

MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT COMPLEX ON THURSDAY, MARCH 25, 1999 AT 9:00 A.M. NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES DISPATCH ON MARCH 4, 1999, AND MARCH 11, 1999.

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

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

Mr. McKinney- Good morning, ladies and gentlemen, and welcome to the March, 1999 meeting of the Board of Zoning Appeals. We are glad to have you.

At this time, I will ask Mr. Silber, Secretary of the Board of Zoning Appeals to tell you how the BZA meeting is conducted.

Mr. Silber- Ladies and gentlemen, the BZA does have a set of rules they would like to have followed in conducting business today. They are as follows:

The Secretary, and myself, will call the case; the applicant will come forward to present its case. All of those speaking in favor of or in opposition on the request will be sworn in at that time. The applicant will present the notices to me that adjacent property owners have been notified. The applicant will be given an opportunity to present its testimony.

Anyone in opposition at that point will be given an opportunity to speak. The applicant is then given an opportunity to rebut any of the testimony given and only the applicant will be able to rebut. After all questioning is finished; the Board will take the information under advisement. They will render a decision at the end of the meeting. Anyone who wishes to stay until the end of the meeting to find a decision may do so, or if they wish they may call the Planning Office at the end of the day to find out whatever the decision is if you prefer not to stay until the end of the meeting.

Again, at the back of the room are conditions with each case that are recommended with each of the requests for variances and use permits.

Mr. McKinney- Thank you, Mr. Silber. Are there any calls for deferrals or withdrawals on the nine o'clock agenda?

Mr. Silber- Yes, we do have one request for a withdrawal. That is UP-9-99, Faith Community Baptist has indicated they would like to withdraw that case. There is

also a request under the 9 o'clock portion for deferral of UP-11-99. This is Boone, Boone, Loeb and Pettit to request a temporary use permit. In this case, the applicant has indicated that they have not provided notices, so that would need to be deferred.

A-20-99

Jeffrey D. and S.L. Staton request for a variance from Section 24-95(q)(5) of Chapter 24 of the County Code to build a room addition at 9013 Runyon Dr (Dunncroft)(Tax Parcel 39-2-E-35), zoned R-3 CD, One Family Residence District (Controlled Density)(Brookland). The minimum side yard setback is not met. The applicant has 5.0 feet minimum side yard setback where the code requires 8.0 feet minimum side yard setback. The applicant is requesting a variance of 3.0 feet minimum side yard setback.

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

Mr. Staton - Yes, sir. I'm Jeffrey D. Staton. We are asking for a three-foot variance on the minimum side yard setback. We are asking for this variance so that the addition that we plan on building will stay consistent with the floor plan. We are planning a two-story addition, which would include a bedroom upstairs and a playroom downstairs. Room sizes 16 feet by 18 feet. We are asking for the much-needed space because we have four children.

I have a contractor, Dan York, General Contracting, and architect drawings are done by Mr. Wayne Moffitt and Associates.

Mr. McKinney- Any questions of Mr. Staton by Board members?

Mr. Wright- Mr. Staton, it appears that your house is sort of askew on your lot. Is that correct?

Mr. Staton- Yes, sir, that's correct.

Mr. Wright- It causes this to project somewhat in the side yard, but only one corner of this addition looks like it is affected.

Mr. Staton- Yes, sir, the corner of the addition would be the point that would project into the side yard setback.

Mr. McKinney- Any other questions? Anyone else who wishes to speak in reference to A-20-99? That concludes the case.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright, the Board granted a variance of 3.0 feet minimum side yard setback.

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

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

1. This approval is only for the addition that is the subject of this case. Future improvements on the site shall comply with all the applicable regulations of the County Code.

UP-8-99 **Holland Aggregates, L.L.C.** request for a conditional use permit pursuant to Sections 24-52(d) and 103 of Chapter 24 of the County Code to extract materials from the earth at 3801 Darbytown Rd (Tax Parcel 239-A-1) zoned A-1, Agricultural District (Varina).

Mr. Silber- Mr. Chairman, before we get on with this case I would like to point out that the Board has been provided an amendment to condition #21, and additional condition, #33, that hopefully were provided for you this morning.

Mr. McKinney- Anyone to speak in reference to UP-8-99? Anyone other than the applicant to speak in reference to UP-8-99? Would anyone who is going to speak on this case stand and be sworn in by Mr. Silber. Please stand now. We will save a lot of time.

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

Ms. Freye- Yes, sir. Good morning, Mr. Chairman. My name is Gloria Freye. I am an attorney here on behalf of the applicant, Holland Aggregates, LLC. Also, here today with me is Russell Holland, who is the President of Holland Aggregates and Dan Sloan, my partner, and also Dr. Robert Luce, who is with the Hydrodynamics Group. I would like to begin with just getting oriented with the location of this property. The map that is on your screen right now I would like to replace with one that we have done that would give you a better picture of the outline of the property.

What this map shows you is this outline; here is the property line of the Holland Property. This is about 225 acres of land. This road here is an access easement that goes out to Route 5. This is Route 5 down here. This is an access road up here that goes out toward the service road along 295 and then further out north to Darbytown Road.

The internal line that you see here are the buffers. This area along here, around this way, this way, and over to the side is a 100 foot setback from the property line. This area up here has a 200 foot setback from Deerlick Creek.

The Hollands bought this property about 40 years ago for several reasons. They bought it for the sand and gravel deposits that were on the property. Another reason is for its timber and a third possibility was for a homesite. They never did build a homesite there but they have timbered this property, and now they are asking for a use permit to extract the sand and gravel from 114 acres of the property in two phases.

The first phase is shown on this map in this area, Phase I, and that is below the pipeline easement and that area is about 90 acres. The Phase II area, this triangle here, north of the pipeline is about 24 acres. That acreage does exclude the wetlands that are on this property.

Another map that I think might be helpful to understand the operation of extracting the sand and gravel is this map. What this map shows you is just a section across the Holland Property. This line at the top is the ground surface. This area in here is the overburden, the soil beneath the surface.

The next level that you see is the area where you find the deposits of the sand and gravel in here. This area is called marl. It is actually blue clay that is a very low permeability barrier that separates this part of the property from the aquifer below.

The proposal is to move the overburden, the surface soil, and to stockpile that in the mining areas. They will then extract the sand and gravel using a hydraulic excavator and simply haul it away using the road out to Darbytown Road. They will not use the access to Route 5. That is one of the conditions that staff has suggested. It is acceptable to the applicant. It was one of the major concerns that the neighbors raised when we had a meeting with them and in subsequent conversations with them as well.

The sand and gravel will not be stockpiled. It will be excavated and hauled away. It will not be processed on this site. There will be no maintenance facilities required. There will be no waste products generated on this property. There won't be any waste disposed of on this property. They are simply going to extract the sand and gravel and haul it away out the Darbytown entrance.

The depth of the mining is going to vary from seven feet to 30 feet in these areas. All of the cuts and fills will be graded to a slope no greater than five to one, and that is also a condition that staff has suggested.

After the area is mined the overburden from previously worked areas will be moved in and then graded to a maximum slope of five to one again. So they will be reclaiming it as they mine sections.

Once the mining is completed all debris that is generated will be removed from the property. The property will be revegetated and returned to forestry and agricultural uses. We have met with the adjacent landowners and other neighbors in the area. In addition to

sending them information and talking by phone. We have individual meetings with some of the neighbors; particularly the closest ones.

As I said the main concerns that were expressed to us were the access road, which we have resolved by agreeing to the condition to use Darbytown, but the other question that they had is the impact on residential wells, and the impact on Diamond and Camp Holly Springs.

To address the possible impact on the residential wells and the springs was more involved than solving the access question. For that, Mr. Holland engaged the services of the Hydrodynamics Group. This is a team of hydrogeologists, geologists and engineers who are recognized as some of the Country's leading experts in solving water problems. The two principals who worked on our question were Dr. John D. Bredehoeft and Dr. Robert W. Luce.

I just want to give you a brief over view of their credentials. Dr. Bredehoeft started working in the field of ground water in the 1950's. He has worked at the U. S. Geological Survey for 32 years. At USGS he engaged in both research and high level management. He has authored over 100 research papers.

In the 1970's Dr. Bredehoeft managed the entire research program for USGS. In the early 1980's he was West Coast regional manager for the USGS, which applied to the eight western states.

In 1995, Dr. Bredehoeft left the USGS to start the Hydrodynamics Group as a consultant and has consulted on a number of the nations nuclear waste facilities.

Dr. Robert Luce has over 28 years of broad experience in geochemistry, geology, and project management with an emphasis on hydrogeology and hydrochemistry.

Mr. McKinney- Ms. Freye, are you doing this for our benefit or for the audience?

Ms. Freye- Yes, sir, both.

Mr. McKinney- We have all of this information.

Ms. Freye- Yes, sir. I would like for the audience to have that as well.

In his 14 years at the U. S. Geological Survey, he became proficient in geological mapping and geochemical sampling in a variety of terrains in both the United States and abroad. He has had project management responsibility for a variety of hazardous waste site investigations and remediation.

