

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX ON THURSDAY, JUNE 24, 1999 AT**
4 **9:00 A.M. NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES**
5 **DISPATCH ON JUNE 3, 1999, AND JUNE 10, 1999.**
6

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

Also Present: Randall R. Silber, Secretary
Susan W. Blackburn, County Planner II
Kay S. Lam, Recording Secretary

7
8 Mr. McKinney - Good morning, ladies and gentlemen. Welcome to the June
9 Board of Zoning Appeals. In the rear of the room, there are staff reports with conditions
10 for each case that is to be heard today. If you are not familiar with what the staff has
11 suggested on a case, you will find them at the rear of the room. Now, we will hear from
12 Randy Silber, who will explain the rules and regulations that we will have today. Mr.
13 Silber.
14

15 Mr. Silber - Yes, sir, Mr. Chairman. Thank you. Welcome this morning,
16 and the Board of Zoning Appeals does have a set of rules and regulations or
17 procedures they follow when conducting business. I will call the cases in order, as on
18 the agenda. The applicant will come forward to present his case. All of those speaking
19 in favor of or against the case would asked to be sworn in at that time. The applicant
20 will provide me with notices, if the notices have not been turned in prior to the meeting.
21 By notices, I mean notice of adjacent property owners of the case. The applicant is
22 then given an opportunity to present his testimony. If there is anyone in opposition, the
23 opposition then would be given an opportunity to speak against the case. Following
24 that, the applicant is given, and only the applicant is given, an opportunity for rebuttal.
25 After all of the questioning is finished, the Board will take the information under
26 advisement and will render a decision at the end of the meeting. So, if you want to stay
27 around until the end of the meeting to find out your results, that is fine. If not, you may
28 leave and call the Planning Office at the end of the day to find out the decision on the
29 cases. Again, the copies of the staff report and the recommended conditions are in the
30 back of the room for those that may have an interest in those.
31

32 Mr. McKinney - Thank you, Mr. Silber. Do you have any requests for

33 deferrals or withdrawals on the 9:00 a.m. agenda?

34

35 Mr. Silber - No, sir, Mr. Chairman. I am not aware of any deferrals this
36 morning.

37

38 Mr. McKinney - Would anyone in the audience like to defer or withdraw a
39 case? Yes, sir, if you would come up. Please state your name for the record, sir.

40

41 **A-87-99** **Robert N. Shapiro** request for variance from Section 24-94 of
42 Chapter 24 of the County Code to build a Florida room at 13413
43 College Valley Lane (Foxhall) (Tax Parcel 45-2-B-101), zoned R-
44 2AC, One-Family Residence District (Three Chopt) (Conditional).
45 The rear yard setback is not met. The applicant has 41.0 feet rear
46 yard setback where the Code requires 45.0 feet rear yard setback.
47 The applicant requests a variance of 4.0 feet rear yard setback.

48

49

50 Mr. Craig Mates - It is Craig Mates.

51

52 Mr. McKinney - Would you be sworn in by Mr. Silber?

53

54 Mr. Mates - Yes, sir.

55

56 Mr. Silber - Would you please raise your right hand and swear that the
57 testimony you are about to give is the truth, the whole truth and nothing but the truth, so
58 help me God?

59

60 Mr. Mates - Yes.

61

62 Mr. McKinney - What is your request, Mr. Mates?

63

64 Mr. Mates - This case is A-87-95.

65

66 Mr. McKinney - Are you the applicant?

67

68 Mr. Mates - No, sir. I am the contractor representing the Shapiros.

69

70 Mr. Silber - It is on page 3 of your agenda.

71

72 Mr. McKinney - All right.

73

74 Mr. Mates - They requested a variance of four feet for a rear setback and
75 last week they went over the layout of the addition that is encroaching into the garage
76 and they want to swing it around and ask for a six-foot variance instead of a four-foot
77 variance.

78

79 Mr. McKinney - Well, Mr. Mates, if the plans are changing, the notices have
80 gone out. You are probably going to have to ask for a deferral for 30 days and refile it,
81 or amend it, to where the adjacent and adjoining property owners can be notified of
82 what you are doing, seeing you are asking for specifically four feet, and Mr. Silber will
83 help you with that this afternoon, if that is your request.

84
85 Mr. Mates - OK. The delay, as far as getting this, is another 30 days,
86 you say?

87
88 Mr. McKinney - It is.

89
90 Mr. Mates - Yes, sir.

91
92 Mr. McKinney - You can't ask for four and come in and get six, because the
93 notices have not gone out properly.

94
95 Mr. Mates - OK.

96
97 Mr. Silber - The next meeting of the Board would be July 22, 1999. If
98 you can get with our office later today or tomorrow, we will help you develop what needs
99 to be done.

100
101 Mr. Mates - Well, I will just go on and take it as it is. They have gone on
102 vacation, and I went to the Planning Department the day before yesterday, and that was
103 just the procedure they told me to ask for, the deferral. If it is going to delay it another
104 30 days, it is going to go as it is. They don't want to wait another 30 days.

105
106 Mr. McKinney - So, you want to go ahead today with the case when it comes
107 up.

108
109 Mr. Mates - Yes, sir.

110
111 Mr. McKinney - OK. Thank you. Is there anybody else in the audience to
112 speak? Mr. Silber, will you call the first case?

113
114 **A-64-99** **Walter A. Brown, Jr.** request for variance from Section 24-30.1(a) of
115 Chapter 24 of the County Code, to build a two-story garage addition at
116 9400 Hungary Ridge Drive (Hungary Ridge) (Tax Parcel 50-18-A-39),
117 zoned R-5C, General Residence District (Conditional) and C-1C,
118 Conservation District (Brookland). The total side yard is not met. The
119 applicant has 17.0 feet total side yard where the Code requires 20.0 feet
120 total side yard. The applicant requests a variance of 3.0 feet total side
121 yard.

122
123
124 Mr. McKinney - Is the applicant here? Would you state your name for the

125 record, sir?
126
127 Mr. Horace Harrison - My name is Horace Harrison. I am with H. E. Harrison
128 Construction Company and I represent Mr. Walter Brown.
129
130 Mr. McKinney - All right, Mr. Harrison, have all adjoining and adjacent
131 property owners been notified of this request, according to the County Code?
132
133 Mr. Harrison - Yes, they have. I have the sheets right here.
134
135 Mr. McKinney - Will you turn those in to Mr. Silber? All right, if you'd raise
136 your hand and be sworn in. Before you do that, if there is anyone else in the audience
137 interested in A-64-99 and expect to speak, if they would, would they stand and be sworn
138 in at the same time as Mr. Harrison. All right.
139
140 Mr. Silber - Would you please raise your right hand and swear that the
141 testimony that you are about to give is the truth, the whole truth, and nothing but the
142 truth, so help me God.
143
144 Mr. Harrison - I do.
145
146 Mr. Silber - Thank you.
147
148 Mr. McKinney - All right, Mr. Harrison, if you would present your case, sir.
149
150 Mr. Harrison - The address in question is in a cul-de-sac, and it is pie-
151 shaped, right here. Right here we have an existing storage shed on the side. We want
152 to put a garage back there but we are short three feet in order to put the desired size
153 garage back there. So, we are going to tear down the existing shed and move the
154 garage back towards the rear of the property so that we can install this garage in there.
155 I think it is, we are three feet short of having the necessary dimensions to accommodate
156 that.
157
158 Mr. McKinney - What is the garage going to be constructed out of, Mr.
159 Harrison?
160
161 Mr. Harrison - It will be a masonry foundation, frame walls and aluminum
162 siding.
163
164 Mr. McKinney - Are there any questions of Mr. Harrison by Board members?
165
166 Mr. Kirkland - What is the size of this proposed garage?
167
168 Mr. Harrison - Eighteen feet.
169
170 Mr. Kirkland - Eighteen by what?

171
172 Mr. Harrison - Excuse me, it is 18 feet by 22 feet.
173
174 Mr. Kirkland - So, it is a two-car garage.
175
176 Mr. Harrison - Yes, sir.
177
178 Mr. Kirkland - Mr. Harrison, did you read the second page of the staff report
179 where it says that if you were to offset it a little further, you would not have to apply for
180 this variance to comply with the Ordinance? Is there any reason it couldn't be offset
181 and pushed back a little further to meet the requirement?
182
183 Mr. Harrison - I had not gotten, I was not aware of that. I see really no
184 reason we probably couldn't push it back some, because in the back – there is nothing
185 in the back there, there is nothing in the back but yard space, so we could probably set
186 it back.
187
188 Mr. Kirkland - That might require another driveway farther back, too, wouldn't it?
189 They may have considered that in the design.
190
191 Mr. Harrison - I don't think running the driveway back would impact the
192 construction of the garage.
193
194 Mr. Kirkland - They were probably thinking of that expense and maybe that is why
195 they didn't do that in the first place.
196
197 Mr. Harrison - Oh, OK.
198
199 Mr. McKinney - What is on the second story of this garage, Mr. Harrison?
200
201 Mr. Harrison - They want to have living space on the second floor of the
202 garage.
203
204 Mr. McKinney - To the rear of the existing house, what is right there, right
205 now, upstairs?
206
207 Mr. Harrison - It is bedrooms up there.
208
209 Mr. McKinney - Bedrooms at the corner, it is one bedroom?
210
211 Mr. Harrison - Yes, at the rear most part of the existing structure.
212
213 Mr. McKinney - What they are trying to do, I would presume, is align that wall
214 up. Are they enlarging that bedroom or adding a bedroom?
215
216 Mr. Harrison - I am sure they have two small children, well, they have a

217 small child and one on the way. I think they want to use that as a future bedroom for
218 the children.

219
220 Mr. Kirkland - It looks like they are trying to line the garage up with the back of the
221 house. It may not work if you push it back three feet. Also, it looks like you have some
222 woods right behind the house there, too. Are any of the trees going to be required to be
223 cut down to build this thing?

224
225 Mr. Harrison - No. Those trees are a good distance from the building site.
226 They are at least 100 feet, I would say, back.

227
228 Mr. McKinney - All right. Any other questions? Does staff have any
229 comments?

230
231 Mr. Silber - All right, Mr. Harrison. That concludes your case. You will
232 get your answer this afternoon, as Mr. Silber stated earlier, or you may stay if you like.

233
234 Mr. Harrison - All right, thank you sir.

235
236 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
237 Wright, the Board **granted** the case.

238
239 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

240
241 Negative: 0

242 Absent: 0

243
244 **REASON:** The Board **granted** this request as it found from the evidence presented that
245 authorizing this variance will not be of substantial detriment to adjacent property and will
246 not materially impair the purpose of the zoning regulations.

247
248 1. This approval is only for the total side yard setback in order to construct the two-
249 story garage addition which is the subject of this case. Any additional
250 improvements on the property shall comply with the applicable rules and
251 regulations of the County Code.

252
253 **A-77-99 Robert P. Bain** request for a variance from Section 24-95(b) of Chapter 24 of
254 the County Code to build a dwelling at 8900 Midway Road (Westhampton Settlement)
255 (Tax Parcel 100-10-1-24), zoned R-3, One-Family Residence District (Tuckahoe). The
256 lot width is not met. The applicant has 61.64 feet lot width where the Code requires
257 65.0 feet lot width. The applicant requests a variance of 3.36 feet lot width.

258
259

260 Mr. McKinney - Is the applicant here?

261
262 Mr. Robert Parkerson - I am Robert Parkerson and Mr. Bain is here, as well.

263
264 Mr. McKinney - Robert Parkerson?
265
266 Mr. Parkerson - Yes, sir.
267
268 Mr. McKinney - All right, Mr. Parkerson. Have all adjoining and adjacent
269 property owners been notified?
270
271 Mr. Parkerson - Yes, sir. They have.
272
273 Mr. McKinney - You can turn those in. Is there anybody else to speak on
274 behalf of A-77-99? Would you stand and be sworn in along with Mr. Parkerson if you
275 intend to speak. Anybody in the audience who plans on speaking to A-77-99? If you
276 would stand where you are, ma'am. Anybody that thinks they may speak on A-77-99
277 can be sworn in and we can save a lot of time. All right, Mr. Silber.
278
279 Mr. Silber - If you could all raise your right hand and swear that the
280 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
281 help me God.
282
283 The People in Unison - I do.
284
285 Mr. McKinney - All right, Mr. Parkerson, you have turned your notes in to Mr.
286 Silber?
287
288 Mr. Parkerson - Yes, sir.
289
290 Mr. McKinney - All right, if you would present your case, sir.
291
292 Mr. Parkerson - Gentlemen, the applicant purchased this piece of property in
293 a row in 1984 and has been the sole owner of the property since 1984. Several lots
294 were laid out, as I am sure you are aware, a 50 foot subdivision, and in 1960 the County
295 required 65 feet. Enough property was purchased to have built on this lot with the full
296 65 feet, but inadvertently the surveyor made a couple of lots larger than 65, which left
297 us with this parcel which is 61.54, if I am reading that correctly. A request was made in
298 1984 and was denied. Again, 15 years have passed where Mr. Bain has owned the
299 property and maintained it and paid taxes on it. He has attempted on several
300 occasions, one of both properties on either side are improved. One is improved with
301 over 65 feet and he has made several attempts from the only one who could sell him
302 the extra land to purchase that land, and there has been no interest on that party's part
303 to sell. We could certainly rectify the problem if we could purchase something, but,
304 again, our attempts to do so have been declined. We feel it would improve the entire
305 area to put a home on this lot, which, again, has been unimproved for all of this time. It
306 is surrounded now by improved property. We are willing to make, as a condition of this
307 case, and I would tender to Mr. Silber, if he could pass on those lots showing that we
308 would have a full 25 feet of total side yard footage. The one neighbor who is on a 65

309 foot lot and would be most impacted by this, we would be willing to place the house to
310 give a full 15 or over 15 feet of side yard between his home and this particular property,
311 which, I would add, is more than the side yardage he has, but we are certainly willing to
312 accommodate his concerns in that regard and to place this house in such a manner to
313 minimize the impact on him. Again, we feel that this improvement here, particularly
314 along the conditioned sketch there, would enhance all of the values in the property and
315 would not impair the purpose of the zoning regulations. This was not a deliberate
316 attempt to create an extra lot out of footage that did not exist. That was not and is not
317 the intent. We feel, again, this would not have an impact on the neighborhood other
318 than a positive one. It would place a valuable improvement on County property, on
319 property of a private owner, and increase the County's tax base. We feel that 15 years
320 have gone by where all attempts have been made to do something positive here and
321 this is the alternative at this time. I would note that a variance granted by you
322 gentlemen in 1999 on a 50 foot lot in this same subdivision that had been purchased for
323 investment in 1991. We have again 61.5 plus feet here and feel this would be a proper
324 use and would be fair to all parties concerned. I will save a little time for a very brief
325 rebuttal if necessary.

326
327 Mr. Nunnally - Mr. Parkerson, did Mr. Bain offer this property for sale to the
328 adjoining property owners? Has he tried to sell this lot to them?
329

330 Mr. Parkerson - He has not tried to sell it sir, he has again tried to purchase
331 and on one side, I believe, there is a home built on two of the old 50 foot lots, 100 feet,
332 we have attempted to buy the extra three and a half feet from that owner and she has
333 indicated no desire to sell. We could, I suppose, offer it to the other party, but that has
334 not been done. We feel that the best use of this property would be to put a home on it
335 as we desire and which would really accomplish the same thing as a 65 foot lot. They
336 are very deep lots, so it would not impose any sort of hardship towards the people
337 behind it by making it a slightly a deeper home than what might be normal. He
338 proposes a small cape cod, which would certainly be in keeping with that neighborhood
339 value-wise and aesthetically.

340
341 Mr. McKinney - Any other questions for Mr. Parkerson?
342

343 Mr. Balfour - What price range do you have in mind for construction of this
344 house?
345

346 Mr. Robertson - Approximately \$100,000 or a little bit above that, and I
347 believe the assessments in that neighborhood range from \$80,000 on up.
348

349 Mr. Balfour - But it would be something in keeping with the other houses.
350

351 Mr. Robertson - It certainly would be and that is the intent, to complement the
352 neighborhood, and again, this has been a vacant piece of undeveloped property now
353 and the entire same neighborhood, when he bought the property was, I'd say, 50%
354 developed. It is now almost 100% developed. There might be one or two small...

355
356 Mr. Balfour - Would he rent the property?
357
358 Mr. Robertson - The intent is to sell.
359
360 Mr. Balfour - Owner occupation.
361
362 Mr. Robertson - Private owner, yes, sir.
363
364 Mr. Balfour - Are any other houses in that area on 50 foot lots?
365
366 Mr. Robertson - Yes, sir. It is a very old subdivision. There are a few on 50
367 foot lots. What has happened over the years is some of those houses were in disrepair
368 and they were purchased along with empty lots, and most people have attempted to
369 build on 65 feet, but there are some smaller older homes in there that were on 50 foot
370 lots, but I am not aware of much vacant property left in there.
371
372 Mr. McKinney - Have you met with any of the adjoining and adjacent
373 property owners?
374
375 Mr. Robertson - Mr. Bain has spoken to a Mr. Kelly, who I believe is here this
376 morning, about it. He has attempted on the other side to purchase from Ms. Burrell, I
377 think her name is, and has not had any response from her. She is an older person and
378 has no interest in dealing with it.
379
380 Mr. McKinney - All right. Any other questions? Thank you, Mr. Robertson.
381 All right. Whoever would like to come up first, please come ahead.
382
383 Mr. Kelly - My name is Mark Kelly and I live at 8992, the lot immediately
384 to the west. I am afraid I have to disagree with Mr. Parker (sic) on just about everything
385 he said. We have lived in our house for 4-1/2 years and this little piece of property next
386 to us has not been maintained. It is badly overgrown with poison ivy and blackberries
387 and small trees when we moved it, and I have had to work, or I have worked on it, each
388 summer trying to clear it off so that it didn't present a safety hazard and eyesore when
389 we moved in.
390
391 He has made no contact with me other than this letter notifying me of the request for the
392 variance. We might have had an interest in purchasing this property from him, but he
393 has not made any contact with us. I don't believe it is any of our faults that an
394 incompetent survey left him with a piece of property that is narrower than the County's
395 minimum requirements and if there were recourse out of this, the recourse should have
396 gone back on to the surveyor. There should have been opportunities, I would have
397 thought, earlier on, for a change to be made, but apparently nobody paid enough
398 attention to do the survey, and double checked what was done to ensure that the survey
399 was accurate. I don't really see this as a minor variance. The houses are close
400 together in there. The... I don't understand, well, when a 65 foot minimum has been set

401 by the County for housing, I don't understand what the point is of granting variances of
402 this size, putting a two-story house sandwiched in between one-story houses. We don't
403 feel like this would enhance our property values to see a two-story house of \$100,000
404 constructed in between my house and the house next door and on the other side is an
405 older home, and our house is about as old as the area is. Our house is a \$70,000
406 house, not \$80,000 or above, and \$100,000 two-story house is going to leave a
407 negative impression on anybody interested in looking at our house down the road to buy
408 the house. We do feel like it will hurt our resale values. We don't believe the owner of
409 the property has shown any real interest in that property for certainly the five years
410 we've been there, and no effort was made to contact us to see if there was anything that
411 we might be interested in taking the property off of his hands.

412
413 Mr. Balfour - Mr. Kelly, facing the property, are you on the left or the right?
414 Facing the property.

415
416 Mr. Kelly - On the right. Facing the property, I am on the left. If I am
417 standing in the street looking at the property, my house is on the left. We live west of
418 that property.

419
420 Mr. Balfour - And you said you might be interested in purchasing the
421 whole lot or half of the lot?

422
423 Mr. Kelly - No contact has been made. I have no idea what that
424 situation might be like, what he is asking for the whole lot. I certainly don't want to see a
425 two-story house sandwiched in between two one-story houses, and it is going to
426 negatively, I think it is going to affect my property value negatively enough that it would
427 be worth something to me to look at purchasing that entire piece of property.

428
429 Mr. Balfour - Well, it might effect your property otherwise, when you got
430 ready to sell it, perhaps you might get \$100,000 for yours rather than \$70,000.

431
432 Mr. Kelly - I don't think so. Not a home or a house that is 15 years old,
433 a one-story house, and I think a two-story cape cod next door to it is going to make it
434 look smaller, and less attractive.

435
436 Mr. Balfour - What is the size of your lot?

437
438 Mr. Kelly - It is a 65 foot lot and the house is 40 feet wide. A small
439 house.

440
441 Mr. McKinney - Any other questions of Mr. Kelly by Board members? Thank
442 you, Mr. Kelly. Next.

443
444 Mr. Scott Phillips - My name is Scott Phillips and I live at the house that backs
445 up to the lot in question. Before I get started, there was another neighbor who couldn't
446 make it here today and he did write a letter. Is it possible I could read this letter from

447 him?

448

449 Mr. McKinney - Is that agreeable with everyone? OK, go right ahead.

450

451 Mr. Phillips - His name is Mark Robertson and he lives next door to me at
452 9007 Michaux Lane. "Dear Board Members, I regret that I am unable to attend the
453 public hearing pertaining to Robert Bain's request for a zoning variance. In lieu of a
454 personal appearance, I am sending this letter detailing my concerns with my neighbor,
455 Scott Phillips. Mr. Bain's request for a rezoning variance should definitely be denied.
456 The lot on which he intends to build is simply too small to accommodate a single-family
457 dwelling. It lacks sufficient space to provide for ample parking and a yard of reasonable
458 size. In addition, the effects of clearing the lot and building on it will significantly
459 degrade the quality and value of my property. Currently my lot receives large amounts
460 of runoff from adjacent lots during periods of heavy rain. Drainage can be problematic
461 at times, but is best described as adequate. The removal of the natural water buffer the
462 trees and foliage provided will necessitate the installation of any artificial drainage
463 system to handle the increased runoff. Without such a system, I would most likely have
464 standing water on my property and quite possibly under my house. Installation of such
465 a system would cost far more than I am able to afford. Furthermore, the development of
466 this property is without question unwanted by the community. A small rental house on a
467 substandard lot is unwanted and unwelcome. The best use of this small piece of
468 property is as an attachment to one of the adjacent lots. I respectfully request that the
469 Board of Zoning Appeals deny Mr. Bain's request for a variance. Denial of this request
470 is in accordance with the County Zoning Code and the wishes of all property owners
471 living within the immediate vicinity of 8990 Midway Road."

