

730
731 Mr. Tokarz - The answer is that the owner can apply to the Board of
732 Supervisors for rezoning of the property. That's the relief that's available under the
733 ordinance. The issue that is before the Board of Zoning Appeals is whether the Director
734 of Planning is correct that the number of units in excess of twenty is in violation of the
735 zoning ordinance, and we're going to indicate with the evidence to you today that that is
736 the case.

737
738 Mr. McKinney - You were talking about what the Code says in Virginia Law.
739 That was adopted in what year? Do you know what was prior to that, what the law
740 stated when this

741
742 Mr. Tokarz - The definition of variance?

743
744 Mr. McKinney - No, no, no, well, let's say prior to 1960?

745
746 Mr. Tokarz - You're talking about the zoning ordinance in Henrico
747 County? Yes sir, I do know.

748
749 Mr. Wright - So you don't think anybody can be grandfathered in a
750 situation like this?

751
752 Mr. Tokarz - No sir, and certainly not by this body, I do not.

753
754 Mr. Wright - That's your opinion?

755
756 Mr. Tokarz - Based on my review of the ordinances, which I will be glad to
757 share with you at this point. I have the original ordinances here, and we did review in
758 some detail, the ordinances before these notices of violation were issued. Let me walk
759 you through the ordinances at this point. If I may, I'll start by showing you the
760 application and then showing the ordinance at the time.

761
762 Mr. McKinney - You going to start at 1943?

763
764 Mr. Tokarz - 1948. Mr. Kessler's been saying 1943; it's actually 1948, as
765 you'll see from this document right here.

766
767 Mr. McKinney - In other words, it was purchased later in 1948, not in 1943?
768
769 Mr. Tokarz - Right. The letter I have in my hand, I'm going to give you a
770 copy of this, is from Highway Traffic Trailer Sales, dated August 6, 1948. It starts and
771 says,
772
773 "Dear Sir:
774
775 I T. H. Broski, and A. L. Stupasky have recently purchased property formerly
776 owned by George Mayo and his wife this transaction was made through Rose &
777 Lafoon"
778
779 I'll skip a couple of lines, and then it says,
780
781 "We are interested in securing a use permit for a modern trailer park we will meet
782 all law requirements for this trailer park.
783 Our plans are at present to park 25 trailers with a space of 35 ft.by 30 ft. with
784 lights, city water connections and sewerage line to each trailer"
785
786 Mr. Tokarz - And if I could present copies to the Board.
787
788 Mr. McKinney - Mr. Tokarz, is this when it was started, in '48, or was it
789 started in '43?
790
791 Mr. Tokarz - 1948.
792
793 Mr. Kessler - Gentlemen, I'm sorry, I may have been incorrectly saying
794 1943; I'll concede that it's '48. Thank you.
795
796 Mr. Tokarz - I'll let you read the letter first.
797
798 Mr. McKinney - We should have had it before; then we'd have already read
799 it.
800
801 Mr. Tokarz - We should have enough copies for everybody.
802
803 Mr. McKinney - What's the difference between a "trailer camp" and a "trailer
804 park"?
805
806 Mr. Tokarz - I'm going to address that right now, Mr. McKinney. I've
807 passed out copies of the ordinance from 1945 that was in effect in 1948. What you
808 have in the ordinance of 1945, if you look on the first page of the copy, definition # 32
809 says a
810
811 "Trailer camp: A parcel of land on which are located or intended to be located

812 two or more house trailers occupied for living purposes.”

813
814 That was the definition that applied to this use in 1948. Then on the second page of the
815 1945 ordinance excerpt, in # 3, and this was a “B” use at that time, # 3 says that there is
816 a “permitted use,” one of the permitted uses being “trailer camps,” and the key words
817 are at the end of that section,

818
819 “subject to the securing of a use permit therefore from the Board of Zoning
820 Appeals.”

821
822 And it is because of that zoning ordinance provision that there was a use permit
823 ordinance application submitted by Mr. Broski and Mr. Stupasky in 1948. At the time
824 they submitted that application,

825
826 Mr. McKinney - Excuse me one second – what is the difference between a
827 trailer park and a trailer camp?

828
829 Mr. Tokarz - Under the 1945 ordinance there was no such thing as a
830 trailer park; it was a trailer camp, and it should be analyzed as a trailer camp.

831
832 Mr. McKinney - Because I see “trailer camps” around at the river and the
833 beaches, and they call them “trailer camps;” they don’t call them “trailer parks,” and I
834 understand these are called “trailer parks,” where you leave them; they’re permanent.

835
836 Mr. Tokarz - This is for purposes of the analysis before you today; it was
837 a “trailer camp,” as defined by the 1945 ordinance in effect in 1948. If I can walk you
838 through what happened in 1948, and then I’ll take you through what happened with the
839 ordinance after that time.

840
841 When the application was submitted in 1948, the first action that was taken was on
842 September 9, 1948, at the Board of Zoning Appeals. They considered it in very quick
843 order within, as you can see, a month of the action of submitting the application. I am
844 now submitting to you copies of the minutes.

845
846 Mr. McKinney - Mr. Tokarz, why didn’t we get these earlier so we could have
847 reviewed it?

848
849 Mr. Tokarz - I wanted to present this in the context of the hearing
850 because you’re bound to consider the records presented in the hearing, sir. That was
851 the reason.

852
853 Mr. McKinney - We could have still done that, but we would have had an
854 opportunity to read them.

855
856 Mr. Tokarz - I can make it very simple for you in walking you through,
857 because if you’ll turn to page 2 at the bottom, R-566, it refers to the application of Mr.

858 Broski and Mr. Stupasky, and it says,

859

860 "Moved by Mrs. Ancarrow, seconded by Mr. Bradshaw, that action be deferred
861 and the County Engineer be authorized to issue a use permit if and when a
862 favorable report is received of the County Sanitary Officers' requirements, the
863 applicant agrees to comply with these requirements and to leave standing a
864 sufficient growth of trees to screen the premises from the Hermitage Golf Course,
865 such action to be confirmed at the next meeting of the Board if the above is
866 consummated. Motion carried unanimously.

867

868 Mr. McKinney - Mr. Tokarz, one other question. How many sewer
869 connections are at that trailer park right now?

870

871 Mr. Tokarz - I do not know. Do you know?

872

873 Mr. McKinney - There was a statement that they had 69 sewer connections,
874 which had to be approved by public utilities.

875

876 Mr. Tokarz - I don't know the answer to that question; I don't think it's
877 before the Board at this point. Following that, there was a letter submitted to the Board
878 of Zoning Appeals by W. A. Clarke, and I don't know if there's any relationship to Earl
879 Clarke, on October 14, 1948, in which he advises the Secretary of the Board of Zoning
880 Appeals that he had been unable to contact the applicant in any manner other than
881 telephone. He

882

883 "advised him to submit his plans to the department so that we might know what
884 he proposes to do before giving any approval on his trailer camp project."

885

886 At that point plans apparently had not been submitted or reviewed. The next document
887 I'll submit to you, and I'm just going to read you a very short excerpt, is from the minutes
888 of the October 14, 1948 of the Board of Zoning Appeals. In the middle of the second
889 page, it once again calls this case R-566, and it says,

890

891 "In view of the letter from Mr. Clarke that he had not received Mr. Braski's plans
892 the case was tabled, and the County Engineer was authorized to issue the permit
893 on receipt of plans approved by Mr. Clarke.

894

895 Those plans were then submitted to Mr. Clarke, and we have two original sheets in the
896 file. Is there a way of showing this document? We have a blueprint document from that
897 period. Is there any way of enlarging that for me, please? What you see, Members of
898 the Board, is on this plat you will see a number of lots or spaces laid out on the left of
899 the diagram, across the center of the diagram, and then a few at the left in the middle.
900 Ben, if you can turn the diagram upside down, we can read what it says on the diagram
901 with the lots, it looks like 19, 18, and 17. It says twenty places for trailers. That was the
902 plan that was submitted to Mr. Clarke at that time.

903

904 Mr. McKinney - That doesn't even look like this plot plan that we have.

905

906 Mr. Tokarz - That's exactly the point, Mr. McKinney, is that the trailer park
907 has never complied with the lot layout that was approved by the Board of Zoning
908 Appeals, has never been a lawful conforming use, and that's exactly the point that's
909 before the Board right now. I'll address the significance of that in just a moment. On
910 November 16, 1948, Mr. Clarke wrote a letter to the applicant, and he said,

911

912 "After inspecting the location for a proposed trailer camp on your place just south
913 of Richmond Auto Court on Highway No. 1 and reviewing your plans showing a
914 trailer park for twenty (20) trailers with toilets, washroom and office, I am
915 reasonable sure that these facilities will be properly taken care of with septic tank
916 and drain field"

917

918and then he says, in the second paragraph,

919

920 "Since you have not determined exactly how much of this proposed plan you
921 intend to carry out, the capacities can not be exactly determined at this time."

922

923 He goes on to talk about the capacity and says,

924

925 "This of course, is merely suggestive and subject to change as changes may be
926 made in your plans.

927

928 Please keep us informed as to when you plan to start this work."

929

930 So November 16, 1948, and the reason I'm going through this evidence, Mr. McKinney
931 and Members of the Board, is because, as you probably know from the cases of the
932 Supreme Court of Virginia, when there's litigation involving lawful non-confirming uses,
933 there needs to be an evidentiary record for possible review at the appellate level, and I
934 think it's important to get these documents before you. The last document in this 1948
935 series of documents, is the minutes of the meeting of November 18, 1948. There's only
936 a very short piece of that document that I need to read into the record for you. It's on
937 the second page, at the top of the page. It says R-566,

938

939 "Use permit for trailer camp on parcel 105-A1-7 on west side of U. S. Route 1.
940 Moved by Mrs. Bradshaw, seconded by Mr. Gratz that request be granted.
941 Motion carried unanimously."

942

943 What we have on the record before you, is that in 1948, the ordinance required that any
944 trailer camp be permitted if it was the subject of a use permit granted by the Board of
945 Zoning Appeals. The Board of Zoning Appeals granted the use permit in 1948 for a 20-
946 space trailer park. That is all that has been approved by the Board of Zoning Appeals,
947 and that is all that is lawful and conforming on that property. And I would also add in
948 response to what Mr. McKinney said, they were required, under the use permit
949 approved by the Board of Zoning Appeals, to comply with that lot layout, and they

950 certainly have not, based on the drawings that you have seen. At no point has there
951 been a lawful, conforming use on the property, and certainly no lawful, conforming use
952 in excess of twenty units. With respect to the Zoning Ordinance changes since that
953 time, there was a 1953 amendment of the Zoning Ordinance, and in the 1953
954 amendment,

955
956 Mr. McKinney - While you're looking, may I ask you a question. If you were
957 in Mr. Jerry Owings place as an attorney, and you received this letter July 21, 1972,
958 from Mr. Earl Clarke, would you put any credence in it?

959
960 Mr. Tokarz - I would like to answer that question if I could walk you
961 through '53 and '60, because I think there's another document that you need to see first.

962
963 Mr. McKinney - Do you think Mr. Owings saw that other document, or did Mr.
964 Clarke see this other document? Mr. Clarke was an official of the County, speaking for
965 the County.

966
967 Mr. Tokarz - Let me address it right now. I'll come back to the '53 and
968 '60. What I want to show you right now is the deed for the property when the sale was
969 consummated.

970
971 Mr. McKinney - I just feel like we should be looking for a way to help these
972 people, not hurt them.

973
974 Mr. Tokarz - I understand, Mr. McKinney; I'm just simply suggesting that
975 the Board of Zoning Appeals is not the forum for that to occur. What I'm showing you
976 right now is a deed, and this is a deed by Julian J. Blanton and W. Louise Blanton, and
977 Enterprise Trailer Park, Inc. It's dated July 14, 1972. Now the reason that's significant
978 is because of the next document I'm going to show you. What I'm going to say right
979 now about Mr. Owings is that we don't know what Mr. Owings did in 1972. I knew Jerry
980 Owings; he was a friend of mine who tragically died, relatively recently. There is no
981 evidence of what he did. The only evidence I can present to you are these two
982 documents. The bottom document is dated July 21, 1972, from Mr. Clarke, and that's
983 the letter that Mr. Kessler has relied upon. There is, as Mr. Kessler states, some
984 ambiguity in the letter, and I'd like to address that at some point, but I simply want to
985 point you to the dates of the letter, a July 21st letter a week after the sale was closed,
986 and the letter on top was dated July 25, 1972, in which Mr. Owings says to Mr.
987 Holzgreffe,

988
989 "Please find enclosed herein copy of letter received this morning from A. E.
990 Clarks, Zoning Administrator for the County of Henrico, pursuant to our telephone
991 conversation of today."

992
993 I would simply submit to the Board of Zoning Appeals, there is no evidence before this
994 Board today, that Mr. Clarke's conversation with Mr. Owings occurred before the sale of
995 the property. There is no evidence today of a good-faith reliance upon this Zoning

996 Administration letter. The deed predates Mr. Clarke's letter. Now to address your point,
997 Mr. McKinney, I agree with you.

998
999 Mr. Wright - Predates it? So Mr. Clarke spoke after they acquired the
1000 property?

1001
1002 Mr. Tokarz - So by definition they could not have relied on that letter
1003 when they purchased the property. That's my point. There was no good-faith reliance
1004 on that determination by Mr. Clarke.

1005
1006 Mr. Wright - But the point is, at least at the date of that letter, Mr. Clarke
1007 said that the park could continue to operate, as it presently is.

1008
1009 Mr. Tokarz - The use is permitted. But he also says in the letter, "The
1010 number of trailer spaces presently licensed could not be increased." What I submit to
1011 you is, that the number of trailer spaces that were presently licensed, was 20.

1012
1013 Mr. Wright - How do you get around the permit that was issued on
1014 January 1, 1973, by the Health Department, which gives him permission to operate a
1015 trailer park? Why would they give that if they hadn't checked the number of units that
1016 were there?

1017
1018 Mr. Tokarz - The issue before the Board is not what the Health
1019 Department did. The issue is what is appropriate under the Zoning Ordinance. I can't
1020 explain what happened in 1973 with the Health Department. I'm here representing the
1021 Director of Planning in the administration of the Zoning Ordinance.

1022
1023 Mr. Kessler - Gentlemen, I know that you're interested in not wasting time,
1024 but I happen to have here the owners' title insurance policy for when the property was
1025 purchased, and the deed was recorded August 1, 1972, although it was dated before
1026 that.

1027
1028 Mr. Wright - The date of the deed doesn't mean a thing. I do enough of
1029 that myself. It's the date that the owners' policy was issued, which is the date it was
1030 closed.

1031
1032 Mr. Kessler - I'll be glad to give this to Mr. Blankinship.

1033
1034 Mr. Tokarz - I would simply say this. I understand the concern that the
1035 Board has about the letter. I don't believe that it changes in any way the decision that
1036 the Board has to make under the law. I will also point to you, as I did in the letter that I
1037 submitted to you earlier, and its process dated June 13, that even if Mr. Clarke's letter
1038 was taken by Mr. Owings as part of his due diligence process. The fact of the matter is
1039 if Mr. Clarke was wrong, and he was wrong, if you interpret the letter in the way that Mr.
1040 Kessler does, his interpretation does not allow the Zoning Ordinance of the County to
1041 be overridden. That's been a holding of the Supreme Court in the case of Wolfe vs. the

1042 Board of Zoning Appeals. I cited that in the pleading, and the theory is that the Board of
1043 Supervisors cannot be overridden by a subordinate official. Mr. Owings had the right to
1044 check the zoning records to determine if there was a use permit. We don't know
1045 whether he did or not. We don't know what Mr. Clarke told Mr. Owings. We don't know
1046 what Mr. Owings told Mr. Clarke. All we have is a letter which is ambiguous on its face
1047 and refers to the number of trailer spaces presently licensed. And we know the only
1048 number of spaces that were presently licensed under the zoning ordinance was 20. So
1049 for that reason, I don't believe this letter has the effect that Mr. Kessler urges upon you
1050 today.

1051
1052 I would like to go on and just finish up for you with the analysis on the two zoning
1053 ordinance amendments that occurred after that point. In 1953, there was a zoning
1054 ordinance, Section 13-A-2, which said that trailer camps would be permitted, subject to
1055 compliance with health and sanitary requirements, and approval of the layout by the
1056 Board of Zoning Appeals. The idea is that if they wanted to increase the size of the
1057 trailer park, they had to come to the Board of Zoning Appeals. You don't just let people
1058 increase the size of something when a use permit is required. In 1960, Section 10.22,
1059 that zoning ordinance allowed trailer parks by conditional permit and conditional use
1060 permit. They could have come to the Board of Zoning Appeals at any point and asked
1061 for a conditional use permit to increase the number of spaces, but they chose not to do
1062 so.

1063
1064 Mr. McKinney - Mr. Tokarz, how many trailer parks existed in Henrico
1065 County when this was done in 1953, do you know? Do you know if this trailer park or
1066 any others were given notice on this change? They wouldn't have known.

1067
1068 Mr. Tokarz - They would have known like everybody else, with public
1069 advertising of any ordinance change.

1070
1071 Mr. Blankinship - They are responsible for knowing. They have the
1072 responsibility of applying for the necessary permits.

1073
1074 Mr. McKinney - This thing goes back in the '40's, come on guys.