There is more detailed information about both of these experts that is included in the report that has been submitted for the record. I won't go into further detail on that, but I think it suffices to say that we are extremely happy and fortunate that we were able to get

the services of such experts of this calibre to help us look at the ground water questions here.

That moves me to the report that has been submitted by the Hydrodynamics group, and I am not going to go over a page of that because you do have that, but I do want to give you a brief overview.

The questions that were asked Dr. Luce and Dr. Bredehoeft was whether sand and gravel being extracted from the Holland property would have an impact on nearby residential wells or the Diamond and Camp Holly Springs either in quality or quantity, and, if so, how. Those were the questions that were presented to them.

To answer those questions, they first researched all available information that they could get their hands on regarding the local geology and the hydrogeology. They obtained reports and studies on the area; they interviewed geologists and engineers who had researched maps and written reports on the topography, geology, and the hydrogeology of this property and surrounding area.

All of that is also detailed in your report. They used the data that had been collected from the 48 borings and six observation wells, which they installed and obtained factual data from in order to describe the particular features of the Holland property.

Dr. Bredehoeft determined that the best way to answer this question and to quantitatively estimate the effects of the mining was to run a ground water flow model on a computer. With the factual information that he had, he made certain assumptions that are also listed in the report. He constructed a model grid and assigned hydrological parameters for the rainfall and the discharge. He ran the model and generated a map showing a ground water divide. That divide is just about in the same location as the one that Henrico County mapped for the protection for the springs. That map is the very last sheet on the final report "Henrico County Well Head Protection Pilot Project" of which I have copies of to give you.

What we are showing on the screen now is the very last page of that report. That is the map that the County prepared as the protection area for the Diamond and Camp Holly Springs. You can see the arrows point to the area where the divide is.

Now the map that the model - after running this model program in a computer, the Hydrodynamics Group came up with another map that shows that the divide is basically where the County says it is. I have copies of that to pass to you and put on the screen as well.

From this map, if you can compare the two, you see that this divide runs along in this area. There is also another divide that runs this way. The point of this map is that the divide is a highpoint, so that if water falls here it is going to flow in this direction or in this direction, or from here in this direction, or in that direction. (Using pointer on map on screen).

So you can see that the map that was prepared by the County, agrees with the model where vise-versa that was prepared by the County for the protection area for Diamond and Camp Holly Springs. You can see that the Holland property is over here, outside that protection area and then the mining areas, which were here and in here are well outside the protection area.

One of the things that Dr. Bredehoeft found when he ran the model was that there would be no effect on the ground water levels on the Phase II mining area. That's right here. However, he did find that the Phase I mining area, this area here, could have effects on the level of the ground water in the area. So, Dr. Bredehoeft reran the model, but this time included a low permeability cutoff wall.

A cutoff wall is constructed by digging; in this case what we are proposing is a five-foot wide trench. This schematic gives you some idea about how this would function. You dig a five-foot wide trench and backfill it with silty clay and compact it.

You construct that above the marl and a certain height above the annual high water table. In effect, what you have done with the marl, which is the low permeability sticky clay layer down here; it extends that sticky clay layer in a stem upward creating a barrier for the ground water.

If we could put back the map showing the area...the phase map...the very original...yes, that one. So, the proposal is to build this cutoff wall in this area here; start here and come around like this. About 1,000 feet here wrapping around this part of the mining area, and then extending about 1,500 feet south, southeast.

When he ran the model using that provision the results were that the elevation of the water table was relatively unchanged from before and after the mining. Dr. Bredehoeft then computed the draw down impact on wells and the springs. How much might the water table change?

There are two areas where he found that there could be a one-foot draw down that could occur. In the area north east of the Phase I mining. It is only the Phase I mining that will have an impact. The northeast would be in this area up here. The other area was in the southwest down here. This is Mr. Matthews's property.

The consequence of that was that a shallow well within 1,600 feet of the southwestern boundary of the Phase I mining area might have a one-foot decrease of water table elevation. That would be in this area down here on Mr. Matthews's property. And, similarly, a possible one-foot decrease on water table in this area up close to the Kelly property up here.

In talking with Mr. Matthews, he could not be here today. He is recovering from surgery on both his knees, but he has submitted a letter that I would like to read into the record and submit for the file. Mr. Matthews has informed us that he does not have a shallow

well within the area that would possibly be impacted, but his letter is addressed to Mr. Randall Silber, Secretary of the Henrico County Board of Zoning Appeals.

“Dear Mr. Silber: My wife and I own the property approximately 86 acres located immediately adjacent to the south of the Holland property proposed to be mined. We have received the Hydrodynamics Group report and discussed it with Russell Holland. We understand that there may be a one-foot draw down impact on the ground water within 1,600 feet of the southern boundary of the Phase I area. We do have a shallow well but it is not located in that vicinity. We do not believe the mining will affect our well.

“We support Mr. Holland’s request for a use permit to mine the sand and gravel on the Holland property. Please give a copy of this letter to the Board of Zoning Appeals members. We regret that we cannot attend in person because I am recovering from knee surgery. Thank you for your assistance. Sincerely, Melvin Matthews and Phyllis Matthews.”

Mr. Silber- Would you point out where that is on the map...where the property owner resides?

Ms. Freye- The Matthews own this property here. This is the 86 acres that they own.

The next thing that the modeling of the ground water told us was the impact on the springs.

Mr. Wright- You talked about the impact on the shallow wells. I guess to the southeast. How about the others?

Ms. Freye- Yes, sir. On the Kelly’s property, we did send them their report, and as far as I know I don’t think Mr. Holland has had an opportunity to hear back from them, and I don’t know if they are in attendance today or not.

Mr. Wright, we had been talking with the Kelly’s consistently throughout this. They do have a shallow well. We think it is outside the 500-foot area.

Mr. Wright- I thought you said 1,600.

Ms. Freye- That’s down here. That’s 1,600 feet down here. It is about 500. They do have a shallow well. I have been talking with them and their family members. The distance there...you have got a 100-foot pipeline easement. Then you have also got the 100-foot buffer and then you have this distance here. But we were measuring it from the mining limits of 500 feet.

We have talked with them about the possibility of a one-foot draw down in the ground level.

As far as we know they don't have any objection, but we have not confirmed that. The next thing that the modeling on the ground water told us was the impact on the springs. We felt that there was no change in the flow of water to Camp Holly springs. There was a one-gallon per minute decrease in the ground water flow to Diamond Springs, which is located a little bit closer to the property.

We were very pleased with that. That was very good news for us.

Mr. Wright- Can you show us where that is?

(Ms. Freye points out the location of Diamond Springs and Camp Holly Spring.)

Mr. Wright- Where is your property in relation?

Ms. Freye- It is over here. This property line over here.

As I said this was good news for us because when we had met with Mr. Dowdy and his attorney before, he advised us that his concerns about this were (1) he could not accept any change in quality of his spring water. The good news is that we found that there would be no impact on the quality.

He did tell us that he could accept some minimal impact on the quantity of the water as he was getting more flow from the springs than he really was using. So, if there was minimal impact he thought that he would be okay with that.

So, with the cutoff wall what we found is that there would be no change in the quantity of water at all to Camp Holly springs and a one-gallon per minute decreased in the flow to Diamond Springs, and no change at all in the quality of the water. The conclusions for the residential wells are that deep wells...those that tap into the marl, that blue sticky clay, those are considered deep wells, they would have no real impact at all, either Phase I or Phase II mining...quality or quantity would not be affected at all. Water levels and shallow wells, however, if they were in these certain distances could have a one-foot draw down. As we have determined and as well as we know, there are no residential wells in those areas.

With this report and with its acceptance of the proposed conditions, along with the added condition that is before you with a cutoff all being provided with the mining condition, the applicant has demonstrated that the mining of sand and gravel will not have an adverse impact on the surrounding properties. It will not impact the health, safety, or welfare of the neighbors as the quality and quantity of water is not significantly changed.

The mining will not have any impact on light and air because there is a condition in the staff report that all roads must be treated to eliminate dust.

The mining will not increase congestion in the area. One of the reasons for that is that there is already a mining operation and that's located to the northwest of this on the Tarmac McNeil property. That mining operation is actually winding down. That is being completed so that those trucks will go away. These trucks will not be added to that.

Also, the traffic will be using the access out to Darbytown Road, which was very important to the neighbor.

The mining will not create any public danger from fire or affect public safety. There will be no blasting, no explosions. The mining is compatible with the A-1 zoning and with other mining operations in the area.

Because the property is going to be reclaimed and returned to foresting and agricultural, it will not have an adverse impact on the surrounding property values. Accordingly, the applicant feels that we have met the jurisdictional requirements and request that you approve the use permit with the added condition of the cutoff wall. The applicant is in agreement with the conditions with one amendment. We would like to amend condition No. 21 from the bond being placed on 225 acres and placing the bond on 114 acres, the area that is actually going to be mined.

In talking with staff, we were agreeable to if that change and that condition are acceptable to changing the bond from 114 acres at \$2,000 an acre as opposed to 225 acres at \$1,000. That is acceptable to the applicant.

With the understanding that the use permits and the conditions apply to the portions of the property being mined. The applicant is willing to accept and abide by all the conditions suggested by the staff with those requested amendments.