472

473 Mr. McKinney - You need to turn that letter in to Mr. Silber. We are going to
474 keep that for at least 30 days. You have read it into the record. All right, Mr. Phillips,
475 what is your concern?

476

477 Mr. Phillips - I am afraid I am not as polished as Mr. Robertson, to be
478 quite honest. I come here today to voice my objection to the granting of this variance.
479 Like I said, I own the property that backs up to the lot in question and I do not wish to
480 see a house crammed onto a lot that for 30 plus years the County has maintained is too
481 small to build on. I believe that this would unreasonably interfere with the use and
482 enjoyment of my property. Right now, this narrow wooded area serves as a buffer in
483 the middle of several lots. We enjoy a sense of privacy as well as a small sense of rural
484 living in an already full subdivision. The fact is that we who are here today, as well as
485 Mr. Robertson who sent in his letter, are the neighbors whose property surrounds the lot
486 in question. We like it the way that it is and wish it to remain as it is. I don't personally
487 know Mr. Bain. I have lived there for 14 years and have never known who owned that
488 property and never saw anybody on it, but I do know that he can't see from his house
489 what we will have to deal with from our homes. I wonder that if the situation was
490 reversed, if someone came out to his neighborhood of \$300,000 to \$500,000 plus
491 homes, on two to three plus acre lots, and wanted to cram an out of place dwelling on a
492 too small lot if he would not also be here objecting. In conclusion, the County has these

493 rules and regulations for good reason. I respectfully request that the Board abide by the
494 County's rules and vote no on this variance. To do otherwise would permanently and
495 unreasonably interfere with the use and enjoyment of many homeowners' properties, so
496 that the one outsider could turn another dollar.

497
498 Mr. McKinney - Mr. Phillips, how many square foot in your house?

499
500 Mr. Phillips - I'm sorry, sir?

501
502 Mr. McKinney - How many square feet are in your home?

503
504 Mr. Phillips - I think it is around 1,800.

505
506 Mr. McKinney - Eighteen hundred?

507
508 Mr. Phillips - It is a tri-level.

509
510 Mr. McKinney - And what size lot are you on?

511
512 Mr. Phillips - I am not exactly sure. It is like on the street adjacent to
513 Midway. I think it is probably a 90 x 90 or something like that. I am not 100% sure. I
514 am just guessing on that.

515
516 Mr. McKinney - All right. Are there any other questions of Mr. Phillips by
517 Board members? Thank you for coming, sir. Next. Yes, sir. Could you state your
518 name for the record, please.

519
520 Mr. Theodore Burrell - My name is Theodore Burrell.

521
522 Mr. McKinney - All right, Mr. Burrell.

523
524 Mr. Burrell - I live on the other side of this gentleman here. My neighbor
525 on the other side of the lot, on the right-hand side, facing your way, on the right-hand
526 side. My Mom owns the biggest lot adjacent to the piece of property that is in question.
527 She has on a couple of occasions tried to contact Mr. Bain to see if he wanted to sell
528 the property to her, with no success. And, like the other gentleman, that piece of
529 property is just too small to be building on. Up and down Midway, as it is right now,
530 there are one construction going on right now on a two-story house with single-family
531 dwelling with ranch-size houses that are already on the street. It would not enhance
532 this street or the property value at all. Thank you. That is all I have.

533
534 Mr. McKinney - All right. Any questions of Mr. Burrell by Board members?
535 Thank you.

536
537 Mr. Balfour - I have a question for him. You are saying the vacant lot is
538 facing your house, to the right, your family owns?

539
540 Mr. Burrell - No.
541
542 Mr. Balfour - OK. I thought there was a lot somewhere in there that you
543 said that...
544
545 Mr. Burrell - My Mom owns the...she bought two lots from her brother –
546 from her brother when she first moved there. She is on the biggest of the lots.
547
548 Mr. Balfour - OK. In other words, the house is on those lots?
549
550 Mr. Burrell - Yes.
551
552 Mr. Balfour - But there seems to be a vacant lot between what appears to
553 be...
554
555 Mr. Burrell - Across the street from us there is a piece of vacant land.
556
557 Mr. Balfour - You all live two houses down from Mr. Kelly, I guess. It
558 looks like that is a buildable lot from the map. (Looking at map....looks like a couple of
559 lots in there. Is that right?) Mr. Silber, you could probably answer that question. Mr.
560 Silber, are those buildable lots underneath R-3 in that map behind you?
561
562 Mr. Silber - Mr. Balfour, I don't know. I don't know if they are buildable.
563 It looks like that is undeveloped space right there. I think where the hand is at right
564 now, the neighbors are indicating that may not be buildable because of the topography,
565 but I really don't know without having...
566
567 Mr. Balfour - Is this lot in question longer than the other lot or is that just a
568 misrepresentation in the document? The lot looks deeper than we are talking about than
569 the lot behind it.
570
571 Mr. Burrell - Lengthwise it is the same size as everybody else's.
572
573 Mr. Balfour - Lengthwise it is the same size; this is not proportional, I
574 guess.
575
576 Mr. Burrell - Lengthwise but not width size. Widthwise, you'd be
577 crammed into a hole in the wall.
578
579 Mr. Balfour - Well, you are four feet short.
580
581 Mr. Silber - My guess would be that the lots on Midway are the same as
582 Michaux behind it, the same depth, but I don't know that for a fact. We may have this
583 shown inaccurately on this map.
584

585 Mr. McKinney - Thank you for coming, sir. Yes, ma'am.
586
587 Ms. Linda Bork - Good morning. My name is Linda Bork.
588
589 Mr. McKinney - All right, Ms. Bork.
590
591 Ms. Bork - I own the dwelling across the street. My address is 8915
592 Midway Road and I am here to object to the building of the house across the street. I
593 agree with the statements of all three of the other home owners, and also the letter. I
594 was really surprised when I got the notice, because I have always assumed that that
595 piece of land belonged to either one of the dwellings across the street, and when I
596 realized they wanted to put another house in there, I was really against it. As you can
597 see from the diagram, they have done a lot of construction already. I have been there
598 about 10 years. I moved in in 1989. There is construction going on now. As I said, I
599 believe it is like below that R-3 area, and just in the past few years it seems there has
600 been about five new little houses built, and to me, it is just the destruction of the trees
601 and everybody is getting crammed in and I object to it. In no way do I think that a house
602 would be appropriate on that narrow strip, and I really hope you vote against it. I guess
603 I am kind of nervous speaking, but all of the homeowners here, I think, are in agreement
604 that this would not be appropriate to build on, and I don't know Mr. Bain at all. I wish
605 him well, but it is just too narrow, too narrow a strip to put. We have used the word
606 "sandwiched in" and "crammed in" and it is just, it is already built up enough and you'd
607 have to destroy a lot of trees and a lot of bird's nests there, and I am just here to voice
608 my opinion that I am against granting the variance.
609
610 Mr. Balfour - Are you familiar with any homes in that area that are on 60 foot
611 lots?
612
613 Ms. Bork - No, I am not, and I am not very good with measurements, so
614 I really couldn't speak accurately about that, except that if you drive down that road, you
615 will see, you would assume that little piece of land there belonged to one of the adjacent
616 owners. No way would you think there was enough room to build a house in there, and
617 I don't think you should allow him to build in there.
618
619 Mr. McKinney - Actually, what he is asking for is a little over 18 inches on
620 each side of the lot, and I am just wondering visually if you could see that?
621
622 Ms. Bork - Oh, I can, and I can visualize a house on that narrow strip,
623 as well, and I do not want another house built there.
624
625 Mr. McKinney - No, what I am say, what he is asking for, is a little over 18
626 inches on each side of the house in the lot width.
627
628 Ms. Bork - But it would also entail cutting down a lot of trees.
629
630 Mr. McKinney - Now, that is something that you can't do anything about. If

631 the lot was 65 feet, he could just go ahead and clear it off and the trees would be gone.
632 A lot of people move into subdivisions and they see this piece of land, and that don't
633 think that it will ever be developed, and eventually, if it can be, it will be.

634
635 Ms. Bork - Well, I am here to say that I am voicing my opinion that I
636 hope that you will not allow it to be. I am against it along with the other owners that are
637 here.

638
639 Mr. Balfour - Ms. Bork, and this is to all of you out there. These cases are
640 difficult for us, because in my area they took an area like you are talking about, took the
641 trees down. And even put a flag lot on a lot that was postage-stamp size, and that is
642 what people want to do, and I don't like it and you don't like it, but at the same time, we
643 have to weigh the rights of a property owner to be able to use a lot the way he wants,
644 and as the Chairman said, it is only 18 inches on each side. But what you are really
645 saying, I think, it that you don't want to lose your open space, which we all like, but we
646 all have to fight in urban areas of keeping, but at the same time, we have a duty, of
647 course, to not deny a person who owns the property the right to do something with it,
648 and a hardship is what we have to look at, and 12 inches, or whatever it might be, 18
649 inches, is a mighty small difference, particularly on a 50 foot lot. This is just for other
650 people to know and understand where we are coming from; not because they did the
651 same thing in my area should they do it in your area, but, I am like you. I'd like to have
652 an acre lot beside me or three acres or whatever, but anyway, we have to weigh all of
653 those things and hope you'll appreciate the fact that we have to weigh the property
654 owner's rights and their rights to use their property versus the desires of the
655 neighborhood and we would all have little "farmettes" if we could. We would all like that,
656 but it is difficult to do.

657
658 Ms. Bork - OK, thank you.

659
660 Mr. McKinney - Any other questions of Ms. Bork? Thank you for coming,
661 ma'am. All right, Mr. Parkerson.

662
663 Mr. Parkerson - Gentlemen, I will attempt to be very brief. Let me address a
664 couple of the concerns on the people behind. We are not aware of drainage problems,
665 but certainly they will be addressed by Public Works in the course of any construction.
666 These lots are relatively deep, in that they are 164 feet in depth. The back would not be
667 disturbed in any way during the construction; no improvements, obviously, would be
668 placed on the rear of the property. I think Mr. McKinney's point is well taken. This lot is
669 approximately 95% of the size of the other 65 ft. lots and is, obviously, the same
670 percentage larger than the few homes than the homes that are on 50 ft. lots. We are
671 asking for a 3-1/2 foot variance and I don't think visually there is a huge difference
672 between 65 feet and 61-1/2 if you are looking at it. We have attempted to address that
673 concern by making a condition that this house would be slightly narrower, which would
674 give it the same or more side yard setoff than 65 foot homes, which are obviously, most
675 like Mr. Kelly's 40 foot homes, which give you smaller side yards. In fact, Mr. Kelly's
676 side yard is smaller total than 25 feet, but we have attempted to address his concern by

677 shifting the house as far away from him as we can, and putting it on that side as a
678 condition of this 15.3 feet away from his side yard. I am in the situation and Mr. Balfour
679 has been, and we all would like natural property near (LOST – LISTEN AGAIN TO
680 TAPE) what we are providing in evergreen hedge. The purpose of that is to eliminate
681 some of the effects of the reduced landscape. Yes, they have, but I was
682 up here earlier, and Mr. Silber mentioned the 30 days, and I would like to request a
683 deferral (LOST – LISTEN AGAIN)

684
685 Mr. Balfour - How long has your client owned this lot, Mr. Parkerson?

686
687 Mr. Parkerson - He has owned this property, Mr. Balfour, since 1984. He
688 owns other properties in there which will be built on, on 65 foot lots, but he has owned
689 this piece, and has built between 12 and 15 homes on Midway Road over the course of
690 the last 15 years.

691
692 Mr. Balfour - Was he the applicant in 1984 and he was turned down then.

693
694 Mr. Parkerson - Yes, sir. We don't mean to blame this on the surveyor.
695 There was an attempt to lay out 65 foot lots, and we had enough there. My point was,
696 we had enough there for this house on a 65 foot lot, but inadvertently, some were made
697 larger than 65 feet. It is not an attempt to carve out a new lot, in other words, to
698 increase what he could have built on. There was enough property there to have built
699 this on a 65 foot lot.

700
701 Mr. Balfour - He originally owned the adjoining lots as well?

702
703 Mr. Parkerson - Yes, sir.

704
705 Mr. Balfour - He was a developer?

706
707 Mr. Parkerson - Well, it was developed in stages. There are several builders
708 who have built in there. It is an older subdivision. As I said, a 50 foot home, originally,
709 subdivision; 50 foot lot subdivision, and there were houses originally built during various
710 periods of time in 1984, I believe, was when Mr. Bain started his construction. Other
711 builders, I am aware of, have built in there as well. It is really a fairly small, one road
712 subdivision, and it is mostly complete. There are, as you asked, several lots in there that
713 can be built on and that will be built on.

714
715 Mr. Balfour - Do you know other than it was turned down, why it was
716 turned down 15 years ago?

717
718 Mr. Parkerson - I didn't represent Mr. Bain. I think Mr. Bain appeared on his
719 own and the Board indicated at that time that this was a self-imposed hardship, but
720 again, my point there is that we didn't attempt to create an extra lot. It was done
721 inadvertently. If that is self-created hardship, I suppose that is true, but we do feel that
722 this would improve, several people have talked about overgrown and weeds, we feel

723 this would enhance everybody's values and we can certainly work with Mr. Kelly on the
724 type of home to minimize any impact on him. We think that it would be a positive impact
725 on him.

726
727 Mr. Balfour - What if the landowner's interested he might be interested in
728 purchasing it and how would your client feel if we continued it for 30 days and you
729 talked to him?

730
731 Mr. Robertson - Well, we certainly have no objection to talking. We had
732 written to Ms. Burrell and I don't question this gentleman when he says his mother has
733 attempted to contact Mr. Bain. I asked him and he said that he had never heard from
734 her. He had written to her on two occasions and not gotten a response. Whether she
735 got the letters, I assume she did. But, we are certainly willing to talk to Ms. Burrell and
736 Mr. Kelly and see if something can be worked out, and again, our attempt was just to
737 purchase extra footage, and it wouldn't necessarily just be 3-1/2 feet, but there was no
738 response to that.

739
740 Mr. Balfour - But you have no objection if I move to continue for 30 days?

741
742 Mr. Parkerson - No, sir. Not at all. We always want to work with the
743 neighbors?

744
745 Mr. McKinney - Let me ask them, before you do it, Mr. Balfour? Do you
746 have a picture of this lot?

747
748 Mr. Parkerson - I do not have a picture of it, no sir. I don't know if Mr. Silber
749 has one.

750
751 Mr. Silber - No sir, we don't have a picture.

752
753 Mr. Parkerson - We can take pictures and bring them back in 30 days.

754
755 Mr. McKinney - A frontal picture of it. Can you tell me what this lot is
756 assessed at right now?

757
758 Mr. Parkerson - The assessment, I believe, is \$5,000, but I am not...

759
760 Mr. McKinney - Do they have it assessed as a buildable lot?

761
762 Mr. Parkerson - I know the 50 foot lot sold in 1991 that you all granted the
763 recent variance on, for \$5,200. That is probably where I get the figure, so I don't know
764 what the assessment is. I can certainly find that out very quickly.

765
766 Mr. McKinney - I was just questioning why it would be assessed at \$5,000 if
767 it is not a buildable lot.

768

769 Mr. Parkerson - It might not be. That figure came from the price that was
770 paid for the 50 ft...
771
772 Mr. McKinney - Maybe you can find that out before you come back.
773
774 Mr. Parkerson - Yes, sir. I can certainly do that.
775
776 Mr. McKinney - This case has been deferred one time.
777
778 Mr. Balfour - Could I ask Mr. Parkerson one question, Mr. Chairman?
779
780 Mr. McKinney - Go right ahead.
781
782 Mr. Balfour - Mr. Parkerson, you just referred to the fact that in 1984 the
783 Board denied this same request on the grounds that the owner had created the
784 hardship and under Virginia law, self-imposed hardship, would cause us to not be able
785 to approve it. What has changed since 1984?
786
787 Mr. Parkerson - Well, he has continued to maintain the property, pay taxes
788 on it. The neighborhood has changed.
789
790 Mr. Balfour - I am talking about what is the difference in what you did in
791 1984 and what we are asked to do today?
792
793 Mr. Parkerson - I presume the difference is...
794
795 Mr. Balfour - Has the law changed?
796
797 Mr. Parkerson - No sir. The only difference I can think of is whatever
798 grounds that you gentlemen approved the 50 foot request is that was a builder who
799 bought for investment, not Mr. Bain, bought for investment purposes in 1991, bought a
800 50 foot lot, knowing for 30 years the requirement to build in that area had been 65 feet.
801 You gentlemen approved his request.
802
803 Mr. Balfour - Mr. Parkerson, do I have to tell you that we consider each
804 case on its own merits?
805
806 Mr. Parkerson - Yes, sir, and I am only saying that whatever change would
807 be that justified that, which would be the same type of thing.
808
809 Mr. Balfour - I don't know of any change in the law since I have been on
810 this Board for 25 years, and I know of anything that has changed.
811
812 Mr. Parkerson - I am just saying that was approved under the same type of
813 law.
814

815 Mr. Balfour - I was here when this case was decided.
816
817 Mr. Parkerson - Whatever the conditions were on the January request would
818 apply here I would say.
819
820 Mr. Balfour - Mr. Parkerson, if this case were withdrawn, you'd have to
821 come back, if he has waited 15 years, maybe if he waits 3 or 4 months and refile, I am
822 not sure what the cost is to refile, but you may not like the idea, but maybe we can
823 waive the fee if he wants to do that.
824
825 Mr. Parkerson - If that addresses your concerns and the neighbors, we can
826 do that.
827
828 Mr. Balfour - Can that be waived, Mr. Silber?
829
830 Mr. Silber - I don't know. I don't think we have the administrative
831 authority to waive the fee.
832
833 Mr. Parkerson - The fee is not that significant an issue here. It is just
834 whether we can refile in a short period of time if we withdraw it, and you could tell me
835 that.
836
837 Mr. Balfour - If you withdraw it without prejudice, you could, we could do
838 that. I gather, Mr. Wright, if you withdraw it without prejudice at this point, you could
839 probably bring it right back up. Is that right?
840
841 Mr. Wright - Yes, sir. That has been our position.
842
843 Mr. Parkerson - If that is the case, then we would move to withdraw.
844
845 Mr. McKinney - Would you like to do that, Mr. Parkerson?
846
847 Mr. Parkerson - Again, it is not our intent to jam something to the neighbors.
848 We are certainly willing to work with them. He we just have had no response to the
849 letters we sent out before this case or during this case, and we are certainly willing to
850 talk to all of them and try and work things out.
851
852 Mr. Balfour - I think the neighbors are like a lot of us lawyers. They wait
853 until the last minute, but they are here today.
854
855 Mr. Parkerson - Obviously their concerns are here and they are here, and we
856 are certainly now aware of them. We certainly were not because we were not
857 contacted.
858
859 Mr. Balfour - All right. I move that the matter be accepted as withdrawn
860 without prejudice.

861

862 Mr. Wright - I second it.

863

864 Mr. McKinney - The move was seconded. All in favor say aye. All opposed
865 say no. The matter is withdrawn. Thank you for coming.

866

867 Gentlemen in the
868 Audience - What...

869

870 Mr. McKinney - Well, that is over and done. If he brings it back up, you can
871 ask the question later, sir. Well, come up real quick and ask it.

872

873 Gentleman in the Audience - We all took off from our jobs to come in here to
874 protect our rights. This is his job to try and put a house on it to try and make more
875 money for himself. Do we have to come back to this next hearing, or are we going to be
876 represented by what we say here today, or do we have to come back in three months
877 time and do this all over again? I mean, how long will this be drawn out? It has already
878 been deferred once before? And, it just does not seem fair that we should have to keep
879 coming. He says we've never contacted him, well, I never met the man before today.

880

881 Mr. McKinney - I will tell you something, we can't say that. The case is
882 withdrawn right now without prejudice. I am sure he will talk to you. We can't tell you if
883 he ever brings it back up, but if he does, you can...

884

885 Mr. Balfour - You can submit what you want to in writing. Let one person
886 speak for all of you. That would be considered just as much as what you say in person.

887

888 Gentleman in the Audience - Will we be informed again?

889

890 Mr. McKinney - Oh, yes, sir. You'll get notices and you have to be notified.

891

892 Mr. Balfour - And you can submit what you want to in writing and it will be
893 considered just as strong as if you were here.

894

895 Mr. McKinney - We've got to get this on record. The case is over with. You
896 guys can go out into the hallway and discuss that. All right, Mr. Silber.

897

898 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
899 Wright, the Board **grant** this request made by the applicant that this request be
900 **withdrawn without prejudice the case.**

901

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

903 Negative: 0

904 Absent: 0

905 **UP-20-99** **W. C. English, Inc.** request for conditional use permit pursuant to
906 Sections 24-52(d) and 24-103 of Chapter 24 of the County Code to

907 extract materials from the earth at 7800 Osborne Turnpike (Tax
908 Parcel 235-A-16) zoned A-1, Agricultural District (Varina).

