

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, JUNE 22, 2006, AT 9:00 A.M., NOTICE HAVING BEEN**  
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON JUNE 1 AND 8, 2006.**  
6

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

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

7  
8 Mr. Nunnally - Good morning, Ladies and Gentlemen. We welcome you to  
9 the June meeting of the County of Henrico Board of Zoning Appeals. We ask you to  
10 please stand and join us for the **Pledge of Allegiance to the Flag of Our Country.**  
11 Mr. Secretary, would you read the rules, 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 have an 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, or you can check the website. The vote on each case will be posted to our  
25 website within an hour of the end of the meeting. This meeting is being tape recorded,  
26 so we will ask everyone who speaks, to speak directly into the microphone on the  
27 podium, to state your name, and to spell your last name please. And finally, out in the  
28 foyer, there are two binders, containing the staff report for each case, including the  
29 conditions that have been recommended by the staff. If you are not familiar with the  
30 conditions on your case, you should step out and check that, because that’s a very  
31 important point. Mr. Chairman, we have one withdrawal, but it was before the Agenda  
32 was printed, so there are no deferrals or withdrawals on the Agenda.

33  
34 Mr. Nunnally - Thank you sir. Call the first case then, please.

35  
36 A-24-2006 **BOONE HOMES, INC.** requests a variance from Section 24-94 to  
37 allow a one-family dwelling to remain at 12025 Blairmont Court  
38 (Blairmont at Grey Oaks) (Parcel 738-772-2158), zoned R-2AC,  
39 One-family Residence District (Conditional) (Three Chopt). The  
40 minimum side yard setback is not met. The applicant has 9 feet  
41 minimum side yard setback, where the Code requires 12 feet  
42 minimum side yard setback. The applicant requests a variance of 3  
43 feet minimum side yard setback.  
44

45 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
46 please stand and raise your right hand?  
47

48 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
49 truth, the whole truth, and nothing but the truth, so help you God?  
50

51 Mr. Shrader - I do. My name is Keith Shrader; I'm here to represent Boone  
52 Homes and request a 3-foot variance on a home constructed on Lot 21, Block B of  
53 Blairmont at Grey Oaks. On May 3, 2006, Youngblood, Tyler and Associates performed  
54 an as-built survey to determine the house did not meet the minimum side yard setback,  
55 as approved on the building permit for that lot. On May 4, Youngblood, Tyler and  
56 Associates went out to re-verify that the house indeed was located in its incorrect  
57 position, as shown on the approved building permit. At that time, we also had the house  
58 next door, Lot 20, located, and verified its position to determine whether there was any  
59 possibility of purchasing any additional property from the next lot, which would enable  
60 this house to be in compliance. Unfortunately, the house on Lot 20 is constructed near  
61 its minimum side yard setback and does not allow the opportunity to pursue that  
62 avenue. I know Boone Homes employed the services of Youngblood, Tyler and  
63 Associates, to prepare the building permit, stake the footers, as well as the brick points  
64 for this house. It appears that during the footer construction, that the house was  
65 positioned in the incorrect location. I know that at the time the footer was staked, there  
66 were no monuments, property corners for the rear lots nor the front lots at that time.  
67 The house was staked solely on two control points that were used in the neighborhood  
68 during the infrastructure staking. The property corners were not installed until  
69 November 10, 2005. I'd like to point out that I have managed the Survey Department at  
70 Youngblood, Tyler, for ten years; we stake hundreds of houses a year throughout  
71 Henrico, Hanover, and Chesterfield Counties, and this is the first time that I've had to  
72 represent any request for any variance due to any survey error. I just would hope that  
73 you would grant this variance and allow continued use of this home as a residence.  
74

75 Mr. Wright - Are you saying that the surveyor made the mistake?  
76

77 Mr. Shrader - Yes sir.  
78

79 Mr. Wright - Is the surveyor here?  
80

81 Mr. Shrader - I represent the survey company. It was surveyors under my  
82 supervision.  
83

84 Mr. Wright - I'd like to know how the surveyor made the error.  
85

86 Mr. Shrader - I believe what has happened, since the house is exactly  
87 three feet, under some neighborhoods, right now the current right-of-ways are 50 feet.  
88 In the past, we had some 44-foot right-of-ways. I think that the surveyor at the time  
89 assumed a right-of-way of 44 feet on the next street. When we had the control points,  
90 we had a control point at the intersection of Blairmont Drive and Blairmont Court. If the  
91 surveyor assumed that Blairmont Drive was a 44-foot right-of-way, he calculated his  
92 distance versus the 50-foot right-of-way, if you took half the distance from the center  
93 line to that right-of-way, it was exactly the 30 feet. I believe that's in fact what he did. I  
94 took the surveyor who staked the house back to the field when we rechecked the  
95 position of the house, but due to the time lapse, he couldn't recall what had happened.  
96 Typically there are rods on the lots, so when we come off our control points, we have  
97 something physically to check to, to insure that we don't have an error. The only  
98 physical feature we had at the time this house was constructed, was the existing curb  
99 and gutter. Once the house is staked, we take the longer side of the house and project  
100 it into the street and set control points on the side of the house so when we come back  
101 and do the brick points, we can get quickly back on the house, that distance check was  
102 within .2 of where the edge of pavement is, so we had a check from front to back on the  
103 house, but no check side to side.  
104

105 Mr. Wright - How did they determine the error?  
106

107 Mr. Shrader - We determined the error when the as-built survey was  
108 performed.  
109

110 Mr. Wright - So they surveyed that correctly?  
111

112 Mr. Shrader - Yes sir. At that time, the monuments were installed; all the  
113 property corners were installed and checked prior to performing the as-built survey.  
114 The as-built survey was done in May. We installed the monuments on November 10,  
115 2005.  
116

117 Mr. Wright - How much would it cost to move the house?  
118

119 Mr. Shrader - Significant cost.  
120

121 Mr. Wright - Who would bear that, the surveyor?  
122

123 Mr. Shrader - I'm sure we would, yes sir.  
124

125 Ms. Dwyer - Are houses typically built using the control points from a  
126 right-of-way as opposed to waiting until the property corners are set?

127  
128 Mr. Shrader - It does vary. We're seeing that more common in the past  
129 few years. Typically, we'd like to try to get at least some rear corners set, but the site  
130 here was still under construction, putting rear swells in and grading, and we hadn't had  
131 the request from the developer to install those corners yet. I know what we have done,  
132 and after analyzing this mistake, I have implemented procedures, both in our field, as  
133 well as our office, to try to insure that this doesn't reoccur, such as our field information,  
134 we provide a second sheet, we'll go ahead and have a distance from the control point,  
135 or at least two control points, so that when they compute this from the field, it gives  
136 them a check to see that they get the same answer, or we're staking houses in the  
137 neighborhood that do not have the property corners in, once we stake a house, we'll  
138 turn some angles to some existing houses where they may be five or six lots down, and  
139 have that rechecked back in the office, once the information is brought back to the  
140 office.  
141  
142 Ms. Dwyer - Your policy then, is to have a second process, in addition to  
143 the control points, that review.  
144  
145 Mr. Shrader - Yes ma'am, if it's a subdivision that does not have the  
146 control monuments in. If the subdivision has the monuments in, I know that our  
147 procedures that we've had implemented for the past ten years have worked.  
148 Unfortunately, this got by us, but it allows us to re-analyze our procedures and  
149 implement additional procedures to assure this doesn't reoccur.  
150  
151 Ms. Dwyer - I was just concerned that if we're rushing to construct before  
152 we have the property monuments in, if that's a common occurrence, we may see more  
153 of these, and we certainly don't want to do that.  
154  
155 Mr. Shrader - I think weather may have held some of this up here, in  
156 getting the site ready. Typically, once the curb is installed, normally we don't have too  
157 much of a lapse period prior to installing the monuments. If we go stake houses in  
158 neighborhoods that we don't develop, there has to be some type of control for us to  
159 work with, which is typically the first item we'll put in or see in additional subdivisions.  
160 We have procedures that we perform a close check on the house itself when we stake it  
161 to insure that it's in its correct location, but without these property corners being  
162 installed, and only having the curb, it only allowed us to check one way on the house  
163 instead of its left to right location.  
164  
165 Mr. Nunnally - Did you say what the name of the surveyor was? Who did  
166 the surveying?  
167  
168 Mr. Shrader - Youngblood, Tyler, and Associates.  
169  
170 Ms. Harris - The Certificate of Occupancy was denied?  
171  
172 Mr. Shrader - Yes. There is a temporary Certificate of Occupancy that was

173 issued for that residence.  
174  
175 Ms. Harris - Is anyone living there?  
176  
177 Mr. Shrader - Yes ma'am.  
178  
179 Ms. Harris - How long have they been living there?  
180  
181 Mr. Shrader - I can tell you that the date that the temporary CO was issued  
182 was on May 9, 2006, and I assume that they moved in shortly thereafter.  
183  
184 Ms. Dwyer - Mr. Blankinship, have we seen other errors like this, from  
185 either Boone Homes, or Youngblood, Tyler, to your knowledge?  
186  
187 Mr. Blankinship - No, I checked our records for Boone Homes, the actual  
188 property owner, and did not see any similar cases in the last five or ten years. We do  
189 occasionally get an error, but it's very rare.  
190  
191 Mr. Nunnally - Any other questions? Is anyone here in opposition to this  
192 request? I know you people stood up – are you in opposition? Come down then.  
193  
194 Ms. Luvera - My name is Janice Luvera, and we are the homeowners at  
195 12029, next door. Our statement is that when you move into a high-caliber subdivision  
196 and pay in excess of half a million dollars for a home, one would anticipate that all of the  
197 "i's" were dotted and the "t's" were crossed, and given that we are already in extremely  
198 tight quarters, in this area, three feet makes a huge difference, and in fact, the back  
199 porch of this home is very close to our patio. The concern that we have is that an  
200 automatic variance would be granted without any consequence for the error, so we just  
201 wanted to make that statement.  
202  
203 Ms. Dwyer - Are you looking for some monetary compensation from the  
204 builder?  
205  
206 Ms. Luvera - Not necessarily looking for anything specific; I was just  
207 making the statement that we did pay a lot of money for our house, and it is three feet,  
208 and three feet makes a huge difference in this particular area.  
209  
210 Ms. Dwyer - You are 12029?  
211  
212 Ms. Luvera - Yes ma'am.  
213  
214 Mr. Nunnally - Thank you ma'am. Do you have anything to rebut sir?  
215 Hearing none, that completes the case. Thank you. A-24-2006, Boone Homes, Inc. Is  
216 there a motion on that?  
217  
218 Mr. Wright - I move we approve it. The basis for it is that it appears there

219 was at least an effort to locate this house properly; they had a surveyor. It isn't one of  
220 those cases that we've had in the past where the contractor did it himself and didn't rely  
221 on the surveyor. Based on the testimony, it looks like the surveyor made a mistake.  
222

223 Mr. Nunnally - Motion by Mr. Wright that we approve it. Is there a second?  
224

225 Ms. Harris - Second.  
226

227 Mr. Nunnally - Second by Ms. Harris. All in favor say aye. It's been  
228 approved.  
229

230 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
231 Harris, the Board **granted** application **A-24-2006** for a variance to allow a one-family  
232 dwelling to remain at 12025 Blairmont Court (Blairmont at Grey Oaks) (Parcel 738-772-  
233 2158). The Board granted the variance subject to the following conditions:  
234

235 1. This variance applies only to the improvements shown on the plan filed with the  
236 application. Any additional improvements shall comply with the applicable regulations  
237 of the County Code.  
238

239 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
240 Negative: 0  
241 Absent: 0  
242

243 The Board granted this request, as it found from the evidence presented that, due to the  
244 unique circumstances of the subject property, strict application of the County Code  
245 would produce undue hardship not generally shared by other properties in the area, and  
246 authorizing this variance will neither cause a substantial detriment to adjacent property  
247 nor materially impair the purpose of the zoning regulations.  
248

249 Mr. Nunn - Next case, Mr. Blankinship.  
250

251 **A-25-2006** **JOHN BRASWELL** requests a variance from Section 24-9 to build  
252 a one-family dwelling at 12564 Kain Road (Parcel 734-770-9794),  
253 zoned A-1, Agricultural District (Three Chopt). The public street  
254 frontage requirement is not met. The applicant has 0 feet public  
255 street frontage, where the Code requires 50 feet public street  
256 frontage. The applicant requests a variance of 50 feet public street  
257 frontage.  
258

259 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
260 please stand and raise your right hand?  
261

262 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
263 truth, the whole truth, and nothing but the truth, so help you God?  
264

265 Mr. Braswell - Yes sir. My name is John Braswell. I'm requesting a 50-foot  
266 variance because a piece of property, that is going to be coming into my possession,  
267 has no road frontage.  
268  
269 Mr. Wright - How do you intend to get to this property?  
270  
271 Mr. Braswell - I was hoping to be able to get the variance.  
272  
273 Mr. Wright - I mean if the variance is granted, how would you get to it  
274 legally? You have to have a legal right-of-way to access the property. Do you have a  
275 legal access to get to it? Has somebody granted you an easement or something?  
276  
277 Mr. Braswell - Actually, the piece of property that I want the variance  
278 across, it belongs to my sister.  
279  
280 Mr. Wright - Are you on good terms with your sister?  
281  
282 Mr. Braswell - Yes sir.  
283  
284 Mr. Wright - Has she granted you an easement or right-of-way already,  
285 or will that come in the future?  
286  
287 Mr. Braswell - Actually, the property isn't in our names yet; it's in my  
288 mother's name, and she still owns all the property, and she wrote a letter. I don't know  
289 if you have that.  
290  
291 Mr. Blankinship - Yes, that's in the packet.  
292  
293 Ms. Dwyer - The property that's adjacent to Kain Road is 210 feet wide, is  
294 that correct?  
295  
296 Mr. Braswell - And the requirement, is it 100 feet?  
297  
298 Mr. Blankinship - Lot width has to be 150 feet. The road frontage has to be  
299 50.  
300  
301 Ms. Dwyer - So there's no way this could be divided and meet the Code if  
302 it were divided differently?  
303  
304 Mr. Blankinship - No ma'am.  
305  
306 Mr. Wright - Where is the building line, Mr. Blankinship, where would it  
307 be?  
308  
309 Mr. Blankinship - Fifty feet back from Kain Road.  
310

311 Mr. Wright - They won't have 150 feet at the building line, will they?  
312  
313 Mr. Blankinship - Right.  
314  
315 Mr. Wright - They are not asking for that variance, are they?  
316  
317 Mr. Blankinship - They would have 150 feet of width. The lot is 210 feet wide.  
318  
319 Mr. Wright - I know, but at the building line, aren't you supposed to have  
320 150 feet?  
321  
322 Ms. Dwyer - It appears that it's 210 feet wide all the way back, wherever  
323 they would build.  
324  
325 Mr. Wright - But they don't own that. They own the lot to the rear. The  
326 question is, don't you normally have to have a variance at the width at the building line?  
327  
328 Mr. Blankinship - If they owned that pipe stem where the easement is dashed  
329 in there, coming down, then they would have the lot width problem. But because all of  
330 their lot is 210 feet wide, we consider the lot width to be complied with.  
331  
332 Mr. Wright - But aren't they going to carve out this lot to the rear and  
333 build on it.  
334  
335 Mr. Blankinship - Yes.  
336  
337 Mr. Wright - At the time that they do it, won't they then be in violation  
338 again?  
339  
340 Mr. Blankinship - No, because it is, the lot when it's cut off will be 210 feet  
341 wide. It just won't have any public street frontage. In some cases, they have a pipe  
342 stem coming down to the frontage, and then the width is the issue.  
343  
344 Ms. Dwyer - The aerial might be inaccurate; the property lines may not be  
345 laid quite accurately on the aerial photograph, but it appears that their property includes  
346 the driveway of the house next door.  
347  
348 Mr. Kirkland - It looks like it's hitting the house next door. Is that true, Mr.  
349 Blankinship?  
350  
351 Mr. Blankinship - I doubt it. That is probably just a matter of when you take a  
352 survey from one source and an aerial photograph from another source and overlay  
353 them, they don't always register precisely.  
354  
355 Ms. Dwyer - Has the property been surveyed?  
356



357 Mr. Wright - Yes, there's a survey attached to our materials.  
358  
359 Ms. Dwyer - There's no overlap with the neighbors' driveway to your  
360 knowledge?  
361  
362 Mr. Wright - It's not shown on the survey.  
363  
364 Mr. Braswell - I don't think so ma'am.  
365  
366 Mr. Blankinship - Do you know whether that house existed in 2002, the one at  
367 12578?  
368  
369 Mr. Braswell - Yes, that's my brother's home.  
370  
371 Mr. Blankinship - Has it been there for four years?  
372  
373 Mr. Braswell - Yes sir.  
374  
375 Ms. Dwyer - It was built prior to the survey, in other words?  
376  
377 Mr. Blankinship - It should have been there if it were a violation. Towards the  
378 front of the survey, they do show a fence, 7.6 foot encroachment, so if there had been  
379 an encroachment I'm confident it would have been noted.  
380  
381 Mr. Braswell - That house up in the front also belongs to my mother.  
382  
383 Ms. Harris - Which one is that, 12564?  
384  
385 Mr. Braswell - Yes ma'am.  
386  
387 Ms. Harris - What about 12574 – who owns that?  
388  
389 Mr. Braswell - That's my mother's.  
390  
391 Mr. Blankinship - Is there a house at 12564, or is that just a vacant lot?  
392  
393 Mr. Braswell - That's just a vacant lot.  
394  
395 Mr. Nunnally - Any other questions from the Board or staff? Is there  
396 anyone here in opposition to this request? Hearing none, that concludes the case.  
397 Thank you. A-25-2006, John Braswell.  
398  
399 Mr. Wright - I move we approve it.  
400  
401 Mr. Nunnally - It's been moved by Mr. Wright that we approve it.  
402

403 Mr. Wright - The basis for the motion is that they would not have a  
404 reasonable use of the property, under the Cochran case, unless we grant the variance.

405  
406 Mr. Nunnally - Do we have a second?

407  
408 Mr. Kirkland - Second.

409  
410 Mr. Nunnally - Motion by Mr. Wright; second by Mr. Kirkland. All in favor  
411 say aye. It's been approved.

412  
413 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
414 Kirkland, the Board **granted** application **A-25-2006** for a variance to build a one-family  
415 dwelling at 12564 Kain Road (Parcel 734-770-9794). The Board granted the variance  
416 subject to the following conditions:

417  
418 1. This variance applies only to the public street frontage requirement. All other  
419 applicable regulations of the County Code shall remain in force.

420  
421 2. Approval of this request does not imply that a building permit will be issued.  
422 Building permit approval is contingent on Health Department requirements, including,  
423 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
424 of a well location.

425  
426 3. At the time of building permit application, the applicant shall submit the  
427 necessary information to the Department of Public Works to ensure compliance with the  
428 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
429 water quality standards.

430  
431 4. At the time of building permit application the owner shall demonstrate that the  
432 parcel created by this boundary line adjustment has been conveyed to members of the  
433 immediate family, and the subdivision ordinance has not been circumvented.  
434 Ownership of the parcel shall remain in the immediate family for a minimum of five  
435 years.

436  
437 5. The applicant shall present proof with the building permit application that a legal  
438 access to the property has been obtained.

439  
440 6. The owners of the property, and their heirs or assigns, shall accept  
441 responsibility for maintaining access to the property until such a time as the access  
442 is improved to County standards and accepted into the County road system for  
443 maintenance.

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

445 Negative: 0

446 Absent: 0

447  
448

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

454  
455 Mr. Nunnally - Next case, Mr. Blankinship.

456  
457 **A-26-2006** **JERRY W. AND NANCY L. OSBY** request a variance from Section  
458 24-9 to build a one-family dwelling at 4802 Charles City Road  
459 (AASBE Estates) (Parcel 837-700-9842), zoned A-1, Agricultural  
460 District (Varina). The public street frontage requirement is not met.  
461 The applicants have 0 feet public street frontage, where the Code  
462 requires 50 feet public street frontage. The applicants request a  
463 variance of 50 feet public street frontage.

464  
465 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
466 please stand and raise your right hand?

467  
468 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
469 truth, the whole truth, and nothing but the truth, so help you God?

470  
471 Mr. Osby - I do. My name is Jerry Osby, and this is my wife, Nancy.  
472 We're requesting a right-of-way variance for the 50-foot right-of-way. We have a  
473 driveway, which is already in there, which is 50 feet wide, and there are already three  
474 houses back there; this is the last lot.

475  
476 Ms. Dwyer - Mr. Osby, our staff report says that you originally owned 20  
477 acres on this area, and that a subdivision was granted for that in 1986. Have any  
478 houses in the subdivision been built according to the subdivision ordinance?

479  
480 Mr. Osby - Yes ma'am.

481  
482 Ms. Dwyer - Which ones are they?

483  
484 Mr. Osby - All of them to the front. The latest one was just in front of my  
485 house.

486  
487 Ms. Dwyer - You may not understand the question. Mr. Blankinship,  
488 have the other three lots been developed according to the subdivision ordinance?

489  
490 Mr. Osby - Yes ma'am, the ones behind me have been developed too.

491  
492 Mr. Blankinship - I'm not sure I understand the question.

493  
494 Mr. Kirkland - Do you have a subdivision drawing of this, other than the

495 aerial?

496

497 Ms. Dwyer - I can clarify my question. The staff report states that there  
498 was a four-lot subdivision approved in 1986, and the parcel that you're looking at comes  
499 out of Lot 4. What I'm wondering is, have any of the other three lots been built in  
500 accordance with the subdivision ordinance, because it seems to me that this is an  
501 example of why we have a subdivision ordinance. It seems to me that the ordinance is  
502 being circumvented by having all these different variances granted so that the  
503 subdivision ordinance requirements don't have to be met. I'm wondering if that's the  
504 case with all the other lots.

505

506 Ms. Osby - We **(Unintelligible – away from mike)**. We have one left;  
507 one child sold his house.

508

509 Mr. Blankinship - Would you speak into the microphone, please.

510

511 Ms. Osby - We had our two children, our two sons at home, and we built  
512 a home; there's one lot left. Our daughters, one couldn't afford it, and the other one  
513 bought a home, and our one son moved **(Unintelligible)** open.

514

515 Mr. Wright - We don't have a copy of the subdivision plat?

516

517 Mr. Blankinship - Mr. Kirkland has it there.

518

519 Ms. Dwyer - So there was a subdivision of four lots, and then the fourth  
520 lot has been divided now into four lots itself – is that correct, Mr. Blankinship?

521

522 Mr. Blankinship - That sounds right. I'm trying to get it up here on my  
523 computer.

524

525 Ms. Dwyer - Or maybe it's Lot 4 has been divided into three lots. And this  
526 is going to be marketed to the general public, is that the case?

527

528 Mr. Osby - Possibly.

529

530 Ms. Dwyer - My concern is that we have a 20-acre parcel, which is now at  
531 least seven lots, none of which are going to be built according to the subdivision  
532 ordinance, because they're all going to be requesting variances.