1075
1076 Mr. Tokarz - We don't notify any citizens of all the changes. I'm simply
1077 submitting to you, Members of the Board, that the Board of Zoning Appeals ruled that
1078 they could have a 20-space trailer park. They've had the opportunity to come and apply
1079 for something more; they've never done so. The Director of Planning has received a
1080 complaint that they are in violation of the ordinance; he is required by State Law to
1081 enforce the ordinance, and what is before you today is the question as to whether his
1082 interpretation of the Zoning Ordinance is correct. This is not a variance request. It is
1083 not before you as a variance request. It does not meet the definition of a variance.
1084 There is another avenue of relief, but it is not in this proceeding. The only issue before
1085 you is whether his interpretation is correct. I submit to you on the evidence that you
1086 have before you, notwithstanding Mr. Clarke's letter, there has never been a lawful
1087 conforming use which gives them the right to continue the use at this point, and it's for

1088 that reason that we ask you to confirm the Director of Planning's decision.
1089
1090 Mr. Wright - You deny that Mr. Clarke's letter mislead the owner of this
1091 park?
1092
1093 Mr. Tokarz - I don't know what to tell you about the letter. I don't know
1094 what was said in 1972 between them.
1095
1096 Mr. Wright - Then a permit was issued to them in 1973 by the Health
1097 Department to operate these trailers.
1098
1099 Mr. Tokarz - Sir, I don't know whether the Health Department checked
1100 with the Planning Office at all about that. I don't know whether they even submitted an
1101 application to the Planning Office for review at the time of that permit. What we have is
1102 a lot of speculation, but we have nothing in the record which indicates that they have a
1103 lawful non-conforming use of the property. That's the only basis on which they can
1104 overturn the Director of Planning's decision in this case.
1105
1106 Mr. McKinney - Let's say this letter that was written by Mr. Clarke, was dated
1107 yesterday, written by Mr. Blankinship. Do you think that Mr. Marlles would uphold that?
1108
1109 Mr. Tokarz - If Mr. Blankinship had issued an erroneous letter, and we
1110 knew that it was erroneous?
1111
1112 Mr. McKinney - Erroneous letter? Why do you say it's erroneous?
1113
1114 Mr. Tokarz - Yes sir. If this letter is interpreted, and I suggest "if,"
1115 because I think you can read this letter two ways, I believe when he refers to the
1116 number presently licensed, he refers to twenty units. But if you read it to say it refers to
1117 65 units, which is what the testimony is that was in existence in 1973, it would have
1118 been erroneous because it was not permitted under the Zoning Ordinance. He would
1119 not have done the research necessary in order to render a proper zoning opinion, so for
1120 that reason it would have been erroneous, and Mr. Owings would have determined that
1121 if he had reviewed the files of the Planning Office.
1122
1123 Mr. McKinney - In the first paragraph, it says, "The park could continue to
1124 operate, as it is presently,"
1125
1126 Mr. Tokarz - The use can continue; that is correct.
1127
1128 Mr. McKinney - That's the way it was.
1129
1130 Mr. Tokarz - The use can continue.
1131
1132 Mr. McKinney - They had 69 units at that time, from what I'm told.
1133

1134 Mr. Tokarz - Mr. McKinney, I understand your point. I simply suggest to
1135 you that approval of the use is different than approval of the number of units.

1136
1137 Mr. McKinney - You're correct.

1138
1139 Mr. Tokarz - There is a sentence in there that makes it ambiguous
1140 because he talks about the number of units presently licensed, and I believe that refers
1141 to 20 units. Now I wish Mr. Clarke had written the letter differently. I wish Mr. Owings
1142 had said to him, we understand that there was only a use permit for 20 units; we now
1143 have 65. We want to know if that is a legal use. If we had that letter in the file, and Mr.
1144 Clarke had responded, "yes," we'd be in a different ball game. But we don't know what
1145 Mr. Owings did, and we don't know what Mr. Clarke said.

1146
1147 Mr. Wright - That's inconsistent with what you said earlier then, because
1148 Mr. Clarke didn't have the authority to say that.

1149
1150 Mr. Tokarz - What I'm saying is, Mr. Clarke would have rendered a
1151 decision. He does not have the authority to render an erroneous decision. But he had
1152 the authority to render

1153
1154 Mr. Wright - Wouldn't it have been erroneous if it had only been permitted
1155 for 20 by the Board of Zoning Appeals?

1156
1157 Mr. Tokarz - If he had said "you can have 65," yes sir, it would have been
1158 erroneous.

1159
1160 Mr. Wright - So it wouldn't have mattered a hill of beans, would it?

1161
1162 Mr. Tokarz - Well, no sir, but I think that if he had even asked the
1163 question, "Our use permit is only for 20; can we operate with 65?" the answer would
1164 have been "no." If that question had been clearly stated. We don't know what the
1165 question was. Mr. Wright, I would simply say to you though, I think the point, and we're
1166 getting lost at the point, the point here is the Zoning Ordinance has only allowed 20
1167 units. What Mr. Clarke said in 1972, before that letter was issued, those 65 units were
1168 in violation of the County Ordinance. Mr. Clarke's letter could not magically make them
1169 in compliance with the County Ordinance. The use permit limited them to 20, and
1170 therefore, when Mr. Clarke issued a letter in violation of the ordinance, it was erroneous
1171 and cannot be relied upon to give them conforming status when their use was non-
1172 conforming and unlawful.

1173
1174 Mr. McKinney - Mr. Tokarz, are you saying that in 1948, that the Zoning
1175 Ordinance only allowed 20 units? Well you just said that. You said it only allowed 20
1176 units; well, they only applied for 20 units, but that didn't mean the Zoning Ordinance
1177 wouldn't give them 100 if they wanted it.

1178
1179 Mr. Tokarz - No sir. No sir. Yes sir. That is correct sir. It only allowed

1180 20, because that's all they submitted plans for, and that's all the Board of Zoning
1181 Appeals approved. The idea, really, gentlemen, what we're saying to you is this, you
1182 have citizens coming to you every day, applying for variances, applying for use permits,
1183 and your job is to decide whether the use or the variance that they're requesting is in the
1184 public interest and meets all the requirements of State Code. Here, they had a use
1185 which exceeded what was permitted by your predecessor Board in 1948. All we're
1186 simply saying here is the ordinance which allowed them 20 units under that approval did
1187 not allow anything more. The Director of Planning is correct in making that
1188 determination. Their avenue of relief is in a different form.

1189
1190 Mr. McKinney - You know, Mr. Tokarz, back in 1948, we were good old
1191 country boys, and the BZA probably knew a lot of the people and so forth, and they said
1192 well, we'll come in and get 20 spaces, and they said sure, and they said well, we might
1193 want to add down the road, and they said no problem, go ahead and do it; things like
1194 that were done back in 1948.

1195
1196 Mr. Tokarz - That may indeed be the case, Mr. McKinney. All I can tell
1197 you is, under the ordinance it would not have been permitted without an approval by the
1198 Board of Zoning Appeals, and that ordinance was designed to protect all the citizens of
1199 Henrico County from improper zoning.

1200
1201 Mr. McKinney - Well, it doesn't look like we're protecting the ones sitting
1202 down in this audience.

1203
1204 Mr. Tokarz - I would simply say to you, with respect to that, that the
1205 protection of the existing trailer park is not the purview, with all due respect to the Board
1206 of Zoning Appeals. I think that is a matter for the Board of Supervisors to decide in a
1207 rezoning case.

1208
1209 Mr. McKinney - I'm not too sure.

1210
1211 Mr. Tokarz - I can only submit what the position is of the Director of
1212 Planning.

1213
1214 Mr. McKinney - That's your position.

1215
1216 Mr. Tokarz - Yes sir, that's my position. Thank you.

1217
1218 Mr. Wright - Is that all Mr. Tokarz? Is that the opposition.

1219
1220 Mr. Tokarz - Yes sir. I don't know if there's anybody here in opposition to
1221 the request. I don't have any witnesses.

1222
1223 Mr. Kessler - Gentlemen, I think you have a good handle on what the
1224 issues are in this case. Thank you.

1225

1226 Mr. Wright - All right. That concludes the case. Thank all of you for
1227 coming down. The Board will make a decision at the end of the docket today, whenever
1228 that may be.

1229
1230 Mr. McKinney - Mr. Chairman, may I. Is there any way that this Board can
1231 take this under advisement and render a decision possibly at our next meeting? I'd like
1232 a motion on that, because there are a lot of variables in this.

1233
1234 Mr. Wright - Sure, we can defer it.

1235
1236 Mr. Blankinship - May I ask one question, Mr. McKinney? Is it the intent of the
1237 motion that the hearing be closed, or that you will take new evidence next month? So
1238 we will not advertise the hearing.

1239
1240 Mr. McKinney - We would like to do some research as to what our position is
1241 as far as the law is concerned and like to defer the decision to our next meeting.

1242
1243 After an advertised public hearing and upon a motion by Mr. McKinney, seconded by
1244 Mr. Kirkland, the Board **deferred the decision** on application **A-60-2003** appealing a
1245 decision of the Director of Planning with respect to two notices of zoning violation at
1246 7202 Brook Road (Parcel 784-750-6778). The decision was deferred to allow for further
1247 research and discussion, from the June 26, 2003, until the July 24, 2003, meeting.

1248
1249 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1250 Negative: 0
1251 Absent: Balfour 1

1252
1253 Mr. Wright - Let's take a five-minute break, and the Board will reconvene
1254 at 10:30.

1255
1256 Will the meeting come back to order. Do we have a deferral?

1257
1258 Mr. Blankinship - Yes, Mr. Chairman, we do have a request for deferral on the
1259 10:00 o'clock.

1260
1261 **UP- 12-2003** **BON SECOURS ST. MARY'S HOSPITAL** requests a temporary
1262 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
1263 24 of the County Code to allow temporary parking at 2300
1264 Dumbarton Road (Parcels 780-745-3121, 2808 and 3308), zoned
1265 R-4, One-family Residence District (Brookland).

1266
1267 **UP- 13-2003** **BON SECOURS ST. MARY'S HOSPITAL** requests a temporary
1268 conditional use permit pursuant to Section 24-116(c)(1) of Chapter
1269 24 of the County Code to allow temporary parking at 2605
1270 Dumbarton Road (Parcel 779-744-0545), zoned R-4, One-family
1271 Residence District (Brookland).

1272
1273 Upon a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **deferred**
1274 application **UP-12-2003** for a temporary conditional use permit to allow temporary
1275 parking at 2300 Dumbarton Road (Parcels 780-745-3121, 2808 and 3308). The case
1276 was deferred, at the request of the applicant, from the June 26, 2003, until the July 24,
1277 2003, meeting.

1278
1279 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1280 Negative: 0
1281 Absent: Balfour 1

1282
1283 Upon a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **deferred**
1284 application **UP-13-2003** for a temporary conditional use permit to allow temporary
1285 parking at 2605 Dumbarton Road (Parcel 779-744-0545). The case was deferred, at
1286 the request of the applicant, from the June 26, 2003, until the July 24, 2003, meeting.

1287
1288 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1289 Negative: 0
1290 Absent: Balfour 1

1291
1292 Mr. Wright - Ladies and gentlemen, I apologize for the delay, but it looks
1293 like we're about 12-13 cases behind because we had a long case, but we'll try to move
1294 this along as quick as we can, but to give everybody a chance to be heard. We
1295 certainly don't want to deny anybody that opportunity.

1296
1297 **A - 61-2003** **MARGARET W. HOWARD** requests a variance from Sections 24-
1298 41(j) and (e) of Chapter 24 of the County Code to build a screened
1299 porch at 1748 Shady Tree Court (Townes of Quail Woods) (Parcel
1300 734-748-3556), zoned RTHC, Residential Townhouse District
1301 (Conditional) (Tuckahoe). The accessory structure location
1302 requirement and rear yard setback are not met. The applicant
1303 proposes 21 feet rear yard setback and an accessory structure in
1304 the side yard, where the Code requires 30 feet rear yard setback
1305 and accessory structures in the rear yard. The applicant requests a
1306 variance of 9 feet rear yard setback and an accessory structure in
1307 the side yard.

1308
1309 Mr. Wright - Is there anybody to speak please? Please state your name
1310 for the record.

1311
1312 Ms. Howard - Margaret W. Howard.

1313
1314 Mr. Wright - Does anyone else here desire to speak on this case? All
1315 right, Mr. Secretary.

1316
1317 Mr. Blankinship - Raise your right hand please. Do you swear that the

1318 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
1319 help you God?

1320
1321 Ms. Howard - So help me God. I'm requesting a nine-foot variance to build
1322 a screen porch on an existing ten by ten concrete slab at the rear of my townhouse. It
1323 will give me more living space, and this time of the year, I can't really use the patio
1324 because the sun shines on it so much, and it's so hot I can't use it, and then in the
1325 evening, the bugs are out and the mosquitoes, and I'm scared of the mosquitoes. I'm
1326 just asking you to give me the variance of the nine feet.

1327
1328 Mr. Wright - And this will be built exactly the same dimensions as the
1329 concrete pad that is there?

1330
1331 Ms. Howard - Yes sir.

1332
1333 Mr. Wright - Have you read the suggested conditions?

1334
1335 Ms. Howard - Yes sir.

1336
1337 Mr. Wright - Any questions of members of the Board? Anyone here in
1338 opposition to this request? Thank you ma'am.

1339
1340 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1341 Nunnally, the Board **granted** application **A-61-2003** for a variance to build a screened
1342 porch at 1748 Shady Tree Court (Townes of Quail Woods) (Parcel 734-748-3556). The
1343 Board granted the variance subject to the following conditions:

- 1344
1345 1. The new construction shall match the existing dwelling as nearly as practical.
1346
1347 2. The property shall be developed in substantial conformance with the plan filed
1348 with the application. No substantial changes or additions to the layout may be made
1349 without the approval of the Board of Zoning Appeals.

1350
1351 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 4
1352 Negative: 0
1353 Absent: 1

1354
1355 The Board granted this request, as it found from the evidence presented that, due to the
1356 unique circumstances of the subject property, strict application of the County Code
1357 would produce undue hardship not generally shared by other properties in the area, and
1358 authorizing this variance will neither cause a substantial detriment to adjacent property
1359 nor materially impair the purpose of the zoning regulations.

1360
1361 **A - 62-2003** **RODNEY E. WILLIAMS** requests a variance from Section 24-94 of
1362 Chapter 24 of the County Code to allow the existing shed to remain
1363 at 300 West Nine Mile Road (Highland Springs) (Parcel 822-725-

1364 3021), zoned B-3, Business District (Varina). The rear yard
1365 setback is not met. The applicant has 7 feet rear yard setback,
1366 where the Code requires 40 feet rear yard setback. The applicant
1367 requests a variance of 33 feet rear yard setback.
1368

1369 Mr. Wright - Please state your name for the record.
1370

1371 Mr. Ellis - My name is Lonnie Ellis; I'm representing Rodney Williams,
1372 the owner. I'm the renter of the building.
1373

1374 Mr. Wright - Does anyone else here desire to speak on this case. We
1375 need to swear you in sir.
1376

1377 Mr. Blankinship - Raise your right hand please. Do you swear that the
1378 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
1379 help you God?
1380

1381 Mr. Ellis - Yes I do. I'm the renter of the building at 300 West Nine Mile
1382 Road, owned by the estate of T. C. Williams, Sr., which is handled by Rodney Williams,
1383 Attorney. The office building I have now has been there about 50 years with a small
1384 addition on it. It is sitting 20 feet off the back line. I'm asking for a variance of 33 feet.
1385 The zoning says it should be 40 feet off the back line to this utility building; I have a
1386 utility building that's ten by ten, right behind my building, between my building and the
1387 back line. About five or six years ago, when the fire people came by and checked the
1388 fire ordinance, I had the oil in there in, containers, air compressor and things like that. I
1389 only have space in that building for three offices, myself and 2 secretaries. There's a
1390 real small utility room in there, and there's a full bath there. They suggested maybe I
1391 shouldn't have that compressor and things in that building, so at that time, maybe five or
1392 six years ago, I had a ten by ten portable building set behind it, between my office
1393 building and the back line. The variance I'm asking for is 33 feet. The zoning is asking
1394 for 40 feet. According to the zoning, if I had to meet the zoning, that building would
1395 have to be brought up seven feet in front of the office building. What you'd be looking at
1396 from Nine Mile Road down, you can see the office building, but the other building would
1397 be sitting out in front of it.
1398

1399 Mr. Wright - Or you say you couldn't have it at all?
1400

1401 Mr. Ellis - The way they're saying, yes sir. I can have it as long as I
1402 bring it 40 feet off of that line and stick it in front of my office building.
1403

1404 Mr. McKinney - Mr. Ellis, is this a portable building or a permanent building?
1405

1406 Mr. Ellis - It's a portable building; it's ten by ten; it's on skids, and I
1407 have it there to put the compressor and any oil I have in containers. We use it mostly
1408 for patching tires, plugging them, or putting air in tires, but we don't do any tire work
1409 there. We don't have any way to change tires; I don't do repairs on that lot. That's all

1410 done one block from me at Al's Auto Service. The only thing we have there is an office
1411 building. We don't do any repairs other than maybe fix a door handle or something like
1412 that.

1413
1414 Mr. Wright - Is that an alley behind your property?

1415
1416 Mr. Ellis - Yes it is. The people behind me, Mr. and Mrs. Radler, they
1417 live in that house behind me. Right behind those bushes, that is an alley, and they park
1418 in that alley, which I have no opposition to that. But if you look at this, for a border back
1419 there, there are four 25-foot trees behind my building; the bushes are first and then
1420 there are 25-foot trees right behind them. On the left-hand side of the building, we have
1421 four trees that are 30-feet high. From that house behind me, you can't see my office
1422 building unless you walk to the front of their house.

1423
1424 Mr. Wright - There are no windows in your utility building?

1425
1426 Mr. Ellis - No, solid building. This is what I'm asking for.

1427
1428 Mr. Nunnally - You say it's been there six years, Mr. Ellis?