909
910
911 Mr. McKinney - All right. Would you state your name for the record, sir?

912
913 Mr. James Higginbotham - James Higginbotham.

914
915 Mr. McKinney - Is anyone in the audience going to speak in reference to UP-
916 20-99? If you'd stand where you are and be sworn in along with Mr. Higginbotham.

917
918 Mr. Higginbotham - I've got my engineer here, Mr. Roberts. I don't know if we
919 need him, but he is here if we need him.

920
921 Mr. McKinney - He needs to stand if he expects to speak.

922
923 Mr. Higginbotham - And Mr. Hackett from Environmental. I am not sure. Does
924 he need to be sworn in, too?

925
926 Mr. McKinney - If he expects to speak. Raise your hand and be sworn in.

927
928 Mr. Silber - If you would all raise your right hand and swear that the
929 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
930 help me God.

931
932 The People in Unison - I do.

933
934 Mr. McKinney - Mr. Higginbotham, have all the adjoining and adjacent
935 property owners been notified of this request according to the County code? Would you
936 turn those in to Mr. Silber?

937
938 Mr. Higginbotham - Yes, sir.

939
940 Mr. McKinney - Mr. Silber, do you have a question?

941
942 Mr. Silber - I was just going to say that I thought we already had the
943 notices, but I certainly have them now. But, I also wanted to say that the staff does
944 have another condition, Condition No. 26 that we wanted to recommend to the Board. I
945 do have copies of this and if you'd like, I can pass those out at this time.

946
947 Mr. McKinney - All right. Has Mr. Higginbotham got a copy?

948
949 Mr. Silber - He does not have a copy. I will be glad to provide him with a
950 copy.

951
952 Mr. McKinney - Are there any staff reports in the rear of the room?

953
954 Mr. Silber - They would not be in the staff report in the rear of the room.
955 We will put one back there.
956
957 Mr. McKinney - All right, Mr. Higginbotham, if you would present your case,
958 sir.
959
960 Mr. Higginbotham - Yes, sir. This is a request for a burrow site to furnish
961 material for the 895 connector. This site adjoins 895, which is currently under
962 construction. The beauty of this site is that there will be no on-road traffic, that the dirt
963 that is needed to build 895, at least a portion of it will be hauled directly from this site
964 onto the 895 right of way. That is pretty much it, in a nut shell. The only request that I
965 would make as a change to what the panel has recommended is we would like to be
966 able to work on Saturdays if we have a rainy season where we get behind schedule.
967 That would not be the norm, but we would like to have that flexibility, if rain prevents,
968 you know, rain on Monday-Tuesday would prevent us from working. Then, we'd like to
969 be able to work on a Saturday. Also, we would like to be able to work until 7:00 p.m.
970 which would be our normal work for the activity up and down the 895 corridor anyway.
971 Right now the recommendation is "No work on this property be done after 6:00 p.m."
972 and that is a minor item, but that is pretty much it, in a nut shell. We have confirmed
973 this is not a mine site. It is strictly a burrow area. It is not governed by the Department
974 of Mines and Mineral Energy, and the staff has been very helpful in working through
975 these issues that were raised and we have narrowed them down. That is all I have.
976
977 Mr. McKinney - Have you read all of the rest of the conditions?
978
979 Mr. Higginbotham - Yes, I have, sir, and we have addressed them.
980
981 Mr. Wright - How about No. 26?
982
983 Mr. Higginbotham - Yes, sir. I don't have a problem with that, either. This
984 property is up on a ridge and it going to be lowered approximately 25 to 30 feet, and we
985 are not getting into the water table, but certainly if property owners are concerned, I
986 have no problem with that being added as a condition.
987
988 Mr. Silber - Mr. Chairman, I apologize for the lateness of that condition.
989 We received a couple of phone calls recently concerning and questioning whether there
990 were any difficulties with ground water in this area, and private wells, and whether
991 anything could be done to correct that, so we did prepare this condition after the staff
992 report went out. It was just finalized this morning, so I apologize for not getting copies
993 to the applicant sooner. There are copies now in the back of the room if anybody wants
994 to see that or if need be, I can certainly read this into the record.
995
996 Mr. Wright - I think it would be a good idea to read it since it has not been
997 made public.
998

999 Mr. McKinney - Well, let me ask you a question, Mr. Silber.
1000
1001 Mr. Silber - Yes, sir.
1002
1003 Mr. McKinney - Suppose he gets into the aquifer there and two or three
1004 people's wells go out. We have the power to stop it, but what happens to these
1005 peoples' wells?
1006
1007 Mr. Silber - The way this condition is worded or we have attempted to
1008 word it is 'If the property owner prove by way of a licensed engineer or geologist, that
1009 their well has been affected, because of this extraction activity, then we could suspend,
1010 revoke their activities at the site and ask the operator to take corrective action."
1011
1012 Mr. McKinney - You can ask him but it would appear to me that you get into
1013 a situation like that, that this should be studded where this is being done and a bond be
1014 put up for that purpose, and then to turn back to the developer, as we do on everything
1015 else. Because, this is not telling me, if I was the contractor on this, English Construction
1016 Company, building this and we hit this and the County stopped me, I don't know if you
1017 can really make them put in a well or another well for a person, the way that this is
1018 written.
1019
1020 Mr. Silber - Well, the intent is...
1021
1022 Mr. McKinney - I understand what the intent is.
1023
1024 Mr. Silber - When it says "Operator may be required to take measures to
1025 correct the problem", we are talking about, perhaps, drilling another well.
1026
1027 Mr. McKinney - Which they may be required to take measures to correct the
1028 problem. If you don't have a bond or anything, how are you going to make this correct
1029 this? He has a bond for the land. But that is the reclamation bond, but that is not for
1030 taking care of somebody's well if you guys mess them up.
1031
1032 Mr. Higginbotham - Can I point out something, sir?
1033
1034 Mr. McKinney - Yes, sir.
1035
1036 Mr. Higginbotham - This is a small creek running through here, and this is a
1037 ridge. The ridge is, actually part of 895 cuts that ridge, and the actual burrow area will
1038 be right here, which is high ground above this creek. I mean, we are not going to be in
1039 the water table, and that is part of the conditions that we have, that we stay out of the
1040 water table, but I certainly, any concerns that you have that we in operating and taking
1041 materials off of this property, we affect somebody's well, I feel like that is a civil matter,
1042 but we could certainly, we are not here to destroy somebody's well. If we did, we would
1043 take care of it, but I am just saying that it the citizens have raised concerns about that
1044 one, I personally don't think it is warranted, but we are willing to address it and we

1045 certainly would address it. English has been in business about 60 years. Fairfax and
1046 Henrico were the only two counties where you have to get Board approval for burrow
1047 pits, and you know, we deal with property owners all of the time, and we like to think,
1048 you know, that we are a reputable company and certainly we feel the concern is fine.
1049 We don't feel from an engineering standpoint that there is any real concern in taking the
1050 top off of a hill or a ridge will effect the water table below, but...

1051
1052 Mr. McKinney - Mr. Higginbotham, we are not insinuating, and we know that
1053 you are a good firm. We understand that. You said this should be a civil matter. You
1054 are here before us asking for a use permit to do this. We are trying to keep it, and my
1055 feeling is to look at the public's interest, even though there might not be a necessity for
1056 it, but if it comes down to the point that this happens, you've been in business for 60
1057 years, all you've got to do is, if you've got a geologist that can say "you may affect this"
1058 or "you may not effect that", then present Mr. Silber with a bond on that particular
1059 (MISSING TAPE – LOST ON COMPUTER)

1060
1061 don't feel from an engineering standpoint that there is any real concern in taking the top
1062 off of a hill or a ridge will effect the water table below, but...

1063
1064 Mr. McKinney - Mr. Higginbotham, we are not insinuating, and we know that
1065 you are a good firm. Well, I speak for myself, and I don't know what the other Board
1066 members' concern might be on it, if any.

1067
1068 Mr. Higginbotham - I am willing to address that, if that is required.

1069
1070 Mr. Wright - I think if you are going to put this condition in, then you need
1071 something to back it up. You need some teeth. The bond would be that which would
1072 take care of that. How many houses would be affected?

1073
1074 Mr. McKinney - That is why I am saying his geologist. We need to know that.

1075
1076 Mr. Wright - He said none, but I said, how many could be affected – a
1077 probability.

1078
1079 Mr. McKinney - That is why I am saying that is why he needs a geologist to
1080 say that "These houses – you know – straight up, north of this, could be affected."

1081
1082 Mr. Wright - Well, probably nothing to the south of the road, because the
1083 road is going to effect it as much as taking this.

1084
1085 Mr. Higginbotham - That is exactly correct.

1086
1087 Mr. Wright - The State didn't put up a bond to protect those wells, did
1088 they?

1089
1090 Mr. Higginbotham - The answer to that is no, sir.

1091
1092 Mr. Silber - Mr. McKinney, we certainly could require or recommend a
1093 bond in this case. I think the language could also be strengthened by saying "that the
1094 operator shall be required to take corrective measures" instead of may be. We could
1095 add to this that there would be bond that would be filed. Maybe we need to hear from
1096 those who have concerns in this case to see how many homes would be effected. I
1097 would then that there would be no more than 10 homes effected, and that is probably
1098 along Wilton Road and along the Wilton View area. I agree with Mr. Wright. I don't
1099 think there is anything south of the site that could be effected.

1100
1101 Mr. McKinney - Or it may never happen.

1102
1103 Mr. Higginbotham - That is what I don't want the Board to lose sight of. We are
1104 taking dirt off of a hill and the road is already taking more than what we are taking off of
1105 the top of this ridge. The road is going through and taking Mr. Sneed's property actually
1106 went on the other side of 895, but 895 might be going down 50 to 60 feet from the top of
1107 this ridge and we are just going to take 30 feet from the top, and, we are not getting into
1108 the water table, and yet, I am willing to work with you any way that I can to address the
1109 property owners' concerns.

1110
1111 Mr. Wright - Mr. Higginbotham, back to the hours. Do you want from
1112 7:00 a.m. to 7:00 p.m. in both seasons, in the winter as well as the summer?

1113
1114 Mr. Higginbotham - The summer season is all.

1115
1116 Mr. Wright - And you want to hold the winter one at 5:00 p.m.?

1117
1118 Mr. Higginbotham - That is fine. It gets dark early in the winter and the other
1119 thing was Saturdays.

1120
1121 Mr. Wright - And Saturdays you want the same hours?

1122
1123 Mr. Higginbotham - Yes, sir.

1124
1125 Mr. Wright - OK.

1126
1127 Mr. McKinney - All right. Any other questions of Mr. Higginbotham by Board
1128 members? Now, I presume you may have some opposition. So, you may want to save
1129 some time for rebuttal. Is there anyone else to speak in reference to UP-20-99, in
1130 opposition? All right. Anyone else to speak in opposition, if you would come on down
1131 and get on the front row and you'll be ready as soon as this lady finishes. Would you
1132 state your name for the record, ma'am?

1133
1134 Ms. Nanette Stepanhagen - My name is Nanette Stepanhagen and I reside at
1135 7853 Wilson Road. My property would abut up against where there are taking or mining
1136 the land. And, it is basically two items that are my concerns. The water item, I am

1137 currently having problems with my well. It has been contaminated and a new well costs
1138 around \$5000, and if you want more details I can go into it, because I am in a court
1139 case with it right now, but there is concern in the area about that.

1140
1141 The second thing is that when I found that 895 was coming through that they said, "Oh,
1142 it is no problem. You are up on the hill. Because you are up on this hill, it will help
1143 abate the noise pollution. And you are going to be hearing the cars going through there.
1144 There is no doubt about that, and the wild life is already, a lot of it has left the area. But,
1145 now, I'm hearing, "Well, we are going to take down this ridge, which is supposed to help
1146 you with this noise pollution." They are taking off the trees and nothing has been done
1147 to help prevent noise pollution coming to the area into the neighbors. And, those are
1148 my main concerns. What can be done to replace this? I was told this, "Don't worry, you
1149 are on the hill." Now, you're taking away the hill for the noise pollution.

1150
1151 Mr. McKinney - Who told you that?

1152
1153 Ms. Stepanhagen - Who told us that?

1154
1155 Mr. McKinney - Yes, ma'am.

1156
1157 Ms. Stepanhagen - I wish I had that name – someone in the County. I have
1158 called so many people. It was either was – I wish I had my Daytimer, too. It was
1159 someone over near Sandston, the group near Sandston, where they are doing the
1160 building, the contractors. It was, I can call back and get the information.

1161
1162 Mr. Silber - Sounds like the VDOT residency office.

1163
1164 Ms. Stepanhagen - But I think if you take away this land, something needs to be
1165 put up to help us with the noise pollution.

1166
1167 Mr. Wright - Were no noise barriers projected for this?

1168
1169 Ms. Stepanhagen - As far as I know, no noise barriers from my research that I've
1170 found.

1171
1172 Mr. Wright - Usually now they will require noise barriers, and you know,
1173 they are put up to protect the homes.

1174
1175 Ms. Stepanhagen - Unless things have changed since I researched it. It was
1176 nothing.

1177
1178 Mr. Wright - That is not within our jurisdiction.

1179
1180 Ms. Stepanhagen - Well, I kept on hearing that, too. So, that is all I have to say,
1181 and I just hope you can see that something could be done to help work and resolve this
1182 problem.

1183
1184 Mr. McKinney - Any questions of Ms. Stefenhagen by Board members?
1185 Thank you for coming. Yes, sir.
1186
1187 Mr. Robert Bruce – Robert Bruce at 7866 Wilton Road. I oppose this and the
1188 fact that it may damage the water table, and also question, has any geologist been
1189 consulted on this at all?
1190
1191 Mr. McKinney - I can't tell you right now, Mr. Bruce. We can ask Mr.
1192 Higginbotham.
1193
1194 Mr. Bruce - And also the noise pollution thing, but that is sort of taken for
1195 granted. I am more concerned with the water table and the noise pollution.
1196
1197 Mr. McKinney - Are you having problems with your well, too?
1198
1199 Mr. Bruce - Not yet, but I don't want it to occur.
1200
1201 Mr. McKinney - Do you have a drilled well or a bored well?
1202
1203 Mr. Bruce - It was a surface well.
1204
1205 Mr. McKinney - So you have a bored well?
1206
1207 Mr. Bruce - Yes, sir.
1208
1209 Mr. McKinney - How far down are you below where they are anticipating?
1210
1211 Mr. Bruce - I am 7866, and that is about mid-way.
1212
1213 Mr. McKinney - All right. Is that all, Mr. Bruce?
1214
1215 Mr. Bruce - That is all I have, sir.
1216
1217 Mr. McKinney - Any questions of Mr. Bruce by Board members or staff?
1218 Anyone else to speak in reference to UP-20-99? All right. Mr. Higginbotham.
1219
1220 Mr. Higginbotham - To address the young lady's concerns, the 895 corridor is
1221 going to be built and we can't, I can't control what VDOT or somebody represented.
1222 She mentioned something about the trees being cut down. The trees were already cut
1223 down on this site by the property owner, not, that is not our doings. This whole area
1224 where this creek is a wooded area that is not going to be disturbed. We are required to
1225 stay 200 feet from any wetlands. There is a buffer zone around the property, and again,
1226 the well issue, we certainly do not think that there is any geological problem that would
1227 affect wells by taking again, 30 feet off of the top of the ridge where the road has
1228 already gone down 50 feet from the top of that ridge, and then taking some of that same

1229 ridge, so I am willing again to, if it is the Board's desire, to post a bond for any concern
1230 that we actually did damage somebody's well. Obviously, a well that is already bad, I
1231 don't think that would be our responsibility, but certainly if our actions did affect that, we
1232 could certainly give the County or the property owner some assurance that we would
1233 stand behind our liabilities.

1234
1235 Mr. McKinney - Any questions of Mr. Higgenbotham by Board members?

1236
1237 Mr. Wright - Would you agree to a bond of say \$50,000; they're talking
1238 about 10 people might be involved in it. I don't think any of them will be. I agree with
1239 you on that, but...

1240
1241 Mr. Higgenbotham - I think that is mighty extreme, but, again, I am willing to work
1242 with the Board any way that you all see that we do that. A bond can be furnished and
1243 the bond merely insures that we are reputable and we stand behind what we do, and if
1244 that is what the Board requires, we will certainly work with the Board on that.

1245
1246 Mr. Wright - I am not saying it is required, but I just want you to think
1247 about it.

1248
1249 Mr. Nunnally - This English Construction Company, is this First English,
1250 Altavista?

1251
1252 Mr. Higgenbotham - Yes, sir. That is correct.

1253
1254 Mr. McKinney - All right, any other question. Does staff have any comments?

1255
1256 Mr. Silber - No, sir. We will get that condition worked out. All right. I
1257 thank all of you for coming and you will get your answer this afternoon.

1258
1259 Mr. Higgenbotham - Thank you.

1260
1261 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1262 Wright, the Board **granted** the case.

1263
1264 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1265 Negative: 0
1266 Absent: 0

1267
1268 **REASON:** The Board **granted** this request as it found from the evidence presented
1269 that authorizing this use permit with amended conditions, will not be of substantial
1270 detriment to adjacent property and will not materially impair the purpose of the zoning
1271 regulations.

1272
1273 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the
1274 County Code.

- 1275 2. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. from December 1 to March
1276 31, and from 6:00 a.m. to 7:00 p.m. from April 1 to November 30, local time in effect
1277 in the County of Henrico.
- 1278 3. No operations of any kind are to be conducted at the site on Saturdays, Sundays,
1279 or on national holidays; except that operations may be conducted on the Saturday
1280 following any week in which inclement weather caused operations to be suspended
1281 for one or more days.
- 1282 4. Open and vertical excavations having a depth of 10 feet or more for a period of more
1283 than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the
1284 public safety.
- 1285 5. All means of access to the property shall be from the public right of way of the
1286 proposed I-895.
- 1287 6. A superintendent who shall be personally familiar with all the terms and conditions of
1288 Section 24-103 of Chapter 24 of the County Code as well as the terms and conditions
1289 of **UP-20-99**, shall be present at the beginning and conclusion of operations each
1290 work day to see that all conditions of said Code and said Use Permit are carefully
1291 observed.
- 1292 7. Topsoil shall not be removed from any part of the property outside of the area in
1293 which extraction is authorized. Sufficient topsoil shall be stockpiled on the property
1294 for respreading in a layer with five (5) inches of minimum depth. If the site does not
1295 yield sufficient topsoil, additional topsoil shall be brought to the site to provide the
1296 required five-inch layer of cover. All topsoil shall be treated with a mixture of seed,
1297 fertilizer, and lime as recommended by the County of Henrico after the results of
1298 soil tests have been submitted to the County of Henrico. All topsoil shall be
1299 stockpiled within the authorized borrow area and provided with adequate erosion
1300 control protection.
- 1301 8. The rehabilitation of the property shall take place simultaneously with the extraction
1302 process. Rehabilitation shall not be considered completed until the extraction area is
1303 covered completely with permanent vegetation.
- 1304 9. Responsibility for maintaining the property, fences, and roads in a safe and secure
1305 condition indefinitely, or for converting the property to some other safe use, shall rest
1306 with the applicant.
- 1307 10. Entrance gates shall be erected and maintained at all entrances to the property.
1308 These gates shall be locked at all times, except when authorized representatives of
1309 the applicant are on the property.
- 1310 11. Erosion Control Plans shall be submitted to the Department of Public Works for
1311 review and approval at time of application for the Use Permit. Throughout the life of
1312 this extraction operation, the applicant shall continuously satisfy the Department of
1313 Public Works that erosion control procedures are properly handled and furnish
1314 plans
1315 and bonds that the department deems necessary. The applicant shall provide
1316 certification from a licensed professional engineer that dams, embankments and
1317 sediment control structures meet standard and approved design criteria as set forth
1318 by the State.
- 1319 12. The areas approved for extraction under this permit shall be delineated on the ground
1320 by the erection of five (5) foot high metal posts at least five (5) inches in diameter and

1321 painted in alternate one (1) foot stripes of red and white. These posts shall be so
1322 located as to clearly define the area in which the extraction is permitted. They shall
1323 be located, and the location certified by a certified surveyor, within ninety (90) days of
1324 the date of approval of this use permit by the Board of Zoning Appeals, or this use
1325 permit is **void**.

1326 13. "No Trespassing" signs shall be posted and maintained on the property to warn
1327 against use of the property by unauthorized persons. The minimum letter height shall
1328 be three inches and signs are to be posted every 250 feet along the perimeter of the
1329 property. The applicant shall furnish the Chief of Police a letter authorizing
1330 enforcement by the County Police Officers of the "No Trespassing" regulations, and
1331 agreeing to send a representative to court for purposes of testimony whenever
1332 required or requested by the Division of Police.

1333 14. Excavation operations shall be discontinued on said site by **June 30, 2001** and
1334 restoration accomplished not later than **June 30, 2002** unless a new permit is applied
1335 for by not later than 60 days before the expiration of the permit, and is subsequently
1336 granted by the Board of Zoning Appeals.

1337 15. A suitable completion bond with surety satisfactory to the County Attorney, or certified
1338 check, shall be posted with the Secretary of the Board of Zoning Appeals in an
1339 amount of **\$2,000.00** per acre for each acre of land to be disturbed, guaranteeing that
1340 the land will be restored to a reasonably level and drainable condition with a
1341 minimum slope on the restored property being five to one or flatter. The completion
1342 bond may provide for the termination of the obligations of the surety on such bond by
1343 the surety giving a 90 day notice in writing to the principal and obligee of the bond, of
1344 its intention so to do. Such notice shall be served upon the principal and upon the
1345 obligee as provided by law for the service of notices. At the termination of the
1346 aforesaid 90 day notice to the principal, all authority of the principal under this use
1347 permit to extract materials, and work incident thereto, shall cease provided the
1348 applicant has not furnished another bond suitable to the County within said 90 days.
1349 The principal shall then proceed within the next ensuing 90 days following the
1350 termination of its authority under this use permit, to accomplish the complete
1351 restoration of the land as provided for under the terms of this permit. A notice of
1352 termination by such surety shall in no event relieve the surety from its obligation to
1353 indemnify the County of Henrico for a breach of the conditions of this use permit.