533

534 Ms. Osby - Only three have variances.

535

536 **(Unintelligible, discussion among Board members)**

537

538 Mr. Nunnally - You don't have a contract on this lot now?

539

540 Mr. Osby - We had one on it, but it's voided now.

541  
542 Mr. Kirkland - How come this wasn't put in the subdivision?  
543  
544 Ms. Osby - Because **(Unintelligible)**.  
545  
546 Ms. Dwyer - So Mr. Blankinship, when this subdivision was approved,  
547 stem lots were permissible?  
548  
549 Mr. Blankinship - Yes ma'am.  
550  
551 Ms. Dwyer - So this is no longer a family division then, because it is not  
552 for your daughter? It doesn't appear that the other three lots have been built on, or  
553 maybe one of them has, from the aerial photograph anyway.  
554  
555 Ms. Osby - All three lots are built on, our two sons, our lot, and the last  
556 lot.  
557  
558 Ms. Dwyer - I'm not talking about Lot 4 in the subdivision. I'm talking  
559 about the original subdivision – there were four lots, and you've now divided Lot 4 in  
560 three ways.  
561  
562 Ms. Osby - We're trying to divide it into the fourth way.  
563  
564 Ms. Dwyer - You're trying to divide Lot 4 into four lots.  
565  
566 Mr. Osby - It's been divided, surveyed, it perks .....  
567  
568 Ms. Osby - And we've been paying separate taxes **(Unintelligible)**.  
569  
570 Ms. Harris - Separate taxes on how many portions is that, of Lot 4?  
571  
572 Ms. Osby - Our house, we pay separate taxes from the one that we  
573 want to do something with.  
574  
575 Ms. Harris - But the tax on this portion that you're talking about is taxed  
576 on a non-buildable site, right? Isn't that taxed differently, because it's considered non-  
577 buildable if you don't have road frontage.  
578  
579 Mr. Osby - Not that we know of. It doesn't say anything on the tax  
580 records.  
581  
582 Mr. Kirkland - Mr. Blankinship, could I ask you a question while you're  
583 flipping through the drawings? Lot 4 was split the first time. Why wasn't it required to  
584 be numbered Lot 5 in the subdivision?  
585  
586 Mr. O'Kelly - Mr. Kirkland, this is a family division, which is exempt from

587 subdivision requirements. So all of the divisions that Mr. Osby has made on his lot have  
588 been for family members, and his daughter just decided that she didn't want to live on  
589 the property.  
590  
591 Mr. Kirkland - So as I understand it, this is not part of the family on this last  
592 lot, is that correct?  
593  
594 Ms. Osby - There's nobody on the last lot, but our son has already sold  
595 his place. His wife left him, and he lost everything.  
596  
597 Mr. O'Kelly - But the intent of this division was for their daughter, and she  
598 decided she didn't want to live on the property.  
599  
600 Ms. Dwyer - So we're no longer talking about a family division.  
601  
602 Mr. O'Kelly - It was intended to be a family division, but yes, it's no longer.  
603  
604 Ms. Dwyer - Mr. O'Kelly, just to clarify, because it was divided, and at that  
605 time it was intended to be a family division, the subdivision ordinance does not have to  
606 be complied with.  
607  
608 Mr. O'Kelly - That's correct.  
609  
610 Ms. Dwyer - So that exemption, so to speak, would still hold at this point.  
611  
612 Mr. O'Kelly - I would think so.  
613  
614 Mr. Wright - When was it divided? How long ago was this lot divided?  
615  
616 Ms. Osby - 1999. 1989, for the first, but we divided it for our daughter in  
617 1999.  
618  
619 Mr. Wright - So this last lot was set apart in 1999?  
620  
621 Mr. Osby - It was set apart with one other lot, the lot that's kind of  
622 directly behind it to the left.  
623  
624 Ms. Dwyer - The staff report says 2002 the additional lots of 4.7 acres  
625 and 1.2 acres. That's what we're talking about?  
626  
627 Mr. Osby - Yes ma'am, that's the one.  
628  
629 Mr. Dwyer - That's what we're talking about?  
630  
631 Mr. Wright - Don't we have some requirement of five years, in a family  
632 subdivision, that you couldn't sell the property within five years – where do I remember

633 that?  
634  
635 Mr. Blankinship - You started using that just recently.  
636  
637 Ms. Dwyer - Are we putting in our standard conditions now?  
638  
639 Mr. Blankinship - On family divisions. It does not appear on this case because  
640 we're not treating this as a family division. Mr. Chairman, if I could ask one question. Is  
641 there a particular reason you chose to have several gravel driveways running parallel to  
642 each other just a few feet apart, rather than building one shared driveway for all these  
643 homes.  
644  
645 Ms. Osby - That's the way the County laid it out when we applied to  
646 subdivide it.  
647  
648 Ms. Dwyer - Is that because they are stem lots?  
649  
650 Ms. Osby - Flag lots is what they used to call them.  
651  
652 Mr. Blankinship - I found it very surprising when we went out there. We  
653 actually turned in the wrong driveway. We only missed by about fifteen feet.  
654  
655 Ms. Osby - Yes, they took pictures of the next-door neighbors' driveway.  
656 They were called flag lots back in the '80's.  
657  
658 Mr. Nunnally - Any other questions from the Osbys. Is anyone here in  
659 opposition to this case? Hearing none, that concludes the case. Thank you for coming.  
660 A-26-2006, Jerry and Nancy Osby. Do I hear a motion?  
661  
662 Ms. Dwyer - I move that we deny, and the reason is, that this property  
663 was a 20-acre parcel, and subdivided into four lots, and then the fourth lot has  
664 ostensibly been divided yet another time into four smaller lots. I think that this kind of  
665 division circumvents the Subdivision Ordinance and creates substandard lots that are  
666 going to be problematic down the road in the County. This is also not a family  
667 subdivision; it's going to be offered to a member of the public who is unrelated. I think  
668 offering these kinds of substandard lots is something that we shouldn't proliferate.  
669  
670 Ms. Harris - I second the motion.  
671  
672 Mr. Nunnally- Motion by Ms. Dwyer that it be denied; second by Ms. Harris.  
673 All in favor say aye. All those opposed?  
674  
675 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
676 Harris, that the Board **deny** application **A-26-2006** for a variance to build a one-family  
677 dwelling at 4802 Charles City Road (AASBE Estates) (Parcel 837-700-9842).  
678

679	Affirmative:	Dwyer, Harris,	2
680	Negative:	Kirkland, Nunnally, Wright	3
681	Absent:		0
682			
683	Mr. Nunnally -	Not enough to carry the denial. Do I hear another motion?	
684			
685	Mr. Kirkland -	I move that we approve it.	
686			
687	Mr. Nunnally -	Motion by Mr. Kirkland that we approve it. Do I hear a	
688	second?		
689			
690	Mr. Wright -	Second.	
691			
692	Mr. Nunnally -	Second by Mr. Wright.	
693			
694	Mr. Blankinship -	Would you state the basis of the motion for the record,	
695	please.		
696			
697	Mr. Kirkland -	It was made in good faith as a family division. I can't help	
698		that the woman's backed out of the deal later on. I don't know why she didn't live there,	
699		but I don't see that it can go any further. It's now over with, and I don't think there will	
700		be any problem in the future in this area. You can't have reasonable use of the property	
701		without the variance.	
702			
703	Ms. Dwyer -	To respond to that, I think there is reasonable use of the	
704		property; they just wouldn't have eight lots, divided from the original 20. So I think there	
705		is reasonable use of the property taken as a whole, and this property could be explored	
706		into another lot.	
707			
708	Mr. Kirkland -	But Lot 4 has been divided – this will be the fourth division of	
709	Lot 4, correct?		
710			
711	Mr. Blankinship -	Yes.	
712			
713	Ms. Dwyer -	So there are seven lots out of the twenty acres; if it were	
714	denied, it would be six lots.		
715			
716	Mr. Nunnally -	The girls wanted a smaller lot, the daughter, and the sons	
717	wanted the larger lots.		
718			
719	Mr. Kirkland -	I'll stick with my motion.	
720			
721	Mr. Nunnally -	All in favor, say aye. Opposed. It's been approved.	
722			
723	After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.		
724	Wright, the Board <b>granted</b> application <b>A-26-2006</b> for a variance to build a one-family		



725 dwelling at 4802 Charles City Road (AASBE Estates) (Parcel 837-700-9842). The  
726 Board granted the variance subject to the following conditions:

727  
728 1. This variance applies only to the public street frontage requirement. All other  
729 applicable regulations of the County Code shall remain in force.

730  
731 2. Approval of this request does not imply that a building permit will be issued.  
732 Building permit approval is contingent on Health Department requirements, including,  
733 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
734 of a well location.

735  
736 3. At the time of building permit application, the applicant shall submit the  
737 necessary information to the Department of Public Works to ensure compliance with the  
738 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
739 water quality standards.

740  
741 4. The applicant shall present proof with the building permit application that a legal  
742 access to the property has been obtained.

743  
744 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
745 for maintaining access to the property until such a time as the access is improved to  
746 County standards and accepted into the County road system for maintenance.

747  
748 Affirmative: Kirkland, Nunnally, Wright 3  
749 Negative: Dwyer, Harris, 2  
750 Absent: 0

751  
752 The Board granted this request, as it found from the evidence presented that, due to the  
753 unique circumstances of the subject property, strict application of the County Code  
754 would produce undue hardship not generally shared by other properties in the area, and  
755 authorizing this variance will neither cause a substantial detriment to adjacent property  
756 nor materially impair the purpose of the zoning regulations.

757  
758 Mr. Nunnally - Next case, Mr. Blankinship.

759  
760 **A-27-2006** **JOHN K. PALMER** requests a variance from Section 24-94 to build  
761 an addition at 8304 Lydell Drive (Glenhills) (Parcel 776-754-0595),  
762 zoned R-3, One-family Residence District (Brookland). The rear  
763 yard setback is not met. The applicant proposes 28 feet rear yard  
764 setback, where the Code requires 40 feet rear yard setback. The  
765 applicant requests a variance of 12 feet rear yard setback.

766  
767 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
768 please stand and raise your right hand?

769  
770 Mr. Blankinship - Do you swear that the testimony you are about to give is the

771 truth, the whole truth, and nothing but the truth, so help you God?  
772

773 Mr. Palmer - I do. I am John K. Palmer. I'm requesting a permit for my  
774 rear yard setback of 11 feet so I can build a bedroom for my daughter.  
775

776 Mr. Kirkland - Mr. Palmer, when you went to the County Permit Center to  
777 apply for this permit, were you instructed about the Cochran vs. Fairfax case?  
778

779 Mr. Palmer - Yes sir, that was all given to me on the form; that was all in  
780 writing. I'm well aware.  
781

782 Mr. Kirkland - I just wanted to make sure you were well aware of it before  
783 you applied for the variance.  
784

785 Mr. Palmer - Yes sir, they were very helpful up there.  
786

787 Ms. Harris - Mr. Palmer, is it possible for you to construct these facilities  
788 without using the twelve feet prohibited area? In other words, do you have ultimate  
789 plans that could be drawn that would accommodate your handicapped daughter and not  
790 violate?  
791

792 Mr. Palmer - No, on the right side of my home at the rear, where I want to  
793 build the bedroom, it's the 40-foot setback. That doesn't allow me to come but seven  
794 feet from my back wall, where I could not build a room. That's about the only place on  
795 the back that I could have a room. Five other homes on my side of the street have a  
796 bedroom or addition on that side of the home, and I really didn't think it was going to be  
797 any difficulty. I got three estimates from builders, and one of them told me that I'd better  
798 come up to the Planning Department to check, because he thought the rear yard  
799 setback wouldn't allow me to come far enough from the right back side of my home.  
800

801 Ms. Dwyer - That was a good builder. That was good advice that you  
802 received on that.  
803

804 Mr. Palmer - In looking at the yard, the average person has plenty of  
805 room.  
806

807 Ms. Dwyer - And it looks from the aerial photograph like some of the  
808 other houses in your neighborhood have deeper back yards than you do.  
809

810 Mr. Palmer - I didn't think my garage was unusual, but the gentleman's  
811 house at 2248, his back yard comes into almost a triangle and about my property line,  
812 that's where the left side of the triangle starts, so as it gets to the front, it comes over  
813 and narrows it.  
814

815 Mr. Wright - When was your house built?  
816

817 Mr. Palmer - It was built in '72, and we moved in April 26, 1973.  
818  
819 Mr. Wright - So you've had the enjoyment of this house all those years?  
820  
821 Mr. Palmer - Yes sir, going on 34 years now.  
822  
823 Mr. Nunnally - Mr. Palmer, I hate to ask you this question, but how long has  
824 your daughter been handicapped?  
825  
826 Mr. Palmer - She'll be 47 the 6<sup>th</sup> of next month, and she was born with  
827 cerebral palsy, and retarded, so from birth.  
828  
829 Mr. Nunnally - Is there any opposition to this request? Any other questions  
830 for Mr. Palmer? Hearing none, that completes the case. Thank you for coming. A-27-  
831 2006.  
832  
833 Mr. Kirkland - I move we deny, the reason being that Mr. Palmer's had  
834 reasonable use of the property since 1973 and under the Cochran vs. Fairfax case,  
835 that's why I make the motion to deny.  
836  
837 Mr. Wright - We don't have the authority to consider the case. I'll second  
838 the motion.  
839  
840 Mr. Nunnally - Motion from Mr. Kirkland that we deny; second by Mr.  
841 Wright. All in favor say aye. Opposed – aye.  
842  
843 Mr. Kirkland - Mr. Blankinship, I would like to make a comment. Under the  
844 form that was in the file, that Mr. Palmer signed, could it be made a little more "people  
845 friendly."  
846  
847 Mr. Wright - I don't think he understood that.  
848  
849 Mr. Blankinship - Oh, they describe it in great detail.  
850  
851 Mr. Kirkland - It just didn't show that on the paper.  
852  
853 Mr. Wright - It would take a lawyer to read that statement, to understand  
854 it. He didn't understand it when I asked him.  
855  
856 Mr.  
857 Blankinship - I remember speaking with him myself; he understood it. Mr.  
858 Nunnally, did you vote in opposition to the motion?  
859  
860 Mr. Nunnally - Right. I voted against it. He said he'd had good use of that  
861 house all these years, and he's got a handicapped child ever since she was born; I don't  
862 see where he had good use of it.

863  
864 Ms. Dwyer - So you agree that it should be denied?  
865  
866 Mr. Nunnally - Yes.  
867  
868 Mr. Blankinship - I'm sorry; I thought you voted against the motion.  
869  
870 Mr. Wright - I'm sympathetic; I wish we could help, but I don't think we  
871 have the authority to do it. I think the Court took that away from us.  
872  
873 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
874 Wright, the Board **denied** application **A-27-2006** for a variance to build an addition at  
875 8304 Lydell Drive (Glenhills) (Parcel 776-754-0595).  
876  
877 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
878 Negative: 0  
879 Absent: 0  
880  
881 The Board denied your request as it found that the property would retain substantial  
882 beneficial uses and substantial value without a variance. The Supreme Court of Virginia  
883 has determined that a board of zoning appeals may grant a variance only after finding  
884 that the zoning ordinance "interferes with all reasonable beneficial uses of the property,  
885 taken as a whole" (Cochran v. Fairfax County BZA, 267 Va. 756 (2004)).  
886  
887 Mr. Nunnally - Next case, Mr. Blankinship.  
888  
889 **A-28-2006** **EUGENE I. SEARGENT, SR.** requests a variance from Section 24-  
890 9 to build a one-family dwelling at 1115 Greenview Drive (Parcel  
891 801-707-1459), zoned R-3, One-family Residence District (Varina).  
892 The public street frontage requirement is not met. The applicant  
893 has 0 feet public street frontage, where the Code requires 50 feet  
894 public street frontage. The applicant requests a variance of 50 feet  
895 public street frontage.  
896  
897 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
898 please stand and raise your right hand?  
899  
900 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
901 truth, the whole truth, and nothing but the truth, so help you God?  
902  
903 Mr. Seargent - I do. I am Eugene I. Seargent, Jr., for the record, not Sr. I  
904 am here for the variance on an acre and a half parcel that does not have road frontage,  
905 but it does have a 50-foot easement. We contracted for this property; it's actually zoned  
906 R-3 presently, along with the 50-foot easement. While the R-3 zoning would allow for  
907 approximately three building sites, we propose a 3500 square foot home with a  
908 driveway coming along that 50-foot easement from Greenview Drive. That particular

909 piece of property is a historical site, and it is presently on the market for sale. There is  
910 an existing private, 20-foot road, off of New Osborne Turnpike, which serves two small,  
911 older, rather rough conditioned houses. The particular customer with whom we're  
912 working, Mr. and Mrs. Bert Farb, from Louisiana, and other potential customers, have  
913 stated that they would not have any interest in this site if we had to go along with an  
914 older, private road off of New Osborne. Given the mad rush to make R-3 zonings into  
915 as many high density homes as possible, we feel like this one house on this 1.5 acres,  
916 and given the size of the house, would certainly maintain the rural nature of the  
917 immediate area.

918  
919 Ms. Harris - Did you say this property, this parcel, is for sale, or were you  
920 talking about another property?

921  
922 Mr. Seargent - This particular property I have placed a contract on to  
923 purchase, subject to this hearing. The adjoining property to the north, noted on your  
924 screen there as 1107, is presently for sale. Coincidentally, just to the left, or west of that,  
925 you'll see another structure. That 5.7 acres is also presently for sale. It is under  
926 contract, subject to an engineering, because it is R-3 zoned, and it is my understanding  
927 that they're pursuing 3 to 5 to 7 lots to be built on that particular parcel.

928  
929 Mr. Blankinship - Did I understand you to say that your contract on this parcel  
930 is contingent on the outcome of this morning's hearing?

931  
932 Mr. Seargent - That is correct. It is surrounded to the south and east by  
933 farmland that has been farmed for quite some time, and I believe the young lady behind  
934 me is here, probably in protest at this hearing, to my variance. She is the one who  
935 owns the property and has no intention of selling any time in any near future. She has  
936 made it very clear that she enjoys her privacy.

937  
938 Mr. Kirkland - What's the distance from the New Osborne Turnpike to the  
939 rear of this property? Do you have any idea roughly of how long that is?

940  
941 Mr. Seargent - Based on the numbers I'm now looking at, I can give a good  
942 estimate, it appears to be approximately 550 feet to the corner point to the New  
943 Osborne Turnpike.

944  
945 Ms. Dwyer - If we determine that we have the authority to grant this  
946 variance, which is not a given, but assuming that's the case, under the Cochran case,  
947 one of the questions we have to answer is whether this variance would be of substantial  
948 detriment to adjacent property. Even some of the materials that we have received  
949 indicate that it would be of substantial detriment to the unique historical property that's  
950 in front of this lot. How do you respond to that?

951  
952 Mr. Seargent - I'm very familiar with that particular historical property, and in  
953 addition to it, the property right next door that I just mentioned, that has recently gone  
954 for sale, in somewhat of a state of disrepair, but whoever purchases them, I'm assuming

955 would .....

956

957 Ms. Dwyer - I'm only interested in your variance at this point.

958

959 Mr. Seargent - Yes, but I'm referring to theirs as responding to your  
960 question to how it would impact them. There was a particular buyer who was looking at  
961 the adjoining site to the north, and that particular buyer, upon hearing, not of this parcel,  
962 but of the next-door parcel, being potentially developed into R-3 zoned lots, withdrew  
963 their offer to purchase that particular property. I suspicion that might be part of the  
964 concern that someone might have placed. In terms of the R-3 zoning of this site, at  
965 some point, which everyone is rushing to make these into small lots, that will probably  
966 occur, and that will not be a variance case from that point; it would simply be a  
967 subdivision case.

968

969 Ms. Dwyer - The difference in your case is that while any number of  
970 adjoining properties may be zoned R-3, they don't need a variance. This particular site  
971 needs a variance, so I'm not interested at this point in the other properties.

972

973 Mr. Seargent - The other approach would have been to put a road in to this  
974 site and make it into three buildable lots. That was something I was not interested in  
975 doing.

976

977 Ms. Dwyer - You can't do that without a variance. That's the critical  
978 difference. It is zoned R-3, but it cannot be developed without a variance because it  
979 doesn't have the appropriate road frontage.

980

981 Mr. Seargent - The point was, when I first started studying this, that we  
982 would actually build a road to serve these lots. It would be a cul-de-sac road, but we  
983 vacated that idea, in terms of going with the larger home that would maintain the  
984 integrity of the area.

985

986 Ms. Dwyer - Can you do that with this easement? Where would you build  
987 the road?

988

989 Mr. Seargent - If a road had been built, which I've totally vacated the idea,  
990 due to various engineering issues in particular, drainage and sewage, it would have  
991 come actually through that five-acre parcel that we've been referring to, to the east of  
992 this site, that is now presently under contract with someone else. West, that's correct.

993

994 Ms. Dwyer - Which parcel is that? And that would come from New  
995 Osborne?

996

997 Mr. Seargent - That particular proposal there would be road frontage lots  
998 developed along Greenview, from the corner of New Osborne, down Greenview as I've  
999 seen somebody else's proposal, and then a potential new road constructed off of New  
1000 Osborne and cul-de-sac'ing into the five-acre parcel just to the south of the existing

1001 home that you see there on the corner of New Osborne and Greenview. The original  
1002 proposal was for lots to be along this road here, showed approximately three to four lots  
1003 could be constructed there; then a road was going to be constructed along this section  
1004 here with a cul-de-sac, and kind of turning, which would have created at that point, eight  
1005 additional lots. The cost again of engineering costs on that deterred me from that  
1006 particular site and is where I gained knowledge of this particular parcel when it was  
1007 placed, just coincidentally, for sale. The particular gentleman who owns this does live in  
1008 Hawaii, and according to his agent, is quite frankly, strapped. I have made some  
1009 concessions here in the last several weeks, in order to extend my time frame for  
1010 studying in order to accommodate him, and he needed some cash to get by. I don't  
1011 know the ins and outs of that, but I was willing to make a change in my offer to  
1012 accommodate him.

1013  
1014 Ms. Dwyer - How do you respond to the concern that a variance granted  
1015 in this case would be a substantial detriment to the historic property that's in front of it?

1016  
1017 Mr. Seargent - I would disagree that that's the case. I would believe that a  
1018 home of this size, 3500 square feet, well constructed by a quality builder, would in fact  
1019 enhance. In fact this particular customer, the Farbs, from Louisiana, they are just  
1020 intrigued by the nature of that particular historical home. As you look at your picture, the  
1021 front porch is where I'm noting now. That is the front porch facing my site. My  
1022 customer's concept was that there's a bunch of beautiful magnolia trees in this area  
1023 here, and their point was, in fact, that this would be something conducive to what they're  
1024 familiar with and used to from the South.

1025  
1026 Mr. Wright - I think their concern mostly is about the easement barrier.  
1027 Some of the information we have, there's some ruins in the easement area, sheds or  
1028 something that would be disturbed.

1029  
1030 Mr. Seargent - There is a disturbed shed presently there.

1031  
1032 Mr. Wright - I see. It looks like the easement line goes right through that  
1033 shed, doesn't it?

1034  
1035 Mr. Seargent - That shed, this picture doesn't reflect it, the existing shed  
1036 that is there is in a very disturbed state.

1037  
1038 Mr. Wright - Some of the materials I've read, the opposition states that  
1039 the use of that easement area would be the thing that would adversely affect the historic  
1040 value of their home and whatever they want to do with it.

1041  
1042 Mr. Seargent - I probably couldn't comment on that.