1429
1430 Mr. Ellis - Six years, yes.

1431
1432 Mr. McKinney - Mr. Blankinship, what is the rule on a portable building?

1433
1434 Mr. Blankinship - In a business district, accessory buildings have to meet the
1435 same setbacks as the principal building.

1436
1437 Mr. McKinney - You can bring a portable building in and leave it for how long
1438 without doing anything?

1439
1440 Mr. Blankinship - I don't know that there is a deadline.

1441
1442 Mr. McKinney - Is there anything in the Code about it?

1443
1444 Mr. Blankinship - Not that I know of; we don't treat them any differently.

1445
1446 Mr. Wright - Any further questions by members of the Board? Is anyone
1447 here in opposition to this request? That concludes the case sir.

1448
1449 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1450 Kirkland, the Board **granted** application **A-62-2003** for a variance to allow the existing
1451 shed to remain at 300 West Nine Mile Road (Highland Springs) (Parcel 822-725-3021).
1452 The Board granted the variance subject to the following condition:

1453

1454 1. The property shall be developed in substantial conformance with the plan filed
1455 with the application. No substantial changes or additions to the layout may be made
1456 without the approval of the Board of Zoning Appeals.

1457
1458 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1459 Negative: 0
1460 Absent: Balfour 1
1461

1462 The Board granted this request, as it found from the evidence presented that, due to the
1463 unique circumstances of the subject property, strict application of the County Code
1464 would produce undue hardship not generally shared by other properties in the area, and
1465 authorizing this variance will neither cause a substantial detriment to adjacent property
1466 nor materially impair the purpose of the zoning regulations.

1467
1468 **A - 63-2003** **THOMAS H. TRAYLOR** requests a variance from Sections 24-
1469 95(i)(2), 24-95(i)(2)(a) and 24-94 of Chapter 24 of the County Code
1470 to build an addition and allow existing buildings at 11129
1471 Woodbaron Court (Barony Woods) (Parcel 745-757-9537), zoned
1472 R-3A, One-family Residence District (Three Chopt). The accessory
1473 structure location requirement, accessory structure lot coverage,
1474 and rear yard setback are not met. The applicant proposes 791
1475 square feet of accessory structures, 30 feet rear yard setback, and
1476 an accessory structure in the side yard, where the Code allows 735
1477 square feet of accessory structures, 35 feet rear yard setback and
1478 accessory structures in the rear yard. The applicant requests a
1479 variance of 56 square feet of accessory structures, 5 feet rear yard
1480 setback, and an accessory structure in the side yard.

1481
1482 Mr. Balfour - Do we have any others who intend to testify in this matter?
1483 Is there anyone here in opposition to this request? Would you raise your right hand and
1484 be sworn please?
1485

1486 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1487 truth, the whole truth, and nothing but the truth, so help you God?
1488

1489 Mr. Traylor - I do. My name is Thomas Traylor. I guess it's on those
1490 three points. I originally asked for a variance to change the rear yard setback from 35
1491 feet to 30 feet. I wasn't aware of the other two points that you have brought out. The
1492 side yard, that was approved in '93 when the garage was built. The accessory building
1493 actually started out as a kids' playhouse; since then it has turned into a potting shed for
1494 my wife.

1495
1496 Mr. Wright - Your proposal is to construct an addition over your existing
1497 deck, is that correct? What size is that?
1498

1499 Mr. Traylor - Yes sir. Fourteen by 22.

1500
1501 Mr. Wright - And it will be exactly the size that the deck is?
1502
1503 Mr. Traylor - Yes sir.
1504
1505 Mr. Wright - I guess what happens when you build that, it brings your
1506 other property into nonconformance. It doesn't change anything, just brings it into
1507 nonconformance.
1508
1509 Mr. Traylor - I assume that's what happened with the garage.
1510
1511 Mr. Wright - Is this other building a garage? You're not enlarging your
1512 garage?
1513
1514 Mr. Traylor - It's two other buildings; one is a garage that supposedly will
1515 be in the side yard (there's a picture of it there). The other accessory building made the
1516 total square footage too much for the rear yard.
1517
1518 Mr. Wright - The only problem with the other building is it causes you to
1519 exceed the square footage? And that's been there how long? How about the garage?
1520
1521 Mr. Traylor - About eight years. The garage was built in '93 with the
1522 house.
1523
1524 Mr. Wright - Building the addition causes all the problems, is that right Mr.
1525 Blankinship?
1526
1527 Mr. Blankinship - The addition of the small accessory building put it over the
1528 square footage, but the other two issues are related to the addition, yes sir.
1529
1530 Mr. Wright - That little house was already there. Was that in violation
1531 when it was built?
1532
1533 Mr. Blankinship - It probably was. Of course it's under 150 square feet, so a
1534 building permit was not required, so we probably never had it inspected; it was never
1535 submitted for review.
1536
1537 Mr. Wright - What's located to the rear of your property?
1538
1539 Mr. Traylor - It's all Church Run common area. I believe there's about
1540 150 feet of it.
1541
1542 Mr. Wright - Any further questions by members of the Board? Anyone
1543 here in opposition to this request? Hearing none, that concludes the case.
1544

1545 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1546 Nunnally, the Board **granted** application **A-63-2003** for a variance to build an addition
1547 and allow existing buildings at 11129 Woodbaron Court (Barony Woods) (Parcel 745-
1548 757-9537). The Board granted the variance subject to the following conditions:

- 1549
- 1550 1. The new construction shall match the existing dwelling as nearly as practical.
 - 1551
 - 1552 2. The property shall be developed in substantial conformance with the plan filed
1553 with the application. No substantial changes or additions to the layout may be made
1554 without the approval of the Board of Zoning Appeals.
 - 1555

| | | |
|-------------------|--------------------------------------|---|
| 1556 Affirmative: | Kirkland, McKinney, Nunnally, Wright | 4 |
| 1557 Negative: | | 0 |
| 1558 Absent: | Balfour, | 1 |

1559

1560 The Board granted this request, as it found from the evidence presented that, due to the
1561 unique circumstances of the subject property, strict application of the County Code
1562 would produce undue hardship not generally shared by other properties in the area, and
1563 authorizing this variance will neither cause a substantial detriment to adjacent property
1564 nor materially impair the purpose of the zoning regulations.

1565

1566 **A - 64-2003** **JACK AND BARI COHEN** request a variance from Section 24-94
1567 of Chapter 24 of the County Code to build a covered stoop at 3705
1568 Huntmaster Court (Foxhall) (Parcel 729-758-7954), zoned R-2A,
1569 One-family Residence District (Three Chopt). The front yard
1570 setback is not met. The applicants propose 41 feet front yard
1571 setback, where the Code requires 45 feet front yard setback. The
1572 applicants request a variance of 4 feet front yard setback.

1573

1574 Mr. Balfour - Is anyone here in opposition or desire to speak on this case?
1575 Would you raise your right hand and be sworn please?

1576

1577 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1578 truth, the whole truth, and nothing but the truth, so help you God?

1579

1580 Mr. Cohen - Yes, I do. I'm Jack Cohen. We're having a new home
1581 constructed in Foxhall subdivision, and we're requesting a four-foot variance to have
1582 our stoop covered with a porch. That wasn't in the original plan from the builder
1583 because of the RPA line requirements in the back. He had to build the house a little bit
1584 closer to the front. Again, we're just requesting four feet so we can have the porch built
1585 on the covered stoop. We want it to cover the stoop, and it will be pretty much exactly
1586 the same as the covered porches of the existing homeowners. It's a new subdivision,
1587 and the porch will look pretty much the same as the porches on the existing
1588 homeowners.

1589

1590 Mr. Wright - Will you enlarge that porch any?

1591
1592 Mr. Cohen - No, we're just asking to cover the stoop, and we're going to
1593 have to put it out four feet further, closer to the front.
1594
1595 Mr. Wright - You're located on a cul-de-sac, is that correct?
1596
1597 Mr. Cohen - Yes sir.
1598
1599 Mr. Wright - There's a 100-year flood plain behind your home; that's why
1600 your house had to be built as close as it did to the street.
1601
1602 Mr. Cohen - There's an RPA line that runs the back of all the properties,
1603 and I guess our lot is somewhat irregular in the way the lot lays. The builder had to
1604 come further away from that line in the back, and it just pushed the house closer to the
1605 front of the street, and that's why we need the extra four feet.
1606
1607 Mr. Wright - Have you read the conditions?
1608
1609 Mr. Cohen - Yes sir.
1610
1611 Mr. Wright - Any questions by members of the Board? Anyone here in
1612 opposition to this request? That concludes the case. Thank you very much.
1613
1614 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1615 Nunnally, the Board **granted** application **A-64-2003** for a variance to build a covered
1616 stoop at 3705 Huntmaster Court (Foxhall) (Parcel 729-758-7954). The Board granted
1617 the variance subject to the following conditions:
1618
1619 1. The new construction shall match the existing dwelling as nearly as practical.
1620
1621 2. The property shall be developed in substantial conformance with the plan
1622 filed with the application. No substantial changes or additions to the layout may be
1623 made without the approval of the Board of Zoning Appeals.
1624
1625 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1626 Negative: 0
1627 Absent: Balfour 1
1628
1629 The Board granted this request, as it found from the evidence presented that, due to the
1630 unique circumstances of the subject property, strict application of the County Code
1631 would produce undue hardship not generally shared by other properties in the area, and
1632 authorizing this variance will neither cause a substantial detriment to adjacent property
1633 nor materially impair the purpose of the zoning regulations.
1634
1635 **A - 65-2003** **ANN GORDON** requests a variance from Sections 24-95(k) and
1636 24-94 of Chapter 24 of the County Code to build a patio enclosure

1637 at 1805 Hillcroft Drive (Heritage Oaks) (Parcel 733-750-4116),
1638 zoned RTH, Residential Townhouse District (Tuckahoe). The
1639 minimum side yard setback and rear yard setback are not met. The
1640 applicant has 20 feet minimum side yard setback and 33 feet rear
1641 yard setback, where the Code requires 25 feet minimum side yard
1642 setback and 35 feet rear yard setback. The applicant requests a
1643 variance of 5 feet minimum side yard setback and 2 feet rear yard
1644 setback.
1645

1646 Mr. Wright - Do we have any others who intend to testify in this matter?
1647 Would you raise your right hand and be sworn please?
1648

1649 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1650 truth, the whole truth, and nothing but the truth, so help you God?
1651

1652 Ms. Jackson - I do. I'm Carrie Jackson, here representing Ms. Gordon,
1653 who has a swimming pool and wants to enclose it as a patio, put a roof over it. The side
1654 yard that she has doesn't meet the Code, and the back yard doesn't meet the Code
1655 either. She's asking for five foot minimum for the side yard and two feet for the rear.
1656

1657 Mr. Wright - Where is this pool? Is it within this fence enclosure?
1658

1659 Ms. Jackson - She has a fence around it right now. It's inside that fence
1660 right there.
1661

1662 Mr. Wright - What kind of roof does she plan to put on there? Do you
1663 have a picture of it, or can we see what it looks like? How tall will it be? That could be
1664 a concern to a neighbor if it's in the side yard.
1665

1666 Mr. Kirkland - Do you have any idea how tall it could be? There's no
1667 height dimension on the side there from the ground up.
1668

1669 Ms. Jackson - Do you know? He's representing Ms. Gordon too; he'll
1670 probably know more about that.
1671

1672 Mr. Kirkland - Sir, if you would come up and be sworn in – could you tell us
1673 the height of this structure?
1674

1675 Mr. Blankinship - Raise your right hand please. Do you swear that the
1676 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
1677 help you God?
1678

1679 Mr. Harris - I do. My name is Grantham W. Harris.
1680

1681 Mr. Wright - All right, Mr. Harris, would you tell us something about this
1682 proposed structure.

1683
1684 Mr. Harris - What she's asking for, is the roof is going to be the same
1685 height, except two feet lower than the roof that you see off the room that you come out
1686 on the pool, she wants to come down two feet lower than that roof. So the roof is going
1687 to be built the same height.
1688
1689 Mr. Wright - Why would she want to put a roof over this pool?
1690
1691 Mr. Harris - She's getting a lot of trees and trash and stuff coming in on
1692 the pool.
1693
1694 Mr. Wright - Is this an in-ground pool?
1695
1696 Mr. Harris - Yes it is.
1697
1698 Mr. McKinney - I'm looking at this picture, and it's showing an existing slab –
1699 is that the slab around the pool?
1700
1701 Mr. Harris - Yes it is.
1702
1703 Mr. Wright - What type of construction is this enclosure going to be?
1704
1705 Mr. Harris - It's going to be all glass.
1706
1707 Mr. McKinney - You're showing a roof with three sky-lights on it, with R-30
1708 insulation in the ceiling.
1709
1710 Mr. Harris - There won't be any insulation installed.
1711
1712 Mr. McKinney - It certainly shows here on this plan. And you've got R-13
1713 insulation in the side walls.
1714
1715 Mr. Harris - Yes, that's going to be in the side walls.
1716
1717 Mr. McKinney - I thought you said it was all glass.
1718
1719 Mr. Harris - It's going to be all glass around it.
1720
1721 Mr. McKinney - The side walls are around it.
1722
1723 Mr. Harris - Yes, it's going to have two feet sashing in between the
1724 doors. It's all going to be all doors all the way around. It's going to be two feet, to two
1725 feet, to two feet all the way around.
1726
1727 Mr. McKinney - It's going to be six-foot sliding doors?
1728

1729 Mr. Wright - And there will be vinyl siding between the doors, is that what
1730 you're saying? What is the pitch on this roof?
1731
1732 Mr. Harris - I think it's somewhere around 45.
1733
1734 Mr. McKinney - No, what is the roof pitch?
1735
1736 Mr. Harris - I don't know exactly what the pitch is.
1737
1738 Mr. McKinney - Are you the builder?
1739
1740 Mr. Harris - No, I'm not going to be the builder.
1741
1742 Mr. McKinney - Is it a 4/12 or a 6/12?
1743
1744 Mr. Harris - It could come to be about 4/12.
1745
1746 Mr. McKinney - It looks like you've got about 7/12 on the house.
1747
1748 Mr. Wright - Any further questions by members of the Board? Anyone in
1749 here in opposition to this request? We'll hear from the opposition, and then you will
1750 have an opportunity to rebut, and I might remind the opposition, you have one
1751 opportunity to speak, so please say everything you want to say now, because after you
1752 finish, we don't allow any further back and forth.
1753
1754 Ms. Hager - My name is Carol Hager. I live across the street, 1804
1755 Hillcroft Drive, from this house. I oppose this variance to be changed
1756
1757 Mr. Wright - You're on the other side of where the construction would be.
1758
1759 Ms. Hager - That's correct. I oppose it, and the reason I oppose it is that
1760 the variances were set by the County, and I believe that they were set for a good
1761 reason, and I believe that we should obey and abide by the law. Thank you.
1762
1763 Mr. McQuay - Good morning, my name is Paul McQuay, and I live at
1764 12305 Locust Grove Road, and two neighbors who could not be here have asked me to
1765 bring letters to present to the Board.
1766
1767 Mr. Wright - You're directly across the street from the construction.
1768
1769 Mr. McQuay - Yes sir, and I've got some pictures also of some existing
1770 ordinance violations that are going on now. And I also oppose it for the same reason,
1771 that the County set these rules and regulations, and I feel like we should live by them.
1772
1773 Mr. Wright - All right. Thank you very much. Is there anything further?
1774 That concludes the opposition. Now you have an opportunity to say something in

1775 rebuttal if you so desire. Do you have anything further you want to say? That
1776 concludes the case.

1777
1778 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1779 Kirkland, the Board **denied** application **A-65-2003** for a variance to build a patio
1780 enclosure at 1805 Hillcroft Drive (Heritage Oaks) (Parcel 733-750-4116).

1781
1782 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
1783 Negative: 0
1784 Absent: Balfour 1

1785
1786 The Board denied the request as it found from the evidence presented that approving
1787 the permit would be of substantial detriment to adjacent property or would materially
1788 impair the purpose of the zoning regulations.

1789
1790 **A - 66-2003** **RICHARD A. GIANNOTTI** requests a variance from Section 24-94
1791 of Chapter 24 of the County Code to build a two-story addition at
1792 12007 Horncastle Place (Pine Run) (Parcel 734-754-5461), zoned
1793 R-2A, One-family Residence District (Tuckahoe). The rear yard
1794 setback is not met. The applicant proposes 37 feet rear yard
1795 setback, where the Code requires 45 feet rear yard setback. The
1796 applicant requests a variance of 8 feet rear yard setback.

1797
1798 Mr. Wright - Is there anyone here in opposition to this request who
1799 desires to speak? Would you raise your right hand and be sworn please?

1800
1801 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1802 truth, the whole truth, and nothing but the truth, so help you God?

1803
1804 Ms. Giannotti - I do. I'm Lauren Giannotti, his wife and co-owner. We're
1805 coming over the line with the garage addition in the back of the house. If you look on
1806 the very last page of the packet, you'll see a drawing of the addition. We have already
1807 started the house addition, with a permit, but it is the garage addition on the side, and
1808 just the corner comes over the addition. A small corner is over the setback, which is 45
1809 feet for us.

1810
1811 Mr. Wright - You have an odd-shaped lot there, do you not?

1812
1813 Ms. Giannotti - We do. It's because we back up to a cul-de-sac on the other
1814 side, and of course, their homes are moved back a little bit further on the lot. We have
1815 a really long side on one side, and then a shorter side, and then a little pin that comes in
1816 there. I also have with that attached packet that you've received, letters from each one
1817 of the neighbors who are contiguous to our lot, including the one across the street. All
1818 the neighbors in our cul-de-sac have been notified.