1354 16. The applicant shall furnish a certification from his bonding company each year, verify-
1355 ing that the bond is in effect, premiums have been paid, and the bonding company
1356 reaffirms its responsibility under the use permit conditions. This certification shall be
1357 submitted to the Board on **June 30th** of each year.

1358 17. This permit does not become valid until the bond, required in condition No. 15, has
1359 been posted with the County, and necessary approval received. This must be
1360 accomplished within **90 days** of the Board's action or the action becomes **void**.

1361 18. A progress report shall be submitted to the Board on **June 30th** of each year during
1362 the life of this permit. This progress report must contain information concerning how
1363 much property has been disturbed to date of the report, the amount of land left to be
1364 disturbed, and how much rehabilitation has been performed, and when and how the
1365 remaining amount of land will be rehabilitated, and any and all pertinent information
1366 about the operation that would be helpful to the Board.

- 1367 19 If, in the course of its preliminary investigation or operations, applicant discovers
1368 evidence of the existence of cultural or historical material or the presence on the site
1369 of significant habitat or an endangered species, it will notify appropriate professional or
1370 governmental authorities and provide them with an opportunity to investigate the site
1371 and applicant will report the results of such investigation to the Planning Office.
- 1372 20. The applicant shall comply with the Chesapeake Bay Preservation Act and all state
1373 and local regulations administered under such act applicable to the property and shall
1374 furnish to the Planning Office copies of all reports required by such act or regulations.
- 1375 21. In the event that an appeal of the Board's approval action is filed, all conditions
1376 requiring action on the part of the applicant within 90 days are considered satisfied if
1377 the required actions take place within 90 days of final action on the appeal process
1378 by the courts.
- 1379 22. If the Virginia Department of Mines, Minerals and Energy determines that the use of
1380 this property constitutes a mine, the applicant shall obtain a mine license from the
1381 Division of Mineral Mining, Virginia Department of Mines, Minerals and Energy, within
1382 90 days of such determination, or the use permit is void.
- 1383 23. No offsite-generated materials shall be deposited on the site unless the materials and
1384 the plans for their placement have been approved by the Planning Office.
- 1385 24. If the Virginia Department of Mines, Minerals and Energy determines that the use of
1386 this property constitutes a mine, a sign shall be posted at the entrance to the mining
1387 site stating the name of the operator, the Henrico use permit number, the Division of
1388 Mineral Mining mine license number, and the phone number of the operator. The sign
1389 shall be 12 square feet in area and shall be properly maintained.
- 1390 25. If the Virginia Department of Mines, Minerals and Energy determines that the use of
1391 this property constitutes a mine, all drainage and erosion and sediment control
1392 measures shall conform to the standards and specifications of the Mineral Mining
1393 Manual Drainage Handbook.
- 1394 26. If the water table is lowered or polluted such that the wells located on surrounding
1395 property are affected, and there is reason to believe the extraction operations on
1396 this site are the cause, the affected property owners may present to the Board
1397 evidence prepared by a licensed engineer or geologist that the extraction
1398 operations are a contributing factor. After review by the Board, the permit may be
1399 revoked or suspended, and the operator may be required to take measures to
1400 correct the problem. The applicant shall post a financial guarantee in the amount of
1401 \$25,000, satisfactory to the County Attorney, guaranteeing compliance with this
1402 condition.

1403
1404
1405 Mr. McKinney - That concludes the deferred cases and we will take a short
1406 recess.

1407
1408 **THE BOARD AT THIS TIME TOOK A 10 MINUTE RECESS.**

1409
1410 **The Board reconvenes.**

1411 **A-83-99** William B. Lucas request for a variance from Section 24-95©(1) f
1412 Chapter 24 of the County Code to build an attached garage with

1413 passageway at 204 Doverland Road (Sleepy Hollow) (Tax Parcel
1414 112-5-D-2), zoned R-1, One-Family Residence District (Tuckahoe).
1415 The minimum side yard and total side yards are not met. The
1416 applicant has 8.54 feet minimum side yard and 34.54 feet total side
1417 yard where the Code requires 13.8 feet minimum side yard and
1418 41.4 feet total side yard. The applicant requests a variance of 4.26
1419 feet minimum side yard and 6.86 feet total side yard.
1420
1421

1422 Mr. McKinney - Is there anyone other than the applicant going to speak on
1423 behalf of A-83-99? All right, sir. Would you identify yourself for the record?
1424

1425 Mr. William B. Lucas - Yes, sir. I am William B. Lucas, and I am the property owner
1426 of the subject property for which a variance is requested.
1427

1428 Mr. McKinney - Mr. Lucas, would you be sworn in by Mr. Silber?
1429

1430 Mr. Silber - Please raise your right hand and swear that the testimony
1431 you are about to give is the truth, the whole truth, and nothing but the truth, so help me
1432 God.
1433

1434 Mr. Lucas - I do.
1435

1436 Mr. McKinney - Mr. Lucas, have all of the adjoining and adjacent property
1437 owners been notified of this request, according to the County Code?
1438

1439 Mr. Lucas - Would you please repeat that?
1440

1441 Mr. McKinney - Mr. Lucas, have all of the adjoining and adjacent property
1442 owners been notified of this request, according to the County Code?
1443

1444 Mr. Lucas - Yes, they have, and you have the record of the signed
1445 waiver by every adjoining property owner.
1446

1447 Mr. Silber - Mr. McKinney, we have received those notices and they
1448 should be in the file.
1449

1450 Mr. McKinney - All right, Mr. Lucas, if you would present your case.
1451

1452 Mr. Lucas - This is a rather straightforward request to add a garage to
1453 the side of my present residence. The garage would really be covering where the cars
1454 are normally parked and have been parked for many years. The staff asked that I show
1455 why there would be a hardship not to move the garage backwards or away from the
1456 adjoining property line. Of course, if I moved it to my backyard, we would lose a lot of
1457 the convenience of having a sheltered passageway from the house, the side door of the
1458 house. This photograph doesn't show that side of the house, but it shows where the

1459 garage would be. As you can see, it is heavily landscaped and shrubbed between my
1460 neighbor and myself, and we, the neighbor has signed a waiver and he has no problem
1461 at all. I have a walkway. You see the boxwood lining the tile walkway, the last several
1462 feet would have to be destroyed, and you see there is a lamppost there. That would
1463 have to be destroyed if we moved the garage four feet to avoid the need for the
1464 setback. Also, the driveway, which has been there some 40 years, goes straight into
1465 the garage. If we move the garage, we would have to curve or relocate the driveway
1466 and destroy all of the landscaping along the present driveway. With no objection from
1467 my neighbors, I believe this is a rather straightforward request.

1468
1469 Mr. McKinney - All right, anything else, sir?

1470
1471 Mr. Wright - Mr. Lucas, what is the size of the proposed garage to be?

1472
1473 Mr. Lucas - Twenty-four by 28, that is 24 wide and 28 deep.

1474
1475 Mr. Wright - A two-car garage.

1476
1477 Mr. Lucas - Correct.

1478
1479 Mr. Wright - Also, your lot seems to not exactly be perpendicular. The
1480 lines are not parallel. The side lines are not as you come into the front, which probably
1481 causes your problem. If it were, you'd probably have a little more room on the side.

1482
1483 Mr. Lucas - There is a slight curve in the road on the front, if you notice
1484 it.

1485
1486 Mr. McKinney - Any other questions of Mr. Lucas by Board members?
1487 Comments from staff.

1488
1489 Mr. Silber - No, sir.

1490
1491 Mr. McKinney - I will ask one more time. Is there anybody else to speak in
1492 reference to A-83-99? All right. That concludes your case, Mr. Lucas. Thank you for
1493 coming. You will get your answer this afternoon.

1494
1495 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
1496 Wright, the Board **granted** the case.

1497
1498 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1499 Negative: 0
1500 Absent: 0

1501
1502 Reason: The Board **granted** this request as it found from the evidence presented that
1503 authorizing this variance will not be of substantial detriment to adjacent property and will
1504 not materially impair the purpose of the zoning regulations.

1505
1506 1. This approval is only for the minimum and total side yard setbacks deviations
1507 created by the garage addition that is the subject of this request. Any future
1508 improvements to the property shall comply with the applicable regulations of the
1509 County Code.
1510

1511
1512 **A-84-99** **HBA, Inc.** request for a variance from Section 24-
1513 106.2(e)(4)a.2.1 of Chapter 24 of the County Code to allow
1514 an existing landscape strip at 5300 South Laburnum Avenue
1515 (Tax Parcel 172-A-26), strip width is not met. The applicant
1516 has 7.04 feet landscape strip where the Code requires 10.0
1517 feet landscape strip. The applicant requests a variance of
1518 2.96 feet landscape strip.
1519

1520
1521 Mr. Silber - The next case is A-84-99. HBA, Inc., Trustee, request for a
1522 variance to allow an existing landscape strip at 5300 South Laburnum Avenue, zoned
1523 M-1, Light Industrial District and in the Varina District. In this case, the minimum
1524 landscape strip does not conform to the zoning requirements.
1525

1526 Mr. McKinney - All right. Is anyone going to speak other than the applicant
1527 in reference to A-84-99? All right. One back here. Any others? If you'd stand and be
1528 sworn in by Mr. Silber.
1529

1530 Mr. Silber - Would you please raise your right hand and swear that the
1531 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
1532 help me God.
1533

1534 The People in Union - I do.
1535

1536 Mr. McKinney - All right, would you identify yourself for the record?
1537

1538 Mr. Stacey Burcin - Yes, my name is Stacey Burcin and I am with McKinney and
1539 Company, Engineers. I am here today on behalf of the owner of the property, Mr. Phil
1540 Peachee.
1541

1542 Mr. McKinney - All right, have all adjoining and adjacent property owners
1543 been notified of this request according to the County Code, Mr. Burcin?
1544

1545 Mr. Burcin - Yes, they have.
1546

1547 Mr. McKinney - Would you turn those in.
1548

1549 Mr. Silber - Thank you.
1550

1551 Mr. McKinney - All right. You can state your case.

1552

1553 Mr. Burcin - This case has somewhat of a long history. When the plan of
1554 development was first approved in early to mid 1990s, at which time there was an
1555 approval granted for an industrial building to be located on this property, as well as the
1556 additions and improvements to the existing warehouses that are behind this building.
1557 During that time, the Planning Commission particularly raised some concerns over the
1558 appearance of a utilitarian industrial type building at this property and asked us if we
1559 would reconsider putting a mixed-use type of building in there, something that would
1560 have more of an office appeal or appearance to the Laburnum Avenue frontage. During
1561 that time, a few years later, back in 1996, another plan of development was filed for a
1562 mixed-use office building to be located on this property, and that plan was also
1563 approved. During the initial review, back in 1994, as well as in 1996, there was a
1564 request from staff to provide a 10 foot landscape strip as well as a 2 foot right of way
1565 dedication. The plans were approved with those dimensions on there. The later plan
1566 was approved with that dimension on there. Even with the 1996 plan, there was a
1567 request again from the Planning Commissioner to see if we could change the
1568 architecture slightly to make it more of an office appearance. The applicant again
1569 revised the plans, made the changes, and resubmitted those to the County for their
1570 approval. Apparently, during these changes that occurred during the years there was a
1571 problem that arose. The 10 foot strip that was shown on the plans now shows a 2 foot
1572 dedication coming out of that strip. That drafting error is partially responsible for the
1573 problem we have before us today. Secondly, it looks as if there was a stake-out
1574 problem during the construction of this plan, where the other 9.4 feet came from; it was
1575 staked 9.4 feet too close from where it was specked to be on the plans. The
1576 landscaping, as you can see out here, in the photograph, has been installed, partially.
1577 The landscaping consists of trees that exceed the Code requirements for this property
1578 and when this variance came about as part of the right-of-way dedication, the problem
1579 came about, it was suggested by staff that the applicant should now come back and
1580 install an evergreen hedge. We have worked with staff and you have a landscape plan
1581 before you, also, in your packet that demonstrates what we are providing in evergreen
1582 hedge. The purpose of that is to eliminate some of the effects of the reduced
1583 landscaped area that is provided. When this is finished, you have a landscape strip that
1584 fully exceeds all requirements of the County Code and provides landscaping that is
1585 probably better than most of the adjacent and surrounding uses. The landscape strip is
1586 irrigated. It will not be a problem with it surviving. The sight distance has been checked
1587 by the County engineers and the site distance is acceptable. We do not have a problem
1588 with encroachment. As far as the two foot right-of-way dedication, that has not been
1589 dedicated to the County at this time. The owner has, in fact, provided that dedication.
1590 There is a question going back over the years as to why it was even asked for. It may
1591 not be necessary. I am currently working with Public Works to determine, do they really
1592 want it and do they really need it? If they don't need it, then obviously, the landscape
1593 strip is 9.04 feet instead of 7.04 feet, if they do not elect to take the right of way.

1594

1595 We feel that this meets the spirit and intent of the landscape ordinance. We also feel
1596 that the additional landscaping will make this an attractive amenity out here. We feel

1597 that all of the Ordinances have been met in accordance with the Code. We also feel that
1598 this is unique to this property and part of the changes that have happened over the
1599 years, there have been many site plans and an item got missed. This one drafting error
1600 is solely the responsibility of McKinney and Company. I have checked back over the
1601 years. Fortunately, McKinney and Company has never ever before this Board of Zoning
1602 Appeals or any other board of Zoning Appeals had to come back for such an error. But
1603 this did occur in this case, and I can only attribute it to a number of changes in the plans
1604 and the number of changes of personnel over the years that have created this error that
1605 was not caught during the building inspection stage or plan review stage. We
1606 respectfully request that this variance be granted and I would be happy to grant any
1607 questions that you might have.

1608
1609 Mr. McKinney - Are there any questions of Mr. Burcin by Board members?
1610 All right, Mr. Burcin, we will hear from this gentleman.

1611
1612 Mr. Burcin - He is the owner of the property and he was sworn in, in case
1613 you have any questions of the owner.

1614
1615 Mr. McKinney - This is not the Home Builders Association of Richmond, is it?

1616
1617 Mr. Burcin - No, not at all.

1618
1619 Mr. McKinney - All right. Any questions? I'll ask again, is there anybody in
1620 the audience who'd like to speak to A-84-99?

1621
1622 Mr. Silber - Mr. McKinney, I do have a question for Mr. Burcin. Has this
1623 landscape strip been seeded, Mr. Burcin?

1624
1625 Mr. Burcin - Yes, it is seeded and there is currently irrigation in there.
1626 There will be a continuous evergreen hedge placed just behind the curb on the parking
1627 lot side, provided all along there, as shown on the landscape plan that you have in your
1628 packet.

1629
1630 Mr. Silber - It doesn't look like the grass is doing all that well. Was it
1631 recently seeded or planted or has the irrigation been turned on?

1632
1633 Mr. Burcin - At this point I don't believe the irrigation is turned on. The
1634 building is not occupied yet. They are in the process of getting all of the connections
1635 made and completing the project. They are hoping to obtain a Certificate of Occupancy
1636 for the first tenant space in there next week.

1637
1638 Mr. McKinney - All right. Anything else? All right, Mr. Burcin, that completes
1639 your case. Thanks for coming, and you know how to get your answer.

1640
1641 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1642 Wright, the Board **granted** the case.

1643
1644 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1645 Negative: 0
1646 Absent: 0

1647
1648 **REASON:** The Board **granted** this request as it found from the evidence presented
1649 that authorizing this variance will not be of substantial detriment to adjacent property
1650 and will not materially impair the purpose of the zoning regulations.

1651
1652 1.This approval is only for the reduction in the width of the landscape strip adjacent to
1653 Laburnum Avenue. All other improvements on the property shall comply with the
1654 applicable regulations of the County Code and the approved Plan of Development for
1655 the site.

1656
1657
1658 **A-85-99 Lynn E. Forstmann** request for a variance from Section 24-95i(2)a of
1659 Chapter 24 of the County Code to build a detached garage at 2805 Pine
1660 Lodge Court (Deer Springs) (Tax Parcel 31-12-C-9), zoned R-2AC, One-
1661 Family Residence District, (Conditional) (Brookland). The accessory
1662 structure square footage requirements are not met. The applicant has 147
1663 square feet for accessory structure where the Code requires 1080 square
1664 feet. The applicant requests a variance of 392 square feet for accessory
1665 structure.

1666
1667
1668 Mr. McKinney - All right. Is there anyone in the audience, other than the
1669 applicant, to speak in reference to A-85-99? Anyone else. All right, sir, if you would
1670 raise your hand and be sworn in by Mr. Silber.

1671
1672 Mr. Silber - Would you please raise your right hand and swear that the
1673 testimony you are about to give is the truth, the whole truth and nothing but the truth, so
1674 help me God?

1675
1676 Mr. Lynn E. Forstmann - I do.

1677
1678 Mr. McKinney - Would you state your name for the record, sir.

1679
1680 Mr. Forstmann - Yes, sir. I am the applicant and the property owner of 2805
1681 Pine Lodge Court. I am Lynn E. Forstmann.

1682
1683 Mr. McKinney - All right, Mr. Forstmann. Have all of the adjoining and
1684 adjacent property owners been notified of this request according to the County Code?

1685
1686 Mr. Forstmann - They have, sir.

1687
1688 Mr. McKinney - Would you turn those notices in to Mr. Silber.

1689
1690 Mr. Silber - Thank you.
1691
1692 Mr. McKinney - All right, sir. Will you present your case.
1693
1694 Mr. Forstmann - It is my understanding that because of the way the Code
1695 section requires in this area, I can only build up to 1,080 square foot detached garage. I
1696 am requesting to build a detached garage, which equals 1,472 square feet, which is 46
1697 feet by 32 feet. The parcel of land that I have is on a cul-de-sac on Pine Lodge Court.
1698 As you can see, it is small at the front. It does get big in the back. I do have the room
1699 for this detached garage since my property is a little bit bigger than the average parcel
1700 in the area. The closest from any property line that I would be approximately 20 to 24
1701 feet. The construction of the garage would be block and brick foundation, 2 x 4 framing
1702 and vinyl siding. The Homeowner's Association has approved this as long as it is
1703 identical to the house that is on the property. I think that is all that I have.
1704
1705 Mr. McKinney - Mr. Forstmann, you have a garage in your home now.
1706
1707 Mr. Forstmann - Yes, sir, I do. It is attached. They call it a two-car garage.
1708 I've only been able to get a single car into it at any time, sir.
1709
1710 Mr. McKinney - So what is the purpose of this garage?
1711
1712 Mr. Forstmann - I do have three automobiles. I would like to be able to
1713 garage all three of them. As you can see, it is a heavily wooded area. During spring
1714 time, the pollen gets quite heavy in the area and I am kind of particular how clean I keep
1715 my automobiles. I would like to be able to keep them all inside at all times.
1716
1717 Mr. McKinney - So, you will continue to use the existing garage, also?
1718
1719 Mr. Forstmann - That will probably be finished off inside.
1720
1721 Mr. McKinney - All right. Any other questions of Mr. Forstmann?
1722
1723 Mr. Wright - I'd like to ask Mr. Silber a question. Is the problem caused
1724 here because of the floodplain? You can't use the floodplain area for square footage?
1725
1726 Mr. Silber - Not exactly, Mr. Wright. The square footage requirements in
1727 this case are based on the minimum required rear yard. The minimum required rear
1728 yard would come out to 1,080, so I don't believe it has anything to do with the floodplain.
1729
1730 Mr. Wright - So, it takes in the area within the floodplain?
1731
1732 Mr. Silber - It is based on the minimum required rear yard, so, exclusive
1733 of floodplain, that would be calculated out to...
1734

1735 Mr. McKinney - So, what you are saying is the R-2AC zoning, if he had five
1736 acres here, he could still only build the 1,080 feet because of the way the Code is
1737 written.

1738
1739 Mr. Silber - That is correct.

1740
1741 Mr. Wright - Mr. Forstmann, how many stories is this garage?

1742
1743 Mr. Forstmann - It is just going to be a single-story.

1744
1745 Mr. McKinney - What is that, three bay?

1746
1747 Mr. Forstmann - It is, sir.

1748
1749 Mr. McKinney - Any other questions of Mr. Forstmann by Board members or
1750 staff? Anybody else in the audience to speak in reference to A-85-99? All right, Mr.
1751 Forstmann, that concludes your case. Thank you for coming. You will get your answers
1752 this afternoon.

1753
1754 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1755 Wright, the Board **granted** the case.

1756
1757 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1758 Negative: 0
1759 Absent: 0

1760
1761 **REASON:** The Board **granted** this request as it found from the evidence presented that
1762 authorizing this variance will not be of substantial detriment to adjacent property and will
1763 not materially impair the purpose of the zoning regulations.

1764
1765 1. Only the addition shown on the drawings submitted with this request may be
1766 constructed pursuant to this approval. Any additional accessory structures shall
1767 comply with the applicable regulations of the County Code.

1768
1769 **A-86-99** **Andrew Herzog** request for a variance from Section 24-94 of
1770 Chapter 24 of the County Code to place a screened porch over an
1771 existing uncovered deck at 5900 Kelbrook Lane (Benning Oaks at
1772 Wyndham) (Tax Parcel 9-7-B-5), zoned R-3C, One-Family
1773 Residence District, Conditional (Three Chopt). The rear yard
1774 setback is not met. The applicant has 36.48 feet rear yard, where
1775 the Code requires 40.00 feet rear yard setback. The applicant
1776 requests a variance of 3.52 feet rear yard setback.