1043  
1044 Mr. Wright - Can you address that?

1045  
1046 Mr. Seargent - I've been selling real estate 28 years, and I can clearly

1047 understand that when someone is putting a road next to your home, that does have an  
1048 impact, although some people think that the corner lots are desirable, so I'm not sure  
1049 that I could speak to their concerns. I do know that the property next door had created  
1050 grave concern for this particular site that we're referring to.

1051  
1052 Mr. Wright - What width driveway do you anticipate that you'd have?  
1053

1054 Mr. Seargent - The granted easement, according to the contract that we've  
1055 executed in the court records, identify that I would be purchasing that fifty-foot  
1056 easement off of Greenview, and it would be my intent, based on everyone who has  
1057 seen the site, that is the direction that they would prefer to see a road come in. The  
1058 twenty-foot road to the south, it is just a dirt road; it's in very much disrepair, and the two  
1059 homes along it are in very much disrepair. One of them is just starting to do some work  
1060 on. I have not approached those individuals; I don't even know who owns that particular  
1061 road.

1062  
1063 Mr. Wright - My question was, what width driveway would you need to  
1064 access your property along your easement? You wouldn't build a 50-foot driveway?  
1065

1066 Mr. Seargent - No sir. I would think a 20-foot would be all. It would be a  
1067 gravel drive, cut and cleaned, to the center line of that 50-foot easement. I imagine at  
1068 some point in time as one of the adjoining property owners might consider doing  
1069 something else, that this would also potentially serve, in the distant future, as a potential  
1070 ingress and egress to a future developed neighborhood, and I would even offer up, if  
1071 that would ever occur, that I would deed this such that the easement could be in fact  
1072 improved if someone came and requested it and wanted it.

1073  
1074 Mr. Nunnally - Any other questions of Mr. Seargent?  
1075

1076 Ms. Harris - I'm not sure this question is for Mr. Seargent or Mr.  
1077 Blankinship, but in the report, it says that we "approved four variances for dwellings with  
1078 no public street frontage, between the subject property and Oakland Road." Can we  
1079 point out those, or do we have a map that will allow us to see just where they were in  
1080 connection with this subject property?  
1081

1082 Mr. Blankinship - I don't have those mapped. I didn't think of that in advance,  
1083 but if you look at the vicinity map, you see the stream just to the east of this property.  
1084 They're in the vicinity of that stream, I believe two to the west and two to the east of that  
1085 stream, and the access for each of them runs to the south, to Oakland Road.  
1086

1087 Mr. Seargent - Mr. Blankinship, maybe I'm confused, maybe we discussed  
1088 this, but I believe I just understood you to say that there would be a road coming off of  
1089 Oakland Road, traveling due north towards Greenview.  
1090

1091 Mr. Blankinship - No, not a road. The Board has previously granted some  
1092 variances in that area, and we typically note in our reports if there has been a previous



1093 variance in the immediate vicinity.

1094

1095 Mr. Nunnally - Any other questions of Mr. Seargent? Is there anyone else  
1096 here to speak on behalf of this case? If not, if we have any opposition, please come  
1097 down front, and we'll call you back shortly, Mr. Seargent. I think you've all been sworn  
1098 in; just state your names and tell us what you have to say.

1099

1100 Mr. Broaddus -- Thank you Mr. Chairman, members of the Board. I'm Bill  
1101 Broaddus; I'm an attorney with McGuire Woods, and here on behalf of Ashley Goodwin.  
1102 Ms. Goodwin is the contract purchaser of parcel A, which is known as Edge Hill – that's  
1103 the historic home that's noted, located immediately adjacent to parcel B. We do oppose  
1104 the request for a variance. There are five reasons which we believe should compel this  
1105 Board to deny the request. Before I turn to them, I wish to make sure that everyone  
1106 understands, at least what I believe to be the case, that as Mr. Seargent candidly  
1107 stated, he would gain access, if the variance is granted, through parcel A, which is Ms.  
1108 Ashley's intended parcel. There's a comment in the staff's evaluation which, as I read  
1109 it, inferred that there could be access from Osborne Turnpike. Paragraph 2 of the staff  
1110 evaluation said "Assuming that access to the property would" come from the existing  
1111 private road. That road, as I understand it, is in fact privately owned, and there's been  
1112 no indication of any opportunity or right by the proposed owner of parcel B to use that  
1113 private road, so I think as the focus of the Board has been, that if the variance were to  
1114 be granted, you would have to assume that access would come across parcel A, which  
1115 is Edge Hill. Section 15.2-2309, Subsection 2 of the Code, provides in part, that when  
1116 "a property owner can show that his property was acquired in good faith," and then it  
1117 goes on to state a number of other considerations.

1118

1119 The first requirement that Mr. Seargent must meet, is to show that he acquired the  
1120 property in good faith. That's a two-pronged requirement – one, I believe Mr. Seargent  
1121 has been very candid with the Board, stated that he is a contract purchaser on a  
1122 conditional contract. He has not yet acquired the parcel. So we submit at the outset  
1123 that he fails to meet the requirement in order to have standing before this Board to  
1124 request the variance. Secondly, there's a requirement of good faith. Let me state very  
1125 clearly that we are not accusing Mr. Seargent of bad faith. We are not accusing him of  
1126 bad faith, but the way that term, "good faith" is used in the Code, we submit that it  
1127 means that the property owner must have acquired the property without any knowledge  
1128 or awareness that the unique configuration of that property prevented its use. Here, the  
1129 multiple listing stated quite clearly "possible building lot. Do your homework." It's very  
1130 clear that as a matter of right, this parcel cannot be developed as a residence. It  
1131 requires a variance. So, in this circumstance, we submit that Mr. Seargent not only  
1132 does not own the property, but he cannot be said to meet the good faith requirement,  
1133 because he is aware of the defect that prevents this parcel from being developed.

1134

1135 The second reason why we submit that this Board may not grant this variance, is that  
1136 the Supreme Court has long stated that a Board, and I quote, "should also keep before  
1137 it, the established rule that self-inflicted hardship, deliberately or ignorantly incurred,  
1138 would forge no basis for special treatment under the zoning regulations." The Court has

1139 adhered to that over the years. Here, it's important to understand the history of this  
1140 particular parcel. I'm frankly not certain when parcel A and parcel B were separated,  
1141 but in 1956, Ms. Strang, a widow, conveyed parcel A to the Shobes, and retained parcel  
1142 B. It's not clear at all whether that was a subdivision meeting the requirements of the  
1143 County Subdivision Ordinance. I believe at that time the Subdivision Ordinance  
1144 contained a requirement that if you separated property, the resulting lots had to meet  
1145 the requirements of the Zoning Ordinance. This wouldn't have met a buildable lot  
1146 requirement at that time. In any event, in 1960, Ms. Strang sold parcel B to Mr. and  
1147 Mrs. Shobe, so from 1964, for over 40 years, parcel A and parcel B were owned by the  
1148 same entity. In 1985, Ms. Shobe, then a widow, conveyed the two parcels to Mr. and  
1149 Mrs. Gates. In 1999, the Gates conveyed the parcels to the Cummings. I have deeds  
1150 which show those conveyances. Then in 2002, the Cummings conveyed parcel A to  
1151 Tonya Kirchner, who is here today, and to Lars Wiechmann. Several months after that  
1152 conveyance, Ms. Kirchner and Mr. Wiechmann conveyed an easement to Cummings,  
1153 across A, in order to reach B. Cummings had both A and B. He sold A; he later got an  
1154 easement across A to get to B, and on the same day that that easement was granted,  
1155 Cummings sold B to Wiechmann. Cummings took back a note, recorded in the Clerk's  
1156 Office, for all the principle to be paid as consideration by Wiechmann. Mr. Wiechmann  
1157 now proposes to sell to Mr. Seargent. Mr. Seargent has said Mr. Wiechmann is  
1158 strapped. County records show he has not paid his taxes, so how is this hardship rule  
1159 relevant to these particular proceedings? Wiechmann and Cummings created the  
1160 hardship when Cummings separated the parcels, when Wiechmann participated in  
1161 conveying the easement, and then purchased B. Mr. Wiechmann is indebted to  
1162 Cummings. Wiechmann has signed the application for a variance. If a variance is  
1163 granted, he will be able to sell B at a substantial profit. He will then be able to pay his  
1164 indebtedness to Mr. Cummings. This would enable Wiechmann and Cummings to  
1165 substantially benefit by the granting of the variance, and they would be able to avoid the  
1166 hardship which they themselves created. This would violate the Supreme Court's  
1167 requirements that have been cited and followed for over 50 years.

1168  
1169 The third reason for denying the variance is that the Board may not grant a variance  
1170 unless it finds that strict application of the Zoning Ordinance would produce an undue  
1171 hardship. In the Azalea Corporation case, the Supreme Court made clear that financial  
1172 loss standing alone does not justify extraordinary or exceptional situation justifying relief  
1173 by variance. It's a fact, but it alone is not enough. Here the property, as I understand it,  
1174 is used for agricultural. There are other agricultural uses in the immediate area, so that  
1175 is a reasonable and appropriate use. It may not be the highest and best use, but it is a  
1176 use. Another use could be to hold the property for assemblage, and there are certainly  
1177 many, many parcels in Henrico County that are held for that purpose. We submit that  
1178 there is no undue hardship confronting the property because it does have uses, and one  
1179 of those uses is currently available to it, and it's being used for that purpose.

1180  
1181 The fourth reason requiring denial is that the Board may not grant a variance unless it  
1182 finds that the hardship is not generally shared by other properties in the same zoning  
1183 district, and in the same vicinity. There are two aspects here, as has been indicated, I  
1184 believe the record shows that there were four variances granted, so it would seem that

1185 this is not a unique situation. It's a general situation, and it ought to be addressed by a  
1186 modification of the Zoning Ordinance, if it's to be addressed at all, not by the relief  
1187 suggested here. Secondly, if relief were granted here, it would enable any parcel owner  
1188 to simply divide a parcel, and come in and say "I want a variance, just like you gave Mr.  
1189 Seargent and Mr. Wiechmann.

1190  
1191 Finally, the fifth reason is perhaps the most compelling reason. That is, that the Board  
1192 may not grant a variance unless it finds that the authorization will not be a substantial  
1193 detriment to adjacent property. Ms. Goodwin will describe the situation and is certainly  
1194 able to do so far better than I, but the home, a photograph of which was up earlier, was  
1195 built in the 1940's, I beg your pardon, the 1840's. It's referred to as an architectural  
1196 example of a raised cottage. As I understand it, it may be the only example of this  
1197 particular architecture in Henrico County, certainly the only one in the Varina District.  
1198 There are three outbuildings that were adjoining the property as part of the parcel,  
1199 immediately, if you're standing on parcel B, and looking to Greenview Road (Drive) on  
1200 the right. Two of those have been substantially lost, due to time, but the third exists in  
1201 part. Ms. Goodwin has prepared a plat to scale, showing the location of the 50-foot  
1202 easement and these particular outbuildings. The easement is in red, and the location of  
1203 the three outbuildings, two of which are not standing now, in white, and the one in the  
1204 middle, I believe is the one that still has some remnants still standing. All three have  
1205 potential to be important archeological resources for digging, and the Virginia  
1206 Department of Historic Preservation and the State Review Board, have indicated  
1207 tentative approval, subject to confirmation, for listing of this property for the Historic  
1208 Resource, and part of that is contingent upon the resource being available for  
1209 examination, use, and what not, and if a driveway is put over top of this, then that  
1210 certainly would have a substantial adverse impact, not only to the property as a historic  
1211 use as a residence, but to Virginia and the purposes of trying to preserve these types of  
1212 properties. In addition, on Greenfield Road (Greenview Drive) you will see that there  
1213 are a number of trees, I'm not certain how many of these are hardy, deciduous trees,  
1214 and at least several, if not all, would have to be removed in order to accommodate the  
1215 driveway. Finally, it's my understanding that Mr. Seargent has candidly indicated the  
1216 possibility of expanding the use from simply a driveway for one single-family residence,  
1217 to a greater use. For these reasons we submit that the applicant has not met any of the  
1218 requirements set forth in the Code. He does not have standing, his predecessor, who  
1219 will benefit, who is still the parcel owner, has created the hardship, and the Board does  
1220 not have the authority to grant relief to benefit him. I'll be happy to answer any  
1221 questions. I know that there are others in opposition, and Ms. Goodwin would like the  
1222 opportunity to speak as well.

1223  
1224 Mr. Wright - Mr. Broaddus, just as a matter of interest, there's already a  
1225 50-foot easement into this property, correct?

1226  
1227 Mr. Broaddus - Yes sir.

1228  
1229 Mr. Wright - Does that entitle the owner to come in and out of there with  
1230 farm equipment or whatever? The owner could put some sort of access driveway

1231 through there without any further ado, could he not?

1232

1233 Mr. Broaddus - Mr. Wright, as I understand the objective, and Ms. Kirchner's  
1234 here and can speak to it, I think, more directly, the language of the easement says  
1235 "access and utility easement." It's not restricted in terms of one single-family or any  
1236 particular beyond that. As I understand it, the original objective of Mr. Wiechmann and  
1237 Mr. Cummings was that they thought that parcel B would be a good site for a cell tower,  
1238 and that they wanted to be able to have access for equipment to go in and construct the  
1239 tower and to maintain the tower. So, to answer your question, they would, under the  
1240 terms of that particular easement, it's not limited to residential, they've got the right to do  
1241 it.

1242

1243 Mr. Wright - My point is this. You say, and I understand what you're  
1244 saying, one of the bases is, if they have a reasonable use of the property, then that  
1245 would negate the need for a variance in its present condition. But if it were to be used  
1246 for agricultural purposes, what you said would be one of the reasonable uses, they  
1247 would need to take equipment in and out to get back to farm it. Wouldn't they be  
1248 entitled to go over this easement and the ruins, to the contrary notwithstanding, it may  
1249 not be a good thing, but they've already got that legal right, don't they?

1250

1251 Mr. Broaddus - The person farming it, sir, is a person farming, I'm not certain  
1252 how many acres, perhaps Dr. Nelson can explain, but there's a large acreage  
1253 immediately to the south and I think to the east, that's farmed, and in this area all  
1254 through here, and the equipment that's used to farm this, comes from this area. I'm not  
1255 certain how access is gained here, but while you're right, there would be a legal right.

1256

1257 Mr. Wright - That's my point. They would have a legal right to take  
1258 equipment in and out, over that easement, to access this one and a half acres, if they  
1259 wanted to farm it.

1260

1261 Mr. Broaddus - Yes sir. But it's not necessary to do that.

1262

1263 Mr. Wright - I don't care whether it's necessary; they would have the legal  
1264 right to do it. There's another matter of interest. I believe there's another raised house  
1265 in Henrico County at the old Franklin Farm. I think that's a raised house. I've been in it.

1266

1267 Mr. Broaddus - It's a gorgeous home; I know the one you're referring to.

1268

1269 Mr. Wright - I believe that's a raised house. I was interested when I saw  
1270 this comment that this was the only one in Henrico County, but I believe that one is.  
1271 That's just a matter of information.

1272

1273 Mr. Broaddus - That's why I said, it also might just be in Varina, but it  
1274 certainly is a very significant architectural resource.

1275

1276 Ms. Dwyer - As Mr. Wright's pointed out, even without the variance, this

1277 easement can be used presently to access parcel B, so the historical buildings could be  
1278 compromised in that way. Is it also your client's position that a house on this parcel  
1279 would be of substantial detriment to this historical property on parcel A?  
1280

1281 Mr. Broaddus - There is a right to use the easement. We're not disputing  
1282 that, but this Board has discretion when it evaluates things, if criteria are met, and here  
1283 the point is, that easement is not going to be used for farm purposes, and it will be used  
1284 for residential purposes, so if the easement is granted, if the variance is granted, that  
1285 easement will be used, and that's the detriment that will actually occur and be triggered  
1286 by the granting of the variance. Yes, they have the right to bring farm equipment across  
1287 it, but that's not going to happen. We do know that if Mr. Seargent were granted the  
1288 variance, he would cut the trees and put his driveway in. As to the question of whether  
1289 a home would have a detriment, I apologize for this, but I think that question is probably  
1290 best answered by Ms. Goodwin, and she is here and will speak. Certainly I think that all  
1291 would acknowledge that it would be better to have one home than to have four or five  
1292 homes, but we're addressing each problem as it occurs, and this is the immediate  
1293 problem right now, and that's why we're here.  
1294

1295 Mr. O'Kelly - Mr. Broaddus, is your client aware that we have a  
1296 subdivision application on the Talley property? It's for fourteen lots, and there will be a  
1297 public hearing in this room on July 26 at 9:00 am, to review that plat with the Planning  
1298 Commission.  
1299

1300 Ms. Dwyer - What is that property zoned? Is that R-3, Mr. O'Kelly?

1301 Mr. O'Kelly - Yes.  
1302  
1303

1304 Ms. Dwyer - Of critical interest to us is the Supreme Court case in  
1305 Cochran vs. Fairfax County. One of the statements that the Court made in that case is  
1306 the threshold question, is whether the affect of the Zoning Ordinance on the property  
1307 would interfere with all reasonable, beneficial uses of the property, taken as a whole.  
1308 So one of the questions that arises in these cases, in my mind, is, what is the property  
1309 taken as a whole? Is it the two parcels together, or do we examine this parcel  
1310 separately, simply because someone at some point in time has decided to divide it,  
1311 even though it has received no governmental approval?  
1312

1313 Mr. Broaddus - As I understand the Court's language, that you just referred  
1314 to, in this particular situation, you would look at the roughly 1.5 acres parcel B in  
1315 determining "as a whole." I don't think that you would look at the two together, because  
1316 it has been separated, whether legally or not. However, for the reasons that I stated  
1317 earlier, I do think that you have to look at how it was separated, who would benefit, and  
1318 whether that hardship, if you will, was self-imposed, and that's why you ultimately get  
1319 back to viewing it as a whole.  
1320

1321 Ms. Dwyer - If that were the case, then anyone could divide their property  
1322 in any way they decided to do it, and then come in and say, "this is the parcel that

1323 needs to be considered, rather than the other parcels,” in totality. That’s my concern;  
1324 I’m wondering if both should be considered together “as a whole” under this language.

1325  
1326 Mr. Broaddus - That’s why I pointed out the second portion of the State  
1327 Code requirements, that it has to be a unique situation, because you’re exactly right, if  
1328 you grant a variance here, then anybody else could come in and divide a property and  
1329 say, “Give me a variance.”

1330  
1331 Mr. Nunnally - Are there any other questions of Mr. Broaddus?

1332  
1333 Ms. Harris - If we deny the variance on this property, does that say to Mr.  
1334 Seargent and the person to whom he represents, that he can’t use this easement for  
1335 your new construction, or whatever you’re going to do?

1336  
1337 Mr. Broaddus - No ma’am; I wish it did, but it doesn’t. In light of Mr.  
1338 O’Kelly’s comment, after Ms. Goodwin speaks, I would like the opportunity, if it would be  
1339 permissible, to confer with her for a moment and then come back to the podium.

1340  
1341 Mr. Nunnally - We’ve got a bunch of stuff here, Mr. Broaddus, that we’ve  
1342 received on this case, and we’ll hear from the next person. Would you want to confer  
1343 with her while the next person’s talking?

1344  
1345 Mr. Wright - We’ve got plenty of information, and we don’t want to listen  
1346 to a lot of repetitious information.

1347  
1348 Mr. Broaddus - It would not be for that purpose at all.

1349  
1350 Mr. Nunnally - Next person.

1351  
1352 Mr. Nelson - My name is Henry Nelson. I am here representing the  
1353 Association for the Preservation of Henrico Antiquities. The property in question, that is  
1354 on review today in parcel A, is on our inventory, listing it as a property of interest and  
1355 therefore one that we intend to try and protect, so our interest is relative to its  
1356 interpretation in that regard. We feel that the easement would be detrimental to the  
1357 historical integrity of the property for the reasons already stated. As already put  
1358 eloquently by Mr. Broaddus and others, the speculative value of this particular parcel,  
1359 we have no particular interest in conveying to someone who has imposed their own  
1360 hardship. When this person subdivided with no guarantee of access other than the  
1361 easement that is currently there, which is for access of agricultural purposes, the person  
1362 farming it gets the access from the back. He doesn’t have to come through the  
1363 property. He could come through it if they so desire. The mere speculation that the 50-  
1364 foot easement could someday be improved to afford a street front to others who would  
1365 speculatively buy this property in the back and other areas, therefore affording them the  
1366 right to put it in at a much cheaper rate.

1367  
1368 As already ascribed by Mr. Seargent, he did not look at the cul-de-sac situation because

1369 apparently, the expenses incurred to do so would be incumbent upon his profit profile,  
1370 which we're not concerned with. We are concerned with the integral parcel here.

1371  
1372 A raised cottage is one story above an English basement. An English basement is a  
1373 way in which to raise any house. The one you refer to out there is a story and a half.  
1374 I'm very familiar with all of them, having studied them, but that's the difference. The  
1375 cottage is one story above a raised basement, whereas opposed, the other is a story  
1376 and a half, just to give you a point of reference, not that it is pertinent to this. So it is  
1377 unique. We don't have that many raised cottages. There may be one, or two, or three,  
1378 but as far as I'm concerned, there are very few, if any, on the registry. To interrupt it in  
1379 a way that would preclude the archeological value, which in this particular easement is  
1380 detrimental to this property. To give one a value, is detrimental to the other.

1381  
1382 I hold that there are other ways to get to this property, and that we're not compelled  
1383 here by this Board, nor are we compelled by County statute, regulation, or anything  
1384 else, to afford a value to someone that wasn't realized when they knowingly purchased  
1385 it. That 20-foot easement that was so unattractively presented, could be conveyed if the  
1386 person were to make the purchase from someone who currently owns it, and other  
1387 possibilities exist for properties in and around it that are being rezoned or possibly  
1388 rezoned for infill.

1389  
1390 One of the things that disturbs us a great deal is that, whenever we have a historical  
1391 property that has any "land around it," the first thing we look at is people trying to buy it  
1392 for the sole purpose of chopping it up and making it less valuable for history and more  
1393 value for their immediate pocketbook. My problem is I wonder what in value we have as  
1394 a result of that process. We look at a lot of things in various ways, but that perspective  
1395 gives me a great deal of distress. For those reasons, we do oppose this and hope the  
1396 Board will oppose it as well, and hope you will take what we said into consideration. We  
1397 feel like it's not justified; there are other ways to access the property, and to do so in this  
1398 regard would be detrimental to the one that is very valuable and worth preserving at all  
1399 costs if we can. Thank you for your consideration.

1400  
1401 Mr. Kirkland - I think someone mentioned a cell tower. If someone put a  
1402 cell tower on that agricultural property, that would be acceptable, correct?

1403  
1404 Mr. Blankinship - Depending on the height, it would require a conditional use  
1405 permit.

1406  
1407 Mr. Kirkland - But they could still access through the deeded access, and  
1408 not have to get a variance or anything. The use permit is the only thing they would  
1409 need, right?

1410  
1411 Ms. Dwyer - If it's zoned R-3.

1412  
1413 Mr. Kirkland - Zoned R-3?

1414

1415 Mr. Blankinship - Again, we review those for historical impact as well as other  
1416 things, so that would become an issue.