1819
1820 Mr. Wright - Would you describe what these additions would be for, and

1821 how they would be constructed, please
1822
1823 Ms. Giannotti - They're going to be brick. In fact, we're bricking the whole
1824 home. The addition is going to be in keeping with the rest of the home. If you would
1825 like to see a side view of the addition, I've got the plans.
1826
1827 Mr. Wright - Those would have to stay with us for thirty days if you put
1828 them in evidence.
1829
1830 Ms. Giannotti - Okay. If you would like to see what the addition of the
1831 garage would look like

1832
1833 Mr. Wright - We can show it on the screen there. The existing garage is
1834 a two-bay garage, and it has a bonus remover top. It has two dormers, and we're
1835 proposing to add the third bay, with the dormer matching.
1836
1837 Mr. Wright - Which one of these structures causes the problem?
1838
1839 Ms. Giannotti - It's the corner on the far right new bay garage.
1840
1841 Mr. Wright - The larger building would be the garage; what's the smaller
1842 one?
1843
1844 Ms. Giannotti - Are you looking at the plot?
1845
1846 Mr. Wright - I'm looking at the plot. We have two structures, one a little
1847 larger than the other.
1848
1849 Mr. Blankinship - I believe she's referring to the smaller, which is an addition
1850 to the garage. These two bays of the garage exist, and they're adding the third bay.
1851 That's where that corner is too close.
1852
1853 Mr. Wright - Anything further? Any questions of members of the Board?
1854 Is there anyone here in opposition to this request? That concludes the case.
1855
1856 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1857 Kirkland the Board **granted** application **A-66-2003** for a variance to build a two-story
1858 addition at 12007 Horncastle Place (Pine Run) (Parcel 734-754-5461). The Board
1859 granted the variance subject to the following conditions:
1860
1861 1. The new construction shall match the existing dwelling as nearly as practical.
1862
1863 2. The property shall be developed in substantial conformance with the plan filed
1864 with the application. No substantial changes or additions to the layout may be made
1865 without the approval of the Board of Zoning Appeals.
1866

1913 it into conformance with the radius of the cul-de-sac
1914
1915 Mr. Wright - What is the normal setback distance?
1916
1917 Mr. Shield - The normal setback in the front yard is 50 feet, with an R-1
1918 zoning. We actually will have with this variance, 98 feet, so we're almost twice the
1919 required setback, but we're trying to come into conformance on the radius of the cul-de-
1920 sac. This is the last house in the subdivision on this cul-de-sac.
1921
1922 Mr. Blankinship - Fifty feet is correct.
1923
1924 Mr. Shield - We actually will have 98 feet.
1925
1926 Mr. Wright - So at the 50-foot point, they wouldn't have the necessary
1927 width?
1928
1929 Mr. Blankinship - Correct.
1930
1931 Mr. Shield - We wouldn't have the side yard either. Without conforming
1932 to the side yard requirements, we have 98 feet to the front. Mr. Foster's here if you
1933 have any questions; he'll confirm his conversation with Mr. Spencer if you'd care to hear
1934 that.
1935
1936 Mr. Wright - All right, do you desire to speak, sir?
1937
1938 Mr. Spencer - I'm Thomas A. Foster. I just confirm what Mr. Shield said; I
1939 went out there soon after the lot was staked, and Mr. Spurrier, the next-door neighbor,
1940 came out and questioned me why it was so far back, and neither one of us an answer at
1941 that point. He expressed disappointment as to where it was situated, and I certainly had
1942 those same sentiments.
1943
1944 Mr. Wright - Anyone here is opposition to this request? That concludes
1945 the case.
1946
1947 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
1948 Kirkland, the Board **granted** application **A-67-2003** for a variance to build a one-family
1949 dwelling at 9632 Gaslight Place (Gaslight) (Parcel 744-739-0693). The Board granted
1950 the variance subject to the following condition:
1951
1952 1. Only the improvements shown on the plan filed with the application may be
1953 constructed pursuant to this approval. No substantial changes or additions to the layout
1954 may be made without the approval of the Board of Zoning Appeals. Any additional
1955 improvements shall comply with the applicable regulations of the County Code.
1956
1957 Affirmative: Kirkland, McKinney, Nunnally, Wright 4

1958 Negative: 0
1959 Absent: Balfour 1
1960

1961 The Board granted this request, as it found from the evidence presented that, due to the
1962 unique circumstances of the subject property, strict application of the County Code
1963 would produce undue hardship not generally shared by other properties in the area, and
1964 authorizing this variance will neither cause a substantial detriment to adjacent property
1965 nor materially impair the purpose of the zoning regulations.
1966

1967 **A - 68-2003** **WILLIAM E. ELMORE** requests a variance from Section 24-9 of
1968 Chapter 24 of the County Code to build a one-family dwelling at
1969 11562 Mill Road (Parcel 767-777-9367), zoned A-1, Agricultural
1970 District and R-2, One-family Residence District (Brookland). The
1971 public street frontage requirement is not met. The applicant has 0
1972 feet public street frontage, where the Code requires 50 feet public
1973 street frontage. The applicant requests a variance of 50 feet public
1974 street frontage.
1975

1976 Mr. Wright - Do we have any others who intend to testify in this matter?
1977 Would you raise your right hand and be sworn please?
1978

1979 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1980 truth, the whole truth, and nothing but the truth, so help you God?
1981

1982 Mr. Elmore - I do. My name is William E. Elmore. I'm 73 years old and
1983 have some health problems, and I have a daughter who is 48 years old, who has just
1984 been diagnosed in March with congestive heart failure. She lives with me, and due to
1985 my age, her daughter, who is my granddaughter, desires to build a house right behind
1986 my property. I own 68 acres behind that – it runs from Mill Road all the way to the
1987 Chickahominy River. The lot that she's going to build it on will be right behind my
1988 property, and eventually, this variance, there will be a road from Mill Road all the way
1989 back to the Chickahominy River. I'm going to convey the lot to my granddaughter, and
1990 she will own the lot in question and care for both her mother and me.
1991

1992 Mr. Wright - Any other questions from members of the Board? Thank
1993 you sir. Anyone here in opposition to the request? That concludes the case.
1994

1995 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
1996 Nunnally, the Board **granted** application **A-68-2003** for a variance to build a one-family
1997 dwelling at 11562 Mill Road (Parcel 767-777-9367). The Board granted the variance
1998 subject to the following conditions:
1999

2000 1. This variance applies only to the public street frontage requirement. All other
2001 applicable regulations of the County Code shall remain in force.
2002

2003 2. When the residue of the parcel is developed, it shall be designed such that the
2004 subject lot fronts on a public street.

2005
2006 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2007 Negative: 0
2008 Absent: Balfour 1
2009

2010 The Board granted this request, as it found from the evidence presented that, due to the
2011 unique circumstances of the subject property, strict application of the County Code
2012 would produce undue hardship not generally shared by other properties in the area, and
2013 authorizing this variance will neither cause a substantial detriment to adjacent property
2014 nor materially impair the purpose of the zoning regulations.
2015

2016 **A - 69-2003** **DARRELL BOWMAN** requests a variance from Section 24-94(i)(2)
2017 of Chapter 24 of the County Code to build a garage at 10310
2018 Bowman Court (Bowman Acres) (Parcel 735-772-9581), zoned A-1,
2019 Agricultural District (Three Chopt). The accessory structure
2020 location requirement is not met. The applicant proposes a garage
2021 less than one foot from the house and a pool in the side yard,
2022 where the Code requires the garage to be 10 feet from the house
2023 and allows accessory structures in the rear yard. The applicant
2024 requests a variance to allow the proposed garage and pool.
2025

2026 Mr. Wright - Do we have any others who intend to testify in this matter?
2027 Would you raise your right hand and be sworn please?
2028

2029 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2030 truth, the whole truth, and nothing but the truth, so help you God?
2031

2032 Mr. Bowman - Yes. I'm Darrell Bowman. I've got a letter here from all the
2033 surrounding homeowners, except for one who I could not reach, who have no
2034 opposition to this. I'm building a garage adjacent to my house, with a room over top of
2035 it. To meet the County codes, it has to be attached by ten feet to the house, and there's
2036 really no practical way to attach it with a ten by ten, other than to have a ten by ten
2037 covered patio behind the back of my house, which really doesn't make a whole lot of
2038 sense. The gap area here that you see in the picture between the house and the
2039 garage being built, is now covered, and it's actually attached to the house by two feet,
2040 and it's a covered breezeway just on the side of the garage towards the back of the
2041 garage that's thirty feet long. Where the roof ends, it's disconnected there, and I'm
2042 asking for the variance where I don't have to put the ten-by-ten covered patio behind the
2043 house. This will serve no practical purpose, since I've got an eight-by-thirty covered
2044 patio down the side of the garage, which is attached to the house by two feet. Then the
2045 pool is actually behind the house, but with the garage being attached to the house,
2046 actually I think the pool does sit behind the back line of the garage, but because the
2047 garage is attached to the house, they're saying the back line of the house is the back
2048 line of the garage, and if the pool is not behind the back line, it is considered a side yard

2049 even though it sits directly behind my house. So from a common sense point,
2050 everything I ask for, it does not affect anybody adversely.

2051
2052 Mr. Wright - It looks like you have an odd-shaped lot there, don't you?

2053
2054 Mr. Bowman - It's two acres. It's odd-shaped, but it's a big lot; it's just
2055 meeting all the regulations.

2056
2057 Mr. Wright - What's located to the north of your property, which would be
2058 going north on Pouncey Tract over to the left?

2059
2060 Mr. Bowman - That's a seven-acre parcel that only has one perk site. Mr.
2061 Chou owns that, and he's signed off saying he has no problem with me extending it.
2062 There are wetlands that run between my property line and his property line on his
2063 property where he can't build within probably 50 to 75 feet of my property anyway,
2064 because it's all wet.

2065
2066 Mr. Wright - How about to the south of your property? How far are those
2067 houses off of Stone Horse Court?

2068
2069 Mr. Bowman - The only gentleman who can really see my house, I guess
2070 it's 12401 and 12400 on Stone Horse Court; they're the only two people who can
2071 actually see the garage. Nobody else can even see it. 12400 has no problems
2072 whatsoever, and he's the most directly affected. 12401, I've been by his house on four
2073 different occasions in the last three weeks and have not been able to catch him at home
2074 to talk to the gentleman, but I don't think he's here today, so I assume he has no
2075 objections. Otherwise he'd be here.

2076
2077 Mr. Wright - Roughly how far are those houses from your property line?

2078
2079 Mr. Bowman - From my property line, they're probably 75 to 100 feet; these
2080 are all acre or acre and a half lots. It's not like we're in a third acre subdivision. It's all
2081 acre, two-acre, three-acre lots.

2082
2083 Mr. Wright - Any questions from members of the Board? Is anyone here
2084 in opposition to this request? Hearing none, that concludes the case. Thank you very
2085 much for appearing.

2086
2087 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2088 Nunnally, the Board **granted** application **A-69-2003** for a variance to build a garage at
2089 10310 Bowman Court (Bowman Acres) (Parcel 735-772-9581). The Board granted the
2090 variance subject to the following condition:

2091
2092 1. Only the improvements shown on the plan filed with the application may be
2093 constructed pursuant to this approval. No substantial changes or additions to the layout

2094 may be made without the approval of the Board of Zoning Appeals. Any additional
2095 improvements shall comply with the applicable regulations of the County Code.

2096
2097 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2098 Negative: 0
2099 Absent: Balfour 1

2100
2101 The Board granted this request, as it found from the evidence presented that, due to the
2102 unique circumstances of the subject property, strict application of the County Code
2103 would produce undue hardship not generally shared by other properties in the area, and
2104 authorizing this variance will neither cause a substantial detriment to adjacent property
2105 nor materially impair the purpose of the zoning regulations.

2106
2107 **A - 70-2003 WILLIAM AND MARLENE JERNIGAN** request a variance from
2108 Section 24-94 of Chapter 24 of the County Code to build a porch at
2109 7407 Landsworth Avenue (Stuart Ridge) (Parcel 784-752-0420),
2110 zoned R-4, One-family Residence District (Fairfield). The front yard
2111 setback is not met. The applicants propose 26 feet front yard
2112 setback, where the Code requires 35 feet front yard setback. The
2113 applicants request a variance of 9 feet front yard setback.

2114
2115 Mr. Wright - Do we have any others who intend to testify in this matter?
2116 Would you raise your right hand and be sworn please?

2117
2118 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2119 truth, the whole truth, and nothing but the truth, so help you God?

2120
2121 Ms. Jernigan - I do. I'm Marlene Jernigan. We have an existing front stoop
2122 or porch; it's just an overhang to the front door. We want to keep the same footage of
2123 that to the street, but we want to extend it across the front of the house under the
2124 picture window. We have to have a variance in order to do this. The main thing is, we
2125 just want to add to our home and to the use of the front of the property, and we cannot
2126 do this without the variance.

2127
2128 Mr. Wright - Have you read the suggested conditions?

2129
2130 Ms. Jernigan - Yes, I have. We do have some other homes in the same
2131 subdivision that have been granted variances, both to build an entire home, and also to
2132 add porches like we are. We would just like the same consideration.

2133
2134 Mr. McKinney - Ms. Jernigan, what type of porch are you going to put on?

2135
2136 Ms. Jernigan - It would be a wooden structure.

2137
2138 Mr. McKinney - This is like an aluminum canopy that you have there now?

2139
2140 Ms. Jernigan - Yes, that would come off. It would be a wood structure with

2141 shingles to match the roof.

2142

2143 Mr. McKinney - And it would go from the left-hand side of the door, over past
2144 the picture window, or all the way to the end of the house?

2145

2146 Ms. Jernigan - It would go about where the shutter on the house, it wouldn't
2147 come quite to the end of the house, but about where that shutter is. It would take in the
2148 area where the bushes are now.

2149

2150 Mr. Wright - Any further questions by members of the Board? Anyone
2151 here in opposition to this request? That concludes the case.

2152

2153 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2154 Kirkland, the Board **granted** application **A-70-2003** for a variance to build a porch at
2155 7407 Landsworth Avenue (Stuart Ridge) (Parcel 784-752-0420). The Board granted the
2156 variance subject to the following conditions:

2157

2158 1. The new construction shall match the existing dwelling as nearly as practical.

2159

2160 2. The property shall be developed in substantial conformance with the plan filed
2161 with the application. No substantial changes or additions to the layout may be made
2162 without the approval of the Board of Zoning Appeals.

2163

2164 Affirmative: Kirkland, McKinney, Nunnally, Wright 4

2165 Negative: 0

2166 Absent: Balfour 1

2167

2168 The Board granted this request, as it found from the evidence presented that, due to the
2169 unique circumstances of the subject property, strict application of the County Code
2170 would produce undue hardship not generally shared by other properties in the area, and
2171 authorizing this variance will neither cause a substantial detriment to adjacent property
2172 nor materially impair the purpose of the zoning regulations.

2173

2174 **A - 71-2003** **LEWIS D. TYLER, JR.** requests a variance from Section 24-9 of
2175 Chapter 24 of the County Code to build a one-family dwelling at
2176 8380 Strath Road (Parcels 816-683-0990 and 815-683-8388),
2177 zoned A-1, Agricultural District (Varina). The public street frontage
2178 requirement is not met. The applicant has 0 feet public street
2179 frontage, where the Code requires 50 feet public street frontage.
2180 The applicant requests a variance of 50 feet public street frontage.

2181

2182 Mr. Wright - Please state your name. Does anyone else desire to speak?
2183 Would you raise your right hand and be sworn please?

2184

2185 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2186 truth, the whole truth, and nothing but the truth, so help you God?

2187
2188 Mr. Tyler - I do. I'm Lewis Tyler, Jr. I'm just here to ask for a variance
2189 to use the non-exclusive easement that crosses Adelmarié Robinson's and Joseph and
2190 Florence's property. That would give me my 50-foot road frontage. Those two are
2191 members of my family. Ada Robinson is my aunt, and Florence Tyler and Joseph Tyler
2192 are my grandmother and grandfather, and I do have their permission to go across their
2193 line.

2194
2195 Mr. Wright - Have you read these conditions?

2196
2197 Mr. Tyler - Yes I have.

2198
2199 Mr. Nunnally - All family back there?

2200
2201 Mr. Tyler - Yes.

2202
2203 Mr. Wright - Anything further? Any questions by members of the Board?
2204 Anyone here in opposition to this request? Hearing none, that concludes the case.
2205 Thanks very much for appearing.

2206
2207 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2208 McKinney, the Board **granted** application **A-71-2003** for a variance to build a one-family
2209 dwelling at 8380 Strath Road (Parcels 816-683-0990 and 815-683-8388). The Board
2210 granted the variance subject to the following conditions:

2211
2212 1. This variance applies only to the public street frontage requirement. All other
2213 applicable regulations of the County Code shall remain in force.

2214
2215 2. At the time of building permit application, the applicant shall submit the
2216 necessary information to the Department of Public Works to ensure compliance with the
2217 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2218 water quality standards.

2219
2220 3. At the time of building permit application the owner shall demonstrate that the
2221 parcel is owned by members of the immediate family, and the subdivision ordinance has
2222 not been circumvented.

2223
2224 4. Approval of this request does not imply that a building permit will be issued.
2225 Building permit approval is contingent on Health Department requirements, including,
2226 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
2227 of a well location.

2228
2229 5. The applicant shall present proof with the building permit application that a legal
2230 access to the property has been obtained.

2231

2232 6. The owners of the property, and their heirs or assigns, shall accept
2233 responsibility for maintaining access to the property until such a time as the access
2234 is improved to County standards and accepted into the County road system for
2235 maintenance.