1777
1778
1779 Mr. McKinney - All right, is anyone in the audience to speak other than the
1780 applicant in reference to A-86-99? Anyone else? All right, sir, if you would raise your

1781 hand and be sworn in by Mr. Silber.
1782
1783 Mr. Silber - Will you please raise your right hand and swear that the
1784 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
1785 help me God.
1786
1787 Mr. Herzog - I do.
1788
1789 Mr. McKinney - Would you state your name for the record, sir.
1790
1791 Mr. Herzog - My name is Andrew S. Herzog. I am the owner of the
1792 property at 5900 Kelbrook Lane in Wyndham.
1793
1794 Mr. McKinney - All right, Mr. Herzog. Have all of the adjoining and adjacent
1795 property owners been notified as required by the County Code?
1796
1797 Mr. Herzog - Yes, they have.
1798
1799 Mr. McKinney - Would you turn those in.
1800
1801 Mr. Herzog - Yes.
1802
1803 Mr. Silber - Let me ask you. These were sitting right here. Correct.
1804
1805 Mr. Herzog - Yes, sir.
1806
1807 Mr. Silber - There are two here. Are there more than two adjacent
1808 property owners?
1809
1810 Mr. Herzog - Those are the two next-door neighbors. Behind is Millstone
1811 subdivision's new construction through the woods, and at the time that I submitted this, I
1812 asked the people in Planning and they said for these particular purposes, because of
1813 the new construction through the woods, just contact the people on either side and in
1814 front of me is an open cul-de-sac and there is nobody in front of me at all.
1815
1816 Mr. McKinney - You have to contact the land owner, whether it is anything
1817 built there or not.
1818
1819 Mr. Herzog - That is fine then. If you want me to defer this for 30 days, I
1820 will go ahead and see if I can track down whoever that is.
1821
1822 Mr. McKinney - Call Mr. Silber and he will be glad to help you with it this
1823 afternoon or tomorrow and go over it.
1824
1825 Mr. Wright - And go over it very carefully. You got some bad information
1826 from somebody.

1827
1828 Mr. Herzog - It was just that they said there was construction back there
1829 and the fact that I'd just have to get the builder's or whoever owns the land.
1830
1831 Mr. Wright - Who told you that?
1832
1833 Mr. Herzog - I don't even know the guy's name because he filled this
1834 whole thing out.
1835
1836 Mr. Balfour - In the Planning Office.
1837
1838 Mr. Herzog - Yes.
1839
1840 Mr. Silber - The requirements stipulate that you need to contact all
1841 adjacent property owners, anybody that surrounds your property or abuts your property
1842 on any side. The owners, the adjacent owners, it may not be that a piece of property is
1843 developed on it, but some one owns that property.
1844
1845 Mr. Herzog - That is fine. I will defer it for 30 days and I will contact them
1846 and come back in 30 days, if that is what the Board wants.
1847
1848 Mr. McKinney - The move is seconded. All in favor say aye. All opposed say
1849 no. The motion passes. The case has been deferred for 30 days. Thank you.
1850
1851 This request was **deferred** from the June 24, 1999 meeting to the July 22, 1999 meeting
1852 because the applicant failed to satisfy the notification requirement of adjacent property
1853 owners.
1854
1855 **A-87-99** **Robert N. Shapiro** request for a variance from Section 24-94 of
1856 Chapter 24 of the County Code to build a Florida room at 13413
1857 College Valley Lane (Foxhall) (Tax Parcel 45-2-B-101), zoned R-
1858 2AC, One-Family Residence District (Three Chopt) (Conditional).
1859 The rear yard setback is not met. The applicant has 41.0 feet rear
1860 yard setback where the Code requires 45.0 feet rear yard setback.
1861 The applicant requests a variance of 4.0 feet rear yard setback.
1862
1863
1864 Mr. McKinney - Is there anyone in the audience other than the applicant
1865 want to speak in reference to A-87-99? All right, sir, if you'd raise your hand.
1866
1867 Mr. Silber - Sir, if you would raise your right hand.
1868
1869 Mr. McKinney - I think you have been previously sworn in, haven't' you?
1870
1871 Mr. Shapiro - Yes.
1872

1873 Mr. McKinney - He has already been sworn in.
1874
1875 Mr. Silber - Yes, sir.
1876
1877 Mr. McKinney - Have all adjoining and adjacent property owners been
1878 notified of this request?
1879
1880 Mr. Shapiro - Yes, they have, but I was up here earlier, and Mr. Silber mentioned
1881 the 30 days, and I would like to request a deferral being that they are out of town, and
1882 we don't really have any set plans, and it is going to take a week or so to get the plans
1883 and another two weeks for the County. I would rather let them make that decision.
1884
1885 Mr. McKinney - Are you going to change it from four to six feet? Are you
1886 going to amend it?
1887
1888 Mr. Shapiro - I believe it was 8 or 4 more feet is what they wanted. The room
1889 was 20 feet this way by 18. They wanted to switch it all the way around like that
1890 (gesturing).
1891
1892 Mr. McKinney - What I am saying is that the Code requires you to notify the
1893 adjoining and adjacent property owners of what you intend to do, so you probably need
1894 to get with Mr. Silber tomorrow or the next day and get in on the deadline as far as
1895 these notices are concerned.
1896
1897 Mr. Shapiro - OK. What is your procedure on those?
1898
1899 Mr. Silber - Yes, sir. We would need to know by tomorrow what your
1900 variance request is, so we could have it properly advertised, to know the exact
1901 dimensions and request that you propose to take forward.
1902
1903 Mr. Wright - You might just go ahead and ask for a larger area, even if
1904 you come in for a smaller one at the time, that will cover it.
1905
1906 Mr. Shapiro - OK.
1907
1908 Mr. McKinney - All right, is there a motion?
1909
1910 Mr. Wright - I move that we defer it for 30 days.
1911
1912 Mr. Nunnally - Second.
1913
1914 Mr. McKinney - The motion was seconded. All in favor say aye. All opposed
1915 say no. All right, you have a 30-day deferral.
1916
1917 Mr. Shapiro - Thank you.
1918

1919 After an advertised public hearing this request was **deferred** from the June 24, 1999
1920 meeting to the July 22, 1999 meeting because the applicant wished to change the size of
1921 the proposed addition resulting in a different variance request.
1922

1923 **UP-23-99** **L. E. Phillips,III** request for a temporary conditional use permit
1924 under Section 24-116(c) (1) of Chapter 24 of the County Code to
1925 locate a temporary sales trailer at 9199 Hungary Road (Park West)
1926 (Tax Parcel 49-A-19), zoned R-5AC, General Residence District
1927 (Conditional) (Brookland).
1928

1929 Mr. McKinney - All right, is there anyone other than the applicant going to
1930 speak in reference to UP-23-99? All right, sir. You going to speak, sir?
1931

1932 Mr. Silber - Would you both raise your right hands and swear that the
1933 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
1934 help me God.
1935

1936 The People in Unison - I do.
1937

1938 Mr. McKinney - Would you state your name for the record, sir.
1939

1940 Mr. John Bender - Good morning. I am John Bender with D. O. Allen Homes
1941 and I am representing L. E. Phillips, III, who is the president of D. O. Allen Homes.
1942

1943 Mr. McKinney – Was that Larry Phillips?
1944

1945 Mr. Bender - No. That was Len Phillips, the gentleman who was sworn in.
1946

1947 Mr. McKinney - Have all of the adjoining and adjacent property owners been
1948 notified of this request according to County Code?
1949

1950 Mr. Bender - Yes, they have, and we turned that in previously this week.
1951

1952 Mr. McKinney - Do you have those, Mr. Silber? Are they in here?
1953

1954 Mr. Silber - No.
1955

1956 Mr. Bender - It could have been Tuesday. I gave them to Susan.
1957

1958 Mr. McKinney - They are not in the file.
1959

1960 Ms. Blackburn - I know they came in.
1961

1962 Mr. McKinney - If you know they came in, that is fine. All right, Mr. Bender, if
1963 you would present your case, sir.
1964

1965 Mr. Bender - Staff has done an excellent job describing our request and
1966 the comments I am going to expand on a little bit, and then I will answer any questions
1967 that you have. The trailer, which is a construction sales trailer in question, is located on
1968 the northeast corner of the construction site of Park West, which will be a 23 acre after-
1969 retirement community, currently under construction. The site is currently under
1970 construction. The trailer is close to only one neighbor, the Bradshaws, and they have
1971 no problem with the trailer being there. I have a short letter to that effect from them, if
1972 you would like that for the file.

1973
1974 The trailer is, as I said, located near only one neighbor. It utilizes an existing curb cut,
1975 an existing gravel driveway, and it is located within the parameters of where the
1976 recreation center for Park West is going to be built. It actually sets where the swimming
1977 pool will be. As staff noted in their comments, there has been a lot of advance interest
1978 in this project. We had 256 potential buyers on our newsletter mailing list before we
1979 started turning the first dirt on our project a couple of months ago. Many of the persons
1980 requested on-site sales trailer. Potential buyers on this Park West are senior citizens,
1981 most of whom reside in the west end or generally in this area of Henrico or the City of
1982 Richmond, and they don't particularly want to come all the way over to our south side
1983 office, either for the distance, or they just don't like to leave Henrico County. We are not
1984 sure. And, also, in addition, we have found that most want to physically see and pick
1985 out their lots while they are out there and it makes a lot more sense for them to be able
1986 to have a place where they can go in and sit down at the table and work on things when
1987 they do that.

1988
1989 The purpose of the temporary trailer is dual. It is to be used as a sales trailer and a
1990 construction office; a sales trailer is the part that requires us to come before you. It will
1991 be used until such time as the model home is constructed and an occupancy permit is
1992 issued on the model home. At that time, the home sales function will be moved to the
1993 model, and the construction superintendent will operate out of the model's garage. The
1994 trailer will be removed at that time. I found out yesterday that the zoning permit has
1995 been approved. We have not received it yet, but it has been approved for the model.
1996 Weather permitting, we will have the lot ready for – to start construction for the model by
1997 mid-July. Ideally, weather should work our way and that is a big if, subject to other site
1998 conditions and County requirements, we hope, our goal would be to be in the model and
1999 have the trailer gone before Thanksgiving. Weather problems and site construction
2000 problems, of course, can cause delays and sometimes we can't predict them. We
2001 believe the staff's suggested condition No. 5 to "have the permit expire June 30, 2000"
2002 is fair and allows for unforeseeable delays.

2003
2004 If the Board should see fit to approve our request for this use permit, subject to the
2005 staff's conditions, we would like to request that condition No. 2 be revised to allow the
2006 sewage holding tank to be used through the length of the permit, which again, is a year,
2007 rather than 180 days. The reason for that is that we certainly hope we will be out long
2008 before 180 days, but it does not seem practical if something should happen and we
2009 should run over a few weeks or a couple of months, practical to connect permanently to
2010 public utilities for a temporary trailer for that amount of time, and it may create some

2011 difficulties. I did try to contact the Utilities Department yesterday, but was unable to get
2012 the person that I needed to talk to, but I am somewhat concerned as to whether we
2013 could even logistically work it out since we would have to put in a sewer line coming to
2014 the trailer. We are located where the swimming pool is, so obviously we'd have to go
2015 back in and remove, and then put a tab back on the line and get the lateral out of the
2016 swimming pool and remove the trailer and all of the construction. Other than that, we
2017 appreciate the staff's conditions and if you have any questions, I'll try to answer them.
2018

2019 Mr. Kirkland - You are asking for condition No. 2 to reflect the 360 days?
2020

2021 Mr. Bender - To run with the trailer, yes, sir.
2022

2023 Mr. McKinney - Any other questions of Mr. Bender by Board members? Any
2024 questions by staff?
2025

2026 Mr. Silber - No, sir.
2027

2028 Mr. McKinney - Do you have any problem with condition No. 2, Mr. Silber?
2029

2030 Mr. Silber - No, I don't have difficulty with that, as long as it is acceptable
2031 to the Health Department.
2032

2033 Mr. Wright - All you've got to do is put a period after waste. You don't
2034 have to say for how long it is, because this thing expires on June 30, 2000. You don't
2035 have to put in a date, during the period of the permit.
2036

2037 Mr. McKinney - All right. Anyone else to speak in reference to UP-23-99?
2038 That concludes your case, Mr. Bender. Thank you for coming in. You will get your
2039 answer this afternoon.
2040

2041 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
2042 Wright, the Board **granted** the case.
2043

2044 The Board **granted** this request as it found from the evidence presented that
2045 authorizing this use permit with amended conditions will not be of substantial detriment
2046 to adjacent property and will not materially impair the purpose of the zoning regulations.
2047

- 2048 1. The property shall be developed as shown on the plans filed with the case and no
2049 changes or additions to the layout may be made without the approval of the Board
2050 of Zoning Appeals.
2051 2. A sewage holding tank may be used for disposal of waste. Approval is needed by
2052 the Health Department for the sewage holding tank.
2053 3. A detailed landscaping plan and lighting plan shall be submitted to the Planning
2054 office for review and approval prior to the issuance of a building permit.
2055 4. Five (5) off-street parking spaces shall be provided for the customers using the
2056 sales/trailer facility.

2057 5. This approval will expire on June 30, 2000.

2058

2059 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

2060 Negative: 0

2061 Absent: 0

2062

2063 **A-88-99**

William J., Jr. and Nancy R. Butler request for a variance from Sections 24-94 and 24-9 of Chapter 24 of the County Code to place a mobile home at 11574 Mill Road (Tax Parcel 13-A-9B), zoned R-2, One-Family Residence District, and A-1, Agricultural District (Brookland). The lot width and public road frontage requirements are not met. The applicant has 50.0 feet lot width and 41.6 feet public road frontage where the Code requires 150.0 feet lot width and 50.0 feet public road frontage. The applicant requests variances of 100.0 feet lot width and 8.4 feet public road frontage.

2064

2065

2066

2067

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2071

2072

2073

2074

Mr. McKinney - Is there anyone other than the applicant going to speak in reference to A-88-99? All right, if you would stand, everybody that may speak can be sworn in by Mr. Silber.

2075

2076

2077

2078

Mr. Silber - If you would, would you all raise your right hand and swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help me God.

2079

2080

2081

2082

Mr. McKinney - All right, would you state your name for the record, ma'am.

2083

2084

Ms. Judy Tolley - My name is Judy Tolley and I am Ms. Butler's sister.

2085

2086

2087

2088

Mr. McKinney - And can I assume that all of the adjoining and adjacent property owner's notices been taken care of?

2089

Ms. Tolley - Yes, I have that here.

2090

2091

Mr. McKinney - We have these in the file, also. Do you have some more?
OK. All right, Ms. Tolley, will you present your case, please.

2092

2093

2094

Mr. Tolley- My brother and sister and I are here today to apply for permission to put a doublewide mobile home on my sister's property. The home is for our mother and mentally challenged uncle, who my mother and father have been taking care of for many years since the death of his parents. Now, since the death of our father last week, we feel it would be better for our mother and uncle to be close to my sister and the family. She is 74 years old, and she could still maintain her independence, but have the support and supervision of the family close to look after her. The mobile home will set well off of the road and out of the view of any dwellings. In our opinion, this arrangement is best for our mother and our family. I have some

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2102

2103 pictures here of where the home would sit.
2104
2105 Mr. Kirkland- Ms. Tolley, what is the size of this mobile home?
2106
2107 Ms. Tolley - It is 28 by 52 feet. My concern is where my mother is now,
2108 with my uncle living with her. If she would have a problem health-wise, you know, he
2109 can't dial for help, and there is no one around that could help, and due to her age, we
2110 feel that she would be better off close to the family.
2111
2112 Mr. Kirkland - I assume that there is a dwelling adjacent to this property where a
2113 family lives now. Correct?
2114
2115 Ms. Tolley - Yes, sir.
2116
2117 Mr. Kirkland - She couldn't move in with you all?
2118
2119 Ms. Butler - I am Nancy Butler. My husband and I own the property
2120 adjacent to the 2.61 acre parcel.
2121
2122 Mr. McKinney - And what was your question?
2123
2124 Mr. Kirkland - I was concerned because you said the woman was 74 years old, I
2125 believe, and she was going to live in a trailer by herself. Is that correct?
2126
2127 Ms. Butler - With my father's older brother, who they have been taking
2128 care of for a long time.
2129
2130 Mr. Kirkland - OK. I didn't hear that second part. I was just wondering why she
2131 was not moving in with you, since you live right next to it and could take care of her...
2132
2133 Ms. Butler - We would have to add on to our house in order to
2134 accommodate them in our present house, and she really, my mother really does not
2135 want to do that. She'd like to have her own place. She is old but she is independent.
2136
2137 Mr. Kirkland - I have a drawing here, a schematic, where on the property is
2138 this trailer going to be located on that lot? I don't see which way it is positioned. Is that
2139 in red there, is that it?
2140
2141 Ms. Butler - Yes.
2142
2143 Mr. Kirkland - OK. I was just looking at those numbers. I couldn't figure out the
2144 52; I'm getting blind in my old age myself.
2145
2146 Ms. Butler - I understand.
2147
2148 Mr. Kirkland - You have 25 foot from side to side at that point on the lot. Is that

2149 correct?
2150
2151 Ms. Butler - The lot width at that area is about 100 feet.
2152
2153 Mr. Kirkland - A hundred feet?
2154
2155 Ms. Butler - Yes, sir.
2156
2157 Mr. McKinney - How much land do you have in this lot, Ms. Butler?
2158
2159 Ms. Butler - In this particular lot?
2160
2161 Mr. McKinney - In this lot.
2162
2163 Ms. Butler - I have 2.61 acres.
2164
2165 Mr. McKinney - 2.61 acres?
2166
2167 Ms. Butler - Yes, sir.
2168
2169 Mr. McKinney - OK. All right, anything else?
2170
2171 Ms. Butler - I can't think of anything else. All right, you have some
2172 opposition.
2173
2174 Mr. Wright - Have you seen the conditions that are proposed for this
2175 case?
2176
2177 Ms. Butler - Yes. We have already had the well and septic survey done
2178 by the State and have a certificate for that for that location.
2179
2180 Mr. McKinney - All right. Thank you. All right, whoever is going to speak, if
2181 you know you're going to speak, it would be a lot quicker if you'd come down on the
2182 front row. We will take them one at a time. All right, Mr. Mizell, would you identify
2183 yourself for the record?
2184
2185 Mr. John Mizell - Yes, Mr. Chairman, and members of the Board, my name is
2186 John Mizell. I am an attorney and I am here today representing Mr. William E. Elmore,
2187 Sr. and Arlene P. Elmore, the owners of property at 11554 Mill Road, or immediately
2188 adjacent to the property in question owned by the applicants, Mr. and Mrs. Butler. I
2189 appear before you in opposition to Case A-88-99 for a variety of reasons. The
2190 requested variance is for a personal convenience and not a demonstrated hardship and,
2191 thus, violates the provisions of Section 24-116(b)(1) of the Henrico County Code. There
2192 are other options available to the Butlers. For example, what was just discussed earlier;
2193 they could add on to their existing house near the front of the adjacent parcel, which the
2194 Butlers also own. That may not be their preference, but we would submit that certainly

2195 is a viable option. The proposed mobile home would be within 35 to 40 feet of the
2196 proposed road that would lead from Mill Road to the proposed development of
2197 approximately 70 acres in the rear portion of Arbill Acres. If we could flip away from the
2198 slide for a moment and go back to the basic layout. The proposed mobile home would
2199 go here and what I am referring to is that Mr. and Mrs. Elmore own approximately 70
2200 acres in the rear. This proposed road for Arbill Drive would be the connecting point to
2201 the 70 acres, the heart of it is a little bit to the north, and goes all the way to the
2202 Chickahominy River. Essentially, the roadway that would be right beside where this
2203 mobile home would go represents the gateway to the main part of the future
2204 development of the northern part of the Elmore property. Preliminary engineering plans
2205 call for approximately 41 one-acre lots in that development. Having a mobile home or
2206 trailer along this main thoroughfare would detract and devalue significantly from the
2207 potential development of the Arbill Acres property. A builder or developer consulted
2208 with Mr. Elmore and recently has indicated that the location of the mobile home along
2209 this connecting road would significantly detract from a proposed subdivision and
2210 threaten the entire project. Accordingly, granting the variance that is requested would
2211 violate the provisions of Section 24-116(b)(2)(c) of the Henrico County Code and
2212 Section 15.2-2309(2)(c) of the Code of Virginia, enabling statute. The Elmore family, if
2213 we can go back to the original slide, the Elmore family has lived on the premises for
2214 approximately 50 years. Mr. Elmore grew up in the previous home place and later built
2215 the existing family home which you can see in this picture here. That is on Mill Road.
2216 He lived there without interruption for the past 28 years. I think we also have a slide of
2217 the rear of that property. Beside the immediate proximity to the proposed road or
2218 entrance way to the Arbill Acres development, the proposed mobile home would be less
2219 than 100 feet directly across the road from one of what would be the nicest lots in that
2220 planned subdivision. There are also family needs that impact on the Elmores, not just
2221 the Butlers. Mrs. Arlene Elmore, wife of William Elmore, has been confined in recent
2222 years to a nursing homes at Crump Manor and has been diagnosed with Althimezers'
2223 disease. As a result, Mr. Elmore finds himself quickly depleting the retirement
2224 resources which have been saved and in the near future, the staggering monthly
2225 expenses of care will likely propel him to sell the rear parcel of the 70 acres for
2226 development, in order to have additional funds to provide for his wife's care. The parcel
2227 in question has been previously envisioned to be a R-2 lot, not the site of a mobile
2228 home. There are no mobile homes or trailers in the vicinity of the property in question.
2229 Although it may be permissible in an A-1 District to locate a manufactured home, it is an
2230 entirely different matter to grant a special privilege to allow this particular one to be
2231 located on a site that does not meet the Code requirements for yard width or frontage.
2232 Within only a few blocks to the west of the subject property, if we can go back to the
2233 original drawing, we find Chickahominy Branch, a very upscale subdivision of homes
2234 selling at a minimum price of \$250,000. Now, just go back to the diagram of the
2235 property site, then we will switch back to the slide. Chickahominy Branch being to the
2236 west of this area and immediately to the west of Chickahominy Branch is another
2237 upscale subdivision, Rock Spring, where homes are valued from \$250,000 to perhaps
2238 as high as a million dollars. Across Mill Road to the southwest, we have Holly Grove
2239 Subdivision off, or it is actually on Bekka Lane, where the homes sell for approximately
2240 in the range of \$250,000 each. Just across Mill Road to the south – a distance of only

2241 one or two blocks – a 177-acre parcel has been rezoned R-1AC. This is known as the
2242 Hunton Estates. There are 165 homes planned for that development in the
2243 neighborhood of \$250,000 to \$350,000 range. Furthermore, the County has purchased
2244 38 acres on that parcel for a new middle school. For approximately 30 years, Mr. Butler
2245 was switching to the present use on an adjacent parcel, but Mr. Butler has operated an
2246 automobile/mechanical shop in his garage immediately east of Mr. Elmore's present
2247 home, a distance of approximately 125 feet, and if we can go to slide #3, various
2248 equipment and assorted material has been regularly surrounding the Butler garage as
2249 shown on this slide. Furthermore, for many years, Mr. Butler has operated a junk yard
2250 behind the garage near the proposed location of the mobile home, if we can go to the
2251 next several slides. He has had as many as 60 cars on the lot during several different
2252 periods of time. He simply stores old vehicles and uses the spare parts to sell.
2253 Approximately one week ago there were six cars and two boats located near the site of
2254 the proposed mobile home, as shown on these slides. Just a short distance away was
2255 a 50 foot over-the-road trailer, as shown on the next slide. Now, one more, and then we
2256 will flip back to the original drawing.