1417  
1418 Mr. Nunnally - Anyone else to speak on it?

1419  
1420 Ms. Goodwin - My name is Ashley Goodwin. I currently have a contract on  
1421 1107 Greenview Drive. It's been known as Edge Hill back to 1793 in the tax records.  
1422 During the process of putting a contract on this property, I've worked closely with the  
1423 Department of Historical Resources, and we have applied to be nominated to the State  
1424 and National Landmarks Registry as a State and National Landmark. During that  
1425 process, I was told that only houses like Carter's Grove and Shirley Plantation received  
1426 a score any higher than 40. Edge Hill received a remarkably high score of 39 points.  
1427 Everyone at the Department of Historical Resources was very surprised to see how  
1428 many points towards history that there were on the property. The property was owned  
1429 at one time by Captain Kennedy; I think you've seen in some of the material I've  
1430 provided for you, that Captain Kennedy, at one time, owned all the outlying land that  
1431 also now encompasses Marion Hill, and was the donator of the land on which the first  
1432 fortress was built to defend Richmond during the Civil War. Edge Hill is the only ante-  
1433 bellum house of its type in Henrico County, and to say there are other raised houses, as  
1434 Dr. Nelson pointed out, the raised cottage form drew its inspiration from the post-  
1435 Renaissance Italian villa, which Thomas Jefferson was also inspired by. It is not  
1436 represented anywhere else in the County. It's listed in the inventory of early  
1437 architectural and historic and archeological sites. I think the Board of Zoning Appeals is  
1438 aware of this resource in the 2010 and 2026 Henrico County Land Use Plan, in the  
1439 section on historic and cultural goals, objectives and policies. Homes included in the  
1440 architectural and archeological sites resource book are identified to help insure the  
1441 compatibility of future development in Henrico County that may occur in proximity to  
1442 these locations through the use of proper design features and types of land use. This  
1443 property is a reminder of Henrico County's agricultural past and historical past.  
1444 Architecturally, the house represents with purity of design and construction, unlike any  
1445 other home in the County, Henrico County building practices of the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup>  
1446 centuries. Edge Hill is also said to be the first home in Varina to have indoor plumbing.  
1447 There is adjacent property now shown on the map, that would be to the southwest, that  
1448 holds a pond and then a stream, that one time from about the 1860's on, water was  
1449 forced with a ram uphill to the property and conveyed into a raised tank and then  
1450 gravitationally fed into the home, which is a very modern convenience for the time. I  
1451 think that you have received materials that I've given you. I have also with me,  
1452 additional materials, showing clear photographs of the easement, and how the use of  
1453 the easement would impact the property itself. I think you can see from the photograph  
1454 that's shown above, that if you cut 50 feet in from the right-hand side, or the east, that  
1455 the dot that you see directly adjacent to the right of the red roof of the home, is, as Mr.  
1456 Seargent has pointed out, a dilapidated shed, but underneath it, are the extent  
1457 archeological remains of a kitchen outbuilding, complete with glazed headers. There is  
1458 a full-scale basement down there, and I have photographs of it. I have additional letters  
1459 from the Virginia Archeological Society, and the Henrico Historical Society, as well as a  
1460 second letter from the Department of Historical Resources, pleading my case and the



1461 destruction of any of the adjacent archeological features or merit points that the house  
1462 has gained me impact upon our ability to gain State and National Landmark status. I  
1463 can say that for the sake of preservation, I would not be opposed to the granting of the  
1464 variance Mr. Seargent is required, as long as the purchaser of parcel B can find another  
1465 way in, with the contingent that it would be for a single-family dwelling only. If I can  
1466 answer any other questions for you, I can give you additional photographic information  
1467 and the new letters that have come in, to Mr. Blankinship.  
1468

1469 Mr. Wright - Ms. Goodwin, concerning the shed and what you say  
1470 remains under .....

1471 Ms. Goodwin - Yes sir, I have photographs of it.  
1472  
1473

1474 Mr. Wright - What would be your intent there, to restore those or just to  
1475 examine them and remove them, or what?  
1476

1477 Ms. Goodwin - No sir, my plan is to restore them. I'm in the process of  
1478 purchasing the house, and as you know, under Virginia State law, when you're under  
1479 contract, and I've also written it additionally into my contract, which I have in the binder  
1480 for you to peruse. I have equitable right to the property, and Ms. Kirchner, the current  
1481 owner, is selling to me, has agreed to aid me in the defense and preservation of the  
1482 buildings. To this point, since the house was built, in or before the 1840's, no one has  
1483 disturbed these buildings. It's our intent to completely restore the home, to allow people  
1484 like the Department of Historic .....

1485 Mr. Wright - I understand all that; I'm talking about this that's in this  
1486 easement area.  
1487  
1488

1489 Ms. Goodwin - Yes sir. Our intent is to allow the Department of Historic  
1490 Resources, and their archeological crew, as well as the Virginia Archeological Society,  
1491 to go through these remains, uncover them, see what we can give as an aid to history  
1492 that way, make that information available to the public, and reconstruct these buildings,  
1493 pending our findings.  
1494

1495 Mr. Wright - You might have some problems legally doing that. An  
1496 access has been granted to this property, and it says access, which we have here in the  
1497 record, and I would think legally you probably couldn't do something that would interfere  
1498 with that access, unfortunately, but that's been done. This is something that's not to be  
1499 done; it's been done. That may be a legal question.  
1500

1501 Ms. Goodwin - I understand what you're .....

1502 Mr. Wright - I can see that working with the owner, you could probably go  
1503 in and do digs and examine these things, etc., and get all the historic value you could  
1504 out of them, but whether you could reconstruct them to that access. That's a legal  
1505 question.  
1506

1507  
1508 Ms. Goodwin - I'm sorry; I'm confused when you say working with the  
1509 owner?  
1510  
1511 Mr. Wright - The owner of parcel B, who has the easement. There's no  
1512 reason why they couldn't .....  
1513  
1514 Ms. Goodwin - They have deeded right to access and utility through the  
1515 easement, but to this point, that's not been granted, and I'm only stating what our plans  
1516 were .....  
1517  
1518 Mr. Wright - It's granted; it's of record. The easement is of record. I've  
1519 examined the information sent to me. You can't deny they don't have a recorded  
1520 easement through that property.  
1521  
1522 Ms. Goodwin - No sir, I'm not denying that at all. I do have concern over  
1523 how the easement was granted, that Ms. Kirchner, who's back here now and will speak,  
1524 as well, if you need, purchased the property and then put Lars Wiechmann on the deed  
1525 with her. Mr. Wiechmann and .....  
1526  
1527 Mr. Wright - Are you questioning the legality of the transaction? That  
1528 may be something else that we're not going to get into here.  
1529  
1530 Ms. Goodwin - No sir, I'm bringing to point the fact that Mr. Wiechmann,  
1531 who was placed on the deed of parcel A, created an easement so that the original  
1532 seller, George Cummings, could get into the back, into parcel B, and then Mr.  
1533 Cummings immediately sold him parcel B. So I'm pointing out that he created his own  
1534 inroad and .....  
1535  
1536 Mr. Wright - That has some bearing on whether we grant the variance,  
1537 but it doesn't have any bearing on the legal, the fact that the access is legally of record.  
1538  
1539 Ms. Goodwin - It's been legally recorded; as to its intent I cannot speak.  
1540  
1541 Ms. Dwyer - I think Mr. Wright's concern and mine, is that a legal, as far  
1542 as we know, a legal easement has been granted to parcel B. Right now the owner of  
1543 parcel B has the right to access it through this 50-foot easement. That's a given. We  
1544 cannot change that. So much of the discussion has focused on the easement, I think  
1545 that's our concern, because the variance, in some tangential way involves the  
1546 easement, but primarily involves the use of parcel B, and that doesn't seem to be an  
1547 issue for any of the opposition today.  
1548  
1549 Ms. Goodwin - I understand that. What doesn't seem to be an issue?  
1550  
1551 Ms. Dwyer - Whether or not a home is placed on parcel B.  
1552

1553 Ms. Goodwin - It's of issue to me, as future owner of Edge Hill.  
1554  
1555 Ms. Dwyer - Would you speak to that, please.  
1556  
1557 Ms. Goodwin - I'm very concerned for the proximity of the proposed  
1558 dwelling. I think that it will have great impact on the current historic value of the home.  
1559 It's chopping up land around it, as Mr. Broaddus point out, this land could be used either  
1560 agriculturally, as it has been, or it could be lumped together with other land in the  
1561 adjacent vicinity. Much land in this area agriculturally is held with this intent. I believe  
1562 that to remove hardy, deciduous trees from the property and to irreparably damage  
1563 archeological resources would have great impact on the value of the property that I'm  
1564 purchasing, and I think I've letters to that effect too, from the DHR, one from the  
1565 Association for Preservation of Virginia Antiquities, from the Henrico Historical Society,  
1566 Dr. Nelson has spoken to this, I believe Chuck Pepple will speak to this, and I also have  
1567 an additional letter from the Archeological Society of Virginia. Not only the use of the  
1568 easement and the destruction of the landscaping around the home that was built prior to  
1569 1840, but also the chopping up of the land in the neighborhood, and the breaking up of  
1570 the integrity of the neighborhood, and any effect on the historic merit of the property.  
1571  
1572 Mr. Wright - What about the subdivision that's proposed?  
1573  
1574 Ms. Goodwin - I'm of course concerned with that.  
1575  
1576 Mr. Wright - That's a lot of houses, not just one nice, big house, which  
1577 would be in a style in keeping with what you've got there.  
1578  
1579 Ms. Goodwin - I'd be interested in seeing that style, sir, seeing the plat  
1580 involved, houses that have now a 15-foot setback on the street front, on the side of my  
1581 property, which is on the left of the red roof you see, the white line to the left of that,  
1582 they're proposing to put four houses down the street on Greenview towards New  
1583 Osborne Turnpike, the closest of which has nearly a 15-foot setback. There's no  
1584 proposed green screen; there's no consideration at all given to the fact that our home is  
1585 State and National Landmark Registry material. It's max density population. I have  
1586 also in my binder, that I intend to give to Mr. Blankinship for your review today, a petition  
1587 that has the signatures of 38 other residents of Marion Hill. Every single resident on  
1588 Greenview Drive has signed it; all the adjacent residents up and down Osborn Turnpike  
1589 have signed it, and I have a similar petition with signatures in excess of that, voicing  
1590 great concern over the design of the proposed Ivy Hill Subdivision. As Mr. Broaddus  
1591 said, taking it one step at a time, my hope is that if the subdivision were to pass, the  
1592 Planning Commission would work with us in the community and address our concerns.  
1593 I hope that they do not deforest and re-vegetate, as so many subdivisions do, plant two-  
1594 gallon lollipop trees. I believe that they need to leave an existing green screen. There's  
1595 a tree right at the adjoining corners on the left side of the line there, that's the left side  
1596 where parcels A and B join – there's a tree there that's got to be two or three hundred  
1597 years old. It's right inside the property line for the Talley property, on which the  
1598 proposed subdivision is supposed to sit. It's my hope that Henrico County will pay

1599 attention to their 2010 and 2026 Land Use Plans, when they talk about preserving  
1600 architectural and historical features in the County, and work with us in Marion Hill on  
1601 this, as an ongoing project.

1602  
1603 Mr. Nunnally - All right, ma'am, I think we've heard enough now. Is there  
1604 anyone else who wants to speak on it?

1605  
1606 Ms. Goodwin - I believe we have Ms. Elizabeth Bendle, who owns the  
1607 property adjacent, that's been farmed for many years and has never had anything built  
1608 on, and also Tonya Kirchner is here. She's the current owner of Edge Hill and can talk  
1609 to the creation of the easement itself.

1610  
1611 Ms. Bendle - My name is Elizabeth Bendle. I represent my father's estate  
1612 that adjoins this lot on two sides. We have access on the left there, of parcel B, to get  
1613 into the land, and we have been farming this part B since Mr. Gates lived there. I object  
1614 to chipping away at this estate. Some of my family lived there for years, Mr. Shelby. He  
1615 purchased the land and made it a whole area. If this easement is granted, I feel that  
1616 maybe our property will be decreased in value. We'll have a lot of traffic, trash and  
1617 noise in our very quiet neighborhood. I have three neighbors who have lived on  
1618 Greenview Drive ever since they were born, or have moved back when their parents  
1619 died. We want it to stay like it is with open land that we can enjoy. Thank you.

1620  
1621 Ms. Kirchner - My name is Tonya Kirchner, and I'm the current owner of  
1622 Edge Hill. I purchased Edge Hill in 2002 and at the time made a dreadful mistake by  
1623 putting my boyfriend on the deed. We have since split. He purchased parcel B from  
1624 George Cumming. I never agreed to a cell tower on the back portion of the land, but  
1625 they wanted to get the easement there in case a huge offer came in that was monetary.  
1626 At the time I had no idea of the archeological significance on that side where the  
1627 easement is. The shed is the original out-kitchen. You can look down there and see  
1628 pictures of all kinds of artifacts down there. I have walked parcel B; it is full of artifacts  
1629 there also. After the Bendles have plowed it, you can walk and pick up china, blue  
1630 yellow, green glass, tent stakes. It's rumored to be a Civil War campsite. I've found  
1631 Civil War bullets out there. It would just be a shame to have construction crews come in  
1632 and tear everything up before someone was given the opportunity to go out there and  
1633 truly do an archeological excavation to find out the importance of that land. I think it's  
1634 important for Henrico County.

1635  
1636 Mr. Nunnally - Is anyone else in opposition? I'll give them five minutes, and  
1637 that's it for today. Opposition? Mr. Seargent, do you want to rebut?

1638  
1639 Mr. Seargent - I'm just a local boy who agrees partially with what everyone  
1640 has said, that the growth in Varina has been rather extraordinary, and all of a sudden,  
1641 it's at my back door on the adjoining property of Toby Matthews property, near where I  
1642 live, so I can relate to everything they are saying. I was not aware of this grave  
1643 concern. I did receive a couple of calls from the agent on this property, and a couple of  
1644 other people, when I was investigating the 5.8 acres. I kind of wish at this point, or

1645 maybe I could ask for a point of order. Had all of this discussion taken place, openly  
1646 and freely, I think we may not be here with all the opposition; we may have already  
1647 come to a reasonable conclusion. I still stand ready to do that. I guess I need to point  
1648 out several minor points, perhaps major. I do not believe I've heard them articulated.  
1649 There exists a deeded easement of ingress and egress. This property was not recently  
1650 divided; it is not about to be divided. It has been divided, in 1959. We do not know the  
1651 intent of that dividing at that time, but one would have to believe it was either, "Hey,  
1652 we've got some land here – you have a house, and I'll farm the dirt, and then maybe by  
1653 farming the dirt, you give me this land, or I'll buy it from you." But certainly this property  
1654 was divided quite some time ago, before Eugene Seargent was born, actually within a  
1655 few years after my birth, I imagine. Certainly the development next door is going to take  
1656 place, and I would suspect, based on what I'm understanding, it's not going to be  
1657 anywhere near the quality of the home that I plan to build for this particular customer,  
1658 the Farbs. Certainly we could hold this land for a long period of time, until such time as  
1659 Ms. Bendle's heirs decide to sell, because she's made it clear that she will never sell  
1660 her adjoining property, and I respect that, and I told her that. Her son sold property  
1661 through me at one point, and there's a major subdivision sitting there now. She didn't  
1662 like the fact that he had done that, and I don't blame her. I even sold her grandson a  
1663 home, so we've known each other for a while, and I do respect her concerns. Whether I  
1664 get this variance through this particular easement, and that is now a major question on  
1665 my part, given what I've heard today, and the fact that no one had discussed it with me,  
1666 I am more than happy to revisit it, this whole issue. These are things that were not  
1667 known to me, and I feel like we've maybe wasted your time, so I am offering to get back  
1668 together and resolve it. In fact, if I owned this property, I would love the opportunity to  
1669 deed this easement back to whoever wants it. I understand the potential significance.  
1670 Again, none of this was brought to my attention. I thought it was a ramshackle shack,  
1671 so I think we could have done a little bit better maybe in preparation. Maybe I would  
1672 have had an attorney here, but I hope not, because I've already put too much money in  
1673 this site and may not get anything out of it. The attorney spoke to the financial hardship  
1674 that was created, and many people have, between Mr. Wiechmann and Mr. Cumming,  
1675 but we're not speaking to whatever their intentions were at the time. The fact that the  
1676 easement is there, the fact that the property was divided quite some time ago, is  
1677 irrelevant to what financial issues they have amongst themselves. Their intent, in terms  
1678 of what they recorded, is clear. I also question, obviously, if this new development next  
1679 door is done, and if this one house is built on this site, I still question the talk about  
1680 these poor guys' hardships and the creation of problems because a relationship went  
1681 sour, but are we not also talking about the "financial relationship of the sale of this  
1682 particular historical property"? I'm getting the impression that if not all this comes to  
1683 pass, that this particular young lady, who is so well spoken, may in fact not acquire this  
1684 property, because it will damage the significance or the future historical significance,  
1685 given the relationship of all these new homes. I'm not sure where all this leads us,  
1686 except I am more than happy to, and I need some point of reference here, how do we  
1687 delay, defer, I have no knowledge of who owns that 20-foot strip. Perhaps whoever  
1688 owns it might want to sell those houses as well. Perhaps we can improve those  
1689 houses, widen that 20-foot driveway to create a more attractive environment. I have not  
1690 spoken to whoever's now doing this proposed 4.5 acres, but perhaps we could

1691 incorporate some of this with respect to how they're doing it. Unfortunately, I don't have  
1692 time, so I cannot say please defer me, because I have until July 30 to get a building  
1693 permit, or my interest in this will go away, and there's another interested party in the  
1694 background, waiting to do less than what I'm planning to do. I guess I need a point of  
1695 reference as to how to proceed from your procedural points, because I feel like we can  
1696 resolve a lot of these issues. I can't resolve the subdivision, but we can certainly  
1697 discuss the lease of this easement, and for me to reposition my hopes, and perhaps it  
1698 may require some assistance, financially, from those who are concerned about the  
1699 historical nature and the disturbing of this easement.

1700  
1701 Mr. Wright - Mr. Seargent, the next meeting of this Board is July 27.

1702  
1703 Mr. Seargent - That would give me a three-day window, would it not?

1704  
1705 Mr. Wright - Would you be agreeable to our deferring this case to give  
1706 you an opportunity to get with these folks and see what you can work out?

1707  
1708 Mr. Seargent - Yes, this is not a big fight in what I do for a living. It's not  
1709 extremely consequential. If I walked away today, it wouldn't matter, so I would love to  
1710 have the opportunity. I'm a good guy. No one's ever addressed me. I'm just really  
1711 surprised that all this has happened, and I think we have wasted everyone's time.

1712  
1713 Mr. Wright - If we were to do that, I think it would be on the basis that we  
1714 would not hear all this evidence over again, but anything new, or any developments  
1715 since today, we could entertain. It may be that something could be worked out.

1716  
1717 Mr. Seargent - Might I ask, if in fact in our deliberations, we work out an  
1718 arrangement where this easement through the particular parcel, 1107, is involved in this  
1719 thing and deeded to this potential purchaser, which I think is where we need to be  
1720 going, that would assume that I would find a way to purchase this 20-foot easement to  
1721 gain access, my question is, and of course the proposal that I received, suggested that  
1722 is what you would have wanted anyway. So I think what I'm asking is, I would not  
1723 withdraw, if I may, the probability of moving through Greenview property and for me to  
1724 pursue the 20-foot right-of-way if you could deliberate on that as a variance and the  
1725 ingress and egress through that site. I believe that avoids every controversy that I've  
1726 heard here today, except for the extent of the artifacts that might be found on this site,  
1727 and I'd be more than happy to give somebody as much time as they want to dig it up  
1728 before we build a house.

1729  
1730 Mr. Wright - Unfortunately, that would be a new procedure.

1731  
1732 Mr. Seargent - I think that's what you've told me you want to do.

1733  
1734 Mr. Wright - Is that correct, Mr. Blankinship?

1735  
1736 Mr. Blankinship - I think you could just make that a condition, if that is what the

1737 Board chose to do, but of course you might prefer to deliberate for a couple of weeks  
1738 instead.

1739  
1740 Mr. Wright - Wouldn't he be asking for a variance for a new access?

1741  
1742 Mr. Blankinship - It would be the same request though.

1743  
1744 Mr. Seargent - I think your staff reported that it would be their  
1745 recommendation.

1746  
1747 Mr. Wright - I understand. Mr. Broaddus, do you have something to say  
1748 on what we just raised here?

1749  
1750 Mr. Broaddus - I simply wanted to repeat Ms. Goodwin's position that she  
1751 would not oppose a variance if a condition were that the access to be through some  
1752 means other than A, which is what I believe is what Mr. Seargent just suggested, and  
1753 you'll recall, I began my presentation by saying I think there may be a concern with  
1754 respect to the valuation, so that I think that what he is suggesting would be consistent  
1755 with the staff's recommendation. It would be consistent with the position of Ms.  
1756 Goodwin. The other condition that she referenced would be that there would be one  
1757 residence on B, as opposed to some larger, more dense.

1758  
1759 Mr. Wright - I take it that's what's proposed here, so I don't think that Mr.  
1760 Seargent has a problem with that.

1761  
1762 Mr. Seargent - The only problem I would have with that, if in fact I've got to  
1763 figure out a way to get off of New Osborne, down this 20-foot easement, that's going to  
1764 certainly incur additional cost, if we go that route, and then we team up with the  
1765 gentleman next door. If this is R-3 zoning, and it may very well conform with the  
1766 development that they're proposing, before your meeting on the 27<sup>th</sup>, I'll contact these  
1767 people, and if we can't do what I need to do, and come to some conclusion, then  
1768 certainly I would be remiss in not offering those three developable lots in conjunction  
1769 with the project that's about to go next door. I think what I'm saying is, we probably still  
1770 need to have a conversation, deliberate as you see fit, regarding my use of that 20 feet,  
1771 but before I would vacate the easement up on top, I would have to have some  
1772 assurance that this financial hardship that I'm now being placed upon, to be assured of  
1773 the historical significance, ought to be addressed as well.

1774  
1775 Mr. Wright - If we were to grant this variance on the grounds that you  
1776 have access other than over this 50-foot easement, you would be free to go ahead and  
1777 explore that. That's up to you and them whether you want to subsequently convey that  
1778 easement back.

1779  
1780 Ms. Dwyer - There seem to be so many issues that don't really involve  
1781 us, how the property is going to be used, whether or not access is going to be gained  
1782 from this point or that point, what the validity of the existing easement is, someone's

1783 willingness to deed it back, and the prices that may need to be negotiated between the  
1784 parties, I would like to just see us defer it and have the parties come back to us with  
1785 their proposal, rather than have us get involved in variances contingent on this or that  
1786 access. I think it's just better for us to just defer it and let the parties resolve it in the  
1787 meantime.

1788  
1789 Mr. Wright - We'll want to know what the access is before we grant the  
1790 variance, I agree with that.

1791  
1792 Mr. Seargent - And might I suggest, as this thing progresses, I was kind of  
1793 outmanned and outgunned. I think that when I do reappear, I will have legal counsel.

1794  
1795 Mr. Nunnally - There will be no more testifying, just what you come up with.