We will be glad to answer any questions that you might have.

Mr. Balfour- Mr. Chairman, on the last page of the report Dr. Luce states, as you pointed out, the level of the water in shallow wells located to the east of Phase I mining area located to the (unintelligible) of Phase I might drop about one foot. Do you know how much variance they are talking about? Could that be as much as two feet, or do you have any idea?

Ms. Freye- The computer actually prepared an exhibit that showed the contours of where that one-foot area could be. Anything beyond that would be even less. Our concern would be that if their well is outside that one-foot contour, then it might not be affected at all.

Mr. Kirkland- Ms. Freye, on the cutoff wall you all want to put in, is water built up inside that cutoff wall?

Ms. Freye- I guess the better way of saying it is that it doesn't let it seep through it. It helps build that divide in there.

Mr. Kirkland- Is it equalized on both sides?

Ms. Freye- Yes, sir, because there is water movement at the top...over top of it.

Mr. Nunnally- Ms. Freye, you said that your report shows that there will not be any difference other than quality of water or the quantity of water. Do you feel that you could put up a bond in case there is some difference in the quality or quantity of if the variance is approved?

Ms. Freye- I think the problem is there would be an enforcement problem with that, Mr. Nunnally. There have not been tests or statistics gathered about the surrounding people's well or what the water looks like. We have only been able to get the statistics and the data on our property. That's why we were using the computer to make these projections and come up with this quantitative analysis. It is a lot better than just looking at the topography, which is what has been done in the past.

Although I would defend the County, because the County's protection area, which was based on topography, turned out to be right.

Mr. Nunnally- Ms. Freye, how long do the applicants propose this mining to take place? Again, a lot of that depends on market forces but they would expect it to be done in six years.

Mr. Wright- Six years and all of it would be removed?

Ms. Freye Yes, sir.

Mr. Wright- All operations would cease?

Mr. Freye- Yes, sir. It could be much quicker if there is a demand for gravel.

Mr. Wright- That's an outside figure.

Ms. Freye- Yes, sir.

Mr. Wright- Would you put the first diagram showing your Phase I and Phase II back on? I want to ask you to point to something.

Ms. Freye- Yes, sir.

Mr. Wright- Would you tell me how you would take the materials from over, what haul road, etc.

Ms. Freye- The concern that the neighbors have, most of the people's houses that were closest, and live along this access down to Route 5. The commitment is that there would be no mining operation in using that road. All of the mining operations would have to come across Deerlick Creek up to the service road that parallels I-295.

This map doesn't show you Darbytown Road, but this leads out to Darbytown Road where there is already an entrance that serves the mining operation that that service road parallels. That's the Tarmac McNeil mining operation that I was telling you about.

Mr. Wright- So we go out from the..... up to the north next?

Ms. Freye- Yes, sir. And it will not go by people's houses that way.

Mr. Wright- There's no access to I-295 there?

Ms. Freye- They have to come out onto Darbytown Road and that is a paved entrance.

Mr. Wright- What is the approximate distance on the property to where it will access Darbytown Road?

Ms. Freye- You have asked me a question that I don't have an answer to.

Mr. Holland- I'm Russell E. Holland.

Ms. Freye- Mr. Holland, the question that Mr. Wright asked was what is the distance from the mining area using the access out to Darbytown. What is the distance of that road to the Darbytown entrance?

Mr. Holland- Okay, you want to go all the way to the entrance not to just where the existing road is. I roughly think it is about a mile and a half. It is probably from the property, the new road to be constructed is probably a quarter of a mile to get to the road that trucks are already using with the Tarmac McNeil operation. I doubt that there is a mile from there to the entrance. I could get a topo map.

Mr. Wright- No, just a rough idea. And the applicant will then maintain that road according to the conditions.

Mr. Holland- Yes, sir. Do you have any further questions of me, sir.

Mr. Wright- Well, I don't know. I have another question and I don't know whether you can answer it or Ms. Freye. How many trucks a day will be accessing that property. Just some idea of the activity that is going to be taking place.

Mr. Holland- Sir, I really don't know, because I don't know how the sales of volume will go. I did check with the individuals.

Mr. Wright- Assuming you really get going and you sell a lot.

Mr. Holland- Well, I guess I did not ask the right question of the mining operation that is going on over at McNeil-Tarmac. The one I did ask him is when they are in their peak mode of operation if they had a traffic jam at the Darbytown entrance. I would not be able to mine as much at any one time, as they did because I don't intend to put that much equipment in there. They have never had a problem with traffic. I apologize, but I just don't have the answer.

Mr. Wright- I just wanted to get a feel for how the operation is going.

Ms. Freye- Mr. Wright, there is a condition in the staff report that no more than three trucks can be entering or leaving the site at a time. That is a condition to control that truck traffic.

Mr. Holland- With that condition, I just didn't pursue it further.

Mr. Silber- Ms. Freye, would you say that only the mining activity will go to the north of the site? Any other activity on the site?

Ms. Freye- Yes, there is acreage that is still going to be used for agricultural or timber use. That would not be under the use permit.

Mr. Silber- So the timbering activity and things could access down to New Market Road.

Mr. Freye- That is an access that they have, yes, sir. We have the two accesses to Darbytown and to Route 5. The mining operations will only use the Darbytown Road.

Mr. Holland- Excuse me. I would be willing to proffer that during the period of the mining operations that all logging and timber harvesting activities would also use the same entrance as the mining vehicles – Darbytown Road.

Mr. Silber- That's a condition that the Board may want to impose.

Ms. Freye- I would have absolutely no problem with that.

Mr. Silber- Ms. Freye, on this exhibits it shows Phase I and Phase II. Phase II is obviously very close to Varina Chase Subdivision, a residential community. You indicated that the mining would span over a period of time perhaps six years. If the Board is interested in contemplating phasing this, could you live with approval of Phase I at this time, with Phase II being considered at some later point, given the proximity to that single family subdivision.

Mr. Holland- I have no problem with that as far as mining operation, but if there is wetland mitigation that need to be done, we would need to be in the Phase II area to do the weapon mitigation. If there was material in the Phase II area, then that material and only that material would be removed. We would need to access the Phase II area probably for two reasons: (1) When we get to route the road itself, we don't know exactly where it would go. We may have to hit that corner of Phase II for construction of the ingress/egress facility, and we may have to use it for wetland mitigation. Other than that, I have no problem with that being a condition.

Mr. Silber- You could live with the condition that there wouldn't be any mining that takes place in Phase II?

Ms. Freye- If they are going to be digging and mitigating then they are going to be moving some sand and gravel. They would like to go ahead and take it if they extracted it. In effect, that's what the use permit would allow them to do is exact sand and gravel.

Mr. Wright- You could say that with respect to mitigating.

Ms. Freye- Yes, sir. And if we could do it that way we would be fine.

Mr. Holland- Does that answer the question?

Mr. Wright- Yes, sir.

Mr. McKinney- Any other questions? Thank you Ms. Freye. Is there anyone here in opposition to this request?

Mr. Deal- My name is John Deal; I am the attorney representing Camp Holly Springs, Inc., which is the owner of the Diamond Spring and the Camp Holly Spring. We have a map that we are going to put up on the podium there. While this report is fresh in your mind, the representations that were just made to you...there are a few things I would like to bring out about the report and then I would like to go back just to highlight, but I will go back to the report later on, it's just to bring a few things out.

The first thing that I would like to correct is this, of what Ms. Freye said, and Ms. Freye gave a very good presentation but she had been given some wrong information. The red line coming down.

This is Terry Phillips with Resource International, one of the engineers that works with us. Terry, if you would, outline the mining limits first. The hatched off area there is the mining limits. The white line that goes through the mining area is a continental gas.

To your right, Terry, if you will, up in the upper right hand corner, that red line that is coming down that Ms. Freye referred to is the primary protection area established by the

County. This was drawn by Resource International, which is still on retainer to us as an engineering firm. It is not a protection area.

When you deal with aquifers you are dealing with primary recharge areas and secondary recharge areas. That red line at Resource International Group that Ms. Freye put it is an estimated primary recharge area line.

What we did find out, Terry, would you point to where you all just drilled four wells. If you will remember Ms. Freye in her presentation mentioned that the ground water divide line was where the red line is.

We tried to cooperate with the Holland people in that we gave them every scrap of mining information we have since we have been there. They said they would cooperate with us. As it turned out when we gave them everything that we had, our engineer, Terry Phillips asked Dr. Luce when we could expect something back from them. His comment was I don't believe I can give you anything before the meeting. We never heard one more thing from these people about having our engineers present when they did any of their drilling, when they did any of their well testing, anything, nothing.

We are dealing with the Amason people on the southside of us, and when their engineers do something, our engineers are there. We have a good flowing relationship so that you have verification. So, Camp Holly stands before you today without any verification of this report whatsoever.

Now, Terry, if you would, again, would you point to where we sank four wells. There is one down there by Camp Holly, and then there are three up here. What we found out in sinking those three wells, and as a matter of fact, those three wells were sunk at the same time, about two weeks after they were sinking theirs on a 114-acre site.