2257
2258 Over the years, Mr. Elmore has simply let the natural vegetation grow up to partially
2259 buffer his home from the activity at the Butler home. He simply tried to stay to himself
2260 and tolerate Mr. Butler's activities on the nearby parcel. However, the Butlers now
2261 request a variance that constitute a privilege to place a mobile home on a lot that simply
2262 does not meet the Code requirements for width or frontage. Since Mr. Elmore believes
2263 there would be significant detriment not only to his property but also the surrounding
2264 neighborhoods, it certainly seems appropriate for him to come forward and object and
2265 oppose this request for a variance. For all of the forgoing reasons, I respectfully request
2266 that you deny the variance as applied for in Case A-88-99. Now, my client, Mr. Elmore,
2267 is here with me. We'd be happy to answer any questions that you may have. Also, Mr.
2268 Robert Hall, who lives in the nearby subdivision of Holly Grove is here and may wish to
2269 make a few comments. Mr. Jim McNeil, who lives on Chickahominy Branch Drive, in
2270 the area and has been very active in helping enhance the type of development in this
2271 area in recent years, and finally Mr. Talmage Harris is here, who lives across Mill Road.
2272 Those three individuals may wish to make some additional comments.

2273
2274 Mr. McKinney - Are your representing them?

2275
2276 Mr. Mizell - No.

2277
2278 Mr. Wright - Mr. Mizell, if a house were to be built where the mobile home
2279 would be, would you still have objections?

2280
2281 Mr. Mizell - I don't believe so.

2282
2283 Mr. Wright - So the real objection is to having the mobile home there?

2284
2285 Mr. Mizell - Yes.

2286

2287 Mr. Kirkland - Mr. Silber, all those cars and boats, has the County ever had
2288 any complaints about this?
2289

2290 Mr. Silber - I may have to defer to the staff. I am not aware of any
2291 complaints at this point. It looks like there may have been some violations out there, but
2292 I have not heard of any complaints, Mr. Kirkland.
2293

2294 Mr. Kirkland - OK. I didn't see any in the staff report.
2295

2296 Mr. McKinney - Looks like you have seen some today.
2297

2298 Mr. Silber - Looks like maybe I have.
2299

2300 Mr. Kirkland - Just wanted to make sure you have seen the pictures.
2301

2302 Mr. McKinney- All right, is there anyone else to speak in opposition to A-88-
2303 99? All right, Mr. Hall, would you identify yourself.
2304

2305 Mr. Robert B. Hall - Members of the Board, I am Robert B. Hall, and I live at
2306 3503 Bekah Lane in the Holly Grove Subdivision, and have lived there since May of
2307 1983. The people on Bekah Lane who I represent here today, we very much oppose a
2308 mobile home in this area. We have worked very, very hard with developers who have
2309 wanted to come into our community, developers who have developed our community to
2310 make sure we had a reasonably developed community. Recently, we spent a
2311 considerable amount of time working with Mr. Atack on the 165 home subdivision,
2312 Hunton Estates, that he plans to put there adjacent to our property. We do not, and I
2313 emphasize the word, do not feel that a mobile home is compatible in that area. We
2314 have no objection to the Butlers applying for a permit and adding to their home. We
2315 respect the situation they have with their mother and uncle, but we do not think that a
2316 mobile home in our community is compatible with the rest of the community and that it
2317 would have an adverse effect on our property, as well as, and especially on the property
2318 that Mr. Elmore plans to develop in the very near future. Any questions?
2319

2320 Mr. McKinney - Any questions of Mr. Hall by Board members?
2321

2322 Mr. Wright - Would you have any objection if they changed it to build a
2323 home on that property?
2324

2325 Mr. Hall - I would have no objection to that, providing that it met the
2326 Code requirements for that piece of property. I don't think...
2327

2328 Mr. Wright - They would still have to have a variance because they don't
2329 have the road frontage at the building line.
2330

2331 Mr. Hall - Everything in our neighborhood right now is on an acre, is
2332 built on an acre or more. The new subdivision will be a minimum of ½ acre, but it will be

2333 from ½ acre to as much as three acres, depending on the configuration of the lots and
2334 the houses that have to do with floodplain, if they built a home back in there that was
2335 compatible to the other homes in our area.

2336
2337 Mr. Wright - Will that road that is proposed eventually come into the
2338 County road system?

2339
2340 Mr. Hall - I believe that it will, yes, sir. I believe it will. That is part of
2341 the proposed subdivision that...

2342
2343 Mr. Wright - When that happens, that would take away the 50 foot road
2344 requirement that it would need.

2345
2346 Mr. Hall - But that is probably several years away.

2347
2348 Mr. McKinney - But if that was a public road, then they would have every
2349 right to put the trailer on it? They've got 2.61 acres, as long as they met the setbacks.

2350
2351 Mr. Hall - So, if that was a public road,

2352
2353 Mr. McKinney - If Mr. Elmore developed in the rear of his 71 acres, and the
2354 County took that road into their system, then this 2.61 acres that is owned by William
2355 and Nancy Butler would be on a road frontage and would not need a variance. They've
2356 got 2.61 acres. They could put a trailer there.

2357
2358 Mr. Hall - You can put a trailer in a residential area?

2359
2360 Mr. McKinney - It is A-1, as long as you have the minimum of one acre.

2361
2362 Mr. Hall - The entire 2.61 acres is in A-1 area?

2363
2364 Mr. Silber - No, sir. Some of it is zoned R-2. It looks to me like half of it
2365 is R-2.

2366
2367 Mr. McKinney - No, you can't put it in R, but you can put it in A-1.

2368
2369 Mr. Wright - And if they rezone that, if that is developed to residential
2370 there, I assume that would all be rezoned.

2371
2372 Mr. Hall - I don't know; that is up to them whether they would want to.

2373
2374 Mr. Wright - Well, you can't put a half-acre lot in an A-1 District.

2375
2376 Mr. Hall - Right. That is correct.

2377
2378 Mr. Wright - That would have to be rezoned to do that. I assume that

2379 would be done.

2380

2381 Mr. McKinney - All right, any other questions of Mr. Hall by Board members?
2382 Thank you, Mr. Hall. Anyone else to speak?

2383

2384 Mr. Talmadge Harris - My name is Talmadge Harris. I live catty-corner across Mill
2385 Road from the property in question. My wife and I certainly support anyone's effort to
2386 care for an elderly parent, but we are opposed to a variance to place a mobile home on
2387 the property, due to the precedent it would set and the negative effects to the property
2388 values. We have no objection, however, to a free-standing building for this need. Thank
2389 you.

2390

2391 Mr. McKinney - All right, Mr. Harris. Any questions of Mr. Harris by Board
2392 members? Is there anyone else to speak that is not going to be redundant?

2393

2394 Mr. Jim McNeil - I will make it real short. My name is Jim McNeil and I live on
2395 Chickahominy Branch Drive and have been representing the folks on that street, and
2396 again we have worked very, very hard over the years to develop the area north of 295,
2397 into an area with larger homes and larger lots, and to have a trailer put into that area
2398 would be totally just the opposite direction that the entire neighborhood is going. We
2399 are really very much against a trailer. A home that is built to meet the requirements of
2400 the neighborhood would be no problem.

2401

2402 Mr. McKinney - All right, thank you, Mr. McNeil. Any questions of Mr. McNeil
2403 by Board members? Thank you, sir. Anyone else? You will get your chance in a
2404 minute.

2405

2406 Mr. Kirkland - Mr. Silber, do we have enough room in there to build a
2407 home?

2408

2409 Mr. Silber - I think what needs to be kept in mind, a couple of things that
2410 need to be kept in mind, #1, is getting back to the question that if this was a public road
2411 and was built up along the side of this property, you'd have a corner lot situation. The
2412 front yard would still be the Mill Road frontage, so a variance would still be necessary to
2413 build on the property. If they were able to somehow carve off and maybe split the
2414 property so that they had just the property in A-1, and there was a public road along the
2415 front, and the frontage was along this public road, they would have the road frontage,
2416 but I don't think you'd have the depth in A-1 to meet 50 foot setbacks, so I think a
2417 variance would still be required.

2418

2419 Mr. Kirkland - OK, thank you.

2420

2421 Mr. McKinney - All right, Mrs. Tolley.

2422

2423 Mrs. Butler - I don't understand, because I get all of this negative
2424 connotation about a mobile home, but the thing that we are looking at is a double wide

2425 modular type home. It would be on a permanent foundation. It would have vinyl siding,
2426 shingle roof, and it looks like a house, not a trailer.
2427

2428 Mr. McKinney - How many square foot is it?
2429

2430 Ms. Butler - It is about 1300 square feet.
2431

2432 Mr. Wright - You don't have a picture of it, do you?
2433

2434 Ms. Butler - I didn't bring a picture. I had some layouts. It is an
2435 Oakwood manufactured home.
2436

2437 Mr. McKinney - So it is a double wide?
2438

2439 Ms. Butler - Yes, sir. It is not a trailer.
2440

2441 Mr. McKinney - That can go into an R-District.
2442

2443 Ms. Butler - I know the negative connotation that goes with a trailer
2444 sitting on a piece of property. That is not what we are asking for.
2445

2446 Mr. McKinney - Mr. Silber, in an R-2, what is the minimum square footage?
2447 Is it 1100?
2448

2449 Mr. Silber - R-2 is 1500 sq. ft. Mr. McKinney, the A-1 requirements, I
2450 refer to those, indicate that a manufactured home for single-family use placed on a
2451 permanent foundation is permitted in A-1. It is not permitted in residential districts. This
2452 would be a manufactured home.
2453

2454 Mr. McKinney - All right.
2455

2456 Ms. Butler - That is all I had.
2457

2458 Mr. McKinney- All right, are you going to address anything that the
2459 opposition says to you all, Ms. Connolly?
2460

2461 Ms. Butler - This gentleman maintains my husband has a shop at our
2462 house. He does not. His shop is located in Ashland. That part is very untrue. He does
2463 have a lot of vehicles setting in that back field that are not visible to anyone else, unless
2464 they come on our property. We are way back off of the road. I don't what else to say.
2465 Just that the property that we want to put the trailer on is still not visible from anyone
2466 else. It is shielded.
2467

2468 Mr. McKinney - All right, thank you, Ms. Butler.
2469

2470 Ms. Tolley - I just want to say that the property is secluded. We certainly

2471 don't want to deface anybody's property, but you know, if you could see it from the road,
2472 it would be different, but you can't. It is well off of the road.

2473
2474 Mr. Kirkland - Yes, but that is now. As soon as they develop that other
2475 property and put that road in there and put houses right across the road from it, it won't
2476 be secluded anymore.

2477
2478 Ms. Tolley - I don't think they will cut down those trees that are on the
2479 Butlers' property. There are a lot of trees on the Butlers' property.

2480
2481 Mr. Kirkland - Where is the driveway going to be to get to it, off of Mill
2482 Road?

2483
2484 Ms. Tolley - Yes.

2485
2486 Mr. Kirkland - Is that this little line right up here beside the proposed road?
2487 Is that where you are going to come right up beside the proposed road?

2488
2489 Ms. Tolley - We would use our current driveway, which is on the eastern
2490 border of our property and come down, there was at one time a road going into
2491 Greenwood Estates, and they would just come down our drive and across the back field
2492 to get to that parcel.

2493
2494 Mr. Kirkland - OK, thank you.

2495
2496 Mr. McKinney - Any other questions. All right, thank you. That concludes
2497 the case. You will get your answer this afternoon. Next.

2498
2499 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
2500 Nunnally, the Board **denied** the case.

2501
2502 The Board **denied** this request as it found from the evidence presented that authorizing
2503 this variance will be of substantial detriment to adjacent property and will materially
2504 impair the purpose of the zoning regulations.

2505
2506 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 0

2507 Negative: 5

2508 Absent: 0

2509
2510 **UP-24-99** **Gloria R. Rowson** request for a conditional use permit under
2511 Section 24-12(e) of Chapter 24 of the County Code to operate a
2512 private catery at 1203 Amesbury Lane (Wildwood) (Tax Parcel 63-
2513 10-J-10), zoned R-2, One-Family Residence District (Fairfield).

2514
2515 Mr. McKinney - Mr. Silber, may I ask you a question?
2516

2517 Mr. Silber - Certainly.
2518
2519 Mr. McKinney - Aren't we talking about a kennel? This is a first I have heard
2520 of a catery? Is this in the Code?
2521
2522 Mr. Silber - I don't know if a reference to a catery is in the Code. It is a
2523 kennel that is being requested.
2524
2525 Mr. McKinney - OK, but catery is in the Code?
2526
2527 Mr. Silber - I don't think that it is. No, sir.
2528
2529 Mr. McKinney - How can you advertise something that is not in the Code? I
2530 mean, nobody knows what a catery is. I thought it may be something that you eat. I
2531 mean, we know it is a kennel, but if you've got over three animals or whatever, but when
2532 you advertise it to the adjoining and adjacent property owners, you know, a catery...
2533
2534 Mr. Silber - I think that your point is well taken. In the future we can refer
2535 to it as a kennel. I think in this case staff was trying to differentiate from dogs versus
2536 cats.
2537
2538 Mr. McKinney - Well, you may say kennel/catery, but I think this has been
2539 advertised wrong.
2540
2541 Mr. Silber - I guess I will leave that up to the Board's discretion.
2542
2543 Mr. McKinney - What do you think, Mr. Wright? Mr. Balfour? Do you want to
2544 look at this?
2545
2546 Mr. Wright - You've got to advertise it the way that it is stated in the Code
2547 and any other advertisement would be erroneous.
2548
2549 Mr. Balfour - I'm advised the word "catery" is not in the dictionary.
2550
2551 Mr. McKinney - I've never heard of it.
2552
2553 Mr. Wright - I was surprised when I saw it. I didn't know what it was at
2554 first.
2555
2556 Mr. McKinney - Before we go any further, will you identify yourself, ma'am.
2557
2558 Ms. Rowson - Yes, I am Gloria Rowson.
2559
2560 Mr. McKinney - All right, Ms. Rowson. What is the pleasure of this Board?
2561 Ms. Rowson, we have a problem here with the way that this was advertised.
2562

2563 Mr. Wright - How many cats are there now?
2564

2565 Mr. McKinney - Ms. Rowson, would you raise your right hand and be sworn
2566 in by Mr. Silber? Is anybody else in the audience who is going to speak in reference to
2567 UP-24-99? All right, Mr. Silber.
2568

2569 Mr. Silber - If you would please raise your right hand and swear that the
2570 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
2571 help me God.
2572

2573 Ms. Rowson - I do.
2574

2575 Mr. Silber - Thank you.
2576

2577 Mr. McKinney - You are Gloria Rowson?
2578

2579 Ms. Rowson - Right.
2580

2581 Mr. McKinney - All right, Mr. Wright, do you have a question?
2582

2583 Mr. Wright - How many cats are there now? I take it that they are there
2584 now. Is that correct?
2585

2586 Ms. Rowson - I have, three of them are considered kittens yet, and I have
2587 six cats, which I have been just developing this year, so it has taken me some time to
2588 apply for the variance and so forth. Probably in the future, I would not have more than
2589 eight at any one time. Now maybe I could clarify a few things.
2590

2591 Mr. McKinney - Before we go any further, we didn't advertise this...
2592

2593 Mr. Wright - I just wanted to say, this is not something she wants to do.
2594 She has already got them. They are there.
2595

2596 Mr. McKinney - I think this case needs to be deferred and it needs to be
2597 advertised properly. The Chair will entertain a motion.
2598

2599 Mr. Wright - I move we defer it.
2600

2601 Mr. Kirkland - Second, on the grounds that we have improper notification or
2602 advertisement.
2603

2604 Mr. McKinney - How does this go along now, being as the County has made
2605 a mistake on this, in case she needs to defer it again? I mean this is not the fault of the
2606 applicant.
2607

2608 Mr. Wright - How was the application phrasing?

2609
2610 Ms. Rowson - It was made out as a kennel, I believe, but the big difference
2611 is that there are no outside structures whatsoever. The cats are kept inside at all times.
2612 It does not change the physical property.
2613
2614 Mr. Wright - It is still considered a kennel.
2615
2616 Ms. Rowson - But they told me it had to go under kennel because they
2617 didn't have a catery.
2618
2619 Mr. Silber - I have just been provided from a reliable source that
2620 Webster's dictionary definition of catery, which indicates that it is an establishment for
2621 the breeding and boarding of cats. It is a legal word. It is a legal term. I guess the
2622 question is, it is not a termed that is defined by the County's Zoning Ordinance.
2623
2624 Mr. McKinney - But it has to be in our Code.
2625
2626 Mr. Wright - It is not in the Code.
2627
2628 Mr. McKinney - We've got a motion and a second to defer this for 30 days.
2629 All in favor say aye. All opposed say no. The motion carries. All right, Ms. Rowson,
2630 what we need to do is have the County re-advertise it as a kennel for cats, or whatever
2631 they want to define it, to operate a private catery. They've got a little note sticking in the
2632 file that doesn't say kennel. We will see you next month.
2633
2634 Ms. Rowson - May I make the suggestion on the application, because the
2635 lady that I spoke to misunderstood what I was asking for. She asked me a two-part
2636 question?
2637
2638 Mr. McKinney - Who was the lady?
2639
2640 Ms. Rowson - The lady in the Planning Department, she works right in that
2641 office, right up where the desk is.
2642
2643 Mr. McKinney - That doesn't tell us anything, but go ahead.
2644
2645 Ms. Rowson - She asked me "Was I going to be breeding cats for
2646 commercial gain?" and I told her no, that I would not. Well, that was a two-part
2647 question? Breeding cats for commercial gain? I am not breeding them for commercial
2648 gain. I show them privately.
2649
2650 Mr. McKinney - Hold it. This is not relevant right now, because we cannot
2651 hear the case because it was not advertised properly. You will be more than welcome
2652 to tell us about that next month.
2653
2654 Ms. Rowson - Well, the only thing is, that is part of the condition.

2655
2656 Mr. McKinney - You need to get in touch with the Planning Office, or they
2657 need to get in touch with you.
2658
2659 Ms. Rowson - So that has to be put in correctly.
2660
2661 Mr. McKinney - The next time you talk to the lady in the Planning Office, get
2662 their name and time and date you talk to them.
2663
2664 Ms. Rowson - Yes, sir.
2665
2666 Mr. Balfour - It will be at 9:00 a.m. That is the good news.
2667
2668 Mr. McKinney - You will be the first case on the docket.
2669
2670 Mr. Silber - One of the first.
2671
2672 After an advertised public hearing the Board **deferred** the case to the July 22, 1999
2673 meeting because the advertisement was done incorrectly.
2674

A-89-99 Shannon M. Osby request for variance from Sections 24-95(c)(1) and 24-95(c)(4) of Chapter 24 of the County Code to build a carport and porch at 3102 Denver Street (Gilbert Gardens) (Tax Parcel 161-10-E-58), zoned R-4, One-Family Residence District (Varina). The front yard and minimum side yard setbacks are not met. The applicant has 27.0 feet front yard setback where the Code requires 35.0 feet front yard setback and 7.50 feet minimum side yard setback. The applicant requests variances of 8.0 feet front yard setback and 5.17 feet minimum side yard setback.