1796  
1797 Mr. Seargent - I think the purpose that I might need legal counsel is to  
1798 address some of these specific legal issues addressed by prior counsel so that I can at  
1799 least have a professional opinion as to the validity and reliability of those arguments that  
1800 he had made. Are you suggesting that my attorney would not be in a position to make  
1801 those arguments?

1802  
1803 Mr. Wright - If it's something new.

1804  
1805 Mr. Nunnally - That's fine.

1806  
1807 Mr. Seargent - We may not get there. I hope we don't.

1808  
1809 Mr. Wright - I move that we defer this case to the next Board meeting.

1810  
1811 Ms. Dwyer - Second.

1812  
1813 Mr. Blankinship - There's a motion by Mr. Wright; second by Ms. Dwyer, that  
1814 we defer. All in favor please say aye. A-28-2006, Eugene I. Seargent, Sr.

1815  
1816 Mr. Blankinship - That one we deferred.

1817  
1818 Upon a motion by Mr. Wright, seconded by Ms. Dwyer, the Board **deferred** application  
1819 **A-28-2006** for a variance to build a one-family dwelling at 1115 Greenview Drive (Parcel  
1820 801-707-1459). The Board deferred the request, from the June 22, 2006, until the July  
1821 27, 2006, meeting, to allow time for the applicant to meet with the neighbors to discuss  
1822 mitigation of the potential impacts on their property.

1823  
1824 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1825 Negative: 0  
1826 Absent: 0

1827  
1828 **A-29-2006** **SPENCE AND MELISSA SNEAD** request a variance from Section



1829 24-9 to build a one-family dwelling at 2701 Old Memorial Drive  
1830 (Parcel 839-709-9010), zoned A-1, Agricultural District (Varina).  
1831 The public street frontage requirement is not met. The applicants  
1832 have 0 feet public street frontage, where the Code requires 50 feet  
1833 public street frontage. The applicants request a variance of 50 feet  
1834 public street frontage.

1835  
1836 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1837 please stand and raise your right hand?

1838  
1839 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1840 truth, the whole truth, and nothing but the truth, so help you God?

1841  
1842 Mr. Snead - Yes.

1843  
1844 Ms. Snead - Yes.

1845  
1846 Mr. Snead - It's Spence Snead, and my wife, Melissa. We were  
1847 requesting a 50-foot variance for road frontage. This was property that was given to us  
1848 on October 2, 2002, by her father, Henry G. Beckstoffer. We're proposing to build a  
1849 house, and as of right now, we have a proposed easement that you see there. My  
1850 attorney hasn't recorded the easement yet because he picked up the paperwork, and  
1851 we were under a short window. Mr. Jason Baker has gone out of the country for two  
1852 weeks, and when Timothy comes back, I actually have the paperwork; he's in  
1853 agreement to sign on that, so no problem there. When they originally drew the  
1854 paperwork up, there was a discrepancy there; now that's been fixed.

1855  
1856 Ms. Dwyer - What was the discrepancy?

1857  
1858 Mr. Snead - We're supposed to be doing a release of the easement. Her  
1859 father's supposed to be giving him a release of an easement on his property. He has a  
1860 60-foot easement behind his house, and all I'm trying to gain is from 0 to 50 feet on the  
1861 left-hand side of his property. There's a 60-foot easement, but I don't wish to go  
1862 through that behind his house. That is actually her father's.

1863  
1864 Ms. Dwyer - That 60-foot easement crosses the easement that you want?

1865  
1866 Mr. Snead - No, it doesn't cross the easement.

1867  
1868 Ms. Snead - The 60-foot easement is actually on the west side of Mr.  
1869 Baker's property, which would cause us to have to go all the way around his property  
1870 back into ours, so we're just proposing to get an easement on the east side of Mr.  
1871 Baker's property.

1872  
1873 Ms. Dwyer - That's shown here? So that easement would go through  
1874 someone else's property, not just your father's property?

1875  
1876 Mr. Snead - It would be her father's and Mr. Baker's property, but I'd  
1877 need Mr. Baker's signature, and he's out of the country for two weeks, so it can't be  
1878 properly recorded at the County until he gets back.  
1879  
1880 Mr. Wright - Have you read the conditions proposed for this case?  
1881  
1882 Mr. Blankinship - Page 3 of the staff report.  
1883  
1884 Mr. Wright - One of these conditions is that you have legal access as  
1885 proved to the Planning Office at the time you apply for your building permit, so that  
1886 could be worked out.  
1887  
1888 Mr. Nunnally - Any other questions? Anyone in opposition to this request?  
1889 Hearing none, that concludes the case. Thank you. A-29-2006, Spence and Melissa  
1890 Snead.  
1891  
1892 Mr. Kirkland - This is the one that had that uncertainty about the easement,  
1893 is that correct?  
1894  
1895 Mr. Wright - But they've got that worked out. I move that we approve  
1896 this, on the grounds that they wouldn't have reasonable use of the property without the  
1897 variance.  
1898  
1899 Mr. Kirkland - Second.  
1900  
1901 Mr. Nunnally - Motion by Mr. Wright, second by Mr. Kirkland, that it be  
1902 approved. All in favor say aye. It's been approved.  
1903  
1904 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1905 Kirkland, the Board **granted** application **A-29-2006** for a variance to build a one-family  
1906 dwelling at 2701 Old Memorial Drive (Parcel 839-709-9010). The Board granted the  
1907 variance subject to the following conditions:  
1908  
1909 1. This variance applies only to the public street frontage requirement. All other  
1910 applicable regulations of the County Code shall remain in force.  
1911  
1912 2. At the time of building permit application the owner shall demonstrate that the  
1913 parcel has been conveyed to members of the immediate family, and the subdivision  
1914 ordinance has not been circumvented. Ownership of the parcel shall remain in the  
1915 immediate family for a minimum of five years.  
1916  
1917 3. Approval of this request does not imply that a building permit will be issued.  
1918 Building permit approval is contingent on Health Department requirements, including,  
1919 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
1920 of a well location.

1921  
1922 4. At the time of building permit application, the applicant shall submit the  
1923 necessary information to the Department of Public Works to ensure compliance with the  
1924 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1925 water quality standards.

1926  
1927 5. The applicant shall present proof with the building permit application that a legal  
1928 access to the property has been obtained.

1929  
1930 6. The owners of the property, and their heirs or assigns, shall accept responsibility  
1931 for maintaining access to the property until such a time as the access is improved to  
1932 County standards and accepted into the County road system for maintenance.

1933  
1934 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

1935 Negative: 0

1936 Absent: 0

1937  
1938 The Board granted this request, as it found from the evidence presented that, due to the  
1939 unique circumstances of the subject property, strict application of the County Code  
1940 would produce undue hardship not generally shared by other properties in the area, and  
1941 authorizing this variance will neither cause a substantial detriment to adjacent property  
1942 nor materially impair the purpose of the zoning regulations.

1943  
1944 **UP-26-2006** **CENTEX HOMES** requests a temporary conditional use permit  
1945 pursuant to Section 24-116(c)(1) to locate a temporary sales trailer  
1946 at 4800 Shady Grove Road (Turnberry) (Parcel 740-770-0883),  
1947 zoned R-3C, One-family Residence District (Conditional) (Three  
1948 Chopt).

1949  
1950 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
1951 please stand and raise your right hand?

1952  
1953 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1954 truth, the whole truth, and nothing but the truth, so help you God?

1955  
1956 Ms. Chisholm - I do. My name is Jennifer Chisholm. I'm here representing  
1957 Centex Homes, and I'm requesting a conditional use permit to establish a temporary  
1958 sales and construction trailer within the Turnberry community.

1959  
1960 Mr. Wright - Have you read the conditions?

1961  
1962 Ms. Chisholm - Yes.

1963  
1964 Mr. Wright - You are in accord with the conditions?

1965  
1966 Ms. Chisholm - Yes.

1967

1968 Mr. Kirkland - Are you going to use a portable john or are you going to

1969 hook to the water and sewer?

1970

1971 Ms. Chisholm - No, it will be a portable system.

1972

1973 Ms. Harris - Did you mention anything about lighting?

1974

1975 Ms. Chisholm - We will submit a landscaping and lighting plan for the

1976 building permit. Typically, what we'll do with lighting is install some floodlights on the

1977 exterior front elevation to up light the walkways and the parking lot.

1978

1979 Ms. Dwyer - This is Lot 1 – what will the lot be used for in the long term,

1980 after the trailer has been removed?

1981

1982 Ms. Chisholm - It will be a site for a home.

1983

1984 Ms. Dwyer - So the asphalt drive will just be .....

1985

1986 Ms. Chisholm - It will be torn up.

1987

1988 Mr. Nunnally - You'll get it for one year, right?

1989

1990 Ms. Chisholm - Yes, approximately ten months.

1991

1992 Mr. Nunnally - Any other questions of Ms. Chisholm? Anyone else want to

1993 speak on this case? Hearing none, that completes the case. Thank you for coming.

1994 UP-26-2006.

1995

1996 Mr. Wright - Move we approve it.

1997

1998 Ms. Harris - Second.

1999

2000 Mr. Nunnally - Moved by Mr. Wright, second by Ms. Harris, that it be

2001 approved. All in favor say aye. It's approved.

2002

2003 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.

2004 Harris, the Board **granted** application **UP-26-2006** for a temporary conditional use

2005 permit to locate a temporary sales trailer at 4800 Shady Grove Road (Turnberry) (Parcel

2006 740-770-0883). The Board granted the use permit subject to the following conditions:

2007

2008 1. Only the improvements shown on the plan filed with the application may be

2009 constructed pursuant to this approval. No substantial changes or additions to the layout

2010 may be made without the approval of the Board of Zoning Appeals. Any additional

2011 improvements shall comply with the applicable regulations of the County Code.

2012

2013 2. The trailer shall be skirted on all sides with a durable material as required by the  
2014 building code for a permanent installation.

2015  
2016 3. A detailed landscaping and lighting plan shall be submitted to the Planning  
2017 Department with the building permit for review and approval. Approved landscaping  
2018 shall be installed as soon as the weather permits. All landscaping shall be maintained  
2019 in a healthy condition at all times. Dead plant materials shall be removed within a  
2020 reasonable time and replaced during the normal planting season.

2021  
2022 4. The trailer shall be removed from the property on or before May 30, 2007, at  
2023 which time this permit shall expire.

2024  
2025 5. Any portable toilet or holding tank placed on the site shall be located underneath  
2026 or behind the sales trailer and shall be screened from view.

2027  
2028 6. The applicant shall satisfy the Department of Public Works that adequate sight  
2029 distance has been provided entering onto Shady Grove Road and adequate parking has  
2030 been provided on the site.

2031  
2032 7. If construction plans show more than 2,500 square feet of land disturbance, the  
2033 applicant shall submit an Erosion and Sediment Control plan to the Department of  
2034 Public Works for review and approval. Plans may be submitted with construction plans  
2035 or separately.

2036  
2037 8. The construction plans for Turnberry subdivision shall be approved prior to the  
2038 issuance of a building permit for the temporary sales trailer.

2039  
2040 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2041 Negative: 0  
2042 Absent: 0

2043  
2044 The Board granted the request because it found the proposed use will be in substantial  
2045 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2046  
2047 Mr. Nunnally - Mr. Blankinship?

2048  
2049 **UP-27-2006 SIMONS HAULING COMPANY, INC.** requests a conditional use  
2050 permit pursuant to Sections 24-103 and 24-52(d) to extract  
2051 materials from the earth at 2655 Lacywood Lane (Parcel 840-722-  
2052 1635), zoned A-1, Agricultural District (Varina).

2053  
2054 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2055 please stand and raise your right hand?

2056  
2057 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2058 truth, the whole truth, and nothing but the truth, so help you God?

2059  
2060 Mr. Cochran - I do. My name is John Cochran. I am with Youngblood,  
2061 Tyler and Associates. We are seeking renewal of the conditional use permit extracting  
2062 materials from the earth on this property. The property is used by Simons Hauling  
2063 Company, for the exclusive use of their company when they have jobs that need  
2064 material. They bring in a track excavator; they load material on the trucks; the trucks  
2065 exit the site and go to the area where it is needed. We have reviewed all conditions and  
2066 are in agreement with them. There has been some question about the use of this pit in  
2067 the last few years, and Wayne Greenwood, of the Simons Hauling Company is with me  
2068 to address any questions you may have concerning that.

2069  
2070 Mr. Nunnally - It says here in the notes that "the mine does not appear to  
2071 have been active during the past couple of years."

2072  
2073 Mr. Cochran - That's correct. They use it when they need it. And it is only  
2074 for use by their company, so they don't sell the material to anyone else. They have not  
2075 had a job nearby wherein that material was needed. I believe he can be more specific  
2076 about their intent in the future, but they have not needed it in the last several years.

2077  
2078 Mr. Greenwood - Good morning. My name is Wayne Greenwood; I'm the Vice  
2079 President of Simons Hauling. I have read the report. We haven't used this particular pit  
2080 in the last couple of years because the type of projects that we have been involved in,  
2081 such as the Massey Cancer Center and the new federal courthouse downtown, have  
2082 been excavation-type projects, projects that have excess material to be excavated, with  
2083 little or no fill material to be brought in. We currently are contracted to the Richmond  
2084 Airport for the new terminal expansion and for the Clarkson Road widening project,  
2085 which will require fill dirt this year, so we intend to use it this coming year. Also, there  
2086 are some upcoming, pretty large projects, including the I-895/Route 64 connector. It will  
2087 be in close proximity to this pit, and we anticipate that we will be involved in those  
2088 projects too. It will require that we remove some fill dirt at that time to supply these  
2089 projects.

2090  
2091 Ms. Harris - Mr. Greenwood, during the time that you have not used this  
2092 pit, has there been any reclamation activity going on at that site?

2093  
2094 Mr. Greenwood - The exterior limits of the pits have been sloped to 3:1; there  
2095 has been some seeding. We're inspected regularly by the Division of Mines and  
2096 Minerals for safety and for repose of the site, and we've had no bad reports at all. All  
2097 the reports have been positive.

2098  
2099 Ms. Dwyer - You might be able to answer this question. When I look at  
2100 the site map, there are four phases listed, or shown on the site map. What's the extent  
2101 of this request; is it the land area represented by those phases, or is the land  
2102 represented by the red dash on the map?

2103  
2104 Mr. Greenwood - Those phases were shown on the original plan many, many

2105 years ago, as how the operation could proceed. At the present time, we are only asking  
2106 for renewal of the permit on Phase 1; we have not posted an erosion control bond for  
2107 the other phases, nor do we have proper plans in place for those other phases; this is  
2108 simply to renew Phase 1.

2109  
2110 Ms. Dwyer - In restoration, it will be for agricultural use? If you could,  
2111 describe the reclamation at the site?

2112  
2113 Mr. Cochran - The landowner is a farmer. He gardens and he has cattle  
2114 and pasture on the site, and when we're finished with the site, we'll restore it to the point  
2115 where he'll be able to continue to use it for that.

2116  
2117 Ms. Dwyer - So it will be leveled to its pre-excavation elevation, or .....

2118  
2119 Mr. Cochran - The drawings that are in the current permit show the grades  
2120 that we can go to, and the way the slopes will be left, in a manner that it can be used for  
2121 agricultural use. The site will be re-topsoiled and seeded.

2122  
2123 Mr. Greenwood - We're not permitted to bring material back in. This is simply  
2124 to remove material, so it's not possible for us, under the terms and conditions of the  
2125 permit, to bring the elevation back up to its original grade. It would be left at a lower  
2126 grade, but it would be useable to the satisfaction of the landowner, to continue his  
2127 farming operations in the area. If you take stuff out, and you can't bring it back, it ends  
2128 up being lower.

2129  
2130 Ms. Dwyer - I guess my understanding from the report that Mr.  
2131 Blankinship had given us, that if the reclamation process required a certain amount of  
2132 topsoil, and you didn't have enough, you'd have to bring that in.

2133  
2134 Mr. Greenwood - That's correct. We've maintained topsoil enough to spread it  
2135 over and restore the area, but it wouldn't be bringing it back up ten or fifteen feet, as an  
2136 example with topsoil. We would be utilizing the topsoil that's available and if necessary,  
2137 bringing additional in to restore the utility of the land, so it's suitable for farming.

2138  
2139 Ms. Harris - Mr. Greenwood, are there any ponds on the land?

2140  
2141 Mr. Greenwood - There are no ponds. We have sediment basins and erosion  
2142 control structures in place, to handle the erosion, but there are no ponds existing.

2143  
2144 Mr. Nunnally - Any other questions?

2145  
2146 Ms. Dwyer - Mr. Blankinship, in the report you've given us, one of the  
2147 comments had to do with the financial guarantee per acre, and what that should be set  
2148 at. The recommendation, which I know we haven't considered yet, but does staff have  
2149 any recommendations about the guarantee in this case? Should it be more than  
2150 \$2,000?

2151  
2152 Mr. Blankinship - For the applicant's benefit, we're going to have a work  
2153 session right after this meeting, to discuss reclamation issues generally, and in a draft  
2154 paper, we have recommended raising the standard bond amount to \$5,000 per acre,  
2155 from the current \$2,000. When the Board would begin to institute that is, of course,  
2156 your choice. If you want it to begin this morning, you certainly have that authority.  
2157  
2158 Ms. Harris - How many sites do you have in Henrico County, do you  
2159 know right off?  
2160  
2161 Mr. Greenwood - For this year? This is the only site.  
2162  
2163 Ms. Harris - I thought that there was another one off Strath Road. That  
2164 isn't yours?  
2165  
2166 Mr. Greenwood - No ma'am, that isn't ours.  
2167  
2168 Mr. Nunnally - Any other questions? Hearing none, that completes the  
2169 case. Thank you for coming. UP-27-2006, Simons Hauling Company.  
2170  
2171 Mr. Wright - I want to ask a question about that \$5,000. Would that be  
2172 realistic without our getting to discuss that, or .....  
2173  
2174 Ms. Dwyer - They didn't agree to it.  
2175  
2176 Mr. Wright - It doesn't look like reclamation here would present that big a  
2177 problem.  
2178  
2179 Mr. Blankinship - Not compared to some sites.  
2180  
2181 Mr. Kirkland - Have we had a good track history on this site in the past,  
2182 when it's been used, as far as .....  
2183  
2184 Mr. Blankinship - I don't know that there's been a truck in there since I came to  
2185 the County in 1999. Every time I've gone out to this particular site, it's looked exactly  
2186 the same. That's why I made the comments I made in the report.  
2187  
2188 Mr. Wright - It sounds like they're going to crank it up though, with the  
2189 new stuff that they've got going this year.  
2190  
2191 Mr. Blankinship - They certainly may.  
2192  
2193 Mr. Wright - I move we approve it.  
2194  
2195 Mr. Nunnally - Motion by Mr. Wright that it be approved. Is there a second?  
2196



2197 Mr. Kirkland - I second it.  
2198  
2199 Mr. Nunnally - Second by Mr. Kirkland. All in favor say aye. It's been  
2200 approved.  
2201  
2202 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
2203 Kirkland, the Board **granted** application **UP-27-2006** for a conditional use permit to  
2204 extract materials from the earth at 2655 Lacywood Lane (Parcel 840-722-1635). The  
2205 Board granted the use permit subject to the following conditions:  
2206  
2207 1. This use permit is subject to all requirements of Section 24-103 of Chapter 24 of  
2208 the County Code.  
2209  
2210 2. Before beginning any work, the applicant shall provide a financial guaranty in an  
2211 amount of \$2,000.00 per acre for each acre of land to be disturbed, for a total of  
2212 \$74,000.00, guaranteeing that the land will be restored to a reasonably level and  
2213 drainable condition. This permit does not become valid until the financial guaranty has  
2214 been approved by the County Attorney. The financial guaranty may provide for  
2215 termination after 90 days notice in writing to the County. In the event of termination, this  
2216 permit shall be void, and work incident thereto shall cease. Within the next 90 days the  
2217 applicant shall restore the land as provided for under the conditions of this use permit.  
2218 Termination of such financial guaranty shall not relieve the applicant from its obligation  
2219 to indemnify the County of Henrico for any breach of the conditions of this use permit. If  
2220 this condition is not satisfied within 90 days of approval, the use permit shall be void.  
2221  
2222 3. Before beginning any work, the applicant shall submit erosion control plans to the  
2223 Department of Public Works (DPW) for review and approval. Throughout the life of the  
2224 operation, the applicant shall continuously satisfy DPW that erosion control procedures  
2225 are properly maintained, and shall furnish plans and bonds that DPW deems necessary.  
2226 The applicant shall provide certification from a licensed professional engineer that  
2227 dams, embankments and sediment control structures meet the approved design criteria  
2228 as set forth by the State. If this condition is not satisfied within 90 days of approval, the  
2229 use permit shall be void.  
2230  
2231 4. Before beginning any work, the applicant shall obtain a mine license from the  
2232 Virginia Department of Mines, Minerals and Energy. If this condition is not satisfied  
2233 within 90 days of approval, the use permit shall be void.  
2234  
2235 5. Before beginning any work, the areas approved for mining under this permit shall  
2236 be delineated on the ground by five-foot-high metal posts at least five inches in diameter  
2237 and painted in alternate one foot stripes of red and white. These posts shall be so  
2238 located as to clearly define the area in which the mining is permitted. They shall be  
2239 located, and their location certified, by a certified land surveyor. If this condition is not  
2240 satisfied within 90 days of approval, the use permit shall be void.  
2241

- 2242 6. In the event that the approval of this use permit is appealed, all conditions  
2243 requiring action within 90 days will be deemed satisfied if the required actions are taken  
2244 within 90 days of final action on the appeal.  
2245
- 2246 7. The applicant shall comply with the Chesapeake Bay Preservation Act and all  
2247 state and local regulations administered under such act applicable to the property, and  
2248 shall furnish to the Planning Department copies of all reports required by such act or  
2249 regulations.  
2250
- 2251 8. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings  
2252 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.  
2253
- 2254 9. No operations of any kind are to be conducted at the site on Saturdays, Sundays,  
2255 or national holidays.  
2256
- 2257 10. All means of access to the property shall be from the established entrance onto  
2258 Grapevine Road.  
2259
- 2260 11. The applicant shall erect and maintain gates at all entrances to the property.  
2261 These gates shall be locked at all times, except when authorized representatives of the  
2262 applicant are on the property.  
2263
- 2264 12. The applicant shall post and maintain a sign at the entrance to the mining site  
2265 stating the name of the operator, the use permit number, the mine license number, and  
2266 the telephone number of the operator. The sign shall be 12 square feet in area and the  
2267 letters shall be three inches high.  
2268
- 2269 13. The applicant shall post and maintain "No Trespassing" signs every 250 feet  
2270 along the perimeter of the property. The letters shall be three inches high. The  
2271 applicant shall furnish the Chief of Police a letter authorizing the Division of Police to  
2272 enforce the "No Trespassing" regulations, and agreeing to send a representative to  
2273 testify in court as required or requested by the Division of Police.  
2274
- 2275 14. Standard "Truck Entering Highway" signs shall be erected on Grapevine Road on  
2276 each side of the entrances to the property. These signs will be placed by the County, at  
2277 the applicant's expense.  
2278
- 2279 15. The applicant shall post and maintain a standard stop sign at the entrance to  
2280 Grapevine Road.  
2281
- 2282 16. The applicant shall provide a flagman to control traffic from the site onto the  
2283 public road, with the flagman yielding the right of way to the public road traffic at all  
2284 times. This flagman will be required whenever the Division of Police deems necessary.  
2285
- 2286 17. The operation shall be so scheduled that trucks will travel at regular intervals and  
2287 not in groups of three or more.