2236
2237 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2238 Negative: 0
2239 Absent: Balfour 1

2240
2241 The Board granted this request, as it found from the evidence presented that, due to the
2242 unique circumstances of the subject property, strict application of the County Code
2243 would produce undue hardship not generally shared by other properties in the area, and
2244 authorizing this variance will neither cause a substantial detriment to adjacent property
2245 nor materially impair the purpose of the zoning regulations.

2246
2247 Mr. Blankinship - Mr. Chairman, the next two are companion cases.

2248
2249 **UP- 10-2003** **VULCAN CONSTRUCTION MATERIALS, LLC** requests a
2250 conditional use permit pursuant to Sections 24-103 and 24-52(d) of
2251 Chapter 24 of the County Code to extract materials from the earth
2252 at 4721 Curles Neck Road (Parcel 836-667-5251), zoned A-1,
2253 Agricultural District (Varina).

2254
2255 **UP- 11-2003** **VULCAN CONSTRUCTION MATERIALS, LLC** requests a
2256 conditional use permit pursuant to Sections 24-103 and 24-52(d) of
2257 Chapter 24 of the County Code to extract materials from the earth
2258 at 4721 Curles Neck Road (Parcel 836-667-5251), zoned A-1,
2259 Agricultural District (Varina).

2260
2261 Mr. Wright - Please state your name. Does anyone else desire to speak?
2262 Would you raise your right hand and be sworn please?

2263
2264 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2265 truth, the whole truth, and nothing but the truth, so help you God?

2266
2267 Mr. Lewis - I do. I'm Monte Lewis; I'm with Lewis and Associates,
2268 representing Vulcan. The first case, UP-10, is the new parcel. UP-11 is a renewal of a
2269 parcel that is adjacent to it. These will last approximately two years for the mining
2270 excavation. The new parcel, which is UP-10, is where the old barns used to be located.
2271 The owner of the property has removed those barns. This will result in, like most of the
2272 other mining areas, depression in the earth where the water will drain into, but we won't
2273 have an outlet.

2274
2275 Mr. Wright - The materials will all be taken out by the river, not on a
2276 public road?

2277

2278 Mr. Lewis - Yes sir. Correct.
2279
2280 Mr. Nunnally - Have you read all your conditions on it?
2281
2282 Mr. Lewis - Yes sir, we agree with the conditions. They are consistent
2283 with all the other mining activities and permits that we have.
2284
2285 Mr. Nunnally - Mr. Blankinship, I understand that we have a very good
2286 operations down there, right?
2287
2288 Mr. Blankinship - Yes sir, I don't know of any complaints that we've had,
2289 certainly in the time I've been here.
2290
2291 Mr. Wright - Anything further, Mr. Lewis? Any further questions of
2292 members of the Board? Is anyone here in opposition to this request? Hearing none,
2293 that concludes both of these cases. Thank you.
2294
2295 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2296 Kirkland, the Board **granted** application **UP-10-2003** for a conditional use to extract
2297 materials from the earth at 4721 Curles Neck Road (Parcel 836-667-5251). The Board
2298 granted the use permit subject to the following conditions:
2299
2300 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of
2301 the County Code.
2302
2303 2. Before beginning any work, the applicant shall provide a financial guaranty in an
2304 amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total of \$
2305 50,940.00, guaranteeing that the land will be restored to a reasonably level and
2306 drainable condition. This permit does not become valid until the financial guaranty has
2307 been approved by the County Attorney. The financial guaranty may provide for
2308 termination after 90 days notice in writing to the County. In the event of termination, this
2309 permit shall be void, and work incident thereto shall cease. Within the next 90 days the
2310 applicant shall restore the land as provided for under the conditions of this use permit.
2311 Termination of such financial guaranty shall not relieve the applicant from its obligation
2312 to indemnify the County of Henrico for any breach of the conditions of this use permit. If
2313 this condition is not satisfied within 90 days of approval, the use permit shall be void.\

2314
2315 3. Before beginning any work, the applicant shall submit erosion control plans to the
2316 Department of Public Works for review and approval. Throughout the life of the
2317 operation, the applicant shall continuously satisfy the Department of Public Works that
2318 erosion control procedures are properly maintained, and shall furnish plans and bonds
2319 that the department deems necessary. The applicant shall provide certification from a
2320 licensed professional engineer that dams, embankments and sediment control
2321 structures meet the approved design criteria as set forth by the State. If this condition is
2322 not satisfied within 90 days of approval, the use permit shall be void.
2323

- 2324 4. Before beginning any work, the applicant shall obtain a mine license from the
2325 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied
2326 within 90 days of approval, the use permit shall be void.
2327
- 2328 5. Before beginning any work, the areas approved for mining under this permit shall
2329 be delineated on the ground by five-foot-high metal posts at least five inches in diameter
2330 and painted in alternate one foot stripes of red and white. These posts shall be so
2331 located as to clearly define the area in which the mining is permitted. They shall be
2332 located, and their location certified, by a certified land surveyor. If this condition is not
2333 satisfied within 90 days of approval, the use permit shall be void.
2334
- 2335 6. In the event that the Board's approval of this use permit is appealed, all
2336 conditions requiring action within 90 days will be deemed satisfied if the required actions
2337 are taken within 90 days of final action on the appeal.
2338
- 2339 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2340 state and local regulations administered under such act applicable to the property, and
2341 shall furnish to the Planning Office copies of all reports required by such act or
2342 regulations.
2343
- 2344 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
2345 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
2346
- 2347 9. No operations of any kind are to be conducted at the site on Sundays or national
2348 holidays.
2349
- 2350 10. Routes of ingress and egress shall be over the applicant's rights of ways to the
2351 loading area at the James River as outlined on the map filed with the application.
2352
- 2353 11. The applicant shall post and maintain a sign at the entrance to the mining site
2354 stating the name of the operator, the use permit number, the mine license number, and
2355 the telephone number of the operator. The sign shall be 12 square feet in area and the
2356 letters shall be three inches high.
2357
- 2358 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
2359 along the perimeter of the property. The letters shall be three inches high. The
2360 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to
2361 enforce the "No Trespassing" regulations, and agreeing to send a representative to
2362 testify in court as required or requested by the Division of Police.
2363
- 2364 13. All roads used in connection with this use permit shall be effectively treated with
2365 calcium chloride or other wetting agents to eliminate any dust nuisance.
2366
- 2367 14. The applicant shall maintain the property, fences, and roads in a safe and secure
2368 condition indefinitely, or convert the property to some other safe use.
2369

2370 15. If, in the course of its preliminary investigation or operations, the applicant
2371 discovers evidence of cultural or historical resources, or an endangered species, or a
2372 significant habitat, it shall notify appropriate authorities and provide them with an
2373 opportunity to investigate the site. The applicant shall report the results of any such
2374 investigation to the Planning Office.

2375
2376 16. If water wells located on surrounding properties are adversely affected, and the
2377 extraction operations on this site are suspected as the cause, the effected property
2378 owners may present to the Board evidence that the extraction operation is a contributing
2379 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
2380 the operator may be required to correct the problem.

2381
2382 17. Open and vertical excavations having a depth of 10 feet or more, for a period of
2383 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the
2384 public safety.

2385
2386 18. Topsoil shall not be removed from any part of the property outside of the area in
2387 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
2388 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
2389 within the authorized mining area and provided with adequate erosion control
2390 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
2391 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
2392 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
2393 tests have been provided to the County.

2394
2395 19. No offsite-generated materials shall be deposited on the mining site without prior
2396 written approval of the Director of Planning. To obtain such approval, the operator shall
2397 submit a request stating the origin, nature and quantity of material to be deposited, and
2398 certifying that no contaminated or hazardous material will be included. The material to
2399 be deposited on the site shall be limited to imperishable materials such as stone, bricks,
2400 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any
2401 hazardous materials as defined by the Virginia Hazardous Waste Management
2402 Regulations.

2403
2404 20. A superintendent, who shall be personally familiar with all the terms and
2405 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms
2406 and conditions of this use permit, shall be present at the beginning and conclusion of
2407 operations each work day to see that all the conditions of the Code and this use permit
2408 are observed.

2409
2410 21. A progress report shall be submitted to the Board on June 30, 2004. This
2411 progress report must contain information concerning how much property has been
2412 mined to date of the report, the amount of land left to be mined, how much rehabilitation
2413 has been performed, when and how the remaining amount of land will be rehabilitated,
2414 and any other pertinent information about the operation that would be helpful to the
2415 Board.

2416
2417 22. Excavation shall be discontinued by June 30, 2005, and restoration
2418 accomplished by not later than June 30, 2006, unless a new permit is granted by the
2419 Board of Zoning Appeals.

2420
2421 23. The rehabilitation of the property shall take place simultaneously with the mining
2422 process. Rehabilitation shall not be considered completed until the mined area is
2423 covered completely with permanent vegetation.

2424
2425 24. All drainage and erosion and sediment control measures shall conform to the
2426 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
2427 drainage structures in place prior to October 14, 1992 and which do not conform to the
2428 Mineral Mining Manual Drainage Handbook may remain in place until such time as any
2429 reconstruction is required at which time said structures shall be brought into
2430 conformance with the Mineral Mining Manual Drainage Handbook.

2431
2432 25. Failure to comply with any of the foregoing conditions shall automatically void this
2433 permit.

2434
2435 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2436 Negative: 0
2437 Absent: Balfour 1

2438
2439 The Board granted the request because it found the proposed use will be in substantial
2440 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2441
2442 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2443 Kirkland, the Board **granted** application **UP-11-2003** for a conditional use to extract
2444 materials from the earth at 4721 Curles Neck Road (Parcel 836-667-5251). The Board
2445 granted the use permit subject to the following conditions:

2446
2447 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of
2448 the County Code.

2449
2450 2. Before beginning any work, the applicant shall provide a financial guaranty in an
2451 amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total of
2452 \$126,920.00, guaranteeing that the land will be restored to a reasonably level and
2453 drainable condition. This permit does not become valid until the financial guaranty has
2454 been approved by the County Attorney. The financial guaranty may provide for
2455 termination after 90 days notice in writing to the County. In the event of termination, this
2456 permit shall be void, and work incident thereto shall cease. Within the next 90 days the
2457 applicant shall restore the land as provided for under the conditions of this use permit.
2458 Termination of such financial guaranty shall not relieve the applicant from its obligation
2459 to indemnify the County of Henrico for any breach of the conditions of this use permit. If
2460 this condition is not satisfied within 90 days of approval, the use permit shall be void.

2461

- 2462 3. Before beginning any work, the applicant shall submit erosion control plans to the
2463 Department of Public Works for review and approval. Throughout the life of the
2464 operation, the applicant shall continuously satisfy the Department of Public Works that
2465 erosion control procedures are properly maintained, and shall furnish plans and bonds
2466 that the department deems necessary. The applicant shall provide certification from a
2467 licensed professional engineer that dams, embankments and sediment control
2468 structures meet the approved design criteria as set forth by the State. If this condition is
2469 not satisfied within 90 days of approval, the use permit shall be void.
2470
- 2471 4. Before beginning any work, the applicant shall obtain a mine license from the
2472 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied
2473 within 90 days of approval, the use permit shall be void.
2474
- 2475 5. Before beginning any work, the areas approved for mining under this permit shall
2476 be delineated on the ground by five-foot-high metal posts at least five inches in diameter
2477 and painted in alternate one foot stripes of red and white. These posts shall be so
2478 located as to clearly define the area in which the mining is permitted. They shall be
2479 located, and their location certified, by a certified land surveyor. If this condition is not
2480 satisfied within 90 days of approval, the use permit shall be void.
2481
- 2482 6. In the event that the Board's approval of this use permit is appealed, all
2483 conditions requiring action within 90 days will be deemed satisfied if the required actions
2484 are taken within 90 days of final action on the appeal.
2485
- 2486 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2487 state and local regulations administered under such act applicable to the property, and
2488 shall furnish to the Planning Office copies of all reports required by such act or
2489 regulations.
2490
- 2491 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
2492 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.
2493
- 2494 9. No operations of any kind are to be conducted at the site on Sundays or national
2495 holidays.
2496
- 2497 10. Routes of ingress and egress shall be over the applicant's rights of ways to the
2498 loading area at the James River as outlined on the map filed with the application.
2499
- 2500 11. The applicant shall post and maintain a sign at the entrance to the mining site
2501 stating the name of the operator, the use permit number, the mine license number, and
2502 the telephone number of the operator. The sign shall be 12 square feet in area and the
2503 letters shall be three inches high.
2504
- 2505 12. The applicant shall post and maintain "No Trespassing" signs every 250 feet
2506 along the perimeter of the property. The letters shall be three inches high. The
2507 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to

2508 enforce the "No Trespassing" regulations, and agreeing to send a representative to
2509 testify in court as required or requested by the Division of Police.

2510
2511 13. All roads used in connection with this use permit shall be effectively treated with
2512 calcium chloride or other wetting agents to eliminate any dust nuisance.

2513
2514 14. The applicant shall maintain the property, fences, and roads in a safe and secure
2515 condition indefinitely, or convert the property to some other safe use.

2516
2517 15. If, in the course of its preliminary investigation or operations, the applicant
2518 discovers evidence of cultural or historical resources, or an endangered species, or a
2519 significant habitat, it shall notify appropriate authorities and provide them with an
2520 opportunity to investigate the site. The applicant shall report the results of any such
2521 investigation to the Planning Office.

2522
2523 16. If water wells located on surrounding properties are adversely affected, and the
2524 extraction operations on this site are suspected as the cause, the effected property
2525 owners may present to the Board evidence that the extraction operation is a contributing
2526 factor. After a hearing by the Board, this use permit may be revoked or suspended, and
2527 the operator may be required to correct the problem.

2528
2529 17. Open and vertical excavations having a depth of 10 feet or more, for a period of
2530 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the
2531 public safety.

2532
2533 18. Topsoil shall not be removed from any part of the property outside of the area in
2534 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
2535 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
2536 within the authorized mining area and provided with adequate erosion control
2537 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
2538 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
2539 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
2540 tests have been provided to the County.

2541
2542 19. No offsite-generated materials shall be deposited on the mining site without prior
2543 written approval of the Director of Planning. To obtain such approval, the operator shall
2544 submit a request stating the origin, nature and quantity of material to be deposited, and
2545 certifying that no contaminated or hazardous material will be included. The material to
2546 be deposited on the site shall be limited to imperishable materials such as stone, bricks,
2547 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any
2548 hazardous materials as defined by the Virginia Hazardous Waste Management
2549 Regulations.

2550
2551 20. A superintendent, who shall be personally familiar with all the terms and
2552 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms
2553 and conditions of this use permit, shall be present at the beginning and conclusion of

2554 operations each work day to see that all the conditions of the Code and this use permit
2555 are observed.

2556
2557 21. A progress report shall be submitted to the Board on June 30, 2004. This
2558 progress report must contain information concerning how much property has been
2559 mined to date of the report, the amount of land left to be mined, how much rehabilitation
2560 has been performed, when and how the remaining amount of land will be rehabilitated,
2561 and any other pertinent information about the operation that would be helpful to the
2562 Board.

2563
2564 22. Excavation shall be discontinued by June 30, 2005, and restoration
2565 accomplished by not later than June 30, 2006, unless a new permit is granted by the
2566 Board of Zoning Appeals.

2567
2568 23. The rehabilitation of the property shall take place simultaneously with the mining
2569 process. Rehabilitation shall not be considered completed until the mined area is
2570 covered completely with permanent vegetation.

2571
2572 24. All drainage and erosion and sediment control measures shall conform to the
2573 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
2574 drainage structures in place prior to October 14, 1992 and which do not conform to the
2575 Mineral Mining Manual Drainage Handbook may remain in place until such time as any
2576 reconstruction is required at which time said structures shall be brought into
2577 conformance with the Mineral Mining Manual Drainage Handbook.

2578
2579 25. Failure to comply with any of the foregoing conditions shall automatically void this
2580 permit.

2581
2582 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2583 Negative: 0
2584 Absent: Balfour 1

2585
2586 The Board granted the request because it found the proposed use will be in substantial
2587 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2588
2589 **A - 72-2003 HUGH AND MARJORIE COLLIER** request a variance from
2590 Section 24-95(c)(1) of Chapter 24 of the County Code to enclose
2591 the existing porch at 7207 Margaret Avenue (Ginter Gardens)
2592 (Parcel 780-750-2873), zoned R-4, One-family Residence District
2593 (Fairfield). The minimum side yard setback and total side yard
2594 setback are not met. The applicants have 6 feet minimum side
2595 yard setback and 16.5 feet total side yard setback, where the Code
2596 requires 7 feet minimum side yard setback and 19.5 feet total side
2597 yard setback. The applicants request a variance of 1 foot minimum
2598 side yard setback and 3 feet total side yard setback.