2675
2676 Mr. McKinney - Is there anyone other than the applicant going to speak in
2677 reference to A-89-99? All right. If you will raise your hand, you will be sworn in by Mr.
2678 Silber.
2679
2680 Mr. Silber - Please raise your right hand and swear that the testimony
2681 you are about to give is the truth, the whole truth, and nothing but the truth, so help me
2682 God.
2683
2684 Mr. Kevin W. Osby - Yes, sir.
2685
2686 Mr. McKinney - Would you identify yourself, sir.
2687
2688 Mr. Osby - My name is Kevin W. Osby. I reside at 3102 Denver Street.
2689
2690 Mr. McKinney - All right, Mr. Osby. Have all adjoining and adjacent property
2691 owners been notified of this request according to the County Code?

2692
2693 Mr. Osby - Yes, sir.
2694
2695 Mr. McKinney - Have you turned your notices in to Mr. Silber?
2696
2697 Mr. Silber - Thank you.
2698
2699 Mr. McKinney - All right, if you'd present your case, sir.
2700
2701 Mr. Osby - I reside at 3102 Denver Street. I am asking for a minimum
2702 front setback to extend an already existing porch that was built in 1947 on that house.
2703 The porch will be covered but not enclosed. It will have a brick foundation, a brick and
2704 block foundation, and it will resemble the front porch that is already on there, which just
2705 has poles at the corners and side rails. The carport will be two 12 x 12 poles made of
2706 brick in the driveway, will not be enclosed, but will be covered.
2707
2708 Mr. McKinney - Anything else?
2709
2710 Mr. Osby - No, that is all, sir.
2711
2712 Mr. McKinney - Any questions of Mr. Osby by Board members?
2713
2714 Mr. Balfour- The picture is sort of confusing to me. The picture shows a garage
2715 and you want this carport to be a part of the garage attached to the house. Am I looking
2716 at the picture right?
2717
2718 Mr. Osby - Yes, sir.
2719
2720 Mr. Balfour - Where is the porch going to be?
2721
2722 Mr. Osby - Do you see the existing front porch?
2723
2724 Mr. Balfour - On the front?
2725
2726 Mr. Osby - There is already a porch on there. That will be added on to,
2727 an 8 x 16 section added onto that porch so that what it will do, it will level up in front of
2728 the house and make it look more even.
2729
2730 Mr. Balfour - Thank you.
2731
2732 Mr. Wright- You will still drive through this car port to get to the garage?
2733
2734 Mr. Osby - Yes, sir.
2735
2736 Mr. Wright - Is that the idea?
2737

2738 Mr. Osby - Yes, sir. The garage is of a block construction and has a
2739 block beam in the front of it, and it is only 7 foot. You can see in the picture the
2740 Suburban is close to 8 feet tall and will not fit into the garage. That is a new truck, so I
2741 am trying to keep it as nice as I can.
2742

2743 Mr. Wright - Are you just going to put one vehicle in this car port?
2744

2745 Mr. Osby - For now, yes, sir.
2746

2747 Mr. Wright- And you are going to be driving through the car port to get to
2748 the garage, you won't be able to put but one vehicle in this, to the right of that driveway,
2749 would you?
2750

2751 Mr. Osby - Where the Suburban is parked now is where the one vehicle
2752 will be parked at all times, which is the Suburban, and there is enough space, if I am
2753 allowed my variance, I will be able to drive a vehicle in between it and leave one parked
2754 there.
2755

2756 Mr. Wright - I was just wondering if you need to have a car port that
2757 extends all the way, almost to your side line, if you are going to have part of it as a
2758 driveway. I was just wondering the necessity for enclosing it and extending it all the
2759 way within two feet of your property line, 2.3 feet.
2760

2761 Mr. Osby - Just for in the future, if I get another vehicle.
2762

2763 Mr. McKinney - How many vehicles do you have now?
2764

2765 Mr. Osby - Four. There is one in the garage, it is a show truck in the
2766 garage now.
2767

2768 Mr. McKinney - All right, any other questions? All right, sir. You can come
2769 down.
2770

2771 Mr. Matthew Burton - I am Matthew Burton. I live at 3100 Denver Street which is
2772 west, where the corner posts are of his house.
2773

2774 Mr. McKinney - All right, Mr. Burton.
2775

2776 Mr. Burton - I have no problems with him putting an addition on his
2777 house. He well maintains his property. He is a real good neighbor. He just maintains
2778 his property real well and I have no objections to it and the rest of those in the
2779 neighborhood have no objections to it.
2780

2781 Mr. Nunnally - OK. And what did you say your address was?
2782

2783 Mr. Burton - 3100 Denver, I live right on the corner on the west side of his
2784 house.

2785
2786 Mr. Wright - Is that right next to this house?

2787
2788 Mr. Burton - Yes, sir.

2789
2790 Mr. Wright - You would be west of it.

2791
2792 Mr. Burton - Yes, sir.

2793
2794 Mr. Balfour - You would be on the side where the construction is going?

2795
2796 Mr. Burton - Right.

2797
2798 Mr. McKinney - All right, any questions of Mr. Burton by Board members or
2799 staff? Thank you, Mr. Burton. That concludes the case. Mr. Osby, you can hang
2800 around or you can get your answer this afternoon.

2801
2802 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2803 Kirkland, the Board **granted** the case.

2804
2805 1. Only the additions shown on the plan filed with the case may be constructed
2806 pursuant to this approval. Any additional accessory structures shall comply with
2807 the applicable regulations of the County Code.

2808
2809 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

2810 Negative: 0

2811 Absent: 0

2812
A-90-99 Parmill, LLC request for a variance from Section 24-61(c) of Chapter
24 of the County Code to build a retail and office building across from a
Residential District at 8700 Staples Mill Road (Tax Parcel 61-A-43),
zoned B-2 (Conditional), Business District (Brookland). The setback is
not met. The applicant has 26.0 feet setback from a residential district
where the Code requires 50.0 feet setback from a residential district.
The applicant requests a variance of 24.0 feet setback from a
residential district.

2813
2814 Mr. McKinney - Is anyone going to speak in reference to A-90-99 other than
2815 the applicant or whoever is affiliated with the applicant? All right, if you would stand and
2816 be sworn in by Mr. Silber.

2817
2818 Mr. Silber - If you would all kindly raise your right hand and swear that
2819 the testimony you are about to give is the truth, the whole truth, and nothing but the
2820 truth, so help me God.

2821
2822 The People in Unison- I do.
2823
2824 Mr. McKinney - I need you over here, sir, before we get started. Would you
2825 identify yourself for the record.
2826
2827 Mr. Doug Tice - Yes, sir. My name is Doug Tice. I am here representing
2828 Parmill, LLC.
2829
2830 Mr. McKinney - All right, Mr. Tice. Have all the adjoining and adjacent
2831 property owners been notified of this request according to the County Code?
2832
2833 Mr. Tice - Yes, sir.
2834
2835 Mr. McKinney - Would you turn those notices in?
2836
2837 Mr. Silber - Thank you.
2838
2839 Mr. McKinney - Would you present your case.
2840
2841 Mr. Tice - We are asking for a reduction in building setback from 50
2842 feet to 26 feet for the construction of a combination retail/office building. As you can
2843 see from the drawing, this drawing depicts a 26 foot setback. The dark line shows a 50
2844 foot setback. It basically prevents us from developing the property. Actually, as was
2845 proffered in the zoning case for another portion of this property, which is a Rite Aide
2846 Drug Store. The 25 foot buffer was proffered and accepted by the County as a
2847 condition of zoning for this property, and I would add that a conceptual plan, which is
2848 referred to in the proffers shows this building that is in the same location that we are
2849 proposing here, and was approved and added to the zoning case. Apparently what
2850 happened was after the zoning was granted with these proffered conditions, it was
2851 noted at a later date that the 50 foot setback, the zoning code requires a 50 foot setback
2852 across from R-2 zoning when the road is less than 80 feet in width, and across Hooper
2853 Road we do have residential zoning. I would also add that the Land Use Plan shows for
2854 office use surrounding the entire property here, and that the area is somewhat in
2855 transition at this time. We have met with adjacent land owners. We sought approval or
2856 input from adjacent land owners in the zoning case, in which this design before you was
2857 approved. We had no objections, and had we known that the 50 foot setback was going
2858 to be an issue during the zoning case when this conceptual plan was approved, we
2859 might have been able to make some adjustments possibly moving the Rite Aide
2860 Building so that we could work within that 50 foot setback, but the Rite Aide Building is,
2861 of course, there, and so we are requesting a variance to stick with the 25 foot or 26 foot,
2862 in this case, setback, that we need in order to construct this building. I would also add
2863 that one of the conditions in the case offered by the Planning Department, I think it is
2864 the first condition, mentions accessory uses. I would like to ask for clarification of
2865 exactly what that would mean.
2866

2867 Mr. Wright- It says accessory structures.
2868
2869 Mr. Tice- Excuse me, accessory structures.
2870
2871 Mr. Silber - I think that the intent of that condition, Mr. Tice, is that what
2872 is being granted here is only the variance of 25 feet to allow the structure to be within 25
2873 feet of the right of way line, property line. All other code requirements must be met.
2874
2875 Mr. Tice - OK. The reason that I asked was, if the building were to
2876 have additional – say if an entrance were to be relocated and there was a need for a
2877 vestibule or something like that – if that might – I don't know if that would affect us or not
2878 with the accessory structures. So, that was the question in my mind and I have that
2879 information at this point, so...
2880
2881 Mr. Silber - I think what the Board is considering is a 25 foot variance, so
2882 the building, including the vestibule or any aspect of that building that projects out would
2883 have to meet that 25 foot setback. So, you may have to move or adjust the building
2884 slightly if you intend to have some projections that stick out on that side.
2885
2886 Mr. Tice - I would like to ask my engineer a question. We are prepared
2887 to proceed with those conditions. I'd also like to just show you one more exhibit, if I
2888 could. This is the conceptual plan which was approved in the zoning case. As a matter
2889 of fact, in the amended proffers for this rezoning, it says "that the property shall be
2890 developed in substantial conformance with the Rite Aide conceptual master plan dated
2891 October 7, 1996, by Architects Dayton and Thompson" and that is this exhibit that you
2892 see before you, which is the same one that was previously shown.
2893
2894 Mr. Silber - Can you tell me, Mr. Tice, roughly how far this building is
2895 from the property line?
2896
2897 Mr. Tice - The building shown right there is 25 feet from the right of
2898 way.
2899
2900 Mr. Silber - It looks like the parking is shown as 25 feet and the building
2901 is substantially beyond that.
2902
2903 Mr. Tice - The parking is 15 feet.
2904
2905 Mr. Silber - Fifteen. OK. I thought you said that there was a proffer that
2906 required a 25 foot landscape strip.
2907
2908 Mr. Tice - A natural and/or landscape buffer of a minimum of 25 feet in
2909 width will be provided adjacent to the southern right of way.
2910
2911 Mr. Silber - So that parking...
2912

2913 Mr. Tice - The northern right of way line of Hooper Road.
2914
2915 Mr. Silber - So the parking that you are showing there was in violation of
2916 your proffer that you said would be a 25 foot buffer?
2917
2918 Mr. Tice - Apparently so. The new drawing is different from that. We
2919 want to go back to the previous; you can see that that has been reduced to conform
2920 with the 25 foot buffer.
2921
2922 Mr. Silber - Right. Let me ask one other question. There is no way to
2923 reconfigure the building on this property to meet the 50 foot setback. You can have
2924 parking that comes within 25 feet of the right-of-way line, but just not the structure. So,
2925 you could have a driveway or parking that runs in a second 25 feet, but the building
2926 can't be there.
2927
2928 Mr. Tice - Mr. Silber, it is my understanding that it was the intent of the
2929 developer and the Planning Department to design the site in this manner to block the
2930 parking from the street, and it was felt that this was the most aesthetically pleasing
2931 design that we could come up with, and so that is why it is the way that it is. In
2932 response to your question, I think there would be some compromise to the development
2933 and also to the aesthetic quality of the project by moving the parking onto the street.
2934
2935 Mr. McKinney - Won't this be addressed at POD?
2936
2937 Mr. Silber - It would be addressed at POD, but the building would not be
2938 able to be placed as shown on here because the zoning requirements stipulate 50 foot
2939 setbacks.
2940
2941 Mr. McKinney - Are there any other questions of Mr. Tice? Any questions by
2942 Board members? Anyone else to speak in reference to A-90-99?
2943
2944 Mr. Charles Wingo - I am Charles Wingo. My wife and I own the property directly
2945 across the street from this proposed building. Directly behind Rite Aide, the property
2946 the adjoins the property in question here is owned by my mother-in-law, the Hayes
2947 family. I am speaking for my wife and I as far as the owners across the street and for
2948 my mother-in-law, Ms. Hayes. Neither one could be here today because of conflicting
2949 schedules. They were notified. Just to say that they have no objection to the variance
2950 that is being requested. Actually, the property, the house that we own across the street
2951 is set back off of the road about 45 feet from Hooper Road already. It sits down in a
2952 bottom and the property, which is rental property right now, and Mr. and Mrs. Hayes'
2953 property, the building that sets on that property is probably about 30 feet, that is a
2954 guesstimate, from where the parking area would be for this proposed project. I just
2955 wanted to say at least those two property owners, ourselves as well as the Hayes have
2956 no objection to this variance.
2957

2958 Mr. McKinney - All right. Any questions of Mr. Wingo by Board members?
2959 Thank you, sir. All right, anyone else to speak in reference to A-90-99? That concludes
2960 the case. Thank you for coming. You can get your answer this afternoon or you may
2961 wait around.

2962
2963 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.
2964 Wright, the Board **granted** the case.

2965
2966 1. This approval is only in regard to the front yard location of the proposed parking lot
2967 and neither negates nor substitutes for other technical standards and regulations
2968 that apply to construction of the parking lots.

2969
2970 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

2971 Negative: 0

2972 Absent: 0

2973

A-92-99 County of Henrico request for a variance from Section 24-96(c) of Chapter 24 of the County Code to build a public library at 8508 Franconia Road (Tax Parcel 53-A-80L), zoned R-2, One-Family Residence District (Fairfield). The front yard parking requirements are not met. The applicant has front yard parking where the Code permits rear yard parking. The applicant requests a variance for front yard parking.

2974
2975 Mr. McKinney - All right. Is there anyone to speak in reference to A-92-99?
2976 All right, we have, if you think you might speak, stand and be sworn in by Mr. Silber.

2977
2978 Mr. Silber - If you would all raise your right hand and swear that the
2979 testimony you are about to give is the truth, the whole truth, and nothing but the truth, so
2980 help me God.

2981
2982 The People in Unison - I do.

2983
2984 Mr. McKinney - Please identify yourself for the record, sir.

2985
2986 Mr. Don E. Meeker - My name is Don E. Meeker.

2987
2988 Mr. McKinney - All right, Mr. Meeker. Have all adjoining and adjacent
2989 property owners been notified of this request according to the County Code? Have they
2990 been turned in?

2991
2992 Mr. Meeker - Yes, sir.

2993
2994 Mr. Silber - Yes, sir. We have those.

2995
2996 Mr. McKinney - All right, Mr. Meeker, if you would present your case.

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Mr. Meeker - Mr. Chairman and members of the Board of Zoning Appeals, good morning. The County plans to construct a 15,000 square foot North Park Branch Library on six acres of property located in the southwest quadrant of the intersection of Parham and Franconia Roads in the Fairfield District. This is our construction site, Parham Road, Franconia Road, and over here is Park Central. The Planning Commission and the Board of Supervisors have determined that the construction is Substantially in Accord with the Comprehensive Plan. The property is zoned R-2, One-Family Residence District. R-2 zoning requires rear yard parking. I appear before you this morning to request a variance to allow front-yard parking. The entrance to the library will be from Franconia Road. We have selected Franconia rather than Parham for several reasons: Safety of walking, bicycle, wheelchair patients from the surrounding community, reduced traffic at the entrance, better buffering of the Parham Road noise, and better identity of the library with the surrounding residential community. This is a picture of the property taken from the intersection of Parham and Franconia Roads. You will note the number of mature trees on the property, which will assist in buffering the residential neighbors and Parham Road. This is a picture of the property across Franconia Road from the library site. As you can see, this property is undeveloped and heavily wooded. I've met with Mr. Ball and he expressed no concerns with our request for this variance. This sketch shows how we envision the property might be developed if parking were placed in the rear. We feel this orientation will be somewhat confusing and undesirable to the patrons. Patrons identify the front of the library or a public building and expect to enter at that location, and have the convenience of parking near the entrance. If parking is in the rear, we feel two entries will be necessary. The front entry will be for identity, walk-in patrons, patrons coming to the library with wheel chairs, and drop-off patrons. A second entry in the rear will present a number of problems. First, the building will have to be increased in size to accommodate the second entrance. This will increase construction and maintenance costs without adding any additional service to patrons. Second, building security will become a more significant problem. With two entrances at opposite ends of the building, it will be difficult for staff to constantly monitor the entries. This limitation will create a blind spot, which will necessitate security monitors and/or additional staff to periodically check the areas. This may create a perception by the public that the library is unsafe and may result in reduced usage. Third, the staff will have to be increased, adding to the long-term operating costs; again, without providing additional service to the patron. This will be necessary for the duplication of services for library activities, such as the return and check-out of materials, the collection of fines and fees, and other patron-related services. Presently, at similar sized libraries, these types of transactions are conducted at one service location. This arrangement permits staff to handle multiple job-related activities in an efficient and effective manner, while meeting the high level of customer service that patrons come to expect. Fourth, placing asphalt around the building in this manner will tend to distract from the building and present a more commercial appearance. Asphalt in the rear and on the north side, even with landscaping, will not provide patrons with a pleasant view from the windows on these sides of the building. Lastly, the County may need to expand the library in the future by as much as 10,000 square feet. Parking in the rear yard will make this rather difficult.

3043 We could construct the building, as shown here, expand to the front. Now, envision if
3044 you will when you make this expansion, you are going to have heavy equipment, you
3045 have got to have lay down areas and so on, so you are going to have difficulty keeping
3046 these two roads open for public access. This will also be more expensive. The other
3047 desire would be to keep the library open. This may not be possible. This shows the
3048 tentative floor plan of the library with one entry to the front. Envision if you will the
3049 second entry to the rear. As I mentioned previously, the second entry will require
3050 duplication of services, this being in the circulation desk and the return book areas.
3051 Now, imagine if you will, if we duplicated this to the rear of the building. This means that
3052 turn-ins being placed, coming in this location, will have to be moved through the library
3053 proper back into the work room. It could be said, "Well, we'll just have to come in and
3054 so we can get it into the work room from here." It would take up an awful lot of
3055 administrative space to do this for both entries.

3056
3057 Now, note the layout of the building. Here we've got the work room. Here we've got the
3058 staff area, we've got the mechanical room, and we have the loading dock. It is all on
3059 the left side of the building. The remainder of the building would be dedicated to patron
3060 services.

3061
3062 As you will see on the next sketch, we will be able to provide the patrons a pleasing
3063 view from the windows. Windows will be on – for patrons will be on the north side and
3064 on the back side. Expansion of the facility is also currently envisioned from this point
3065 right here along the north side of the building and along the back side of the building.
3066 As you can envision here, this is going to have much less impact on the operation and
3067 function of the library. Under this condition, we feel we could keep it in operation
3068 without too much difficulty during construction.. This is a sketch of the site for parking in
3069 the front. Note the reduced impact of future expansion. This would be your future
3070 expansion right here. Also, note the increased ability for landscaping area. This would
3071 be the landscaping on the initial building when we first construct it. You notice that
3072 there will be no problem and also along the expansion area there would be no problem.
3073 You could landscape it well and present a very pleasing view from those windows to
3074 patrons of the library. We feel orientation with parking in the front will best utilize the
3075 site, provide patron identity and convenience, allow a more pleasing appearance from
3076 the inside and outside of the structure, and better allow for future expansion. This is an
3077 artist's sketch of how the front entry might look. It has not been approved. We are still
3078 in the schematic design phase, so this is just a concept at this point. In summary, rear
3079 yard parking will create a number of hardships. Two entries will increase the initial size
3080 and cost, it will require additional staff, building security will be more of a problem,
3081 expansion construction will be more difficult with additional cost, and it will be more
3082 difficult to keep the library in operation during the expansion. We sincerely believe it is
3083 in the best interests of the community and the patrons who will use the North Park
3084 Branch Library to place parking in the front yard. We request your favorable
3085 consideration of this request for variance. Would there be any questions?

3086
3087 Mr. McKinney - Mr. Meeker, how did this get moved up across to North
3088 Park?

3089 Mr. Meeker - I'm sorry, I don't understand your question.
3090
3091 Mr. McKinney - It started out it was going to be in a shopping center, then it
3092 went across Parham Road to be on those two acres there. Then it got moved down on
3093 this piece of property.
3094
3095 Mr. Meeker - The property across the road was not going to be sufficient
3096 for the library.
3097
3098 Mr. McKinney - How much land have you got in this piece of property?
3099
3100 Mr. Meeker - Six acres.
3101
3102 Mr. McKinney - Six acres in this one?
3103
3104 Mr. Meeker - Yes, sir.
3105
3106 Mr. McKinney - What do you anticipate traffic-wise? Has traffic done a study
3107 on this?
3108
3109 Mr. Meeker - We have not gone for the POD. We have been in contact
3110 with Public Works.
3111
3112 Mr. McKinney - You're the expert and you work with these a whole lot. You
3113 say the first phase is 15,000 square feet?
3114
3115 Mr. Meeker - Yes, sir.
3116
3117 Mr. McKinney - How many trips per day do you anticipate?
3118
3119 Mr. Meeker - I don't know the trips per day, but I can take Glen Allen as an
3120 example. There was no significant increase in the Glen Allen area as a result of the
3121 construction of the library. It is virtually the same size.
3122
3123 Mr. McKinney - Are you talking about the 10,000 square foot addition 10 to
3124 20 years down the road, or something?
3125
3126 Mr. Meeker - We were trying to make allowances for that when we design
3127 these libraries. We are doing it in the roof plan and the building layout, so that it can be
3128 economically expanded.
3129
3130 Mr. McKinney - The reason I asked is that this out of the Wildwood,
3131 Chamberlayne Farms Subdivision, in which you have four hundred and some houses,
3132 across the street you have Park Central. You've got a curb cut there. You've got three
3133 entrances. You've got Franconia, you've got Freedomia, and you've got St. Charles that

3134 goes in like, you are going south, or east, to the south, into the subdivision. Is there a
3135 proposed traffic signal there? At this library?