We found out that ground water divide line is not where that red line is, and I am going to give you a report today that states this. It is not where the red line is. The ground water divide line is back where the tree is. Where I put that mark is the location of the western most wells. As a matter of fact, I think it is a few feet inside of the Holland property, we found out later.

That ground water divide line is 1,200 feet further west than Dr. Luce's whole report assumed that it was. I wanted to highlight that, because his report assumed the ground water divide line is right where Terry is pointing. Actually, the ground water divide line is somewhere west of that green line that I just drew up there. I have proven that through the four wells that we sank.

Now, because I wanted to correct the record on those issues before I went further. Now Camp Holly Springs has been producing water at this site since 1923. These springs have been used as documented since before the Revolutionary War that we used before 1812, the Revolutionary War and the Civil War. Also, artifacts around the springs indicate that

they have been used by people for thousands of years. Each of you received this packet that I sent out. Is that correct?

These springs flow 950,000 gallons of water a day. These springs provided potable drinking water. I remember a few years ago when algae showed up in the water and Richmond didn't have a good water supply. We had tractor-trailers lined up at that spring that we couldn't service. In addition to that, every time a hurricane or something of that nature comes up the coast, we have a huge demand on us from a five-state area. Now Camp Holly has built a \$4,000,000 bottling facility on this property, and the life of that bottling facility its very existence and its state of the art. It has been declared by the International Bottled Water Association, to be in the top ten percent in the water bottling companies in America.

They bottle the water and it is distributed over a five-state area, and we also bottle water that we ship to Europe.

Now the source of the springs. Where do these springs come from? These springs come from an aquifer flow. An aquifer is like a sponge, and if you would on the top elevation there's a dark part. That's the overburden. This is an actual drawing prepared by West Sand and Gravel in 1977 when they tried to mine this site. They withdrew their application to mine because of our objection and because their silt dam broke on their mining operation and flooded Deerlick Creek with clay and silt all the way down to the James River. This was in process when that happened.

The black is the overburden and the gold color is the sand and gravel that Mr. Holland wanted to take out. The white under the gold is a blue marl that in this area is very, very thick, and in some places over 100 feet thick.

In that gold is where our aquifer is. The sand and gravel that he wants to take out of 114 acres is admitted by his own engineer, Mr. Luce, to be part of our aquifer serving our springs. If it weren't so, he wouldn't offer to build a cutoff wall. But they have. When you remove the sand and gravel, his own report says that the water that's in there normally would be flowing to our springs and the people's wells is now going to go in silt ponds and then go out the Derrick and then go on out sometime into the James River. The is a surface aquifer, and surface aquifers, (unintelligible). I am going to take you to the County 2010 Land Use Plan in just a few moments.

The 2010-use plan addresses aquifers in great detail. The environmental element of it does. And surface aquifers are very tempermental about what goes on around them. Mr. Luce's report he acknowledges that this area of sand and gravel deposits have been there from five to twenty-four million years. That means what we are talking about here today is an aquifer that has been in place and been operated somewhere between five to 24 million years. That means that what they are talking about here today doing is coming into this place, taking 114 acres out, I mean flat out. It is gone, and not there anymore. Silt is put back where the sand and gravel was. The sand and gravel is being sold.

When you start tampering with one end of an aquifer, you will see from a report I am going to give you in just a few minutes, to do what these people are proposing to do on this site will irreversibly effect the springs in a severely adverse manner.

The document that I sent to you before that had a Joyce Engineer report in it was in our favor, if you will, but really not that strong until we sank these four wells we showed you a couple of months ago. When we sank these four well and found that that ground water divide line shifts away from the spring to a point somewhere west of where the holes are, which is somewhere within the area to be mined. That takes the model and everything that these men leave is used because when you had a model you have got to put assumptions in it. If you will notice in his report, he said assumptions. It is based on the following assumptions. I found seven of them, and I'll take you to that in just a minute.

Not only did Terry and Joyce Engineering sink those four wells, what they did, is they went up and down Turner Road. Watch her point. Each of these point places she's pointing to is a place that they went to a person, obviously with their permission to measure the level of water in their wells. You can take a composite from all of those water levels and all of those wells along Turner Road - this line between the mined area and the area to be mined - and Camp Holly and Diamond Springs plus the four that we sunk and you see the blue dotted lines that have been drawn.

Those blue dotted lines show the ground water level or contours, if you will, as they flow down to Camp Holly and to Diamond Springs both.

What we know now is that that water is flowing off of this area to be mined somewhere. We don't know where.

Another assumption, you will notice in the report that Mr. Luce did, they talk a lot about 48 boreholes. There's a problem with those 48 boreholes. Forty-two of them don't even address water level at all. They didn't sink the 48 holes. The 42 of the 48 holes were sunk by West Sand and Gravel to find out the thickness of the gravel deposits so they would know how to mine the property. Six of them were water wells that they put in about two weeks before we put ours in and they put them in the area to be mined. So, they are only relying on those. They do not have...their whole report, please understand, is based on assumptions. Ours has no assumptions, and we are taking about this man's four million-dollar bottling facilities, not to mention the shallow wells in the area. As a matter of fact, many of those people in there have shallow wells.

Their water comes within 18 inches of the surface of the ground. Mr. Dowdy's uncle has a well and he has lived there for years and years, and the well is 35 feet deep. It has never gone dry. So, there are a lot of shallow wells in that area that can be adversely affected by this.

I would now like to take you through, if you would pull out the report that you have in front of you that Mr. Luce prepared, and I would like to go through it just for a few moments. I don't mean to belabor points here.

Let's go to page two and they are numbered in the lower right hand corner. In the fourth paragraph down, the sentence starts ' no pumping is proposed'. Do you gentlemen have that?

The installation of a cut off wall plan is planned, which they describe. Here's what we got. Right now, God has been pretty good to us for five to 24 million years and that aquifer is doing what it is supposed to do and I don't care how bad a drought we have had, and contrary to what this report says, the flow of those springs is seasonal, yes. But it is not 3.6 times higher now than it was before which this report says. These springs flow very high, and, incidentally, the report says that Camp Holly is flowing half of Diamond Springs. It is actually reverse. Camp Holly is probably flowing three times of what Diamond Springs is. The report has a lot of problems with it.

Now this cutoff wall: God has kept that thing going for five to 24 million years. Now what they want to do is mine it and come along and have you believe that a five-foot-wide cutoff wall down to the blue marl is going to be as good as God would do and they are eliminating 114 acres from the aquifer for serving this spring and their own report admits we are in the same aquifer. So, what do we have? We will then have, if this goes in and that retainer wall is put up, then rather than Mr. Dowdy's destiny being on what has happened from five to 24 million years, it is going to rest on a five-foot supposedly impervious cutoff wall. The people who are drinking this now, won't have it to use anymore. Remember when you are dealing with an aquifer, and you damage it, it is generally irreversible.

I want to show you a report that I got last night at 9 o'clock because we had to scramble. I got this report 30 hours ago. And God bless these people at Joyce Engineering; they dropped everything they were doing as I did and we dissected this thing. We found out that it is not...the assumptions are incorrect. If you would, go down to the next paragraph.

Mr. Holland has provided me with summary logs of 48 borings. That would lead you to believe that you have got a lot of information about water. Forty-two of them don't have any information about them at all. And understand this; Terry; please point to the eastern limits of the mining operations. Now, this report does not contain one boring log between the eastern limits of that mining operation in Diamond Spring or the eastern limits of that mining operation and Camp Holly Springs.

When this building that we are sitting in was built, they bored. Why did they bore? You don't know what is down there until you do bore.

If you read his report verbatim, the whole report is based on the assumption that all of the clay and all of the contours and everything under that mined area carry through all the way to the springs. His assumption also said, remember the red line up here. I'll tell you why that red line was drawn by Resource. It was drawn because in engineering sometimes you ask how do we know what is happening down in the ground. Well, an

indicator, not a finder, but an indicator is what is happening on top of the ground. Does the clay lay under the ground mimic, or (untelligible)? Resource drew the line where the surface divide is. Without four holes we sunk to the left. That's not the ground water divide; it is the surface divide. The red line is in the right place for surface divide, but the ground water divide is 1,200 feet to the left or more. It is not (untelligible) It is not at those...it is further than...the ground water divide has to be somewhere in this mining operation because when you get over in those operations it takes a severe drop and goes down hill.

If you would turn over to page 3 of his report. You see the title "Summary of Local Geology and Hydrogeology...the second paragraph under it. "The sands and gravel on the Highland property belongs to the Bacon's Castle formation.... in the range of five to 24 million years old, which is what I quoted to you earlier about the aquifer. It does not necessarily mean that the aquifer is that old. I am not making that representation, but I am saying that sand and gravel was there and I am saying it was raining, and I am saying that a shallow aquifer comes from rain.

Then look now to next to the last paragraph where it started with the words "Deep wells in the area", and go to the next to the last sentence. This means that the ground water on the Highland property and on the spring's property originates in the surface aquifer. We get our water from a surface aquifer. Where does it come from? Part of it where that water is to be mined.