2599

2600 Mr. Wright - Please state your name. Does anyone else desire to speak?
2601 Would you raise your right hand and be sworn please?
2602
2603 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2604 truth, the whole truth, and nothing but the truth, so help you God?
2605
2606 Mr. Farrar - I do. I'm Terry Farrar. We have an existing 8 by 12
2607 structure; which was previously a screened-in porch, and now it's an existing roof with a
2608 concrete slab foundation on it. The only hardship we have here is a personal hardship
2609 where they definitely need the extra living space and something that they will be able to
2610 use year round. They had it as a screened porch, which was originally constructed in
2611 1947. That obviously didn't meet their needs. They've torn that out two times, and now
2612 they want something a little more permanent. We're asking for one foot minimum on
2613 the side yard setback and three feet total on the side yard.
2614
2615 Mr. Wright - What will this new structure be used for?
2616
2617 Mr. Farrar - A sunroom.
2618
2619 Mr. Wright - How many rooms does this house have already?
2620
2621 Mr. Farrar - I'm not real sure. I've got a picture, if you'd like to see it, of
2622 what the actual wall units would look like.
2623
2624 Mr. Wright - How many people occupy this home?
2625
2626 Mr. Farrar - Only two.
2627
2628 Mr. McKinney - Are you the contractor, Mr. Farrar?
2629
2630 Mr. Farrar - Yes sir, with the Melani Bros.
2631
2632 Mr. Nunnally - Are you going to use that type of glass that you can drive a
2633 nail with?
2634
2635 Mr. Farrar - That's on our regular windows. Actually, you can drive your
2636 car over this one.
2637
2638 Mr. Wright - Any further questions by members of the Board? Anyone
2639 here in opposition to this request? Hearing none, that concludes the case. Thank you.
2640
2641 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2642 Nunnally, the Board **granted** application **A-72-2003** for a variance to enclose the
2643 existing porch at 7207 Margaret Avenue (Ginter Gardens) (Parcel 780-750-2873). The
2644 Board granted the variance subject to the following conditions:
2645

- 2646
 2647 1. The new construction shall match the existing dwelling as nearly as practical.
 2648
 2649 2. The property shall be developed in substantial conformance with the plan filed
 2650 with the application. No substantial changes or additions to the layout may be made
 2651 without the approval of the Board of Zoning Appeals.
 2652

2653 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
 2654 Negative: 0
 2655 Absent: Balfour 1
 2656

2657 The Board granted this request, as it found from the evidence presented that, due to the
 2658 unique circumstances of the subject property, strict application of the County Code
 2659 would produce undue hardship not generally shared by other properties in the area, and
 2660 authorizing this variance will neither cause a substantial detriment to adjacent property
 2661 nor materially impair the purpose of the zoning regulations.
 2662

2663 **A - 73-2003** **DEBORAH D. RANDOLPH** requests a variance from Section 24-
 2664 94 of Chapter 24 of the County Code to allow the existing sunroom
 2665 to remain at 1404 Middleberry Drive (Foxboro North) (Parcel 804-
 2666 705-3532), zoned R-3, One-family Residence District (Varina). The
 2667 minimum side yard setback and total side yard setback are not met.
 2668 The applicant has 4 feet minimum side yard setback and 22 feet
 2669 total side yard setback, where the Code requires 12 feet minimum
 2670 side yard setback and 30 feet total side yard setback. The
 2671 applicant requests a variance of 8 feet minimum side yard setback
 2672 and 8 feet total side yard setback.
 2673

2674 Mr. Wright - Please state your name. Does anyone else desire to speak?
 2675 Would you raise your right hand and be sworn please?
 2676

2677 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 2678 truth, the whole truth, and nothing but the truth, so help you God?
 2679

2680 Ms. Randolph - I do. My name is Deborah D. Randolph. I have an existing
 2681 sunroom that I applied for a permit for back in 1992, and I was granted the permit.
 2682 What happened is, I'd planned on selling my home. During the inspection, they asked
 2683 for the building permit, which I presented to them. It came up that I was eight feet short
 2684 of the side yard setback and a total of eight feet of the total side yard setback. The
 2685 reason I am asking for this variance is so that I can sell this home and move to the new
 2686 home that I'm getting for my grandchildren, who I don't get to see that often because my
 2687 son is in the service. During the time we were over in Iran, I had the opportunity to keep
 2688 my grandkids, but I didn't have the space for them. So I decided to sell my home and
 2689 get a little bit bigger home, since I don't get to see my grandkids much. I'm asking for a
 2690 variance to sell the home.
 2691

2692 Mr. Wright - On this structure, the sunroom is already built?
2693
2694 Ms. Randolph - In 1992.
2695
2696 Mr. Wright - A permit was issued, but evidently it was built larger than the
2697 permit permitted, is that correct? Or the County made an error?
2698
2699 Ms. Randolph - No, I spoke with Mr. Blankinship.
2700
2701 Mr. Blankinship - I didn't do the research on this one myself. Do you happen
2702 to know (*speaking to Mr. Tyson*)?
2703
2704 Mr. Wright - It says she got a permit in 1992.
2705
2706 Mr. Nunnally - "The applicant was issued a building permit for the
2707 construction of the sunroom, apparently in error." So the error was on the County. Do
2708 you have a contract on your house now?
2709
2710 Ms. Randolph - Yes sir. I hope that if you pass this, I'll be able to close and
2711 move the early part of next week.
2712
2713 Mr. Wright - Any further questions of members of the Board? Anyone
2714 here in opposition to this request? Hearing none, that concludes the case. Thank you.
2715
2716 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2717 Kirkland, the Board **granted** application **A-73-2003** for a variance to allow the existing
2718 sunroom to remain at 1404 Middleberry Drive (Foxboro North) (Parcel 804-705-3532).
2719 The Board granted the variance subject to the following condition:
2720
2721 1. This variance applies only to the minimum and total side yard setbacks for the
2722 existing sunroom. All other applicable regulations of the County Code shall remain in
2723 force.
2724
2725 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2726 Negative: 0
2727 Absent: Balfour 1
2728
2729 The Board granted this request, as it found from the evidence presented that, due to the
2730 unique circumstances of the subject property, strict application of the County Code
2731 would produce undue hardship not generally shared by other properties in the area, and
2732 authorizing this variance will neither cause a substantial detriment to adjacent property
2733 nor materially impair the purpose of the zoning regulations.
2734
2735 **A - 74-2003** **UNION BANK & TRUST CO.** requests a variance from Section 24-
2736 94 of Chapter 24 of the County Code to build a drive-up canopy at
2737 1773 North Parham Road (Parcel 754-747-2519), zoned O-2,

2738 Office District (Three Chopt). The front yard setback is not met.
2739 The applicant proposes 20 feet front yard setback, where the Code
2740 requires 40 feet front yard setback. The applicant requests a
2741 variance of 20 feet front yard setback.
2742

2743 Mr. Wright - Please state your name. Does anyone else desire to speak?
2744 Would you raise your right hand and be sworn please?
2745

2746 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2747 truth, the whole truth, and nothing but the truth, so help you God?
2748

2749 Mr. Weisensale - I do. My name's Steven Weisensale, with the architects
2750 Dayton and Thompson; we're the architect for the project. I brought with me Mr.
2751 George Washen, Jr., who's Senior Vice President of Union Bank and Trust, based in
2752 Bowling Green. What the bank is looking to do is to open their first office here in
2753 Henrico County. They have purchased this property for that purpose. This facility,
2754 since it was built in the mid-'70's, has always served as a financial institution on the first
2755 floor, with tenant space upstairs. Union Bank has already occupied approximately a
2756 third of the first floor, to the left in the slide that you have there, as a business office,
2757 which they are now operating.
2758

2759 They're looking to renovate the existing branch on the right-hand side of the building.
2760 When the building was granted a POD in 1974, it included two drive-up lanes that
2761 encroached into the 40-foot setback, but those lanes did not have a canopy built over
2762 them, as you can see there. There's a small vinyl canopy that was built over there; that,
2763 as you can imagine, is quite inadequate in any kind of weather condition. What the
2764 bank is looking to do, is to activate both those lanes, but to take the lanes up and
2765 rebuild them to higher construction standards and to accommodate the automatic teller
2766 tubes and the automatic teller machine that are typical for banking in this type of work.
2767 We are also going to do some renovation to the exterior of the building. You can see in
2768 some spots it's kind of forlorn-looking, and we're going to clean it up and rework the
2769 landscaping and the paving as well, but since that work really wasn't under the purview
2770 of the BZA, we didn't want to complicate the application with that. What we're asking for
2771 here, is for a 20-foot variance to allow us to build a canopy over the existing paved area,
2772 and we would actually move the curb that you see there, farthest from the building.
2773 That curb would be moved approximately two feet closer to the building to narrow those
2774 lanes up a little bit, and we would re-landscape that area as well.
2775

2776 Mr. Wright - Any questions of members of the Board? Is there anyone
2777 here in opposition to this request? Hearing none, that concludes the case. Thank you
2778 very much for appearing.
2779

2780 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2781 Nunnally, the Board **granted** application **A-74-2003** for a variance to build a drive-up
2782 canopy at 1773 North Parham Road (Parcel 754-747-2519). The Board granted the
2783 variance subject to the following conditions:

2784
2785 1. Only the improvements shown on the plan filed with the application may be
2786 constructed pursuant to this approval. No substantial changes or additions to the layout
2787 may be made without the approval of the Board of Zoning Appeals. Any additional
2788 improvements shall comply with the applicable regulations of the County Code.

2789
2790 2. Any new exterior lighting shall be shielded to direct light away from adjacent
2791 property and streets.

2792
2793 3. The conditions of the approved Plan of Development shall remain in force.

2794
2795 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2796 Negative: 0
2797 Absent: Balfour 1

2798
2799 The Board granted this request, as it found from the evidence presented that, due to the
2800 unique circumstances of the subject property, strict application of the County Code
2801 would produce undue hardship not generally shared by other properties in the area, and
2802 authorizing this variance will neither cause a substantial detriment to adjacent property
2803 nor materially impair the purpose of the zoning regulations.

2804
2805 **A - 75-2003** **DAVID S. WOOLARD** requests a variance from Section 24-9 of
2806 Chapter 24 of the County Code to build a one-family dwelling at
2807 8470 Green Peace Lane (Parcel 854-677-9894), zoned A-1,
2808 Agricultural District (Varina). The public street frontage requirement
2809 is not met. The applicant has 0 feet public street frontage, where
2810 the Code requires 50 feet public street frontage. The applicant
2811 requests a variance of 50 feet public street frontage.

2812
2813 Mr. Wright - Please state your name. Does anyone else desire to speak?
2814 Would you raise your right hand and be sworn please?

2815
2816 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2817 truth, the whole truth, and nothing but the truth, so help you God?

2818
2819 Mr. Woolard - I do, so help me God. My name is David S. Woolard. What
2820 I've just purchased is a 16-acre tract on Green Peace, and I want to put one single-
2821 family dwelling on it, so live in it for myself. That's basically it, and it's just a private
2822 road, and there are four or five houses on that road, and I don't think it would impact
2823 anybody.

2824
2825 Mr. Wright - Who maintains that road?

2826
2827 Mr. Woolard - I'm really not sure. There's a guy at the end of the road who
2828 puts gravel in there and if they have a maintenance agreement, I'd be glad to sign that
2829 too.

2830
2831 Mr. Wright - How wide is it?
2832
2833 Mr. Woolard - The road looks like it's about 50 feet; I have not measured
2834 it, and if it got down to it, I would donate a certain section if the road needed to be
2835 widened.
2836
2837 Mr. Wright - Have you read these conditions? You see that you're
2838 responsible for keeping the road up. The County doesn't assume any responsibility.
2839
2840 Mr. Woolard - Yes I have. I understand that. There was one other thing.
2841 The people who had it before me had already put a well in. They already have
2842 electricity to the lot and had planned on building on it, and he suffered a stroke and
2843 could not build on it. That's the reason for his selling it.
2844
2845 Mr. Nunnally - What size home were you planning on building, Mr.
2846 Woolard?
2847
2848 Mr. Woolard - Probably about 1500-1600 square feet, and maybe with an
2849 attached garage.
2850
2851 Mr. Wright - Is there anyone here in opposition to this request? Hearing
2852 none, that concludes the case. Thanks very much for appearing.
2853
2854 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2855 Kirkland, the Board **granted** application **A-75-2003** for a variance to build a one-family
2856 dwelling at 8470 Green Peace Lane (Parcel 854-677-9894). The Board granted the
2857 variance subject to the following conditions:
2858
2859 1. This variance applies only to the public street frontage requirement. All other
2860 applicable regulations of the County Code shall remain in force.
2861
2862 2. At the time of building permit application, the applicant shall submit the
2863 necessary information to the Department of Public Works to ensure compliance with the
2864 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2865 water quality standards.
2866
2867 3. Approval of this request does not imply that a building permit will be issued.
2868 Building permit approval is contingent on Health Department requirements, including,
2869 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
2870 of a well location.
2871
2872 4. The applicant shall present proof with the building permit application that a legal
2873 access to the property has been obtained.
2874

2875 5. The owners of the property, and their heirs or assigns, shall accept responsibility
2876 for maintaining access to the property until such a time as the access is improved to
2877 County standards and accepted into the County road system for maintenance.
2878

2879 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2880 Negative: 0
2881 Absent: Balfour 1
2882

2883 The Board granted this request, as it found from the evidence presented that, due to the
2884 unique circumstances of the subject property, strict application of the County Code
2885 would produce undue hardship not generally shared by other properties in the area, and
2886 authorizing this variance will neither cause a substantial detriment to adjacent property
2887 nor materially impair the purpose of the zoning regulations.
2888

2889 **A - 76-2003** **N. JOSEPH COSBY, JR.** requests a variance from Section 24-
2890 95(q)(5) of Chapter 24 of the County Code to build an addition at
2891 11200 Churchwood Court (Church Run) (Parcel 745-757-5236),
2892 zoned R-3C, One-family Residence District (Conditional) (Three
2893 Chopt). The rear yard setback is not met. The applicant proposes
2894 26 feet rear yard setback, where the Code requires 35 feet rear
2895 yard setback. The applicant requests a variance of 9 feet rear yard
2896 setback.
2897

2898 Mr. Wright - Please state your name. Does anyone else desire to speak?
2899 Would you raise your right hand and be sworn please?
2900

2901 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2902 truth, the whole truth, and nothing but the truth, so help you God?
2903

2904 Mr. Cosby - I do. My name is Joe Cosby. My wife and I have imported
2905 Mr. Joe Yates here, an architect, to assist us in designing an addition to the house that
2906 consists of a sunroom and a kitchen addition, as outlined in the drawing that you have
2907 up on the screen. The lot that we occupy is a pie-shaped lot. The addition does extend
2908 to the rear of the property and violates the setback requirement along the rear.
2909 Immediately to the rear of our property is a conservation area that is wooded. I would
2910 estimate the depth of that conservation area to be about 150 feet. My neighbor to the
2911 immediate left of this drawing, on the side of my house where the addition will be built,
2912 has expressed no opposition to this addition. In fact, the addition does not actually
2913 encroach upon the side yard setback at all.
2914

2915 Mr. Wright - Anything further? Any questions by members of the Board?
2916 Anyone here in opposition to this request? Hearing none, that concludes the case.
2917 Thank you.
2918

2919 Mr. Cosby - I do have a letter from my next-door neighbor that I did send
2920 to the Board, but if you did not receive it, I could get you a copy today.

2921 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2922 Kirkland, the Board **granted** application **A-76-2003** for a variance to build an addition at
2923 11200 Churchwood Court (Church Run) (Parcel 745-757-5236). The Board granted the
2924 variance subject to the following conditions:

- 2925
- 2926 1. The new construction shall match the existing dwelling as nearly as practical.
 - 2927
 - 2928 2. The property shall be developed in substantial conformance with the plan
2929 filed with the application. No substantial changes or additions to the layout may be
2930 made without the approval of the Board of Zoning Appeals.

2931

| | | |
|-------------------|--------------------------------------|---|
| 2932 Affirmative: | Kirkland, McKinney, Nunnally, Wright | 4 |
| 2933 Negative: | | 0 |
| 2934 Absent: | Balfour | 1 |

2935

2936 The Board granted this request, as it found from the evidence presented that, due to the
2937 unique circumstances of the subject property, strict application of the County Code
2938 would produce undue hardship not generally shared by other properties in the area, and
2939 authorizing this variance will neither cause a substantial detriment to adjacent property
2940 nor materially impair the purpose of the zoning regulations.

2941

2942 **A - 77-2003** **BRUCE AND JOANNE DUFFY** request a variance from Section
2943 24-95(i)(1) of Chapter 24 of the County Code to build a deck at
2944 1608 Cedar Grove Terrace (Cedar Grove) (Parcel 777-762-3657),
2945 zoned R-3C, One-family Residence District (Conditional) (Fairfield).
2946 The rear yard setback is not met. The applicants propose 22 feet
2947 rear yard setback, where the Code requires 30 feet rear yard
2948 setback. The applicants request a variance of 8 feet rear yard
2949 setback.

2950

2951 Mr. Wright - Please state your name. Does anyone else desire to speak?
2952 Would you raise your right hand and be sworn please?

2953

2954 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2955 truth, the whole truth, and nothing but the truth, so help you God?

2956

2957 Mr. Duffy - Yes I do. My name is Bruce Duffy. My wife and I would like
2958 to build a deck on the back of our house, and we live on a cul-de-sac, so we're on a
2959 triangle-shaped lot as you can see. The size of the deck that we want to build extends
2960 20 feet from the house, and that puts us into the rear setback of the property. We're
2961 asking for a variance to go only eight feet into that. We've talked to several neighbors;
2962 nobody has a problem, and our property backs up into the wooded common area, so
2963 there are no neighbors behind us.

2964

2965 Mr. Wright - Have you read the suggested conditions?

2966

2967 Mr. Duffy - Yes.

2968
2969 Mr. Wright - Any questions by members of the Board? Anyone here in
2970 opposition to this request. Hearing none, that concludes the case. Thank you.

2971
2972 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
2973 Kirkland, the Board **granted** application **A-77-2003** for a variance to build a deck at
2974 1608 Cedar Grove Terrace (Cedar Grove) (Parcel 777-762-3657). The Board granted
2975 the variance subject to the following conditions:

2976
2977 1. The new construction shall match the existing dwelling as nearly as practical.