3136
3137 Mr. Meeker - At this point, at this library, no, sir.

3138
3139 Mr. McKinney - Because you know, in the mornings and the evenings, it is
3140 hard to get out, and if you've got a library there, not so much in the morning, but in the
3141 evenings...

3142
3143 Mr. Meeker - It would be some additional traffic, I am sure. I can't give
3144 you a count.

3145
3146 Mr. McKinney - I don't think it would be enough to significantly
3147 influence the area. That is one reason why we wanted this piece of property, because
3148 we feel eventually that intersection with Park Central there will have a traffic light.

3149
3150 Mr. Silber - Mr. McKinney, maybe to elaborate, we believe that when
3151 Park Central continues to develop out, that the warrants will be there to provide a signal
3152 at this location. The Board of Supervisors had to consider this site relative to whether it
3153 was Substantially in Accord with the County's Land Use Plan. Those hearings were
3154 held and surrounding property owners, I don't think that there was anybody that came
3155 out and spoke against this.

3156
3157 Mr. McKinney - All right, any other questions of Mr. Meeker?

3158
3159 Mr. Balfour - Is the tax payer cost different, higher or lower, by moving
3160 your parking lot to the front, not assuming that you've got to put in all of these extra
3161 doors, and I am not sure that I buy that, because the Tuckahoe Library doesn't have two
3162 entrances, and they've got a backyard parking lot. Aside from that, assuming that you
3163 are not, I don't necessarily agree with your premises, that you've got to do all of these
3164 extra things for security and double entrances. Take that out of the equation. Is your
3165 parking lot going to cost more or less if it is moved to the front?

3166
3167 Mr. Meeker - The parking lot in the front would be less expensive than if it
3168 is going to be in the back, because you've got more asphalt that is going to have to go
3169 in to get the patron to the rear.

3170
3171 Mr. Balfour - I don't know about that. You're going out Franconia, aren't
3172 you?

3173
3174 Mr. McKinney- Can you go back to the floor plan?

3175
3176 Mr. Meeker - Let's see, that is not my plan on there now.

3177
3178 Mr. McKinney - You're getting there; keep going. There you go. All right, this
3179 one you were speaking of book returns and so forth.

3180
3181 Mr. Meeker - Yes, sir. We feel like if we put the entry, we feel like we are
3182 going to have to have two entries, one to identify the building, and, of course, one,
3183 you're going to have a number of walk-in patrons from the residential communities.
3184
3185 Mr. McKinney - Why can't this whole floor plan be reversed with one
3186 entrance at the rear of the building?
3187
3188 Mr. Meeker - It could sir, we can reverse it. That puts this up here. We
3189 would still have books returned at the front entrance, so you're going to have to
3190 transport them to the rear.
3191
3192 Mr. Balfour - How about like they do at Tuckahoe Library? Have you guys
3193 gotten smarter since you built Tuckahoe Library?
3194
3195 Mr. Meeker - Yes, sir, I've used the Tuckahoe Library. I believe at one
3196 point that it had two entrances.
3197
3198 Mr. McKinney - I was just asking the question that the whole floor plan be
3199 reversed.
3200
3201 Mr. Wright - If you did that, however, it would be a lot longer walk for
3202 walk-in people to go around the back to get in.
3203
3204 Mr. McKinney - But they would come right in where they returned the books
3205 in and...
3206
3207 Mr. Wright But if you put it all to the back, you would not have a front
3208 entrance.
3209
3210 Mr. McKinney - Well, you'd have an entrance.
3211
3212 Mr. Wright - But you'd only have one entrance. That is what they were
3213 looking for.
3214
3215 Mr. McKinney - I mean, if they come in that front entrance right now, they are
3216 going all of the way to the back. They are going to set down and read or if they are
3217 looking for books, or whatever.
3218
3219 Mr. Wright - Are you saying that they should duplicate what is on the front
3220 at the back? That is what he just said.
3221
3222 Mr. McKinney - Just take your whole floor plan and just flip it.
3223
3224 Mr. Wright - That would mean that there would not be any front entrance.
3225

3226 Mr. McKinney - It would be the entrance from the rear. Parham Road would
3227 be the side entrance, so you'd come in off of Franconia anyway. You are not entering it
3228 off of Parham Road.

3229
3230 Mr. Meeker - Sir, you could move it to the rear, but we still feel like a
3231 patron is going to identify with the front of the building, and in this case, the way that it
3232 is, we need an entry here. It would be for walk-ins. I don't know how many wheelchair
3233 patrons we will have. We have a number at the existing library, but, of course, we have
3234 the nursing home across the road, so they wouldn't come in this front entrance.

3235
3236 Mr. McKinney - You have the nursing home across what road?

3237
3238 Mr. Meeker - At the existing North Park Library, it is across Brook Road,
3239 there is a nursing home.

3240
3241 Mr. McKinney - Oh, the existing North Park? Yes, but that is the temporary
3242 library.

3243
3244 Mr. Meeker - Yes, it is, but I am saying that there is a possibility we may
3245 have some wheelchair patients traversing from the residential area. I don't know. We
3246 were building so that we could accommodate those types of patrons.

3247
3248 Mr. McKinney - This is a long way from...

3249
3250 Mr. Meeker - I am talking about people that live in the area and may be
3251 wheelchair bound, and have these motorized wheelchairs. They may use them.

3252
3253 Mr. Silber - I don't think Mr. McKinney is aware, Mr. Meeker, that there is
3254 an assisted living facility that has been approved immediately on the side of Franconia.
3255 They would just be walking across the street.

3256
3257 Mr. McKinney - OK. All right, any other questions? All right, thank you.
3258 Yes, ma'am. Did you want to speak in reference to A-92-99? That concludes the case.
3259 Thank you.

3260
3261 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
3262 Nunnally, the Board **granted** the case.

3263
3264 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright5

3265 Negative: 0

3266 Absent: 0

3267
3268 1. This approval is only in regard to the front yard location of the proposed parking lot
3269 and neither negates nor substitutes for other technical standards and regulations
3270 that apply to construction of the parking lots.

3271

UP-26-99

Tarmac America, Inc. request for conditional use permit under Sections 24-52(d) and 24-103 of Chapter 24 of the County Code to amend conditions of UP-22-97 (Tax Parcel 213-A-2), zoned A-1, Agricultural District and M-2, Industrial District, (Varina).

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Mr. Balfour- I am excusing myself from this case.

Mr. McKinney - Anyone to speak in reference to UP-26-99? Anyone other than the applicant think that they may speak, stand and be sworn in, please. Mr. Silber.

Mr. Silber - Would you please all raise your right hand and swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help me God.

The People in Unison - I do.

Mr. McKinney - Would you state your name for the record, sir?

Mr. Greg Koontz - My name is Greg Koontz, Koontz-Bryant, and I represent Tarmac America, Inc.

Mr. McKinney - All right, Mr. Koontz. Have all adjoining and adjacent property owners been notified of this request according to the County Code?

Mr. Koontz - Yes, sir.

Mr. McKinney - Would you turn them in to Mr. Silber?

Mr. Silber - Thank you.

Mr. McKinney - All right, if you would present your case, sir.

Mr. Koontz - Chairman and members of the Board, Tarmac is requesting to amend one of the conditions on our current conditional use permit. The condition they are trying to amend is to allow Osborne Turnpike as an additional means of ingress and egress to the site. Currently the existing condition limits their ingress and egress to the site via the James River, basically, from internal roads to the James River. Our request is being made at this time to allow for the importation of off-site material required for the restoration of the areas shown in green on the screen. Basically, there is a large area up there. There is a shortage of top soil in this area and with the current construction of I-895, there appears to be a chance where everybody can receive some benefit from this request. So, basically, the importation of the off-site material will allow an accelerated restoration of this area of Chatsworth that Tarmac was currently working on an erosion control plan and restoration plan with Henrico County prior to finding out how we could work this with the I-895 construction. Basically, there is a shortage of

3313 natural topsoil in this area and there is a five inch requirement based on the mining
3314 requirements for restoration of a mining site, and the material that would be brought in
3315 here would be high in organics which would allow the growth of grass and other
3316 vegetation over this restoration area, which would help meet those requirements. An
3317 added benefit is the haul distance from I-895 is just right down the road, there is about
3318 half the distance to any other haul site that they have at this time, which would allow a
3319 much shorter period for trucks to be on the road and decrease truck traffic on some of
3320 the surrounding roads. The owner contacted the Planning Office to determine if we
3321 needed to amend this condition, since the existing conditions stated that top soil will be
3322 required. They will require five inches based off the mining hand book and that was
3323 already in there, and it said in that condition that may have to bring in additional top soil
3324 to achieve that. There was also an additional condition which allowed imported material
3325 to be brought onto the site based off of an approved plan that was submitted to
3326 Planning. We have prepared a plan and reviewed it with the Director of Public Works,
3327 Planning and the environmental group of the Public Works Department and everybody
3328 seems to be in support of our plan. The reason we are here today is the County
3329 Attorney determined that the correct procedure would be for us to amend the
3330 requirement that Tarmac had on their site limiting the ingress and ingress to the James
3331 River, even though the other conditions did allow for some material to be imported to
3332 the site. It is my understanding that this condition that was one of the existing
3333 conditions that limited the ingress/egress to the James River was a self-imposed
3334 condition by Tarmac and was not a County or State requirement. If you have any other
3335 questions, I will be more than happy to answer them.

3336
3337 Mr. McKinney - All right, any questions of Mr. Koontz by Board members?
3338 Does staff have any comments?

3339
3340 Mr. Wright - He says Condition No. 6. Condition 6 says "trucks shall be
3341 loaded and

3342
3343 Mr. Silber - Well, that is on the old one.

3344
3345 Mr. McKinney - What, are we going to remove that one?

3346
3347 Mr. Silber - Yes, sir. Remove that.

3348
3349 Mr. McKinney - We have removed it. How come we don't have the old one?

3350
3351 Mr. Koontz - There are a bunch of additional conditions, I think, which I
3352 think were added, which I think are typical conditions that the County would require for
3353 having truck traffic, leaving a site like this, basically.

3354
3355 Mr. Silber - Basically, conditions Nos. 6, 7, 8, 9 and 10 are new ones
3356 that deal with the new access situation.

3357
3358 Mr. Wright - Oh, this is not amending No. 6. This is a new No. 6?

3359 Mr. Silber - This is a new No. 6. In the staff report, you can see how...
3360
3361 Mr. Wright - I thought you were amending one and you are changing
3362 them all around.
3363
3364 Mr. Silber - Well, it is confusing. I think really, No. 7 is the new 6.
3365
3366 Mr. Koontz - No. 7 is the only one that we requested. The other
3367 additional ones are ones that the County would like to add.
3368
3369 Mr. Wright - I'm glad we got that straight.
3370
3371 Mr. McKinney- Any other questions of Mr. Koontz by Board members?
3372
3373 Mr. Wright - Also, you are asking for a change of time, too, aren't you?
3374
3375 Mr. Koontz - No, sir. We withdrew that request.
3376
3377 Mr. Wright - Oh, No. 2 is withdrawn, the amendment to No. 2?
3378
3379 Mr. Koontz - Yes, sir.
3380
3381 Mr. Wright- I didn't know that.
3382
3383 Mr. McKinney - Are there any other questions? Any other questions, Mr.
3384 Wright?
3385
3386 Mr. Wright - No, I am straight.
3387
3388 Mr. McKinney - All right. Who else wanted to speak? Is anybody going to
3389 speak in opposition? No opposition to UP-26-99? OK. That concludes the case.
3390 Thank you. You will get your answer in just a minute.
3391
3392 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
3393 Wright, the Board **granted** the case.
3394
3395 Reason: The Board **granted** this request to amend the existing conditions of the
3396 use permit as it found from the evidence presented that authorizing this change will not
3397 be of substantial detriment to adjacent property.
3398
3399 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the
3400 County Code.
3401 2. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. from December 1 to March
3402 31, and from 6:00 a.m. to 6:00 p.m. from April 1 to November 30, EST or EDT,
3403 whichever is in effect in the County of Henrico.

- 3404 3. No operations of any kind are to be conducted at the site on Saturdays, Sundays, nor
3405 on national holidays.
- 3406 4. All roads used in connection with this use permit shall be effectively treated by
3407 sprinkling or otherwise treated with water, calcium chloride, or other wetting agents to
3408 eliminate any dust nuisance.
- 3409 5. Open and vertical excavations having a depth of 10 feet or more, for a period of more
3410 than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the
3411 public safety.
- 3412 6. Trucks shall be loaded in a way to prevent overloading or spilling of materials of any
3413 kind on any public road.
- 3414 7. All means of access to the property shall be from the established entrance onto
3415 **Osborne Turnpike** and over the applicant's roads and rights of way to the loading
3416 area at the **James River** as outlined on the map filed with the application..
- 3417 8. The operation shall be so scheduled that trucks will travel at regular intervals and not
3418 in groups of three or more.
- 3419 9. A standard stop sign (R-1-B) shall be installed and maintained at the **Osborne**
3420 **Turnpike** entrance.
- 3421 10. Standard "Truck Entering Highway" signs shall be erected on **Osborne Turnpike** on
3422 each side of the entrances to the property. These signs will be placed by the County,
3423 at the applicant's expense.
- 3424 11. A superintendent who shall be personally familiar with all the terms and conditions of
3425 Section 24-103 of Chapter 24 of the County Code as well as the terms and conditions
3426 of **UP-26-99**, shall be present at the beginning and conclusion of operations each
3427 work day to see that all the conditions of said Code and said Use Permit are carefully
3428 observed.
- 3429 12. Topsoil shall not be removed from any part of the property outside of the area in
3430 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
3431 respreading in a layer with five (5) inches of minimum depth. If the site does not
3432 yield sufficient topsoil, additional topsoil shall be brought to the site to provide the
3433 required five-inch layer of cover. All topsoil shall be treated with a mixture of seed,
3434 fertilizer, and lime as recommended by the County of Henrico after soil tests have
3435 been provided to the County of Henrico. All topsoil shall be stockpiled within the
3436 authorized extraction area and provided with adequate erosion control protection.
- 3437 13. The rehabilitation of the property shall take place simultaneously with the extraction
3438 process. Rehabilitation shall not be considered completed until the extraction area is
3439 covered completely with permanent vegetation.
- 3440 14. Responsibility for maintaining the property, fences, and roads in a safe and secure
3441 condition indefinitely, or of converting the property to some other safe use, shall rest
3442 with the applicant.
- 3443 15. Entrance gates shall be erected and maintained at all entrances to the property.
3444 These gates shall be locked at all times, except when authorized representatives of
3445 the applicant are on the property.
- 3446 16. Erosion Control Plans shall be submitted to the Department of Public Works for
3447 review and approval within 30 days of the approval of the Use Permit. Throughout
3448 the life of this mining operation, the applicant shall continuously satisfy the
3449 Department of Public Works that erosion control procedures are properly handled

3450 and furnish plans and bonds that the department deems necessary. Applicant shall
3451 provide certification from a licensed professional engineer that dams, embankments
3452 and sediment control structure meet standard and approved design criteria as set
3453 forth by the State.

3454 17. The areas approved for extraction under this permit shall be delineated on the ground
3455 by the erection of five (5) foot high metal posts at least five (5) inches in diameter and
3456 painted in alternate one (1) foot stripes of red and white. These posts shall be so
3457 located as to clearly define the area in which the mining is permitted. They shall be
3458 located, and the location certified by a certified surveyor, within ninety (90) days of
3459 the date of approval of this use permit by the Board of Zoning Appeals, or this use
3460 permit shall become **void**.

3461 18. "No Trespassing" signs shall be posted and maintained on the property to warn
3462 against use of the property by unauthorized persons. The minimum letter height
3463 shall be three inches and signs are to be posted every 250 feet along the perimeter
3464 of the property. The applicant shall furnish the Chief of Police a letter authorizing
3465 enforcement by the County Police Officers of the "No Trespassing" regulations, and
3466 agreeing to send a representative to court for purposes of testimony whenever
3467 required or requested by the Division of Police.

3468 19. Excavation operations shall be discontinued on said site by **December 31, 1999**, and
3469 restoration accomplished by not later than **December 31, 2000** unless a new permit
3470 is applied for by not later than 60 days before the expiration of the permit, and is
3471 subsequently granted by the Board of Zoning Appeals.

3472 20 That a suitable completion bond with surety satisfactory to the County Attorney or
3473 certified check, be posted with the Secretary of the Board of Zoning Appeals for
3474 extracting materials from **79.8 acres**, in an amount of **\$1,000.00** per acre for each
3475 acre of land included under development, for a total of **\$79,800.00** guaranteeing that
3476 the land will be restored to a reasonably level and drainable condition with a
3477 minimum slope on the restored property being five to one or flatter. The completion
3478 bond may provide for the termination of the obligations of the surety on such bond by
3479 the surety giving a 90 day notice in writing to the principal and obligee of the bond, of
3480 its intention so to do. Such notice shall be served upon the principal and upon the
3481 obligee as provided by law for the service of notices. At the termination of the
3482 aforesaid 90 day notice to the principal, all authority of the principal under this use
3483 permit to extract materials, and work incident thereto, shall cease provided the
3484 applicant has not furnished another bond suitable to the County within said 90 days.
3485 The principal shall then proceed within the next ensuing 90 days following the
3486 termination of its authority under this use permit, to accomplish the complete
3487 restoration of the land as provided for under the terms of this permit. A notice of
3488 termination by such surety shall in no event relieve the surety from its obligation to
3489 indemnify the County of Henrico for a breach of the conditions of this use permit.

3490 21. The applicant shall furnish a certification from his bonding company each year,
3491 verifying that the bond is in effect, premiums have been paid, and the bonding
3492 company reaffirms its responsibility under the use permit conditions. This certification
3493 shall be submitted to the Board on **December 31st**, of each year.

- 3494 22. This permit does not become valid until the bond, required in condition **No. 20** has
- 3495 been posted with the County, and necessary approval received. This must be
- 3496 accomplished within **90 days** of the Board's action or the action becomes **invalid**.
- 3497 23. A progress report shall be submitted to the Board on **December 31st**. This progress
- 3498 report must contain information concerning how much property has been mined to
- 3499 date of the report, the amount of land left to be mined, and how much rehabilitation
- 3500 has been performed, and when and how the remaining amount of land will be
- 3501 rehabilitated, and any and all pertinent information about the operation that would be
- 3502 helpful to the Board.
- 3503 24. If, in the course of its preliminary investigation or operations, applicant discovers
- 3504 evidence of the existence of cultural or historical material or the presence on the
- 3505 site of significant habitat or an endangered species, it will notify appropriate
- 3506 professional or governmental authorities and provide them with an opportunity to
- 3507 investigate the site and applicant will report the results of such investigation to the
- 3508 Planning Office.
- 3509 25. The applicant shall comply with the Chesapeake Bay Preservation Act and all state
- 3510 and local regulations administered under such act applicable to the property and shall
- 3511 furnish to the Planning Office copies of all reports required by such act or regulations.
- 3512 26. In the event that an appeal of the Board's approval action is filed, all conditions
- 3513 requiring action on the part of the applicant within 90 days are considered satisfied if
- 3514 the required actions take place within 90 days of final action on the appeal process
- 3515 by the courts.
- 3516 27. The applicant must obtain a mine license from the Division of Mineral Mining,
- 3517 Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90
- 3518 days of the approval of this use permit or the use permit is void.
- 3519 28. No offsite-generated materials shall be deposited on the mining site unless the
- 3520 materials and the plans for their placement have been approved by the Planning
- 3521 Office.
- 3522 29. A sign shall be posted at the entrance to the mining site stating the name of the
- 3523 operator, the Henrico use permit number, the Division of Mineral Mining mine license
- 3524 number, and the phone number of the operator. The sign shall be 12 square feet in
- 3525 area and shall be properly maintained.
- 3526 30. All drainage and erosion and sediment control measures shall conform to the
- 3527 standards and specifications of the Mineral Mining Manual Drainage Handbook
- 3528 and/or the Erosion and Sedimentation controls as regulated by the Department of
- 3529 Public Works which ever is more stringent. Any drainage structures in place prior to
- 3530 October 14, 1992 and which does not conform to the Mineral Mining Manual
- 3531 Drainage Handbook said structures shall be brought into compliance with the
- 3532 appropriate regulations.
- 3533 31. The haul road shall be paved for a distance of 400 feet of **Osborne Turnpike** and the
- 3534 may remain in place until such time as any reconstruction is required at which time
- 3535 pavement shall be kept in good repair.

3537 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright5

3538 Negative: 0

3539 Absent: 0

3540
3541 On a motion by Mr. Wright, seconded by Mr. Balfour, the February 25, 1999 minutes
3542 were approved as corrected.

3543
3544 There being no further business and on a motion by Mr. Nunnally, seconded by Mr.
3545 Kirkland, the Board adjourned until July 22, 1999.

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Gene W. McKinney, C. P. C., C. B. Z. A.
Chairman

Randall R. Silber, Secretary