- 2288  
2289 18. Trucks shall be loaded in a way to prevent overloading or spilling of materials of  
2290 any kind on any public road.  
2291  
2292 19. The applicant shall maintain the property, fences, and roads in a safe and secure  
2293 condition indefinitely, or convert the property to some other safe use.  
2294  
2295 20. If, in the course of its preliminary investigation or operations, the applicant  
2296 discovers evidence of cultural or historical resources, or an endangered species, or a  
2297 significant habitat, it shall notify appropriate authorities and provide them with an  
2298 opportunity to investigate the site. The applicant shall report the results of any such  
2299 investigation to the Planning Department.  
2300  
2301 21. If water wells located on surrounding properties are adversely affected, and the  
2302 extraction operations on this site are suspected as the cause, the effected property  
2303 owners may present to the Board evidence that the extraction operation is a contributing  
2304 factor. After a hearing by the Board, this use permit may be revoked or suspended, and  
2305 the operator may be required to correct the problem.  
2306  
2307 22. Open and vertical excavations having a depth of 10 feet or more, for a period of  
2308 more than 30 days, shall be effectively sloped to a 2:1 slope or flatter to protect the  
2309 public safety.  
2310  
2311 23. Topsoil shall not be removed from any part of the property outside of the area in  
2312 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for  
2313 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled  
2314 within the authorized mining area and provided with adequate erosion control  
2315 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought  
2316 to the site to provide the required five-inch layer of cover. All topsoil shall be treated  
2317 with a mixture of seed, fertilizer, and lime as recommended by the County after soil  
2318 tests have been provided to the County.  
2319  
2320 24. No offsite-generated materials shall be deposited on the mining site without prior  
2321 written approval of the Director of Planning. To obtain such approval, the operator shall  
2322 submit a request stating the origin, nature and quantity of material to be deposited, and  
2323 certifying that no contaminated or hazardous material will be included. The material to  
2324 be deposited on the site shall be limited to imperishable materials such as stone, bricks,  
2325 tile, sand, gravel, soil, asphalt, concrete and like materials, and shall not include any  
2326 hazardous materials as defined by the Virginia Hazardous Waste Management  
2327 Regulations.  
2328  
2329 25. A superintendent, who shall be personally familiar with all the terms and  
2330 conditions of Section 24-103 of Chapter 24 of the County Code, as well as the terms  
2331 and conditions of this use permit, shall be present at the beginning and conclusion of  
2332 operations each work day to see that all the conditions of the Code and this use permit  
2333 are observed.

2334  
2335 26. A progress report shall be submitted to the Board on June 30, 2007. This  
2336 progress report must contain information concerning how much property has been  
2337 mined to date of the report, the amount of land left to be mined, how much rehabilitation  
2338 has been performed, when and how the remaining amount of land will be rehabilitated,  
2339 and any other pertinent information about the operation that would be helpful to the  
2340 Board.

2341  
2342 27. Excavation shall be discontinued by June 30, 2008, and restoration  
2343 accomplished by not later than June 30, 2009, unless a new permit is granted by the  
2344 Board of Zoning Appeals.

2345  
2346 28. All drainage and erosion and sediment control measures shall conform to the  
2347 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any  
2348 drainage structures in place prior to October 14, 1992 and which do not conform to the  
2349 Mineral Mining Manual Drainage Handbook may remain in place until such time as any  
2350 reconstruction is required at which time said structures shall be brought into  
2351 conformance with the Mineral Mining Manual Drainage Handbook.

2352  
2353 29. Failure to comply with any of the foregoing conditions shall automatically void this  
2354 permit.

2355  
2356 30. Provide sight distances and sight lines on the plan for all access points onto  
2357 public right-of-way. Adequate sight distance must be demonstrated prior to Public  
2358 Works' approval of this plan.

2359  
2360 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2361 Negative: 0  
2362 Absent: 0

2363  
2364 The Board granted the request because it found the proposed use will be in substantial  
2365 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2366  
2367 Mr. Nunnally - Mr. Blankinship.

2368  
2369 **UP-28-2006** **JERRY AND MARTY KILGORE** request a conditional use permit  
2370 pursuant to Section 24-95(i)(4) to build a swimming pool in the side  
2371 yard at 5724 Shady Grove Road (Shady Ridge) (Parcel 744-777-  
2372 7124), zoned R-3C, One-family Residence District (Conditional)  
2373 (Three Chopt).

2374  
2375 Mr. Nunnally - Is anyone else here interested in this case? If so, would you  
2376 please stand and raise your right hand?

2377  
2378 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2379 truth, the whole truth, and nothing but the truth, so help you God?

2380  
2381 Mr. Conrad - I so swear. My name is Matt Conrad; I'm here on behalf of  
2382 Jerry and Marty Kilgore this morning. They request a conditional use permit pursuant to  
2383 Code Section 24-95(i)(4), specifically that's to install a pool at their residence at 5724  
2384 Shady Grove Road. As you can see on the plat, the pool would be built approximately  
2385 46 feet from a point extending from their garage toward Shady Hills Way. The  
2386 residence owned by Mr. and Mrs. Kilgore pre-dates the existence of the Shady Ridge  
2387 Development, though they opted in to it in 1987. The reason for the conditional use  
2388 permit is because, through a technicality, the County considers what is for all practical  
2389 purposes, the Kilgore's side yard to be their front yard. As you can see, the property is  
2390 bounded on the southern side by Shady Grove Road, which is in fact their address, and  
2391 on the west, by Shady Hills Way. They would have a driveway from Shady Grove  
2392 Road; however ingress and egress is restricted due to the fact that there is a 25-foot  
2393 planting easement along Shady Grove Road. For that reason, the County considers  
2394 that their front yard. However, the place where they want to build is for all intents and  
2395 purposes, their back yard, though the County considers it their side yard.  
2396  
2397 Mr. Wright - Does their house face Shady Grove Road?  
2398  
2399 Mr. Conrad - Yes sir.  
2400  
2401 Mr. Wright - So for their use, this pool would be in the back yard.  
2402  
2403 Mr. Conrad - Yes sir.  
2404  
2405 Ms. Dwyer - Why couldn't the pool be moved a little bit farther away from  
2406 Shady Hills Way? You might be in a temporary construction easement, but I assume  
2407 that's not an issue.  
2408  
2409 Mr. Conrad - I believe the temporary construction easement is still in  
2410 place, because the neighbors next door have not yet opted to hook up to water and  
2411 sewer – am I correct?  
2412  
2413 Mr. Blankinship - We have requested information from Utilities and have not  
2414 received it yet.  
2415  
2416 Mr. Conrad - But they've tried to position the pool, I know they had  
2417 surveyors, Mr. Monte Lewis, draw up the pool plat here, and they've tried to fit it a  
2418 dozen different ways, and this is the only way they can get it to fit in there with the  
2419 easements and the Virginia Power easement being considered.  
2420  
2421 Ms. Dwyer - If the temporary construction easement were eliminated,  
2422 would they be willing to move the pool farther away from Shady Hills Way?  
2423  
2424 Mr. Conrad - I don't believe they're bound to any particular plan, but given  
2425 the existence of the construction easement as it is, this was the only configuration they

2426 could come to.  
2427  
2428 Ms. Dwyer - And how will they shield the pool from Shady Hills Way?  
2429  
2430 Mr. Conrad - At present, they have what looks like evergreen trees --  
2431 large, mature cedar trees, that they're going to extend along Shady Hills Way to  
2432 obstruct the view.  
2433  
2434 Ms. Dwyer - Because the pool will not be screened by these trees, these  
2435 are more to the side of the house.  
2436  
2437 Mr. Conrad - Yes ma'am, that's correct. They're going to continue that  
2438 landscaping all along Shady Hills Way.  
2439  
2440 Mr. Blankinship - Actually, if you'd zoom in on that some, Paul. This is not far  
2441 from Shady Grove, looking along Shady Hills, and you can get a little bit farther, you can  
2442 just see one of the stakes there, two of the stakes for the front corners of the pool, so it  
2443 is going to be very plainly visible with the existing landscape.  
2444  
2445 Ms. Dwyer - It's fairly close to the road.  
2446  
2447 Mr. Conrad - They're very pleased to extend that landscaping.  
2448  
2449 Ms. Harris - Will you have a fence surrounding the pool?  
2450  
2451 Mr. Conrad - Yes ma'am, they've already planned to do a black  
2452 waterhead fence with brick columns to match the house; they think it should increase  
2453 the property value of the house and surrounding properties.  
2454  
2455 Ms. Dwyer - So those orange stakes are actually the pool edge?  
2456  
2457 Mr. Conrad - Yes ma'am.  
2458  
2459 Mr. Wright - We've already got suggested conditions. Have you read the  
2460 conditions?  
2461  
2462 Mr. Conrad - I have read the conditions, and there seems to be some  
2463 conflict there, because it says "only the improvements on the plan filed with the  
2464 application, which would be this, should be constructed," which is 17 1/2 feet, yes  
2465 ma'am.  
2466  
2467 Mr. Wright - How does that fit, Mr. Blankinship?  
2468  
2469 Mr. Blankinship - I guess the intent there is that no other improvements, they  
2470 wouldn't be allowed a pool house or anything like that, without further review. The pool  
2471 is the only improvement shown on the plan. The location would have to be changed.

2472  
2473 Mr. Wright - Location has to do with # 2.  
2474  
2475 Mr. Blankinship - That 50 feet would require putting it at least partly in the  
2476 temporary construction easement, so if that easement is active, than condition # 2  
2477 should be changed. It was drafted on the assumption that Utilities was going to get  
2478 back to us and say that easement was no longer .....  
2479  
2480 Mr. Wright - Well, you could put that in there, that the 50 feet, provided  
2481 the construction easement can be vacated.  
2482  
2483 Mr. Conrad - Yes, it would be our preference that condition # 2 would be  
2484 changed if possible, given the continuing existence of the construction easement.  
2485  
2486 Mr. Wright - You've already got landscaping provided in # 3, which will  
2487 take care of the view from Shady Hills.  
2488  
2489 Mr. Conrad - The neighbors have a pool, which is also obstructed by  
2490 landscaping.  
2491  
2492 Ms. Dwyer - I'm still concerned about the positioning of this pool on  
2493 Shady Hills Way. I think it's too close.  
2494  
2495 Mr. Wright - Mr. Blankinship, have you established that if that  
2496 construction easement is vacated, you could get the pool 50 feet from Shady Hills Way,  
2497 or not?  
2498  
2499 Mr. Blankinship - Yes sir.  
2500  
2501 Mr. Wright - You could get it? What would be required to get that  
2502 construction easement vacated? Is that a County requirement, or what?  
2503  
2504 Mr. Blankinship - Yes, the idea is that the utility line would be built in the  
2505 permanent easement and during the process of building it, they need extra room for  
2506 construction, but I did hear back from the Real Property Department, and they  
2507 confirmed that once that utility line construction is complete, the easement will be  
2508 vacated. There is no additional action necessary; it would expire.  
2509  
2510 Mr. Wright - But how long would it take?  
2511  
2512 Mr. Blankinship - That is unknown.  
2513  
2514 Mr. Wright - Is that something that they contemplate to be started soon,  
2515 or is that something that will take years?  
2516  
2517 Mr. Blankinship - I'm still waiting to hear back from Public Utilities on that

2518 question.  
2519  
2520 Mr. Conrad - We don't have any indication that it will take place soon. I've  
2521 walked that property back there last evening, and I don't think the drawing does it  
2522 justice. It's rather a tight fit, given the fact that they also have a screened porch and a  
2523 patio that extend from the back of the house. There's not a lot of wiggle room right  
2524 there, which is why it would be our preference, if possible, that the condition # 2 be  
2525 amended.  
2526  
2527 Mr. Wright - If you extend this screen that we've got here, all the way  
2528 past the pool, you couldn't see the pool anyhow, from Shady Grove Way, could you?  
2529  
2530 Mr. Conrad - No sir.  
2531  
2532 Mr. Wright - It looks like to me, if that is required, that would give some  
2533 protection.  
2534  
2535 Mr. Blankinship - Once that landscaping matures, yes sir.  
2536  
2537 Mr. Wright - Where those stakes are, the actual pool wouldn't come that  
2538 far; there would probably be a decking, with a fence around.  
2539  
2540 Mr. Conrad - That point there is not the actual pool; there's like a middle  
2541 blue line that's a few feet in from there, that actually demarcates the pool, as I walked it  
2542 last night.  
2543  
2544 Mr. Wright - So the pool is 17 feet from Shady Grove Way, but there's an  
2545 easement, I take it, from Shady Grove Way in, it doesn't go right out to the road.  
2546 There's always an easement alongside the road, and those trees there would probably  
2547 be in that easement. I don't know where the property line is.  
2548  
2549 Mr. Blankinship - Probably right at the edge of the easement,  
2550  
2551 Mr. Conrad - I believe they are at the edge of the easement, but not  
2552 encroaching on it.  
2553  
2554 Mr. Wright - So you've got that area there too.  
2555  
2556 Mr. Nunnally - Any other questions? Hearing none, that concludes the  
2557 case. Thank you for coming. UP-28-2006, Jerry and Marty Kilgore.  
2558  
2559 Mr. Wright - I move we approve it, with the change on condition # 2. I  
2560 guess we should put some time that it should be accomplished, Mr. Blankinship ,  
2561 shouldn't we? In other words, we say that it would be 50 feet, provided that the  
2562 temporary construction easement is vacated, but we ought to not let that go five years  
2563 or I don't know how much time they'd want them to do that. It doesn't appear that



2564 there's anything going right now in the offings that it's going to be done shortly, does it?  
2565  
2566 Ms. Dwyer - Is it providing access to utilities for the Kinzner property next  
2567 door, or for Lot 2 in the subdivision?  
2568  
2569 Mr. Blankinship - I believe it's to the Kinzner property; I'm not certain though.  
2570 We asked for comments from Utilities, and we have not received them yet.  
2571  
2572 Ms. Dwyer - If it's possible, maybe we could defer it and get some  
2573 clarification on that easement. I don't have any problem with the pool in that general  
2574 location; it just appears to be very close to the drive, and if it's at all possible to move it  
2575 inward, I think that would be more compatible with the neighborhood.  
2576  
2577 Mr. Wright - We didn't explore that with the applicant. We didn't ask him  
2578 for a deferral.  
2579  
2580 Ms. Dwyer - I guess they don't have to agree to a deferral as long as the  
2581 condition changes.  
2582  
2583 Mr. Wright - When did you ask for this information, Mr. Blankinship?  
2584  
2585 Mr. Blankinship - I guess it was two weeks ago.  
2586  
2587 Mr. Wright - How long does it usually take them to respond?  
2588  
2589 Mr. Blankinship - I expected to get a response before the meeting.  
2590  
2591 Ms. Dwyer - In my view, it doesn't even have to be 50 feet, but if it were  
2592 30 feet, it would be a substantial improvement to have it moved.  
2593  
2594 Mr. Kirkland - How close can the pool get to the utility easement for the  
2595 sanitary sewer?  
2596  
2597 Mr. Blankinship - It could be up to the easement.  
2598  
2599 Mr. Kirkland - There are two easements there. There's one that's sanitary,  
2600 and there's the one that's temporary construction.  
2601  
2602 Mr. Wright - It's the temporary construction one we're concerned with.  
2603  
2604 Mr. Kirkland - Right, if we get rid of the ten feet temporary, maybe shove it  
2605 over to the utility easement, bring it down and bring it over, will we still get the 50 feet?  
2606  
2607 Mr. Blankinship - You could say "fifty feet, if they are able to get rid of the  
2608 construction easement, and thirty feet if they're not."  
2609

2610 Ms. Dwyer - The applicant has not agreed to those changes though.  
2611  
2612 Mr. Kirkland - Thirty feet would eliminate the pool.  
2613  
2614 Mr. Blankinship - Fifty feet is what was in the report, and I believe the  
2615 applicant said he would like to have that condition amended, but I don't know.  
2616  
2617 Ms. Dwyer - I would hate to leave that in there, because it seems to me  
2618 condition # 1 conflicts with condition # 2, so I think we do need to change something if  
2619 we don't defer it.  
2620  
2621 Ms. Harris - In our discussion, we talked about the close proximity to  
2622 Shady Hills Way. Isn't that 17 feet?  
2623  
2624 Mr. Wright - Could we change it to say that it would be moved as close to  
2625 the ten-foot temporary construction easement as possible?  
2626  
2627 Mr. Blankinship - Or just as far away from Shady Hills Way as possible?  
2628  
2629 Mr. Wright - As far away from Shady Hills Way as possible, which would  
2630 mean that right now, it's not possible to put it in that construction easement, so they  
2631 could move it over. It looks like there's some distance between that point and that  
2632 easement; I don't know how much it is.  
2633  
2634 Mr. Kirkland - Did you get a measurement if they moved it to the temporary  
2635 easement line, Mr. Blankinship?  
2636  
2637 Mr. Blankinship - No, I didn't.  
2638  
2639 Mr. Wright - If they moved it back, see that little circle right directly behind  
2640 it?  
2641  
2642 Mr. Kirkland - That might get you about 25 feet.  
2643  
2644 Mr. Wright - That could get another 20 feet.  
2645  
2646 Ms. Dwyer - Could we say, move it so that it is as close as possible to the  
2647 temporary construction line?  
2648  
2649 Mr. Wright - That would give them another 20 feet.  
2650  
2651 Mr. Kirkland - That's fine.  
2652  
2653 Ms. Dwyer - But again, the applicant hasn't agreed to that change.  
2654  
2655 Mr. Nunnally - The applicant's got his hand up in the air.

2656  
2657 Mr. Wright - We discussed it, and he didn't have any problem with  
2658 moving the ten-foot easement to move it at the time.  
2659  
2660 Mr. Blankinship - He said he would like to have that condition amended, but I  
2661 don't think he drew a line saying he would accept this much but no more. You might  
2662 want to hear from him. It's unusual, but you certainly could hear from him. There's no  
2663 legal reason you can't hear from him. You're not compelled to, but you can.  
2664  
2665 Ms. Harris - What we want to say is move it as far away from Shady Hills  
2666 Way as you can, and as close to the temporary construction easement as possible.  
2667  
2668 Ms. Dwyer - All right, let's do that. The applicant has agreed, by a nod of  
2669 the head.  
2670  
2671 Mr. Wright - My motion, then, would include amending condition # 2 to  
2672 provide that the pool be moved as far away from Shady Hills Way as possible.  
2673  
2674 Mr. Kirkland - I'll second it.  
2675  
2676 Mr. Nunnally - Motion by Mr. Wright, second by Mr. Kirkland, with the  
2677 condition, Mr. Blankinship. All in favor say aye. It's been approved.  
2678  
2679 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
2680 Kirkland, the Board **granted** application **UP-28-2006** for a conditional use permit to build  
2681 a swimming pool in the side yard at 5724 Shady Grove Road (Shady Ridge) (Parcel  
2682 744-777-7124). The Board granted the use permit subject to the following conditions:  
2683  
2684 1. Only the improvements shown on the plan filed with the application may be  
2685 constructed pursuant to this approval. Any additional improvements shall comply with  
2686 the applicable regulations of the County Code.  
2687  
2688 2. [AMENDED] The pool shall be set back from Shady Hills Way as far as practical.  
2689  
2690 3. Additional landscaping shall be provided to screen the pool from view from  
2691 Shady Hills Way. A detailed landscaping plan shall be submitted to the Planning  
2692 Department with the building permit for review and approval.  
2693  
2694 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
2695 Negative: 0  
2696 Absent: 0  
2697  
2698 The Board granted the request because it found the proposed use will be in substantial  
2699 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
2700  
2701 Mr. Nunnally - We'll start the decisions from the front.

2702  
2703 Mr. Kirkland - Mr. Blankinship, can I make a comment about next month?  
2704 If we have any pertinent information that's coming in about the Quarry, to make sure we  
2705 get it in time, like the reclamation plan?  
2706  
2707 Mr. Blankinship - I certainly will.  
2708  
2709 Mr. Wright - Is there any indication as to how things are going at the  
2710 Quarry?  
2711  
2712 Mr. Blankinship - Everything that I've heard has been positive; they've done  
2713 some studies; they've learned some things, and their committee has been working with  
2714 the neighbors to try and educate them and bring them along, and nothing definitive at  
2715 this point, but .....  
2716  
2717 Mr. Wright - I'll tell you one thing, they're still building houses out there,  
2718  
2719 Mr. Blankinship - And they're still blasting.  
2720  
2721 Mr. Wright - After all that publicity, it didn't seem to deter that.  
2722  
2723 Ms. Harris - For a half million dollars.  
2724  
2725 Mr. Wright - I drive all around through there, and it's amazing to me that  
2726 they would do that and then come in here and fuss about it.  
2727  
2728 Mr. Nunnally - We're not going to have a night meeting.  
2729  
2730 Mr. Blankinship - Not that I'm aware of.  
2731  
2732 Mr. Nunnally - I'm saying, we're not going to have a night meeting.  
2733  
2734 Ms. Dwyer - I move that we recess for a lunch and discussion of the  
2735 mining report.  
2736  
2737 Mr. Blankinship - The Board is going to reconvene in the Planning  
2738 Department, and we're going to eat lunch. You're welcome to join us, but we're not  
2739 going to feed you.  
2740  
2741 **The Board recessed to the Planning Department at 11:30 am.**  
2742  
2743 **The Board reconvened in the Planning Department at 12:14 pm.**  
2744  
2745 Mr. Blankinship - I'm trying to cover all the points that you'd asked about. The  
2746 initial frustration I had was when I started asking people what you have to do to reclaim  
2747 a mining site in order to build on it. The experts didn't seem to take the question very

2748 seriously. They just seemed to think it was like any other site; you just come in and  
2749 move some material around with a bulldozer, and then you start building.

2750  
2751 Mr. Wright - That's true. They're building right over big holes, and I used  
2752 to think you couldn't build – you had to wait for it to settle. I guess it's with the  
2753 foundation they put down; they're required to do it.

2754  
2755 Mr. Blankinship - Right. They're required to do core sampling, and if the  
2756 material is not compacted, then they have to engineer the foundation to take that into  
2757 account. Provided they spend the money on the foundation, it's just a matter of  
2758 spending the money. Utilities are going to be necessary; at least sewer, it is going to be  
2759 necessary. That was the one answer that I heard consistently, and that Lewis Walker  
2760 with the Health Department, did finally confirm. They will not even approve alternative  
2761 septic systems on sites that have been disturbed to that extent.

2762  
2763 Ms. Dwyer - Did you put that in here?

2764  
2765 Mr. Blankinship - I don't think so. He really only confirmed it for me in about  
2766 the last week.

2767  
2768 Mr. Wright - That really nixes the development out in these outlying  
2769 areas.

2770  
2771 Mr. Blankinship - Right, at least for the time being.

2772  
2773 Mr. Wright - For residential or commercial if you've got a septic system.

2774  
2775 Ms. Dwyer - Is there any way to avoid that, or just the disturbance itself,  
2776 there's really no way to reclaim it so that they would allow septic.