2978
2979 2. The property shall be developed in substantial conformance with the plan
2980 filed with the application. No substantial changes or additions to the layout may be
2981 made without the approval of the Board of Zoning Appeals.

2982
2983 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
2984 Negative: 0
2985 Absent: Balfour 1

2986
2987 The Board granted this request, as it found from the evidence presented that, due to the
2988 unique circumstances of the subject property, strict application of the County Code
2989 would produce undue hardship not generally shared by other properties in the area, and
2990 authorizing this variance will neither cause a substantial detriment to adjacent property
2991 nor materially impair the purpose of the zoning regulations.

2992
2993 **A - 78-2003** **CLYDE AND EDITH SHINAULT** request a variance from Section
2994 24-95(c)(1) of Chapter 24 of the County Code to enclose the
2995 existing porch at 5905 Shrubbery Hill Road (Chamberlayne Farms)
2996 (Parcel 788-752-9698), zoned R-2A, One-family Residence District
2997 (Fairfield). The total side yard setback is not met. The applicants
2998 have 22 feet total side yard setback, where the Code requires 27
2999 feet total side yard setback. The applicants request a variance of 5
3000 feet total side yard setback.

3001
3002 Mr. Wright - Please state your name. Does anyone else desire to speak?
3003 Would you raise your right hand and be sworn please?

3004
3005 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3006 truth, the whole truth, and nothing but the truth, so help you God?

3007
3008 Mr. Britt - I do. I'm George Britt, with Melani Bros., contractor for the
3009 homeowners. The Shinaults have an existing 12 by 16 screened porch with a brick
3010 foundation that they simply wish to enclose, and unfortunately, and this has existed
3011 since the house was built, the side yard setbacks are not met. Mr. Farrar, on a previous
3012 case, gave you a picture of what we're doing. It's very similar to the picture that he just

3013 gave you. We're just simply asking for a variance so that they can enjoy extended use
3014 of this room.

3015
3016 M. Wright - What type of construction would this be?

3017
3018 Mr. Britt - You have the picture – I can explain further if need be.

3019
3020 Mr. Wright - Any questions by members of the Board? Anyone here in
3021 opposition to this case? Hearing none, that concludes the case.

3022
3023 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
3024 Nunnally, the Board **granted** application **A-78-2003** for a variance to enclose the
3025 existing porch at 5905 Shrubbery Hill Road (Chamberlayne Farms) (Parcel 788-752-
3026 9698). The Board granted the variance subject to the following conditions:

3027
3028 1. Only the improvements shown on the plan filed with the application may be
3029 constructed pursuant to this approval. No substantial changes or additions to the layout
3030 may be made without the approval of the Board of Zoning Appeals. Any additional
3031 improvements shall comply with the applicable regulations of the County Code.

3032
3033 2. The new construction shall match the existing dwelling as nearly as practical.

3034
3035 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
3036 Negative: 0
3037 Absent: Balfour 1

3038
3039 The Board granted this request, as it found from the evidence presented that, due to the
3040 unique circumstances of the subject property, strict application of the County Code
3041 would produce undue hardship not generally shared by other properties in the area, and
3042 authorizing this variance will neither cause a substantial detriment to adjacent property
3043 nor materially impair the purpose of the zoning regulations.

3044
3045 Mr. Blankinship - The next two cases are companion cases.

3046
3047 **A - 79-2003** **DONALD N. BLAKE** requests a variance from Section 24-9 of
3048 Chapter 24 of the County Code to build a one-family dwelling at
3049 11750 Old Washington Highway (Lakeview) (Parcel 772-777-4185),
3050 zoned A-1, Agricultural District (Brookland). The public street
3051 frontage requirement is not met. The applicant has 0 feet public
3052 street frontage, where the Code requires 50 feet public street
3053 frontage. The applicant requests a variance of 50 public street
3054 frontage.

3055
3056 **A - 80-2003** **DONALD N. BLAKE** requests a variance from Sections 24-
3057 95(i)(2)(b), 24-94 and 24-9 of Chapter 24 of the County Code to
3058 build one-family dwelling and a barn at 11760 Old Washington

3059 Highway (Lakeview) (Parcel 772-778-4418), zoned A-1, Agricultural
3060 District (Brookland). The height of accessory structure, height of
3061 principal structure, and public street frontage requirement are not
3062 met. The applicant has 0 feet public street frontage and proposes
3063 an accessory structure 32 feet tall and a dwelling 41 feet tall, where
3064 the Code requires 50 feet public street frontage and allows
3065 accessory structures 15 feet tall and dwellings 35 feet tall. The
3066 applicant requests a variance of 50 feet public street frontage, 17
3067 feet accessory structure height, and 6 feet dwelling height.
3068

3069 Mr. Wright - Please state your name. Does anyone else desire to speak?
3070 Would you raise your right hand and be sworn please?
3071

3072 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3073 truth, the whole truth, and nothing but the truth, so help you God?
3074

3075 Mr. Blake - Good morning, gentlemen. I'm Donald Blake. The first
3076 case, a two-acre parcel, I plan to build a house for my daughter and grandchildren, her
3077 family. I've acquired also the adjacent property to it. There are three parcels there, a
3078 three-acre parcel, a two-acre parcel, and a five-acre parcel. In the future, probably a
3079 year or so, there will be a subdivision that surrounds those three parcels, so the private
3080 road will address just the three residences that will be built there. The development is
3081 an old development, as your staff report says, and it's a 24-foot right-of-way into the
3082 property. The road has been cleared, and I think you have pictures showing the density
3083 of the woods there. There are no other dwellings around that would be affected by this.
3084 There are two neighbors that exist now. They are both pleased to have someone else
3085 come in and actually build larger homes than there are there.
3086

3087 Mr. Wright - Have you read the conditions that are proposed?
3088

3089 Mr. Blake - Yes I have. The fifty-foot right-of-way cannot be met on any
3090 of the lots there. The five-acre parcel, where I plan to build my own residence, we've
3091 asked for a variance for the height of the roof of the barn. The land falls front to rear.
3092 It's about ten feet back where the barn will be built, so the top of the roof will probably
3093 not be visible from any other home in the area. It backs up to the railroad tracks. It's a
3094 five-acre parcel. I'd like to build a two-story barn; it's been designed to look like a barn.
3095 My wife said it's got to look good if we're going to have it sitting back there. I want to
3096 put some vehicles in the first floor, then work space on the second floor. We've
3097 designed a rather expensive, nice-looking building, and a nice home, I think. We're still
3098 working on the roof. The house is wide. From the front it may not violate the height
3099 restriction. From the side, the underground basement, drive-in garage, it might
3100 possibly, but only if we can't work out the roof pitch so that we can have covered
3101 porches, front and rear. It's a wide house, so we may have to raise the roof up a little
3102 bit so that the roof line will still look good as it comes out to cover the porches. There's
3103 a picture in your packet showing the front and rear of the house. The engineer is still
3104 working with the roof, and we want to make sure it looks good, so we're not sure how

3105 much more steep we may have to push it up to so that it looks good from the front.
3106 Those are the three issues. The road, the height of the barn, and the height of the
3107 house. Bear in mind that on the five-acre parcel, probably no one, unless he drives into
3108 the driveway, will see the house or the barn. The two-acre parcel, unless my daughter
3109 cuts down all the trees, they're not likely to see anything there either. Of course we own
3110 the adjacent three-acre parcel to that. I'll be glad to answer any questions that you
3111 might have.

3112
3113 Mr. Wright - What's located to the rear of your property?

3114
3115 Mr. Blake - The railroad.

3116
3117 Mr. Wright - So it wouldn't impact that, would it?

3118
3119 Mr. Blake - The railroad might impact me a little bit, but I'm told by the
3120 neighbors out there that I'll get used to it. It's a good neighbor I think; it only comes by
3121 several times a day.

3122
3123 Mr. Wright - Any further questions by members of the Board? Anyone in
3124 opposition to this request? Thank you for appearing.

3125
3126 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
3127 Nunnally, the Board **granted** application **A-79-2003** for a variance to build a one-family
3128 dwelling at 11750 Old Washington Highway (Lakeview) (Parcel 772-777-4185). The
3129 Board granted the variance subject to the following conditions:

3130
3131 1. This variance applies only to the public street frontage requirement. All other
3132 applicable regulations of the County Code shall remain in force.

3133
3134 2. At the time of building permit application, the applicant shall submit the
3135 necessary information to the Department of Public Works to ensure compliance with the
3136 requirements of the Chesapeake Bay Preservation Act and the code requirements for
3137 water quality standards.

3138
3139 3. Approval of this request does not imply that a building permit will be issued.
3140 Building permit approval is contingent on Health Department requirements, including,
3141 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
3142 of a well location.

3143
3144 4. The applicant shall present proof with the building permit application that a legal
3145 access to the property has been obtained.

3146
3147 5. The owners of the property, and their heirs or assigns, shall accept responsibility
3148 for maintaining access to the property until such a time as the access is improved to
3149 County standards and accepted into the County road system for maintenance.

3150

| | | | |
|------|--------------|--------------------------------------|---|
| 3151 | Affirmative: | Kirkland, McKinney, Nunnally, Wright | 4 |
| 3152 | Negative: | | 0 |
| 3153 | Absent: | Balfour | 1 |

3154
 3155 The Board granted this request, as it found from the evidence presented that, due to the
 3156 unique circumstances of the subject property, strict application of the County Code
 3157 would produce undue hardship not generally shared by other properties in the area, and
 3158 authorizing this variance will neither cause a substantial detriment to adjacent property
 3159 nor materially impair the purpose of the zoning regulations.

3160
 3161 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
 3162 Nunnally, the Board **granted** application **A-80-2003** for a variance to build a one-family
 3163 dwelling and a barn at 11760 Old Washington Highway (Lakeview) (Parcel 772-778-
 3164 4418). The Board granted the variance subject to the following conditions:

3165
 3166 1. This variance applies only to the public street frontage and height requirements.
 3167 All other applicable regulations of the County Code shall remain in force.

3168
 3169 2. At the time of building permit application, the applicant shall submit the
 3170 necessary information to the Department of Public Works to ensure compliance with the
 3171 requirements of the Chesapeake Bay Preservation Act and the code requirements for
 3172 water quality standards.

3173
 3174 3. Approval of this request does not imply that a building permit will be issued.
 3175 Building permit approval is contingent on Health Department requirements, including,
 3176 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
 3177 of a well location.

3178
 3179 4. The applicant shall present proof with the building permit application that a legal
 3180 access to the property has been obtained.

3181
 3182 5. The owners of the property, and their heirs or assigns, shall accept responsibility
 3183 for maintaining access to the property until such a time as the access is improved to
 3184 County standards and accepted into the County road system for maintenance.

| | | | |
|------|--------------|--------------------------------------|---|
| 3185 | | | |
| 3186 | Affirmative: | Kirkland, McKinney, Nunnally, Wright | 4 |
| 3187 | Negative: | | 0 |
| 3188 | Absent: | Balfour | 1 |

3189
 3190 The Board granted this request, as it found from the evidence presented that, due to the
 3191 unique circumstances of the subject property, strict application of the County Code
 3192 would produce undue hardship not generally shared by other properties in the area, and
 3193 authorizing this variance will neither cause a substantial detriment to adjacent property
 3194 nor materially impair the purpose of the zoning regulations.

3195
 3196 **A - 81-2003** **ABID KRAK** requests a variance from Section 24-94 of Chapter 24

3197 of the County Code to build a one-family dwelling at 5401 Dickens
3198 Road (Parcel 773-744-3103 (part)), zoned R-2, One-family
3199 Residence District (Brookland). The total lot area requirement is
3200 not met. The applicant has 16,574 square feet total lot area, where
3201 the Code requires 18,000 square feet total lot area. The applicant
3202 requests a variance of 1,426 square feet total lot area.

3203
3204 Mr. Wright - Please state your name. Would you spell your last name,
3205 please.

3206
3207 Mr. Krak - Abid Krak.

3208
3209 Mr. Wright - Do we have any others who desire to speak in this case?
3210 Would you both raise your right hands and be sworn please?

3211
3212 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3213 truth, the whole truth, and nothing but the truth, so help you God?

3214
3215 Mr. Krak - Gentlemen, last year I applied for a variance, same variance.
3216 Maybe you know me by now. This year I applied for it a second time, just to show you
3217 and prove what I am capable to do here. There are 1400- and some square feet of land
3218 I request from you to build a house, second building on my property, to show the people
3219 around here. I'm going to build some kind of house nobody has built in this country yet.
3220 I've got some papers if you want to see how I'm going to build this house.

3221
3222 Mr. Wright - Yes sir, if you would, and we're going to need to keep those
3223 for 30 days, and then you can have them back. If you want to submit them to the
3224 Secretary, and he'll pass them on along here.

3225
3226 Mr. Krak - And also I ask the Planning Commission to provide me with
3227 a VCR. This tape will tell you, about 35 seconds on the tape, will tell you more than I
3228 can say in one hour. If I've got the VCR, just play the tape.

3229
3230 Mr. Blankinship - Just go ahead with the case, and when he returns, we'll get
3231 the tape.

3232
3233 Mr. Krak - That tape will tell you more than anything I say. Like I said, if
3234 you've got the VCR to provide, you'll see here what and how my house and the whole
3235 property were in a condition before, and what it is right now, how much work I've done,
3236 how much improvement I've done to this property. Second issue is about 50 feet right-
3237 of-way for Dickens Road. The next house down 5313 or something, I was surprised
3238 why our corners don't meet against Dickens Road up front. His property is about eleven
3239 feet more down toward Dickens Road, that corner I'm talking about, on the left-hand
3240 side, right there. If I had that corner to meet up down here, I'd be maybe needing 600
3241 square feet more land up front, plus, from Dickens Road to my property line up front,
3242 you've got maybe 32 feet or something to this corner. The easement covers more than

3243 2,000 square feet, just in this particular lot. I've got electric power lines and everything
3244 up front of my house. The easement took out maybe at least 3,000 square feet of the
3245 whole thing. I'm asking you again, to give me that 14-1500 square feet of land, or
3246 something, and I can build a house. That's my dream in here, to build some kind of
3247 house to be free of any fear about fire, about strong winds, tornados or hurricanes, or
3248 something. For example, I'm building a house, like I said, nobody has built yet this kind
3249 of house in this country. I'm putting a four-inch concrete slab on the pitched roof. That
3250 house will stay as long as this planet stays on. Thank you. And please, if I can get a
3251 VCR to show you this tape.

3252
3253 Mr. Blankinship - We're looking for our media staff who are going to help with
3254 that. Let me just point out that there are some photographs on the slide table, and also
3255 the photographs that were in the package, these were intended as matched pairs. On
3256 each page the top photograph is the way the property was when Mr. Krak applied last
3257 year, and the bottom photograph is what it looks like now.

3258
3259 Mr. Krak - Yes. These pictures will tell you approximately how much
3260 improvement I've done to this property.

3261
3262 Mr. Wright - Does that look like you've got grass now seeded?

3263
3264 Mr. Krak - Yes sir; it looks like carpet now. I love it.

3265
3266 Mr. Blankinship - The clearest sets we included in your package, and these
3267 others we left in the file.

3268
3269 Mr. Krak - The tape is about 35 or 40 seconds long; just pay attention
3270 please.

3271
3272 Mr. McKinney - What kind of work do you do, Mr. Krak.

3273
3274 Mr. Krak - Regarding the home building industry, I'm doing almost
3275 everything, a little bit of engineering, architectural, everything. I designed this new
3276 house. I got some experience from overseas, working in the southern part of Europe,
3277 all over the place. I came here about ten years ago, speaking no English at all, and
3278 working three jobs when I came out here. We bought our first house fifteen months
3279 after we came to this country, working three jobs. I had small kids when came out here,
3280 speaking no English at all. Then two years after Pay attention to this tape;
3281 this is the way the property looked before, when I got it. Just pay attention please, how
3282 much trash, and what a big jungle I had. Here I took out all stumps, roots and
3283 everything out of the ground, that covered more than two thirds of my lot here. See that
3284 little building behind here; that's my previous garage, right there. That thing is brand
3285 new now. You'll see at the end of the tape. This is the new, right now, what I had in my
3286 back or front yard, whatever, all cleaned out. I did a lot of work in my house, interior
3287 and exterior. From now on, some inside work I wanted to show you. There you go.
3288 That's my basement when I got it in December 26, 2000. My basement before, I'm

3289 sorry, just maybe 10-15 more seconds. I'm sorry it takes a long time, but I wanted to
3290 show you this. This year I've got a door to get out now, from my basement to outside.
3291 Pay attention right now, the basement after I got some. This is my basement now, a big
3292 party place. 1200 square feet, just one solid room. Now upstairs, the kitchen,
3293 December 24 or 22, when I moved into this place it was like in this condition. After that,
3294 right now, brand new. Now the tape will show my bathroom when I got in here, all
3295 rotten out, everything almost collapsing down through the floor. Bathroom before, and
3296 bathroom after, it will show right now. There you go, my bathroom after that. Brand
3297 new, everything, kitchen, living room I replaced, knocked out plaster, lattice and
3298 everything. That's my second floor, I'm just working on now. I'm living on my first floor.
3299 I just did the demolition a couple of days ago, finished up; I'm going to finish up the
3300 whole thing upstairs too. I just did the demolition to clear out everything, everything
3301 knocked out. I'm going to insulate it, new electrical, new plumbing, and everything, and
3302 put new sheetrock and everything. That house will be the nicest house in the
3303 neighborhood. That's why, gentlemen, I'm asking you to give me a chance. I've proved
3304 to you what I'm capable of doing.