The origin of Diamond and Camp Holly Springs is not known with certainty. He is saying that in his report. That the origin of Diamond and Camp Holly Springs is not known with certainty because there is a lack of subsurface information in the vicinity of the springs. He is saying himself...I really don't know where their water is coming from. That is in his report. I didn't write that, he did. Turn the page, please. The last paragraph on page 4.

"In 1991-92, I was project manager of the remedial investigation of a super fund on the edge of the Great Dismal Swamp in Suffolk in 1992. Part of the work was to make a water budget for the site. The water budget was calculated on monthly data for precipitation, evaporation, and transportation." He makes this statement. "That site has the same precipitation climate, geology and topography as the spring site." We are in the fall zone. The Dismal Swamp is in the coastal plains. And my engineer will confirm that to you.

Go to page five. He says in his report in the top paragraph on page five in calculating the monthly contribution to ground water research at that site, he found that March produced 30 percent of that annual total. Annual ground water calculated on the basis of March alone would be 3.6 times greater. He is saying that 950,000 gallons that I quoted you was measured in March. He's right, it was. Is March a higher water month? Yes. Assume for a moment he's true. Then when you take the fraction of water that will be left. If 950,000 gallons is 3.6 times the normal flow. If he does anything on that 114 acres, then we have got a problem. Because then we would be down below 200,000 from 950,000 gallons. I

have stood at those pipes each of the 12 months of the year, and looked. We only measured them once, but they may vary seasonally, but nothing according to this. I don't know where that figure came from.

Let's look at the bottom of Page 5, you will see numbers 1 through 7. Dr. Bredehoeft is a gentleman who ran this model in California. Notice that it says that Dr. Bredehoeft made several modeling assumptions within the grid area. We are not dealing with assumptions, we are dealing with a \$4,000,000 bottling facility that serves the Commonwealth, this County, part of this nation and part of Europe, and he has got a right to pass it on to his children and not have it wind up in a mining site over there.

Page 6. Here is where he talks about the ground water divide location in the second full paragraph. He is talking about the red line when he says this. "The divide location was constructed on the basis of topography". What he is meaning and what he says there is Turner Road runs along a hilltop. And he is right, it does. That is the surface divide, but our four wells plus peeking in peoples wells down the road prove it is not the ground water divide. Ground water divide is somewhere within this mining area and not 700 feet away from it.

Now, still on Page 6, the fourth full paragraph starts with a number of early modeling runs. First, they made several modeling runs. He gets water out of the springs. He doesn't make modeling runs; they have either got water or he doesn't. A number of early modeling runs showed that the mining of the Phase 2 area had insignificant effects on the ground water levels outside of the mining area. However, unmigitated Phase I mining caused significant drawdowns in ground water levels outside of the mining area. Where are the models? That's when he decided a wall was needed. We need a cutoff wall; because of the significant draw down and water when we mine in Phase I, and Phase I is his big Phase. That's why he needs this wall and if he puts up that wall, then his business, this aquifer, this natural resource of this County, this Commonwealth, this nation is dependable on a manmade five foot wall, and it has been running for millions of years. He is going to die, his children are going to die, and his grandchildren are going to die, who is going to maintain that wall?

Now, look at Page 7. This is his conclusion and his summary and I want to draw your attention to the top of the page. Now remember, these are conclusions from summaries of models, one of which showed a substantial water draw down. Diamond Springs before mining has a flow rate of 71 gallons per minute. After mining, 70 gallons. Camp Holly Spring before mining, 45 gallons, and after mining 45. So, there's no effect they say. The truth is that if Diamond Springs is flowing 71, Camp Holly is flowing about 300, because Camp Holly is the bigger of the two springs. Two eyeballs will tell you that as you stand there looking at the water coming out of the pipe. Look at page 8.

This is why our engineers need to cooperate, but they chose not to cooperate. We asked them to. We gave them everything. They said give us everything, and we did. He shows 20 references. I want you to know that of his 20 references he used in his report, our engineers supplied to him Nos. 3, 4, 5, 6, 8, 10, 12, 15, 16, 17 18, 19 and 20. Out of the

20 references, 13 came from us and if you will notice on my report, it is zero – nothing. That's why engineers need to learn to work together.

I want to give to you, and I just got this this morning. It actually came to my office last night at 9:30, but I was so tired I didn't go back and get it. I read it this morning. When we received their report 30 hours ago, we set to work, and I said Terri and Mike, here's what I want.

These people of the BZA are getting tired of reading engineering reports that I can hardly understand. On the front of your report, I want you to attach two pages. One says your statement of findings of the limited hydrogeology and the other page, says columned report concerns. And then attach your report to support that behind it.

Because I didn't want to take you through a boring, laborious and, in all due respect, boring engineer's report.

First, the first bullet on the first page. The ground water surface in the study area does not mimic surface. That's a fact; it is not an assumption. In other words, that ground water divide is not under Turner Road. It is 1,200 or more feet west than shown in this report. That one fact alone makes this whole report totally and absolutely invalid.

Next bullet: Ground water flow direction and the study area is from the Holland property toward the spring. How did we determine that? We sunk the four wells and we peeked in the wells down the road and off towards the mines and that's how we found all of that water flowing toward us.

Next bullet: a mining operation will significantly and irreversibly impact the source aquifer for both Diamond and Camp Holly Springs. No. 1, Due to aquifer removal; No. 2, Aquifer denaturing. No. 3 Reduced Aquifer Recharge. Let me explain that. Aquifer removal. That's the 114 acres. Denaturing...if you would watch my hands. Here's an aquifer. You come in and cut that aquifer off and mine out 114 acres, that water is going to start coming back this way. Now, they are saying we are going to solve that by putting a wall up there. Remember they have taken 114 acres out of the aquifer to begin with, and now we have got a man made wall we are depending on. Aquifers depend on pressure. No pressure, no spring. What a spring is, is that it rains and goes down through the overburden and goes into the sand and gravel; pressure build up and the water tries to find an escape point. And it does, and that's called a spring. When you take 114 acres out of an aquifer, your own environmental element shows you can't fool with one aquifer without it affecting the other. I will read that to you in a minute. And the reduced aquifer recharge means the 114 acres are not there to be rained on any more. It is going to be rained on, but the sand and gravel is not there to carry as the vehicle for the aquifer to flow through.

Lastly, the effects of strip mining on the aquifer will be irreversible since there are no mining restoration procedures currently available to restore the aquifer to its premining condition.

Mr. Balfour- If you say the engineers should have cooperated, and then you got the effects of strip mining will be irreversible, what good would it have done for the engineers to get together? Do you think that's the solution to this problem?

Mr. Deal- I'll tell you why. When Mr. Holland came with his lawyers in my office, and he sat down and he said 'I want to mine my property', Mr. Dowdy said he didn't blame him because it was his property. You should be able to use it the way you want, but not to the hurt of other people. Let's work together and see what we can work out, and I am even willing to have a reduced flow of water if that is what is necessary for you to do what you want to do.

Mr. Balfour- Could we move things along if you and Ms. Freye would agree to have the engineers meet and come back here next month?

Mr. Deal- If they are willing to do that, we are willing to do it. Certainly.

Mr. Balfour- Well, you would have to withdraw it and come back.

Mr. Deal- Okay. Next page...Holland Report Concerns. The major concern with the proposed mining plan is it relies solely on the success of a cutoff wall to protect the springs, and I have given you those problems.

Next one, the study used a predicted used, a predicted model which is based on the premises that 'for surface unconfined aquifer, the ground water basin is the same as the water shed.' Facts don't support that statement. The facts we know we gave them. They show that's not true.

The results derived from computer model are only as good as the assumptions. I told you about the assumption of the ground water divided. I don't want to keep you all day.

Next. The model output for an unmitigated mining operation without a cutoff wall is not present because that's the one that said it's substantially lower. That's the model that said 'if we do it that way it is really going to tear up that aquifer, so let's build a wall.'

Next. No information was provided regarding whether a sensitivity analysis was performed on a computer model.

Next. Flow estimates for the two springs presented in this report are inaccurate, and no information is provided regarding how they made the estimate. And then no information is provided regarding transmissivity of the water, and that's a bunch of legal logo stuff there.

Now, I am going to close with this.

What I have just given to you is the Section out of the Henrico County Code that establishes the Board of Zoning Appeals, of which I am sure you gentlemen have memorized and are a lot more familiar with than I am. But with what is at stake here I need to beg your indulgence for a few minutes.

Turn to the second page to paragraph C, if you would. You will see that there is some highlighted in yellow. "In considering an application for special exception, the Board shall give due regard to the nature and condition of all adjacent users and structures...one structure being his \$4,000,000 plant and the probable effect of them on the proposed use.

Next. If they should find after the hearing that the proposed establishment or use would not adversely and go ahead and give the guy the permit.

But the third says 'should the proposed use be compatible with the general plans and objective of the official land use plan of the County nor be likely to reduce or impair the value of buildings or property.' If that wall fails, our engineers say he is out of business.

Lastly, last line...sentence starts in the middle of it. In those instances where the Board finds that the proposed use may be likely to have an adverse effect as above. You can put conditions on it, but if conditions won't control it and you see the underlined part in yellow, the permit should be denied.