2777  
2778 Mr. Blankinship - Right, and that does surprise me, because I know they  
2779 approve alternative systems, six inches of soil above the bedrock.

2780  
2781 Mr. Wright - As things change, add more developments, higher  
2782 technology as years go by, that might change, they might come up with something.  
2783 They come up with something every day that we didn't think was possible five years  
2784 ago.

2785  
2786 Mr. Blankinship - That's certainly possible.

2787  
2788 Mr. O'Kelly - The health regulations right now just won't permit it. There's  
2789 nothing in the regulations simply permitting a drain field or alternative system to be built  
2790 in filled material.

2791  
2792 Ms. Dwyer - Who in the County is responsible for evaluating the mining  
2793 operation? Is that the Planning Department?

2794  
2795 Mr. Blankinship - I wouldn't say evaluating.  
2796  
2797 Ms. Dwyer - Don't they go out and check to make sure they're complying  
2798 with all the conditions?  
2799  
2800 Mr. Blankinship - Yes, we have both the zoning inspector and an  
2801 environmental inspector visit every site every month. In fact, I think the environmental  
2802 guys have to go more than once a month. They leave it up to us.  
2803  
2804 Mr. Wright - The mining people don't worry about it?  
2805  
2806 Mr. Blankinship - They do a fly-by every two years. We have to write them a  
2807 report every two years, and then Allen Bishop comes down, and he'll just check a  
2808 couple of sites and make sure everything looks all right.  
2809  
2810 Mr. Wright - So we can't count on that?  
2811  
2812 Mr. Blankinship - Right.  
2813  
2814 Ms. Dwyer - It's because we have his waiver?  
2815  
2816 Mr. Blankinship - Right, but we send a zoning inspector out with the BZA  
2817 conditions every month, and then an environmental inspector goes out specifically to  
2818 look at the erosion and sediment control plan and measures.  
2819  
2820 Ms. Harris - In a case where there was a sediment trap failure, that was  
2821 one the environmental inspector found to exist.  
2822  
2823 Mr. Nunnally - When they go out and inspect these things, do they find a lot  
2824 of trouble with them, or do they make them repair them or fix them like they're supposed  
2825 to be? I've never seen anything come through that they did this or that. But they do get  
2826 on them every month?  
2827  
2828 Mr. Blankinship - They do have maintenance issues. Erosion control stuff is  
2829 constantly catching silt, so it's constantly losing effectiveness, and it has to be  
2830 maintained periodically. Out inspectors will occasionally find that a sign has come  
2831 down, or that a gate is missing that's always been there before, or a stop sign  
2832 disappears, and they'll require them to put it back up.  
2833  
2834 Mr. O'Kelly - They do have a separate erosion control bond too.  
2835  
2836 Mr. Blankinship - Yes, it is bonded separately as well. Good point. And we  
2837 always coordinate with each other when we're requested to release a bond, so if they  
2838 ask for either bond to be released, we always have both inspectors go out and make  
2839 sure that we don't have any issues.

2840  
2841 Ms. Dwyer - Environmental and zoning?  
2842  
2843 Mr. Blankinship - Yes.  
2844  
2845 Mr. Wright - I guess one other question is how far we should go if it's  
2846 zoned Agricultural now, are we to assume that someday it might be rezoned to  
2847 residential, and what we're proposing they do, or causing them to do, or are we  
2848 comfortable and just concerned with the agricultural use of the land?  
2849  
2850 Mr. Blankinship - I think that's an important policy question.  
2851  
2852 Ms. Dwyer - We could look at the Long Range Land Use Plan, which  
2853 goes beyond present zoning, and says that the County believes in the future this should  
2854 be residential, and if it is residential, if the Long Range Plan says it's Residential, then  
2855 maybe we could have different requirements.  
2856  
2857 Mr. Wright - We'd have some guidance and restrict it to the Long Range  
2858 Plan.  
2859  
2860 Mr. Blankinship - I think one of the reasons we started all this was the review  
2861 of the two W. C. English pits, which they built along I-895, and I remember at your  
2862 hearing when you looked at those, the point was made that those looked like office  
2863 sites, sitting there at an interstate interchange, where I-895 meets I-295, what might  
2864 have been an office site is always going to be a lake now. Did we take land that could  
2865 have been used for something higher and essentially take it out of circulation by not  
2866 requiring that it be reclaimed as an office site, or as a commercial site, or some other  
2867 kind of developable site.  
2868  
2869 Ms. Dwyer - We did. Potentially, that's an office site that can't be used  
2870 for that.  
2871  
2872 Mr. Wright - Maybe the owner would rather have a pond than to have  
2873 that.  
2874  
2875 Mr. Blankinship - Exactly.  
2876  
2877 Ms. Dwyer - I think the issue too is the economic viability of the site in the  
2878 future. If we're looking at land use for the whole County, do we want to be allowing the  
2879 situation to permanently eliminate the use of the land for any purpose, or do we want to  
2880 plan for its use in the future for something like office or residential? If I understand you  
2881 correctly, there's really no way, there's nothing we can do, let's say the Long Range  
2882 Plan says this is going to be Residential, or that we designate this as Residential,  
2883 there's nothing that we can do to objectively state this needs to be reclaimed to this  
2884 standard so that it can be used for Residential.  
2885

2886 Mr. Blankinship - I'm not sure who's got the initiative; generally what the  
2887 process provides is for the applicant to show you his reclamation plan, and then you  
2888 respond to it. In the two recent ones, where they were essentially turning these mining  
2889 sites into landfills, fortunately, we caught that, barely, and you said we didn't want a  
2890 landfill. We wanted that restored to a level, sort of.

2891  
2892 Ms. Dwyer - This is the Kingsland site?

2893  
2894 Mr. Blankinship - Yes, and the other out on Hines Road. You might see  
2895 something in a location that you thought is suitable for residential development, in a ten-  
2896 year horizon, and they may propose some reclamation plan that would make it unusable  
2897 for residential development. You might tell them to take it back and bring it back the  
2898 next month with a plan that shows reclamation of the site in a way that is compatible  
2899 with residential development. So you're still leaving the onus on the property owner.  
2900 You're not dictating to them the use of their land, but you're requiring them to show you  
2901 something that you think is compatible with the County's long-term vision.

2902  
2903 Mr. Kirkland - Aren't we rezoning the land for them immediately when we  
2904 do that?

2905  
2906 Mr. Blankinship - I wouldn't say you're rezoning it.

2907  
2908 Mr. O'Kelly - A good example of the concept that Ben's talking about is  
2909 the Pruitt property. I can't remember the location; it seems it was Castlewood  
2910 Subdivision.

2911  
2912 Ms. Dwyer - I was going to ask how that was going.

2913  
2914 Mr. Blankinship - It's in one of your maps here.

2915  
2916 Mr. O'Kelly - That property was mined by Pruitt; Bourne had placed a  
2917 condition on it that it be mined to a grading plan for a future subdivision, and it was  
2918 subsequently rezoned for a subdivision that was going to be called Hunton Valley.  
2919 Pruitt, for years mined it. Supposedly, it was mined to the grading plan that was  
2920 approved by the Board of Zoning Appeals, and it's now being developed by an out-of-  
2921 town developer as the Castlewood Subdivision. It's over 400 lots. But they had to bring  
2922 sewer to the property, which was a very expensive proposition.

2923  
2924 Mr. Blankinship - When we first met with them, we told them the site was  
2925 mined, and they said "So?" That was one of those eye-opening moments for me.  
2926 Anyway, I thought that was going to be a big hitch in his development plans, but it didn't  
2927 seem to bother him at all.

2928  
2929 Ms. Dwyer - In that case, it had to be reclaimed to a grading plan that  
2930 would be suitable for a subdivision. Could we do this? Could we say, in the staff  
2931 reports, could we have information included in there as to what the long-range plan



2932 designation is for the parcel, and then have proposed conditions that would, if it's  
2933 commercial, or residential, that it would require the reclamation plan to meet whatever  
2934 standards were necessary for this.

2935  
2936 Mr. Wright - What I would like to see in these recommendations, you've  
2937 hit this right on the head – what I'd like to see is the staff come up with proposed  
2938 regulations that we would use in cases where the comprehensive land plan provides for  
2939 residential or commercial or what, so that we could look at that in advance and not wait  
2940 till we get to an exact case to consider it. Following along this, come up with some  
2941 proposed conditions now, that we could look at ahead of time, that would take care of  
2942 that particular situation. I agree that we'd come out and say this comprehensive land  
2943 plan says this is future residential; then we could have these conditions all set and  
2944 ready to go. Just like you do now, you have these we've been using for years; this  
2945 would be a set for this particular case.

2946  
2947 Ms. Harris - I was wondering about the highest and best use, the  
2948 terminology used in the State. The County really should be consistent, whatever we  
2949 come up with after we examine the land use map and whatever else would factor into  
2950 the highest and best use to what the Real Estate Department is using for assessment.

2951  
2952 Mr. Wright - I think our number one concern in considering this is the idea  
2953 of what the future use of the property could be. I think we're going to have to rely on the  
2954 Land Use Plan. I'm not willing to go beyond that.

2955  
2956 Ms. Dwyer - I think that's a good guide.

2957  
2958 Mr. Wright - Then we'd have a set of conditions that we'd just suit to that  
2959 particular situation. If the planning office could work up some of those and give us  
2960 some of those now, to look at, so that when the time comes, we won't be fumbling  
2961 around; these are the conditions. It would work just like they do now.

2962  
2963 Ms. Harris - How specific would that be? Would it go into zoning?

2964  
2965 Mr. Wright - That's why I would be interested to see what the proposed  
2966 conditions would be. I think we have to leave that to the staff to come up with  
2967 something innovative; then maybe we could massage it, but we'd have something to  
2968 work with.

2969  
2970 Mr. Blankinship - I've never really seen anything done in that direction; it's  
2971 certainly something to think about.

2972  
2973 Ms. Harris - We're seeing residential property right next to a mining area.  
2974 We saw it this morning.

2975  
2976 Mr. Wright - What we're hearing now is that these developers don't care  
2977 too much about this. We ought to do the best we can to insure that this property is

2978 reclaimed in such a way that would permit a better use, if that's what the Land Use Plan  
2979 calls for.  
2980  
2981 Ms. Dwyer - And that's what Castleton is, according to Dave and Ben.  
2982 They're saying there was a condition that required it to be created in a way that would  
2983 be suitable for development.  
2984  
2985 Mr. Wright - You could get a hold of those conditions; that's a good  
2986 beginning point.  
2987  
2988 Mr. O'Kelly - Pruitt was also a developer, so he knew exactly what to do.  
2989  
2990 Ms. Harris - He had a plan A and a plan B.  
2991  
2992 Ms. Dwyer - I'm not comfortable being uninformed about what that is.  
2993 You say that Pruitt knew what to do because they're developers. I wish we could  
2994 quantify that in some way, whether it's level of compaction, whether it's soil per inch. I  
2995 have no idea how that could be done, but I think if we're going to require something, we  
2996 ought to have some knowledge base about what would be adequate. I'm not sure how  
2997 we get that.  
2998  
2999 Mr. Kirkland - I'm sure they know how to make it attractive to future buyers,  
3000 when he finishes a situation like this, he knows what to do to make the land  
3001 **(Unintelligible)**.  
3002  
3003 Mr. Wright - We can't be unreasonable.  
3004  
3005 Mr. Blankinship - And I think we want to leave the initiative with the landowner.  
3006  
3007 Mr. Nunnally - This one over here says UP-23-97 and says, "it has never  
3008 been reclaimed." That's West Sand and Gravel – are they still in business?  
3009  
3010 Mr. Blankinship - I think all of their land in the County they've sold, but that  
3011 one site is still **(Unintelligible)**.  
3012  
3013 Mr. Wright - Can't we do something about it?  
3014  
3015 Mr. Blankinship - I've got that file on order. We're trying to find out what we're  
3016 holding them to, what conditions we're requiring. That one we know where we are. We  
3017 just don't know how to get forward. **(Unintelligible)**  
3018  
3019 Mr. Kirkland - In all this, we're going to have to discuss more bond money,  
3020 don't you think?  
3021  
3022 Mr. Blankinship - I think so. When we raised it from \$1,000 to \$2,000, back in  
3023 2001, several of them were unhappy about it. At that time, I talked to Mines, Mineral,

3024 and Energy, and he said that was about what they had found in their experience.  
3025  
3026 Mr. Kirkland - Had they gone up higher in their bonding?  
3027  
3028 Mr. Blankinship - No, theirs is statutory, so it takes an act of the General  
3029 Assembly to change it.  
3030  
3031 Mr. Wright - If we take that first part, the next thing we really ought to look  
3032 at is how much per acre is reasonable.  
3033  
3034 Mr. Blankinship - The State is still requiring \$1,000; they never even went to  
3035 \$2,000 when we did.  
3036  
3037 Mr. Wright - Is it pretty obvious that \$2,000 is not covering it?  
3038  
3039 Mr. Blankinship - It depends on the circumstances.  
3040  
3041 Mr. Wright - You don't see that in every case; therefore, what you're  
3042 saying is, we shouldn't just arbitrarily say \$2,000 or \$5,000, across the board. It  
3043 depends on each case. We've got to look at each case.  
3044  
3045 Mr. Blankinship - Another thing the State has, that we do not, is a fund that  
3046 everybody has to contribute to, called the Orphan Land Fund, so if one developer walks  
3047 off, all the other developers or mining companies essentially pick up the tab, by chipping  
3048 in \$10 per acre every time they renew their license. The problem with us doing that, is  
3049 that we don't have enough; we've only got about 15 active sites. I asked Allen very  
3050 nicely if we could tap into that money, and he said no, because of the waiver.  
3051  
3052 Mr. Wright - What's it for then?  
3053  
3054 Ms. Dwyer - Everybody but us and Fairfax.  
3055  
3056 Mr. Wright - Why are we excluded?  
3057  
3058 Mr. Blankinship - We have been under a waiver, I guess since the State first  
3059 started regulating them on a State-wide basis, because we trust ourselves better than  
3060 we trust the State. Sometimes it's wise and sometimes it isn't.  
3061  
3062 Ms. Dwyer - That might be a reason to justify our rate being higher than  
3063 the State's.  
3064  
3065 Mr. Blankinship - That we can't spread it as broadly.  
3066  
3067 Mr. Wright - Is \$2,000 adequate? You say it depends on the  
3068 circumstances.  
3069

3070 Ms. Dwyer - Is there a way to know?  
3071

3072 Mr. Wright - How do we know, with each case? This has been just  
3073 something arbitrary. You've just been saying \$2,000 for anybody, up till now. So what  
3074 you're saying is, in the future, we should look at each case on its own merits and decide  
3075 the amount of the bond then. That would be something the staff would have to  
3076 recommend.  
3077

3078 Mr. Kirkland - You'd look at the track record of the past property  
3079 disbursements owned too, because we have pretty much the same people that own all  
3080 these, Simons, the Turkey Island crew.  
3081

3082 Mr. Wright - What are we talking about here, as far as expense is  
3083 concerned? You said they really bucked when you went from \$1,000 to \$2,000.  
3084

3085 Mr. Blankinship - Yes, I don't know what it costs them to post the bonds,  
3086 because most of them are still posting surety bonds, rather than letters of credit.  
3087

3088 Mr. Wright - For a letter of credit from the bank, they have to do  
3089 something to show the bank that there's security for them. That ties up funds and  
3090 assets.  
3091

3092 Mr. Blankinship - Right, whereas surety is more like an insurance policy; you  
3093 pay a premium.  
3094

3095 Mr. Wright - You pay a premium, and that's what most of them have been  
3096 doing, is getting a surety bond?  
3097

3098 Mr. Kirkland - Like UP-5, here, for instance, if someone else decides to  
3099 come in and take this project over, this thing's already in the hole before they even start,  
3100 so this would be one that we'd want to increase. We lost a lot of money on this.  
3101 Somebody's going to have to pay a bill, or it's going to just stay looking like it is.  
3102

3103 Ms. Harris - Could we do a range, we say \$2,000, but could we say in  
3104 your report maybe it should be increased to \$5,000, but not in every case? Could we  
3105 use a range of \$2,000 to \$5,000?  
3106

3107 Mr. Blankinship - I guess we want to have some criteria, some objective way  
3108 of determining where along that range we are going to fall.  
3109

3110 Mr. Kirkland - If the place is a dump before you even move  
3111 **(Unintelligible)**.  
3112

3113 Mr. Nunnally - What did the guy say the other day when you mentioned  
3114 \$5,000?  
3115

3116 Mr. Blankinship - I don't think he even responded.  
3117  
3118 Mr. Wright - Why do you say that we shouldn't accept surety bonds?  
3119  
3120 Mr. Blankinship - I understand, and you'd know better than I would, that  
3121 they're much more difficult to collect on, when we are in default.  
3122  
3123 Mr. O'Kelly - I've called on two in the last few years, and it's taken over six  
3124 months to get payment. It just delays getting the project approved or improved, and the  
3125 paperwork is phenomenal in justifying to the bonding company why we need the money.  
3126  
3127 Mr. Blankinship - We really bear the burden of proving to them, whereas with  
3128 the bank it's a lot easier with a letter of credit.  
3129  
3130 Ms. Dwyer - It shifts the burden to us.  
3131  
3132 Mr. Wright - The courts don't have any problem with estates with these  
3133 bonds we get **(Unintelligible)** surety bonds acceptable, as long as we check out the  
3134 surety company, as long as they qualify and are on record with the County.  
3135  
3136 Mr. Blankinship - **(Unintelligible)**  
3137  
3138 Mr. Wright - It's right tough to have people put up cash if you've got a  
3139 large area.  
3140  
3141 Mr. Blankinship - For bonds this large and with a duration as long as these  
3142 tend to be, since most of these tend to roll over every two years, you wouldn't want to  
3143 put up cash.  
3144  
3145 Mr. Wright - A letter of credit would work, probably.  
3146  
3147 Mr. Blankinship - We do have a couple of letters of credit, two or three, Paul,  
3148 out of 15?  
3149  
3150 Ms. Dwyer - So when you say the County no longer accepts surety  
3151 bonds, that's as of when? Page 5?  
3152  
3153 Mr. Wright - He said he's recommending that surety bonds not be  
3154 accepted.  
3155  
3156 Ms. Dwyer - You say for erosion control and planned development  
3157 improvements, the County no longer accepts surety bonds.  
3158  
3159 Mr. Blankinship - I'm not sure when erosion control changed. Dave, have we  
3160 ever accepted surety bonds for POD's?  
3161

3162 Mr. O'Kelly - Not to my knowledge, but after your little exchange of e-  
3163 mails the other day, it looks like the State Code requires us to accept them for POD's.  
3164  
3165 Ms. Dwyer - So we might have to continue.  
3166  
3167 Mr. O'Kelly - We don't have a form, but we'd have to come up with a form.  
3168  
3169 Mr. Wright - How long do they last?  
3170  
3171 Mr. Blankinship - Surety bonds?  
3172  
3173 Mr. Wright - For the erosion control agreements, what is the period of  
3174 them?  
3175  
3176 Mr. Blankinship - They can be just open-ended. It remains in place until the  
3177 property is reclaimed, or until they decide that it's never going to be reclaimed, and they  
3178 can call.  
3179  
3180 Mr. Kirkland - Once someone says that they are closing their mine, how  
3181 long do they have to reclaim it, one year, no more, no less?  
3182  
3183 Mr. Blankinship - That's what it is under the standard condition. Each time  
3184 you issue. Each time you issue one, like the time you issue one, like the one you  
3185 approved today, one of the conditions is, that two years from today, they have to close,  
3186 and three years from today they have to be finished reclaiming, unless they come back  
3187 and renew again.  
3188  
3189 Mr. Kirkland - That seems like a long period of time to me.  
3190  
3191 Mr. Blankinship - It's comfortable. If they're not doing the work that fast, it's  
3192 because they're choosing not to, like Neal Rankin and his screens on top of his air  
3193 conditioning.  
3194  
3195 Mr. Kirkland - A year seems like a long-term situation. It seems like if  
3196 you're closing, if you're there, let's go straight to topsoil leveling.  
3197  
3198 Mr. Blankinship - You may need to leave it through a growing season too.  
3199  
3200 **(Unintelligible)**  
3201  
3202 Mr. Kirkland - So what if you're in the eleventh month of grading and the  
3203 grass doesn't grow; that's free and clear.  
3204  
3205 Mr. Blankinship - Exactly. Then we have to call in the bond.  
3206  
3207 Mr. Nunnally - Can you have a flat fee for \$5,000 for everything under this?