3305
3306 Mr. McKinney - What are you going to do with this house when you build the
3307 next one?
3308

3309 Mr. Krak - I'm going to leave it in, and keep this house for a couple of
3310 years for you, for Henrico County, to make some kind of experiments, if you need to.
3311 Just leave it alone for two years, make all experiments in the house, to show what is the
3312 best house in the home-building market in the whole world today, and after that, I'll keep
3313 it, or if you want it, you can have it.
3314

3315 Mr. McKinney - Are you going to give it to us?
3316

3317 Mr. Krak - Let me say that. Mr. Blankinship knows I came out here to
3318 the Planning Office to ask Henrico to give me a building lot for it and provide me with
3319 materials. I'll build it for free and give it you. I'm capable to do this. I will do, but they
3320 don't have this kind of lot, and they don't do this kind of business here, and here I'm
3321 going to do the same thing, build a house to show you what's a house, and you guys
3322 make any kind of experiments you want to. Home inspection, what I'm doing in this kind
3323 of house. I'm sleeping in one bedroom and put the fire in the next room.
3324

3325 Mr. McKinney - You need to talk to your supervisor, Mr. Glover.
3326

3327 Mr. Krak - I don't know. But if I get the chance to build a house here,
3328 you guys can have it, for any experiments you need to, I don't care. I've got six
3329 bedrooms here in this house. I can stay there.
3330

3331 Mr. Kirkland - Mr. Krak, when you bought this property, you understood
3332 what you had. You had a home that was dilapidated and a garage, and the reason now
3333 that you're coming back, is that you want to build a second home on this property? But
3334 you understood that it didn't meet the requirements when you purchased it, I assume

3335 and that's why you're coming back for the variance now. I mean you understood that? I
3336 notice in this staff report that we got, there's some violations or something with the
3337 garage. Have you addressed all this information.
3338

3339 Mr. Krak - I'll address if you want me to, or you can address.
3340

3341 Mr. Kirkland - I just want to know if you're going to meet all these
3342 deadlines, it looks like somebody put down here. By the 15th you must get everything
3343 squared away.
3344

3345 Mr. Krak - Yes, just violation. You point to this violation, please. I don't
3346 know what kind of violation.
3347

3348 Mr. Kirkland - I assume someone's living in the garage.
3349

3350 Mr. Krak - Yes, my in-laws are living there, temporary.
3351

3352 Mr. Kirkland - The Code – that's still against the Code, and I don't care if
3353 it's for one second, it's against the Code.
3354

3355 Mr. Krak - What does "guest house" mean?
3356

3357 Mr. Kirkland - You can't -- that's not a "guest house." What did you get a
3358 permit for sir?
3359

3360 Mr. Krak - I didn't know, first of all, I can get

3361
3362 Mr. Kirkland - Wait a minute – you're going to build "the best house in the
3363 world," you should have known.
3364

3365 Mr. Krak - But let me say I applied for a building permit like a workshop
3366 last year.
3367

3368 Mr. Kirkland - Exactly.
3369

3370 Mr. Krak - Exactly. If I knew I could have a guest house. Don't mess
3371 with any violations, sir, I'm sorry. I don't mess with any violations. I did apply for a
3372 building permit to have a guest house, as I have it now. Guest house, not a workshop.
3373 I got now. I've got papers saved up in the County; I've got the guest house now. If I
3374 knew I could have a guest house, I'd apply for a guest house, but I knew back in
3375 November or beginning of December, I could have a guest house on the property, and
3376 the family stays there for temporarily, not for a long time. My in-laws, my Bosnian
3377 fellows. I came here first of the Bosnian family; my family was number one Bosnian
3378 family that came to the Richmond area about ten years ago. Since then we brought out
3379 a lot of Bosnian families. I sponsor nine families, I sponsor. You gentlemen know what
3380 it means to sponsor somebody when they arrive in this country, the responsibility, find

3381 them a place to live, find them a job, put kids in school, and everything. How much time
3382 I lost, me and my wife. If you need some references, please call Southern Baptist
3383 Convention Immigration Office, at 321-3305; ask for Richard Kline, and he'll tell you
3384 everything I've done for about more than a thousand Bosnian people here. Like I said, I
3385 sponsored nine families; most of them are in-laws, my brothers and sisters, whatever.
3386 They come out here; they stay with me for a short time of period. All of these nine
3387 families, gentlemen, own their own houses now in Henrico County. They own their own
3388 house, because of me. They got new jobs, good jobs, and everything, and you're
3389 welcome to make something about the Bosnian community here; every one of them did
3390 some improvement on their houses, because of me. My house was previous house,
3391 and this house, but I don't have enough time to do it right now; I'm doing all the
3392 renovation. My house was a boarding house for all these Bosnians who came in here
3393 first. They need any help with the translation, with finding jobs, we put kids in school,
3394 and everything; they ask me for help, with some help from the immigration office down
3395 there. That's why I've got these folks in the guest house now. They will find, I'll find
3396 them a house, their own house. The main reason why my sister-in-law stayed there, my
3397 wife's sister, she got injured on the job. Main reason why is to help them out; they
3398 stayed in an apartment before; her husband makes \$11 an hour; they can't afford to
3399 pay. She's out of the job since January 25 of 2001. She's even out of the hospital
3400 every now and then. She cut her hand; she had just recent surgery on April 13, 15, I'm
3401 not sure, and that's why they will stay with me for temporary, until I find the right place to
3402 stay.

3403
3404 Mr. Wright - It says that you would have them out by August 15; that's
3405 what the condition is. You will meet that?

3406
3407 Mr. Krak - What condition I'm supposed to meet, I'll meet. Just repeat
3408 it. Just repeat it. I need to know

3409
3410 Mr. Wright - That's what

3411
3412 Mr. Blankinship - Just abate the violation; which amounts to removing the
3413 kitchen from your building.

3414
3415 Mr. Krak - OK, the kitchen is, including the stove and the microwave
3416

3417
3418 Mr. Blankinship - And using the rear building in compliance with the Code, as
3419 a guest house, but not as a second dwelling.

3420
3421 Mr. Krak - I can still use this building as a guest house?

3422
3423 Mr. McKinney - Let me ask you a question. This petition you have, signed
3424 by the landowner – where do they live?

3425
3426 Mr. Kirkland - That's not him; that's another case.

3427
3428 Mr. Wright - Let's hear from the opposition, because the hour's getting
3429 late; if you'll just hold just a minute, then you'll have a chance to rebut. All right, sir, if
3430 you'll come forward.

3431
3432 Mr. Wenk - My name's Brian Wenk, and I live at 3011 Krueger Drive.
3433 My house and property are directly behind 5401 Dickens Road. My brother and I own
3434 the property at 5403 Dickens Road. My wife and I have lived in Henrico County for
3435 most of our lives. We have lived at our present address since 1975; we built that home
3436 following the County guidelines and specifications. We built there because we like the
3437 rural setting and the large lots that the people had. My wife has just retired from the
3438 Henrico County School Board, after 35 years of teaching. We've had two sons who
3439 attended Henrico County schools. Our immediate neighbors have lived on our street
3440 and surrounding property for most of their lives, and you can see we've been part of this
3441 community and County for many years. I've spoken with Frank West, who has lived
3442 directly across from Mr. Krak; he's unable to attend the meeting due to medical reasons.
3443 I have a letter from him and some pictures that I took that show what he's talking about.
3444 I've also spoken to Don Early, who has the property next on Dickens Road (I don't know
3445 what that address is), probably 53-something. He's not able to be here because he's
3446 out of town working.

3447
3448 I'm concerned about the existing change to Mr. Krak's property and ours. The natural
3449 flow of water has been diverted, so that our property is being flooded, and the road is
3450 eroding away. I have some pictures showing that. On variance hearing A-90-2002, line
3451 3131, Mr. Krak stated he was new around here and didn't know whether he needed to
3452 apply. I checked with the County business licenses department this week, and found
3453 out that Mr. Krak had a contractor's business license back in 1997, so he should have
3454 known he had to have a permit. The looks and condition of the property haven't
3455 changed much since the last hearing. You have the April 25, 2002, pictures, which I left
3456 with you at that hearing. At the last hearing, on line 3322, Mr. Krak referred to his new
3457 drain field from the rear of his property line and all the way down to the ditch on Dickens
3458 Road. The pictures of May 16, 2002, approximately three weeks after the hearing,
3459 show water standing in the field. I also have a picture from March 2003, where more fill
3460 dirt and gravel had been added between the two heavy rains. Due to the blocked pipe
3461 and drainage area, I'm concerned about the mosquitoes with the standing water, and
3462 the road is being eroded away. I also have pictures showing where the fill was being
3463 brought in and a picture of the flooding, due to the standing water. The road is eroded
3464 away, and the excess standing water is on the road. I refer to the pictures which I have
3465 shown you. Current pictures show the ground has been filled under the fence, which
3466 prevents the water flowing.

3467
3468 Is this hearing really necessary? The County has guidelines, which all the citizens are
3469 to follow. Example: Henrico County Zoning and Building Inspections Departments
3470 know about Chapter 24-8 of the Zoning Ordinance section. That's non-conforming
3471 uses, and that states, "no non-conforming building or use shall be enlarged, extended,
3472 reconstructed, suited for the structure building altered, except when required by law."

3473 I'm referring to the Subsection D, "Any non-conforming building or structure which is
3474 hereafter damaged to the extent exceeding 50 % of its productive value, exclusive of
3475 foundations, by fire, flood, explosion, earthquake, war, rot, storm, or so-called Acts of
3476 God, reconstruction or use of any purpose other than one permitted in the district in
3477 which it's located." The County issued a building permit on May 14, 2002, to renovate
3478 the existing garage and storage. Nothing was stated about building a residence. The
3479 County Real Estate Assessment provided me with the information of the current 2000
3480 assessment of the property, which is for \$111,600, which Mr. Krak bought for \$120,000,
3481 and has probably put another \$250,000 in, in improvements. The house and garage is
3482 listed as a cabin with 760 square feet, built in 1960. Assessment hasn't been updated.
3483 Are these departments doing their jobs, as expected by the citizens of Henrico County.

3484
3485 Converting a barn to a garage into a house should require a special use permit and
3486 meet current County setback and zoning codes and require a certificate of occupancy,
3487 which is not issued. I'm here today to bring to your attention the County cover-ups,
3488 which should not be allowed. Following the first hearing, the barn was immediately
3489 gutted and converted into a house and completed in the middle of October. People
3490 have been living there. A third house would further cause problems being built on the
3491 low wet areas and lacking requirements to meet this request. My brother, my wife, and
3492 his wife are totally opposed to this request. After the hearing is over with, I'd like to
3493 have my pictures back, because I'm going to need them for a civil suit.

3494
3495 Mr. Wright - We have to keep them for 30 days.

3496
3497 Mr. Blankinship - But you can have them after that.

3498
3499 Mr. Wenk - That's fine. I have another picture of topo showing, that you
3500 can look at, you all have this anyhow, that shows from the original hearing where he
3501 backfilled fifteen loads. This last time was probably four or five loads, and then he put
3502 gravel, and did it on the weekends so no one could complain. You can see the natural
3503 drain that was originally through this property, from County records. Also, I'm speaking
3504 for my brother; I've got a letter from him saying that I'm supposed to talk to you. As Mr.
3505 Krak mentioned, he didn't show you the right side of the house, where a lot of the stuff
3506 is, and in one of those pictures I gave you, you can see stuff lying up against the fence.
3507 He now has a dumpster working on the upstairs. I checked with the Building Inspection
3508 people; he has no new permit for the renovation of the upstairs that he showed you on
3509 his tape. I please request that you deny this request again, because he already has two
3510 houses on one piece of property. Thank you.

3511
3512 Mr. Krak - Take a look at these two pictures. As you can see on the
3513 pictures, a fence, that's my property. The property line goes right in the center of the
3514 Krueger Drive. To the fence is my part; on the other side, why is the water staying on
3515 the other side/half of Krueger Drive? Why is that? Can anybody answer me that
3516 question please? And our water goes still over on my property from Krueger Drive.
3517 That picture shows you; we've got some problems on the other side of Krueger Drive,
3518 not on my side only. I added gravel to build a new driveway, gravel because water will

3519 stay for a little short while, period, and go, disappear, and still going over my property
3520 then to Dickens Road ditch. That bump in the road, in Krueger Drive, where the water
3521 stays in, why did we need that bump in the first place a long time ago, because the
3522 problem stays on. They installed that pipe maybe back in 1950's. Nobody can find it. I
3523 know I'd find it in my property. Also, I installed new drainage from the back of my shed
3524 down to the Dickens Road ditch. I installed that two and a half years ago, right after I
3525 moved into it, because of the drainage problem. But regarding Krueger Drive, Mr. Wenk
3526 and I need to sit down and talk about what we can do, because the County doesn't have
3527 to do anything with it. We can solve any problems at all that we have. I'm sure we can.
3528 But as you can see on these two pictures, they tell you everything. I've got some water
3529 on my side because of this hard rain, but we've got some water on the other side. What
3530 I'd like to do there is, remove that bump from there, and we'll solve the whole problem
3531 forever. If my neighbors provide me materials, I'll do my labor on my own, bring this
3532 drain line from back of my property all the way down to Dickens Road ditch, new drain
3533 line. Easy to blame somebody for anything, but I just got pictures, I just got tapes, I just
3534 got everything to show you what I did to the property. That picture, let me repeat it one
3535 more time, I got some water on my side of Krueger Drive, because property line is right
3536 in the center of Krueger Drive, but we've got some water standing on the other side of
3537 Krueger Drive. I'm sorry.

3538
3539 Regarding another issue, my second floor renovation. I spoke and applied for a building
3540 permit. Planning and Permit Center know about it. I did. Then they require some, we
3541 need to find out about what kind of joists we've got down underneath in the floor, and I
3542 told them, when I finish up the demolition, I just did last night. As my neighbors know, I
3543 will apply for a building permit. I will do. I need one of the inspectors come down there
3544 and take a look at what I've got now, regarding insulation, main problems, Code
3545 requires R-25 minimum in rafters in the roof. I've got real two by fours rafters now;
3546 that's why I didn't get a building permit before I did the demo. I just need one of the
3547 inspectors to come down there, take a look at it, and tell me what and how I'm
3548 supposed to finish the second floor. What I need to do in there, I know how to finish it.
3549 Thank you.

3550
3551 Mr. Wright - All right Mr. Krak, thank you very much.

3552
3553 Mr. Blankinship - I need Mr. Wenk's photographs.

3554
3555 Upon a motion by Mr. Kirkland, seconded by Mr. McKinney, the Board **denied**
3556 application **A-81-2003** for a variance to build a one-family dwelling at 5401 Dickens
3557 Road (Parcel 773-744-3103 (part)).

3558
3559 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
3560 Negative: 0
3561 Absent: Balfour 1
3562

3563 The Board denied this request as it found from the evidence presented that approving
3564 the permit would be of substantial detriment to adjacent property or would materially
3565 impair the purpose of the zoning regulations.

3566
3567 ***(UP-12-2003 and UP-13-2003 BON SECOURS ST. MARY'S HOSPITAL were***
3568 ***deferred at the beginning of the 10:00 o'clock agenda.)***
3569

3570 On a motion by Mr. Nunnally, seconded by Mr. Kirkland, the Board **approved** the
3571 Minutes of the **March 27, 2003**, and the **April 24, 2003** (as corrected) Henrico County
3572 Board of Zoning Appeals meetings.

3573
3574 Mr. Wright - Before we adjourn, let's talk about the deferred case.

3575
3576 Mr. McKinney - Are you going to go back and look in your records and so
3577 forth?

3578
3579 Mr. Wright - One option we have, I think in another case we imported an
3580 independent attorney to represent the Board.

3581
3582 Mr. Kirkland - On the Fairgrounds case we did that.

3583
3584 Mr. Wright - I was wondering what you think.

3585
3586 Mr. McKinney - We probably need to do that.

3587
3588 Mr. Kirkland - I do along with that. I think we need an independent
3589 attorney.

3590
3591 Mr. Wright - We have the authority to do that, don't we Ben?

3592
3593 Mr. Blankinship - The money has to be appropriated by the Manager.
3594 Assuming that he's willing to pay for it, yes sir.

3595
3596 Mr. Wright - This is a very serious matter.

3597
3598 Mr. Kirkland - We could evict a lot of people.

3599
3600 Mr. Blankinship - It's almost certain to go to court.

3601
3602 Mr. Wright - This impacts a lot of people, and I appreciate Mr. Tokarz; of
3603 course, he's representing the County, but I think the Board probably needs independent
3604 counsel to look at it from all kinds of viewpoints.

3605
3606 Mr. McKinney - Who would be a good independent counsel?
3607

3608 Mr. Blankinship - The last time independent counsel was hired, the person
3609 writing the check insinuated that he had the right to choose the attorney. He said that if
3610 he's paying the bill, he's going to choose the attorney.

3611
3612 Mr. Wright - Do I hear a motion to that effect?

3613
3614 On a motion by Mr. McKinney, seconded by Mr. Kirkland, the Board requested the
3615 County Manager to appoint an independent counsel to represent the Board of Zoning
3616 Appeals and to meet with them in Executive Session to advise on matters concerning A-
3617 60-2003 Hanover Associates Appeal of a Decision of the Director of Planning.

3618
3619 Affirmative: Kirkland, McKinney, Nunnally, Wright 4
3620 Negative: 0
3621 Absent: Balfour 1

3622
3623 There being no further business, and on a motion by Mr. Kirkland, seconded by Mr.
3624 Nunnally, the Board adjourned until **July 24, 2003**, at 9:00 am.

3625

3626

3627 R. A. Wright,

3628 Vice Chairman

3629

3630 Benjamin Blankinship, AICP

3631 Secretary

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