Now, I want to go through the environmental element. You have that in your report that I gave you gentlemen in February. If you would, please, it is tab #2. Remember what I just read from the County Code said that this activity must be in accordance with the Land Use Plan. Now lets see what the land use plan says about protection of potable water. If you will notice under tab #2 is the environmental element for the Land Use Plan.

Each of the pages that I am going to refer you to are numbered up in the upper right hand corner. The first page I want to refer you to is page 59. Protection of Potable Water, I am going to read the highlighted area. Potable water (water suitable for drinking) includes both groundwater and surface water. Aquifers are for ground water.

The groundwater table, or water table aquifer, is a common term used to describe the level of water tapped within the soil just beneath the surface. Because of the interdependence of the hydrologic cycle, anything that affects one part of the system (i. e. water withdrawals, introducing pollutants) has the potential to affect other parts of the system. My engineer didn't write that. Your County staff wrote that as a part of the environmental element.

Next: "proper planning can ensure an adequate supply of drinking water by protecting the quantity and quality of water. Proper planning also can minimize costs for providing drinking water.

"In addition to the public supply wells, two fresh water springs, located off of Turner Road in the east end of the County, provide commercial bottled water (see Maps V and

VIII for the general location of these springs.) According to Camp Holly Springs, Inc. water from Camp Holly Springs and Diamond Springs is distributed to thousand of consumers daily in Virginia, North Carolina, South Carolina, Maryland, Pennsylvania, West Virginia and the District of Columbia.

“Camp Holly Springs and Diamond Springs appear to originate in separate shallow aquifers or distinct horizons within a single aquifer...And that’s what we are...a single aquifer. “Recharge for the springs are basically from surface water infiltration (e. g. ponds, creeks and precipitation).

“The surface aquifers (not deep enough to be protected by layers of clay) are particularly vulnerable to contamination from any pollutants introduced at the land’s surface. To protect this type of aquifer, the recharge area (i. e. areas where groundwater flow replenishes the aquifer) around the well needs to be protected.”

What are the goals, objectives and policies of the Environmental Element of the Comprehensive Plan are “(5) the care and management of groundwater resources including aquifers recharge areas; (8) the protection of state water quality.

“Goals: (I) to protect the natural and cultural resources while providing for necessary development areas, which respect their limitations.” That property can be used for a whole lot more than mining.” II. To promote environmental management as an integral part of the comprehensive planning process. (III). To minimize environmental degradation.” This is a five to twenty-four million-year-old aquifer that may disappear.

“Objectives: B. Protect unique and/or critically endangered resources by controlling the effects of development. C. Identify and promote conservation and management alternatives which minimize environmental degradation and the mismanagement of natural resources. E. Recommend land uses which respect the physical resources while providing adequate areas to accommodate growth. G. Encourage development, which can lessen the adverse impact to air and water quality”...Much less the existence of the water. “Delineate through on-site assessment, survey, and map environmentally sensitive lands such as aquifer recharge areas.

“Protection of Potable Water: 5. Review all applications for extraction of mineral resources to prevent irreversible damage to the environment and to ensure reclamation for future development.” The report that I got last night at 7:30 p.m. says in two places that if this mining goes in, there will be irreversible damages to this aquifer, and the Land Use Plan says prevent it. “10. Protect the quality of the Camp Holly Springs and Diamond Spring recharge area to the extent reasonably practicable.” Our springs are important enough to this County that they are the only two springs in the County that are named in the Environmental Element and the 2010 Land Use Plan.

Gentlemen, I don’t know anything else that I could say except that I would like to close on this.

If Camp Holly was just coming into this area and was going to start a business and it was going to adversely affect its neighbors to the extent that they may go out of business, certainly you would not grant anybody a permit that could cause that to happen. We sell natural spring water that happens to come from a natural resource. We didn't determine where this aquifer goes and we didn't determine where it comes from, but the County recognizes in its environmental element that they should be protected because that is all they have got. And, we are named by name in there. And as you wouldn't let him come in and start an operation that would put somebody out of business, neither should this mining operation do the same.

If you want verification of anything I have said, there is an engineer sitting here and Mr. Terry Phillips sitting right over there. I'd be happy to answer any questions you might have.

Mr. McKinney- Any questions of Mr. Deal by Board members? Does staff have any comments?

Mr. Silber- No, sir.

Mr. McKinney- Anyone here in opposition?

Mr. Nelson- I'm Terry Nelson. I am a resident of Varina...600 New Market Road. I also represent the Varina Beautification Committee. I have six concerns, gentlemen, that I will share with you briefly. I underscore Mr. Deal's concern. I also like the idea of a hydrology bond. No one has ever addressed that before but it certainly appeals to me.

In the previous gravel and mining operation where the people did not follow the statutes, my well was lowered and I had to pay for having a pump installed. I couldn't prove it wasn't an act of God, so I paid for it myself. A little over a thousand, but nonetheless it is a concern of mine, and I think hydrology is a big concern. We certainly don't want any loss of water. It is irreversible and it is not something that we look forward to and I don't think it is something we should be concerned about.

We want to make sure that that is irreversible and proffered because in no circumstances do we want them using New Market Heights Lane or Route 5. That would adversely impact not only the County's future development. I might point out to the County that we have plans there for a park, and I hope to live to see it. We have had the land since 1976, and it is going to be a conservation park and I cannot imagine someone going to a picnic dodging dump trucks, dust and gravel on the way in, and having that to be a successful scenario. So, I am concerned about that and make sure that that is completely done.

The other concern I have is Deerlick Creek, which is the other access. The Corps of Engineers has got a lot of concern about that, and that might be that the only way to get gravel out of there would be an airlift. I'm not sure of that if that is cut off.

The other impact that I have is the reclamation of this property. We have reclamation laws and as you look around Varina we are blessed with many, many graveling operations. Many of them have not been done very well. They have left desecrated land and it is virtually worthless when it is completed. And that is the creation of desolation, and I hope that we will make sure that this reclamation takes place because we have not always done our homework in this area.

There are more questions today than there are answers about this project. Obviously, the hydrology seems to be the center focus point, and it well should be. The other situation that I think has been brought up by Mr. Deal, and I just want to echo in closing and it is basically this and it is a rather basic principle of which we are all governed by. Any project that we do is based on representative democracy where the owner has certain rights obviously, but those rights begin to come into question when they detrimentally impact others, and I don't think any of us want to take on the responsibility of saying that we must have gravel because it is not a market item that is so scarce that it precludes the cautions that we take relative to other uses of property and land and the other property owners surrounding it. So, I guess it is a question here of doing the right reasons, and to that I submit to you that the right thing to do in my opinion and that of the group that I represent. By the way, I don't know of any homeowners that are in favor of this except the ones you got the letter from. I stand to be corrected if that is the case, but I don't know of any.

We ask you to deny this because there are other uses of that property because I know that Mr. Holland is a very dynamic gentleman and he could find other uses for the property that would give him some return as he has done already. Thank you for your time and your indulgence.

Mr. McKinney- Any questions of Mr. Nelson by Board members? Anyone else who wanted to speak in reference to UP-8-99, in opposition?

Ms. Freye- Thank you, Mr. Chairman. I think I will refer to Mr. Nelson's comments first. We have talked with other neighbors who have expressed no opposition after having received the report and the information about the well. Because of that comfort level that they had, decided not to come to the hearing today.

The reclamation concern that Dr. Nelson talked about is something that is very near, and dear to the heart of Mr. Holland. Mr. Holland is probably the best tree hugger in the County. He has made a living out of doing some timbering, but is a friend of the land, and he has set the example for the County and the state for good husbandry, good forestry practices and being a friend to the land. I think that you can be assured that he will not only abide to the letter of the conditions that are recommended by staff, but he will go beyond those not only because of his own beliefs but his desire to be a good neighbor and to do the best by the land which is his investment.

That leads me to the comment that Mr. Deal said about the orizing about whether the Board would allow a new company to come in and put another company out of business and still recognize individual property right.

The Hollands bought this property long before Diamond Springs was in operation and they bought this property because of its sand and gravel assets and the resources that were there. That's part of their investment; that's part of their expectation to get a return on that investment. What Mr. Holland has done, and I guess the question that we have about all of the conclusions that were handed to you by Mr. Deal and his reports is what is the basis for those conclusions. We have four wells that were drilled within approximately 90 feet of each other. One of which was on the Holland property without their permission or very close. If you look at the location of those wells, you have to ask yourself why did they pick there?

One of the reasons that we were so late in getting our report to you from the Hydrodynamics Group is because there was a meeting that Mr. Deal neglected to tell you about with the engineers on the property where the engineers did share observations and their understandings about the materials had been produced to date. What their thinking was, was about where the divide is; where does the water flow, and how do you measure the quantity and the quality of it.

Well, the quantity was what was really the concern, so the engineers talked about the fact that they really needed to get some hard data. They really needed to drill some wells to measure the depth, to measure the flow, to see where it is.

In response to that, our engineers contacted drillers, they went out and they installed the six wells. You have a map that shows you exactly where the six wells were placed. They were placed at distances apart that you would get an accurate read of where the Phase I mining area and accurate information on that area where the water is and where it flows.