3208  
3209 Mr. Blankinship - You could impose any reasonable condition that's directly  
3210 related to the permit.  
3211  
3212 Ms. Harris - You mean per acre?  
3213  
3214 Mr. Blankinship - Yes, and if they don't want to post it, then they don't mine.  
3215  
3216 Mr. Kirkland - I think they'd still post it.  
3217  
3218 Mr. Blankinship - I think they would.  
3219  
3220 Ms. Dwyer - And the justification, as we know, we have experience about  
3221 what it would cost to reclaim this property that has been damaged and abandoned.  
3222  
3223 Mr. Kirkland - I think you can kind of figure pretty much what it's going to  
3224 cost to reclaim it in your head before this thing starts opening the pit up. Don't you have  
3225 a figure you use on the computer or something that says if they mine five acres, to  
3226 reclaim it, it's 10-point, \$5,000 per acre or something like that?  
3227  
3228 Mr. Blankinship - We've really just relied on that \$2,000 per acre estimate that  
3229 Mines and Minerals .....  
3230  
3231 Mr., Wright - Is there any basis to know what the difference would be?  
3232  
3233 Mr. Blankinship - I wouldn't directly; I'd have to get help with that.  
3234  
3235 Mr. Wright - How would you arrive at that? A lot of it would depend on  
3236 what the people do. They might do more than they're supposed to do in tearing up the  
3237 property. We wouldn't know that until the end.  
3238  
3239 Mr. Blankinship - The County has an annual contract with some excavating  
3240 and erosion kind of guys, that when we're doing County projects, we don't have to bid  
3241 each individual project. We can just call our contractor and send him out there, and  
3242 that's where we got the numbers on the Warriner Pit from. We asked them to go out  
3243 and look at it and give us an estimate of what they would charge to grade down the  
3244 slopes, spread the topsoil, seed it, and make it so that you could walk away. That's  
3245 where we got the \$7,200 figure; obviously, that's a wide range, so if he was bidding that  
3246 as a job, he'd have been more careful. He just spent a couple of hours on the site and  
3247 kind of eyeballed, just using his experience, and that's all we wanted. Each site is going  
3248 to be different. If they're digging thirty feet, it's going to be different than if they're  
3249 digging ten feet. The price per acre is going to be substantially different.  
3250  
3251 Ms. Dwyer - It sounds like it's not really reasonable for us, and we don't  
3252 want to be in the business of estimating the reclamation costs for each site.  
3253

3254 Mr. Blankinship - If we were going to do that, it would be some additional, we'd  
3255 have to get some expertise from somewhere else every time we did a renewal. We  
3256 could certainly do that.  
3257

3258 Ms. Dwyer - It sounds like we need to up our .....

3259

3260 Mr. Kirkland - We need to up it.  
3261

3262 Mr. Blankinship - We've made some changes in our practice to make sure that  
3263 those bonds do get posted in a timely manner too.  
3264

3265 Ms. Harris - On the first page, where you have "The Board of Supervisors  
3266 has delegated the responsibility for administration and enforcement of mining  
3267 regulations to the" BZA – when did they do this? Was this from day 1?  
3268

3269 Mr. Blankinship - From 1960 – it was written in the Zoning Ordinance. By  
3270 writing it into the Zoning Ordinance that it's permitted by use permit.  
3271

3272 Ms. Harris - On page 4, # 28, "Excavation shall be discontinued by [two  
3273 years from effective date]," that doesn't mean that at the end of that two-year period  
3274 business ends? It means they can renew?  
3275

3276 Mr. Blankinship - Right, unless they apply for renewal.  
3277

3278 Ms. Dwyer - What about the Wilton Farm? Are there any liabilities  
3279 because of the mining there, as far as Wilton, as far as we know?  
3280

3281 Mr. O'Kelly - I think most of that area that was subject to mining is going  
3282 to be in parkland now.  
3283

3284 **Mr. Kirkland - (Unintelligible)**  
3285

3286 Ms. Harris - I was surprised Dorey Park had been a mining site. Do you  
3287 remember when it was?  
3288

3289 Mr. Kirkland - Where we're sitting right now was a mining site.  
3290

3291 Ms. Dwyer - Was a borrow pit.  
3292

3293 Mr. Kirkland - Was a borrow pit. There was dirt as far as you could see  
3294 here. When I was a kid, we used to come over here and ride our bicycles on these hills.  
3295

3296 Mr. Blankinship - I don't think there's a use permit on it **(Unintelligible)**.  
3297

3298 Mr. Kirkland - All orange banks, **(Unintelligible)**.  
3299



3300 Ms. Dwyer - I was looking at the conditions that you had -- # 29, "The  
3301 rehabilitation of the property shall take place simultaneously with the mining process."  
3302 That's the same as reclamation? Rehabilitation and reclamation are not different  
3303 terms?  
3304  
3305 Mr. Blankinship - Yes, we probably should use the same term.  
3306  
3307 Ms. Dwyer - So that's one of the things our inspectors look for, is  
3308 reclamation occurring and ongoing .....  
3309  
3310 Mr. Blankinship - And that's something that we've really never taken very  
3311 seriously. We require them to keep the slopes at a 2:1 or greater; they have to have  
3312 current erosion control measures in place. That's kind of where I was going with that  
3313 case this morning, because I can just see us back here two years from now, saying they  
3314 haven't pulled a truckload of dirt out of there in two years, and them saying, "but next  
3315 year ....." It makes me uncomfortable to have these things open year after year, these  
3316 permits out there, the land not getting reclaimed .....  
3317  
3318 Ms. Dwyer - .....in the process.  
3319  
3320 Mr. Kirkland - But that land's not in too bad a shape right now; as long as  
3321 they don't do any digging, it's pretty much dried for two years, and when they come  
3322 back to us, they still **(Unintelligible)**.  
3323  
3324 Mr. Wright - He said under oath that they were going to start doing  
3325 something this year.  
3326  
3327 Mr. Kirkland - They've got the airport job, **(Unintelligible)**.  
3328  
3329 Ms. Dwyer - And they did cite specific jobs, but you're right. I think that  
3330 we need to require some reclamation as an ongoing process. But that sounds to me  
3331 like an administrative/staff issue.  
3332  
3333 Mr. Blankinship - It's kind of both; they're related questions. What do we  
3334 require month by month, and what are you going to require every two years? Are you  
3335 going to require some sort of showing that it is an active site?  
3336  
3337 Ms. Dwyer - So something we could have done today, for example, might  
3338 have been to say, "well, OK, you haven't used the site for however many years, and you  
3339 have disturbed the land here. We want you to initiate reclamation efforts now, for  
3340 whatever you've done." Again, that might be a proposed something that could be part  
3341 of the staff report, if we're having a rehearing for a case, or renewing a request, staff  
3342 could say, "Well, this is the status – they've mined X amount, or they've disturbed 100  
3343 acres, and it hasn't been reclaimed, and we might say, "we'll, extend it, but we want you  
3344 to reclaim 50 acres, or whatever seems appropriate." Does that sound like it would  
3345 work or be feasible or not?

3346  
3347 Mr. Blankinship - That would kind of get us moving in that direction, I guess.  
3348  
3349 Ms. Dwyer - That's different from saying they can't have the permit at all.  
3350  
3351 Mr. Blankinship - Right, if you need a permit in two years, come back in two  
3352 years and get a new one.  
3353  
3354 Mr. Wright - Why can't we have a condition in this permit that would say  
3355 that the mining would have to begin within a certain period of time, or it would become  
3356 void.  
3357  
3358 Mr. Blankinship - We could certainly do that.  
3359  
3360 Mr. Wright - That would be the simple way to do it, give them six months  
3361 or nine months to start. When they come in here to make application, they ought to be  
3362 ready to do it.  
3363  
3364 Mr. Blankinship - These cases, though, have dug in there once. It has been  
3365 an active mine in the past.  
3366  
3367 Mr. Wright - Once they start it, then we could go on further and say "in a  
3368 continuous operation for a X period, or else the permit would become void." They would  
3369 have to come back before us to get it renewed or a new permit.  
3370  
3371 Mr. Blankinship - The exception even to that was the W. C. English, the  
3372 borrow pit along I-895, that they have never done anything but cut grass on. They  
3373 haven't dug a spade full of dirt out of there, and in our report we pointed that out and  
3374 kind of made the case, "Do you want to keep renewing this? The I-895 project has  
3375 been done for two years, and we continue to renew this permit for a borrow pit that  
3376 they've never opened.  
3377  
3378 Mr. O'Kelly - They claimed too, that they were going to be bidding on the  
3379 airport drive.  
3380  
3381 Mr. Blankinship - And they've claimed that every two years for four years.  
3382  
3383 **(Unintelligible)**  
3384  
3385 Mr. O'Kelly - There's no money for right-of-way acquisition, but they're  
3386 claiming that this Australian firm that bought Pocahontas Parkway is going to build the  
3387 connector.  
3388  
3389 Mr. Wright - I'd like to see the staff come in with a new condition that they  
3390 would have to commence operation within X period of time, and figure what is fair;  
3391 otherwise the permit would become void.

3392  
3393 Ms. Dwyer - Within a certain period of time.  
3394  
3395 Mr. Wright - That will put the screws to them. If they don't come in, then  
3396 it will become void, and they've got to come in and apply again.  
3397  
3398 Mr. Kirkland - And spend some more money.  
3399  
3400 Ms. Dwyer - Again, if the permit expires, we still want them on the line for  
3401 any reclamation that they need to do.  
3402  
3403 Mr. Kirkland - That still holds true though. Those conditions still hold. That  
3404 reclamation thing still holds, like this site that we've got today, those photos you took –  
3405 they need to do some work out there now. I saw a lot of orange dirt showing; I didn't  
3406 see any topsoil.  
3407  
3408 Ms. Dwyer - The one we heard today?  
3409  
3410 Mr. Kirkland - Yes. And these photos were accurate that you took, that's  
3411 orange dirt with little cedar trees sticking up. There's no topsoil there.  
3412  
3413 Mr. Blankinship - It's not being actively mined, yet it's not being reclaimed.  
3414 And you sent them the message this morning that that's okay with you.  
3415  
3416 Mr. Kirkland - We're going to send them a message in nine months, that if  
3417 you're going to do it again, you're going to come back again.  
3418  
3419 Mr. Blankinship - This horse is out of the barn. We won't see them again for  
3420 two years.  
3421  
3422 Mr. Nunnally - Are you going to put a time limit on them? Say you've got to  
3423 get started in six months, but you still have your permit for two years?  
3424  
3425 Mr. Blankinship - If you do dig, then you have it.  
3426  
3427 Mr. Wright - Commence operation within a certain period of time,  
3428 **(Unintelligible)**.  
3429  
3430 Mr. Kirkland - That doesn't mean to dig a hole the size of a car. They  
3431 could do that; they could dig one hole the size of a car and say they've started.  
3432  
3433 Mr. Nunnally - You've either got to get started within six months or it  
3434 expires.  
3435  
3436 Mr. Wright - I think you have to begin and have continuous operation.  
3437

3438 Mr. Kirkland - That's a good way to put it.  
3439  
3440 Ms. Dwyer - The alternative to that, would be to begin reclamation  
3441 process. You may leave it inactive because you've got some contract in the offing, but  
3442 you need to start reclaiming and not leaving all this.  
3443  
3444 Mr. Wright - I think we need a condition along that line, to take care of  
3445 that.  
3446  
3447 Ms. Dwyer - So it could be one of two alternatives that we might choose  
3448 from, depending on the case.  
3449  
3450 Mr. Wright - Have we decided what we want to do about the bond, leave  
3451 it at \$2,000?  
3452  
3453 Ms. Dwyer - I think increasing it to \$5,000 might be a little much.  
3454  
3455 Mr. Kirkland - Why don't we split the difference; would \$3,500 be too  
3456 weird?  
3457  
3458 Mr. Wright - Maybe we ought not to jump it so drastically to begin with,  
3459 but go up and then look at it again.  
3460  
3461 Ms. Dwyer - \$1,000 a year or something? But it was \$1,000 for a long  
3462 time.  
3463  
3464 Mr. Nunnally - Make it \$2,500, or \$3,000.  
3465  
3466 Mr. Kirkland - I'd like to keep it so we can get some money back, to take  
3467 care of all this mess. If all this big development is going to take place around what this  
3468 gentleman was talking about today, \$3,000 is not much an acre.  
3469  
3470 Mr. Blankinship - And construction costs are not going down.  
3471  
3472 Mr. Kirkland - That's right, and they'd make enough money to cover this.  
3473  
3474 Mr. Nunnally - What does the majority think?  
3475  
3476 Ms. Harris - \$3,000.  
3477  
3478 Ms. Dwyer - If it's costing \$5,000 to reclaim it, .....**(Unintelligible)**.  
3479  
3480 Mr. Blankinship - If you had 200 acres, \$3,000 an acre might be enough.  
3481  
3482 Mr. Wright - Jump it 50% now, and next year jump it another 50%.  
3483  
3484 Ms. Dwyer - Suppose we look at it again in a year. Up it \$1,000, and look  
3485 at it again in a year, and see if we have any more experience. Our evidence says the

3486 one that we've had problems with could cost \$5,000.  
3487  
3488 Mr. Wright - \$3,000 per acre, Mr. Chairman, is that okay with you? And  
3489 we'll look at it again in another year.  
3490  
3491 Ms. Dwyer - I have a question about the conditions that say they have to  
3492 submit some kind of report in a year? What is that report called?  
3493  
3494 Mr. Blankinship - Just a status report.  
3495  
3496 Ms. Dwyer - And we don't get copies of those, the Board doesn't?  
3497  
3498 Mr. Blankinship - No, it's usually just a one-page letter; they're usually very  
3499 brief.  
3500  
3501 Ms. Dwyer - Maybe when they come up for renewal, we could get, would  
3502 it be valuable for us to read the status reports? Is there any information in there that, or  
3503 should we get it when they submit them, really just so they know we're looking at it?  
3504  
3505 Mr. Wright - Just one page; that would be simple.  
3506  
3507 Mr. Blankinship - We could just make that our practice, that way, when we do  
3508 your case report, we attach the previous annual report.  
3509  
3510 Mr. Kirkland - I think that would be good, to show if there are any  
3511 deficiencies anywhere; I'm sure that's noted under the personal comments too, other  
3512 than under the staff line.  
3513  
3514 Ms. Harris - If the site that's been mined for a number of years is going to  
3515 be used for commercial purposes, what's the major difference in reclamation?  
3516  
3517 Mr. Blankinship - Apparently not very much. When they start a commercial  
3518 site, the first thing they do is start grading anyway. **(Unintelligible)** It would be site  
3519 specific. They would have to do core samples on that property, and then engineer it  
3520 from there.  
3521  
3522 Mr. Wright - It depends on the type of building you're going to put on  
3523 there too. You'd probably have to have more foundation basis for a bigger building than  
3524 just a house. Are we in accord that we ought to consider this Land Use Plan if there  
3525 can be some specific conditions that would tend to cause a little different reclamation? I  
3526 don't know if you can come up with something like that or not.  
3527  
3528 Mr. Blankinship - It would look like we'd do it in more general terms, I think I'd  
3529 feel more comfortable on each specific site, looking at it kind of the way we do a  
3530 rezoning report.  
3531  
3532 Mr. Wright - Can you give us some ideas about that? We could talk  
3533 about that all day before we got something before us.

3534  
3535 Mr. Blankinship - We have one coming up in July, so it might as well be the  
3536 first.  
3537  
3538 Mr. Kirkland - Where is this one?  
3539  
3540 Mr. Blankinship - Right there. It's actually a site that was mined back in the  
3541 '70's.  
3542  
3543 Mr. Kirkland - Who's this?  
3544  
3545 Mr. Blankinship - John Deal is representing them. The name escapes me.  
3546  
3547 Mr. Wright - It's almost in New Kent, isn't it? Does it border New Kent?  
3548  
3549 Mr. Blankinship - Yes. The access is actually in New Kent; you have to drive  
3550 to New Kent and come back to get into the property. Turkey Hill, not Turkey Island;  
3551 that's down here, but Susan kept trying to call it Turkey Island, so if that's Turkey Hill, it  
3552 might be the same one. Part of the property was mined previously. Leisfeld is going to  
3553 be the operator.  
3554  
3555 Ms. Harris - So your ten-year Use Plan says Environmental .....  
3556  
3557 Mr. Blankinship - .....Environmental Protection along the flood plain,  
3558 and then rural residential outside of the flood plain.  
3559  
3560 Ms. Harris - And you said it's going to be where? In the flood plain?  
3561  
3562 Mr. Blankinship - Both there and residential.  
3563  
3564 Ms. Dwyer - You say in your recommendations, where comprehensive  
3565 plan indicates a residential or commercial use, reclamation plans should be more  
3566 specific. I've never seen anything in our packet that says "reclamation plan." We have  
3567 "grading plans," so are we proposing that they need to tell us what they're going to do.  
3568 What would that look like? Would it be more than a grading plan?  
3569  
3570 Mr. Blankinship - Up to this point, there really have been just grading plans,  
3571 with a note stating how they're going to stabilize the soil, whether it's going to be  
3572 pasture or grass or trees or what. The one we had today .....  
3573  
3574 Ms. Dwyer - So what are we going to ask for?  
3575  
3576 **(Unintelligible)**  
3577  
3578 Mr. Blankinship - If it's shown as SR-2, then I think we'd want them to say, the  
3579 reclamation, like for Pruitt, Castleton, something that would say, "this is our grading plan  
3580 for our subdivision," and that may change before they actually submit it, just some fairly  
3581 direct link between their reclamation and the proposed use of the property.

3582  
3583 Mr. O’Kelly -                   Something to keep in mind, with the stating the Land Use  
3584 recommendation, we’re currently updating the plan and most of the mapping has been  
3585 completed, and the staff is meeting with the individual Board and Planning Commission  
3586 members for their recommendations, so it may be that the adopted plan  
3587 recommendation and the proposed plan recommendation we ought to consider.  
3588  
3589 Ms. Dwyer -                    I think we need a better submission for everything, even if  
3590 right now the Long Range Plan is Agricultural Use – that can always change. I think we  
3591 need a better submission for everything, particularly for .....

3592  
3593 Mr. Blankinship -            “Restore area to finished contour and seed” – that’s your  
3594 reclamation plan. Here are your finished contours, and this one is just kind of a gentle  
3595 slope down. It’s approximately 1:42 along there, and then gently sloping down to where  
3596 the stream is.  
3597  
3598 Ms. Dwyer -                    It’s a natural kind of lay-of-the-land thing.  
3599  
3600 Mr. Blankinship -            Right. So after they’re finished excavating, they’ll just grade  
3601 the property to that plan and then throw six inches of topsoil on it and plant grass.  
3602  
3603 Mr. O’Kelly -                   In this case, Mr. Galloway’s farming it.  
3604  
3605 Mr. Blankinship -            Right, so that’s a reasonable reclamation of that property,  
3606 because that’s all he’s going to do with it for now.  
3607  
3608 Mr. Kirkland -                There’s no sewer available down the street there.  
3609  
3610 Mr. Blankinship -            And it’s in a site that’s going to be difficult for a sewer. It will  
3611 be a while before any more intense development gets there, I would think.  
3612  
3613 Ms. Dwyer -                    So this is called the “grading plan.” And that’s usually ...  
3614  
3615 Mr. Blankinship -            Sometimes they will actually put “reclamation plan” on a  
3616 finished grading sheet, but if the proposed use is agriculture or forestry, that’s really all  
3617 there is to it.  
3618  
3619 Mr. Gidley -                    That’s basically topo over what’s originally there.  
3620  
3621 Ms. Dwyer -                    So what are you going to do, Ben?  
3622  
3623 Mr. Blankinship -            If that’s the proposed use of the property for the next 20  
3624 years, is that it’s going to be in pasture, there really is nothing else to do but grade it and  
3625 seed it. The one that we did for Mrs. Holland out in this same area, Mrs. Holland was  
3626 the owner of the property (I can’t think right now who the operator of that one was), but  
3627 it’s back in the woods .....

3628  
3629 Mr. Wright -                    Suppose it were going to be used for residential – what else

3630 can you do but grade it and seed it?  
3631  
3632 Mr. Blankinship - Then it would have a grading plan that we could review with  
3633 an eye toward future development. It is still basically going to be a grading plan.  
3634  
3635 Ms. Dwyer - So you might want to require gentler slopes, for example.  
3636  
3637 Mr. Blankinship - Or even show us a proposed street layout. Don't show us  
3638 any lots at this time, but show us a proposed street plan. It may change, but at least we  
3639 could review it and say all your streets are at an 8% grade or less, so we know that with  
3640 the way you've graded it, it's practical to build streets there. Even if they change the  
3641 layout later, at least we know we left the property such that it could be developed for  
3642 residential. If they show a big pond in the middle, then show us some kind of a  
3643 subdivision layout that features a big pond in the middle.  
3644  
3645 Mr. Kirkland - That would be the BMP.  
3646  
3647 Ms. Dwyer - The second recommendation you had, had to do with the  
3648 bond, and we decided that, and the third recommendation had to do with enforcing the  
3649 reclamation, and that's when you say if at each biennial hearing, nothing's been done,  
3650 then we should reject that.  
3651  
3652 Mr. Wright - I think that we should put something in to make sure that  
3653 when they begin it, they reclaim it.  
3654  
3655 Mr. Kirkland - Let's say in nine months, they must begin the process with  
3656 continuous operation .....

3657  
3658 Mr. Blankinship - So if the one we approved this morning, came back next  
3659 month, you would want that condition to be in there. And if they didn't dig in nine  
3660 months, we'd send them a letter saying "start reclaiming."  
3661  
3662 Ms. Dwyer - We could always decide to deny it, if there hadn't been  
3663 activity.  
3664  
3665 Mr. Blankinship - Right, if they've gone four years.  
3666  
3667 Mr. Kirkland - We need to give them something to push them, to make  
3668 them do something.  
3669  
3670 Mr. Blankinship - If you feel it's an issue. I do. I think having these sites  
3671 hanging around the County and not getting reclaimed, is a problem.  
3672  
3673 Mr. Kirkland - If they don't do anything for two years, that orange dirt I saw  
3674 is not going to get any browner.  
3675  
3676 Ms. Dwyer - To my mind, it's the reclamation issue is the key, so we  
3677 either deny it or say "begin the reclamation process immediately."



3678  
3679 Mr. Blankinship - If you deny it, they would have to; they would be required to  
3680 reclaim within the next 12 months.  
3681  
3682 Ms. Dwyer - We could also say, "if you want to keep this permit open,  
3683 you're going to have to start reclaiming," so that it doesn't degrade over time, exposure  
3684 and erosion.  
3685  
3686 Ms. Harris - What time period would you give them for beginning?  
3687  
3688 Mr. Blankinship - I heard someone say nine months. Earlier I wrote down one  
3689 year.  
3690  
3691 Mr. Wright - I think nine months.  
3692  
3693 Mr. Kirkland - That gives them a dry season, and a winter season, and  
3694 they can't use that for an excuse, they can't do because it's raining or snowing.  
3695  
3696 Ms. Harris - I think reclaiming we talked about nine months, giving them  
3697 seed time.  
3698  
3699 Mr. Kirkland - The ones that we've got trouble with now, that you cite in  
3700 your report, if someone else decides to take that, Mr. Warriner decides to sell that to  
3701 someone else, so they have to reclaim that before they start?  
3702  
3703 Mr. Blankinship - Normally not. We wouldn't make them reclaim it and dig it  
3704 all up again.  
3705  
3706 Ms. Dwyer - We might up the bond.  
3707  
3708 Mr. Kirkland - Up the bond, so we could get it covered.  
3709  
3710 Mr. Blankinship - That's essentially where we were with Castleton; that  
3711 property was rezoned in like 1994 and never developed and never reclaimed, and when  
3712 they came in 2004, and the new guy bought it and said he'd like to develop this, are you  
3713 going to make him reclaim it and then dig it all back up again for my subdivision, and  
3714 that was when we went through the file and saw your reclamation plan was basically a  
3715 subdivision grading plan, so just go in there and start working. There were some  
3716 specific items that environmental said needed to be fixed right away, so they'd maintain  
3717 some sediment basins and that kind of stuff, put in some new silt fence, but then said,  
3718 "no, don't reclaim it and then grade it; just go on and grade it."  
3719  
3720 Mr. Kirkland - That's one less we've got to worry about.  
3721  
3722 Mr. Blankinship - That's a happy ending for sure.  
3723  
3724 Ms. Dwyer - Here's our Tidewater Quarries.  
3725

3726 Mr. Blankinship - I don't know how they're going to reclaim that.  
3727  
3728 **(Unintelligible)**  
3729  
3730 Mr. Kirkland - The County could buy it for a landfill.  
3731  
3732 Ms. Dwyer - That would please Hartley Plantation.  
3733  
3734 Mr. Kirkland - The landfill backs up to it. The flame burns really hot at night  
3735 out there.  
3736  
3737 Mr. Nunnally - Have you heard any more complaints, Ben, on that?  
3738  
3739 Mr. Blankinship - Blasting, no. Ever since they started working the PR angle.  
3740  
3741 Mr. Nunnally - Do we have a big case load for next month?  
3742  
3743 Mr. Blankinship - Not yet, but today's the deadline, so we won't know until  
3744 Monday.  
3745  
3746 Mr. Kirkland - I think you can get this to line up with the Land Use Plan  
3747 somehow.  
3748  
3749 Mr. Blankinship - You'll see it next month on the John Deal case.  
3750  
3751 Mr. Nunnally - Do I head a motion to adjourn?  
3752  
3753 Mr. Kirkland - So moved.  
3754  
3755 Ms. Dwyer - Second.  
3756  
3757 There being no further business, and on a motion by Mr. Kirkland, seconded by  
3758 Ms. Dwyer, the Board adjourned until **July 27, 2006**, at 9:00 am.  
3759  
3760  
3761  
3762

3763 James W. Nunnally  
3764 Chairman

3765

3766

3767 Benjamin Blankinship, AICP  
3768 Secretary

3769