What did the Diamond Springs people do? They did nothing. They did not drill any wells on their property. They went around and they checked other people's wells, and they determined that they must need a larger recharge area for their property than what the County said they need. The County said they need 274 acres. They have disputed that. They said we get so much water...we must have a larger recharge area. The divide must be somewhere else. So, they picked four locations very close to the Holland property line...one over on their property and take those four readings and say, this is where the divide is. We have heard them already say today they can't really draw where that green line is because they don't really know where the divide is. But they are theorizing that it must be there because they need such a recharge area.

The other thing that has been misleading is they have used the term aquifer and that they are the same as the recharge area and the water basin. They are not. They are saying that their water basin is the same water basin on the Holland property, and it is not. The information that is provided in the Hydrodynamics Group Report says that.

This is an unconfined surface aquifer to keep the divide, which the computer model and the facts and the statics have been modeled to show you where that is. Something that their engineers have not done; have not bothered to do on their property (unintelligible) will keep that divide from shifting. It was only with the shift of the divide that there would be a draw down or impact on the quantity of their water. That would be a condition of the permit; it would be maintained. The property will be reclaimed. I think it is also misleading to say to you that 114 acres was going to be removed from this property. What does that say? It is 114 acres of land. Only 90 acres of that is in the Phase I mining area. They are not removing the 90 acres. That is the area that is going to be impacted by the sand and gravel removal. The property is going to be reclaimed. It will not have an adverse impact on the surrounding property. The comment was made that Mr. Holland could use a lot of different things. That's true. There are a lot of different things that he could do on this property that would have a far greater impact on those springs and the surrounding properties with wells.

If you think about poultry raising, hog raising or other things...pesticides, fertilizer that he could use that would have an impact on the quality of that water, not to speak of the quantity. So, I think that in the...if you look at the data, the facts, the quantitative analysis our engineers have put together and made part of this record, you compare that to their conclusions, with no data and no facts to support it, I think that you will see that this does not have a negative impact on the surrounding properties, and that we do meet the jurisdictional requirements that you are mandated with.

We ask that you approve this permit with the conditions, as we have asked them to be amended.

Mr. Balfour- When did the engineers have the meeting that you mentioned?

Ms. Freye- February 16, 1999, according to Ms. Phillips.

Mr. Balfour- I heard Mr. Deal say that they were not irreversibly opposed to the operation as long as there was some protection of the aquifer and I gather you disagree where that is and what the impact it. If that's the case, did the engineers suggest the remedy that would allow the mining and also protect Mr. Deal's client's interest?

Ms. Freye- What they discussed, Mr. Balfour, was that they needed more information and that's why they talked about the idea of drilling the observation wells to test the depth and the flow of the ground water. We went forward; we did that. They did not do that on their property. When we ran the first model and found that there was going to be an impact without the mitigating effect of that cutoff wall, we went back to the drawing board and said we need to do better. With the cutoff wall we found that we would not have an impact. We offered to exchange information with the Diamond Springs people, and we were told that they had no information to exchange with us. To that extent, I don't know what more we could have done. We were trying to respond to their questions, to conversations that we had had with them. We did go to the expense of drilling the wells and plotting them out, doing the report for you. That report is on the

water situation on our property. We had no right to go on to their property, and would not have done so. That would be within their jurisdiction to do that.

Mr. Balfour- Mr. Deal suggested you didn't meet, and we don't know where the truth is, but the Board is in an 'either' 'or' position, which means one business or either business thinks it is going to be hurt based on how we decide it. If you withdrew this matter and got together and came back again, how much is that going to affect you to put it off awhile and see if the two of you can't have another meeting since you had one in February?

Otherwise, one of you is going to be unhappy and that's just too bad, if that's the way you want it.

But, if you can withdraw it and work out something between the two of you, it would be mighty helpful with the County's blessing.

Mr. Wright- I'm confused. Who met in February?

Ms. Freye- The two engineers.

Mr. Wright- The two engineers...who?

Ms. Freye Ms. Phillips and Dr. Luce.

Mr. Wright- Did you meet with the Diamond Springs people, and the Camp Holly people?

Ms. Freye- Yes, sir. We did have a meeting with them.

Mr. Deal- One meeting where they were given the information that's referred to 13 times out of 20. That was the meeting where an exchange was set up, and pursuant to that meeting within 48 hours they had all of their engineer reports.

Mr. Wright- Did you come back to them after that?

Ms. Freye- Yes, sir, they did. That's when they had the meeting on the site and determined that they really needed more detailed factual information about where the groundwater is and where it flowed. That's when we did the wells.

Mr. Wright- I am thoroughly confused, I hear you saying that you all cooperated with them and Mr. Deal says they haven't. If you haven't cooperated with them, there's something amiss here.

Mr. Deal- There was no meeting after the exchange of documents. We have the two engineers right here.

Mr. Wright- We have got direct conflict in our testimony here on that issue.

Ms. Phillips- I'm Terry Phillips with Joyce Engineering. We had an on site meeting with Dr. Luce, Mr. Holland and Mr. Dowdy to show them the springs and the property and to talk about....

Mr. Wright- When was that?

Ms. Phillips- It was on February 16, but subsequent to that we had copies of everything that we had generated or relied on over the years we have been working on this project and provided all of those to Dr. Luce, and you see that referenced in his report.

Mr. Deal- We had a couple of phone calls to see if he had any follow up questions and we answered a couple of questions of his within days of his receiving those reports, and then we have not heard anything since.

Mr. Wright- They didn't get back to you after that?

Ms. Phillips- We had a couple of phone calls to see if he had any follow up questions. We answered a couple of questions of his within days of him receiving those reports, and we have not heard anything since.

Mr. Wright- They didn't get back to you to provide you with any other information or question?

Ms. Phillips- Right. There were two phone calls with two questions within days of providing those reports to him, and, at that time, I asked when their report would be completed and he thought it would be only in a matter of days. This was somewhere around February 20, and that he was going to provide it to the attorneys, but did not feel that he was allowed to share it with us at that time.

Mr. Wright- You never got that until when?

Mr. Deal- Thirty hours ago. We got it last night.

Ms. Freye- Since this is the rebuttal session, I would just like to respond again to that.

The information that was shared in the beginning is really old information. It's information that was provided to West Sand and Gravel some time ago. That information was already available to us. They really didn't provide us with anything new. It was just a new copy of the same thing.

The meeting on the 16th was where they decided that they needed more information. At that point in time, we were scheduled to come before you for the first time on February

25, and when it was determined we needed more information to drill the wells, that's when we asked for the deferral, so we could respond to their questions and the conversations that the engineers had in the field and over the telephone.

Mr. Wright- Did you ever get back with them in a sit down situation and discuss the pros and cons? That was the point he was making.

Ms. Freye- No, sir, because...well, but I think what he was saying was we weren't cooperating, and that's not the case. We were responding to their questions. The first data that we got back, the report we got back was not one that we could go forward on and that's when we had to go back with the information from the wells, do the modeling, build in the cutoff wall so that we could respond in a positive way not to have an impact. That was the question that they were presented with, and the question was what we were trying to answer.

If there was going to be impact, if so, how? And if there was, how could it be mitigated? That's when the engineers came back, did the model with the cutoff wall to mitigate and to prevent any adverse impact.

Mr. Wright- You haven't answered my question. Did you ever get back with them and sit down with the engineers when you got your final report?

Ms. Freye- No, sir, because we got that final report on Monday.

Mr. Wright- Same problem you've got with us.

Ms. Freye- Exactly. We got that on Monday and we had the exhibits prepared and hand delivered, and we sent out 70 packages because we knew that the hearing was this morning. We tried to get it to them as early as possible. I know that some neighbors even got their packages as late as 9:30 last night or the night before. I'm sorry...so that they would have time to review it.

We did want to make sure that you have an opportunity to read it all, but this was all in response to the extra information that they were asking for.

Mr. McKinney- Mr. Deal, You are out of order and you don't get any rebuttal, and we are not asking for any.

Mr. Deal- (unintelligible)

Mr. McKinney- No, sir. Ms. Freye, our problem is you presented to us with a protection area that says 'this line is the protection area'.

Ms. Freye- Yes, sir.

Mr. McKinney- From your engineer's standpoint, the opposition has presented us another line from their standpoint.

Ms. Freye- Yes, sir.

Mr. McKinney- I have got a situation right now on a lot where there were two surveyors. One says it is right here and the other one says it is wrong. Finally, one of them conceded. This is where the line is. We don't know where this line is. This is our problem, and I think Mr. Balfour made a very good suggestion. You might take it under advisement.

Ms. Freye- Mr. McKinney, I would like to do everything possible to help the Board to be able to make an informed decision on this request. It is extremely important to both landowners that you have all of the information before you so that you can make the best decision that you can. I do appreciate the difficulty of that.

Mr. Wright- You know what the question is? When's there is doubt, how can we act? Know what I am saying.

Ms. Freye- Yes. I understand that Mr. Wright.

Mr. Balfour- Do you want to consult with your client and come back in a minute while we take another case?

Ms Freye- The question that I have, Mr. Chairman, is if we withdraw we would have to withdraw because we cannot defer, as I understand from the Code that the Board must act within 90 days. Your next meeting would be April 22, which would be 91 days. Would the Board be willing to arrange a meeting, call a special hearing to deal with this within that time period? We would be glad to defer until then if that would be possible.

Mr. McKinney- We can't continue it, but you can withdraw it without prejudice. Mr. Silber, when can they bring it back?

Mr. Silber- It is my understanding that they can refile at any time if you withdraw without prejudice.

Mr. McKinney- If it is done without prejudice?

Mr. Silber- Yes.

Ms. Freye- Mr. McKinney, and about Mr. Silber's comment about reapplying, would the County waive the application fee since they have already paid?

Mr. McKinney- I'll say one thing Ms. Freye. The County delivered each one of us this report from you.

Ms. Freye- Yes, sir.

Mr. McKinney- I asked Mr. Silber later who paid for it. He said the County did. We had to take the inspectors and reroute. I said why didn't the applicant pay for it? Why did they have to send a special courier? He said he didn't know, but something should be done about this, and this is going to be a decision of not myself, by the Board, and we have our County Attorney, Mr. Tokarz, back there, and I don't know if the fee can be waived or not.

Ms. Freye- Mr. McKinney, we offered to pay couriers to hand deliver to you. My concern was that if it wasn't routed through the County that it might be perceived or criticized by Mr. Deal, as an ex parte communication with the Board. I really did not want to put myself in a position of being criticized for doing that although I was desperately anxious to get you that information as soon as possible; as soon as we had it. We will be glad to reimburse the County for that expense.

Mr. McKinney- Well, if it had not been deferred, I think this Board would have deferred it because of the lateness of receiving this. I think our Rules and Regulations are probably going to be changed because of all of this paper work coming to us at the last minute. We can't absorb it.

Ms. Freye- Could I have a minute to talk with the client?

Mr. McKinney- Yes, and in the meantime, we will ask Mr. Silber and you might want to ask Mr. Tokarz about the waving of the fee if that's possible.

Ms. Freye- Thank you.

Mr. Silber- Mr. McKinney, I am not aware of any authority I have to waive the fees. These fees are set and I am not aware of any authority I have to waive that fee.

Mr. Wright- Can the Board waive it?

Mr. McKinney- I think we need to ask Mr. Tokarz.

Mr. Tokarz is sworn in by Mr. Silber.

Mr. McKinney- Mr. Tokarz, is there anything in the Rules and Regulations of the Code that this Board has the authority to waive the application fee if this case is withdrawn without prejudice and refiled?

Mr. Tokarz- I am not aware of anything, Mr. McKinney. I have just advised Ms. Freye, that, in my view, the situation is that the applicant carries the burden of proof. If the Board of Zoning Appeals is uncomfortable with moving forward on the case because of the lateness of the application, she takes the risk of having the application

denied, and then she would then have to refile it. I think the question is really in the hands of the applicant. I think a new fee would have to be paid.

Mr. Wright- Let me say this, Mr. Chairman. We have waived that fee in the past. When the County was at fault....

Mr. McKinney- The County is not at fault here.

Mr. Wright- I know that, but....

Mr. Balfour- (unintelligible)

Mr. Wright- It has been waived because the County didn't give the proper notice or some deal like that. We waived the fee for the benefit of the applicant.

Ms. Freye- Mr. McKinney, having conferred with the client, I would like to withdraw without prejudice and will pay the application fee.

Mr. McKinney- Is there a motion?

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright, the Board granted withdrawal without prejudice.

Affirmative:	Balfour, Kirkland, McKinney, Wright	4
Negative:	Nunnally	1
Absent:		0

REASON: The applicant withdrew this case without prejudice from consideration by the Board.

UP-9-99 Faith Community Baptist Church request for a temporary use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to locate office trailers at 1903 Cool LAN (Tax Parcel 139-A-5) zoned B-3, Business District, (Fairfield).

Mr. McKinney- Is there anyone here to present this case? Anyone here to present UP-9-99? What's the Boards pleasure?

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland the Board **granted withdrawal without prejudice** on this request.

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

REASON: The applicant withdrew this case without prejudice from consideration by the Board.

A-26-99 **James K. Wright, III** request for a variance from Section 24-94 of Chapter 24 of the County Code to build an addition at 4612 Archduke Road (Dunncroft) (Tax Parcel 39-2-C-14), zoned R-4, One Family Residence District (Brookland). The rear yard setback is not met. The applicant has 25.0 feet rear yard setback where the Code requires 35.0 feet. The applicant is requesting a variance of 10. feet rear yard setback.

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

Mrs. Wright, III- Yes, sir. My name is Jennie Thomas Wright...Mrs. James K. Wright, III. My husband and I propose to build a family room/dining room on the back of our house. We have outgrown our living space. We have a living room and kitchen, but no dining room or family room. We propose to build an addition on the back that's 14 feet by 20 feet, and because of the dimensions, we are asking for a 10-foot variance on the setback.

Mr. McKinney- Do you have anything else, Mrs. Wright?

Mr. Kirkland- Mrs. Wright, I see here on the sketch you have a deck in the backyard. Will that be removed?

Mrs. Wright, III- Yes, that's not attached to the house; that's like a platform and that will be removed.

Mr. McKinney- Any other questions? Staff has any comments? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

Mr. Wright- Mr. Chairman, there is a letter of opposition. Did she know about that?

Mr. McKinney- Mrs. Wright, you are aware that there is a letter of opposition that you received?

Mr. Silber- It was just handed to her a few minutes ago. She has it.

Mr. Wright- Has she got it? She ought to address it.

Mr. McKinney- Would you like to address that Mrs. Wright, III?

Mr. Wright, III- This is our next door neighbor, and she was here earlier for the hearing. She sat down with me and looked at the plans. She was under the impression that the addition would come outside of the house toward her house. But, after she saw that it was in the back, it would not impact the side yard at all. She has left.

Mr. Wright- This neighbor lived adjacent to you on the side? Not to the rear?

Mrs. Wright, III- Not to the rear.

Mr. Silber- Would it be that the house that is shown adjacent to you is shown in this photograph?

Mrs. Wright, III- That house, yes.

Mr. McKinney- Thank you. That will be all.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright, the Board granted a variance of 10 feet rear yard setback.

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

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

1. This approval is only for the rear yard setback for the addition that is the subject of this case. Future improvement to the property shall comply with all the applicable regulations and requirements of the County Code.

UP-11-99 **Boone, Boone, Loeb and Pettit** request for a temporary conditional use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to locate a sales trailer at 5800 Old Greenway Dr. (The Greens at Wyndham) (Part of Tax Parcel 5-A-1C), zoned R-5C, General Residence District (Conditional) (Three Chopt).

Mr. McKinney- There isn't anyone here to present this case? What's your pleasure gentlemen?

On a motion by Mr. Balfour, seconded by Mr. Wright, the Board deferred this request to the April 22, 1999 meeting.

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

REASON: This case has been **deferred** from the March 25, 1999 meeting to the April 22, 1999 because the applicant did not satisfy the requirement of notifying the adjacent property owners.

A-27-99 *DeCapri Commons LLC* request for a variance from Section 24-104(1)(5) of Chapter 24 of the County Code to allow a detached sign to remain at 10069 Brook Road (Tax Parcel 24-A-7P), zoned B-3C, Business District (Conditional)(Fairfield). The number of detached signs for a shopping is exceeded. The applicant has one detached sign in a shopping center where the Code does not allow a detached sign. The applicant is requesting a variance of one detached sign in a shopping center.

Mr. Wright disqualifies himself from voting on this request.

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

Mr. Condlin- Yes, sir. I'm Andrew Condlin, and Mr. Capri and Mike Melton are here to answer any additional questions that you might have beyond my presentation.

The property in here, as you can see on the map, is located at Virginia Center Commons off of J. E. B. Stuart Parkway. The property is actually about a one-acre site. All of the property that is between J. E. B. Stuart Parkway and the actual subject property that you can see in the open space there will be developed as well as the property adjacent between Brook Road, and the subject property.

When Mr. DeCapri was contracting to buy this land, it was absolutely critical to him from a business standpoint to get a freestanding sign. In fact, he made it a condition of the contract, and actually received from the DeBartolo Group permission to do a freestanding sign that was contrary to the typical rules of the owners of Virginia Center Commons. If I can give this to Mr. Silber for your review. That's the letter from the DeBartolo Group authorizing the sign.

The reason and the rationale that they went contrary to their typical procedures were given its location off of Route 1, and the fact that it was on a private road. It could not be seen very well for a retail site, and also because of dual tenancy that Mr. DeCaprio as far as Capri Jewelers shares with Tiffany's, a formal wear store. They decided to grant the rights to build this sign.

Based on that Mr. DeCapri then had his folks go out and apply for the sign from the Planning Office for a sign permit from the County. Tally Sign Company went out and followed all of the correct procedures, and in good faith and asked for within the shopping center a detached sign at this location.

As far, and I have got a copy which was not included in your staff report, which I would like to give you a copy of the application and the attachments as well. That's a copy of the application, which really is as far as I could see makes it clear to where the property was, the sign location on the property, and that it was a detached sign.

The sign permit was approved and there is no doubt that it was an error, but it was approved and in good faith applied for by Mr. DeCapri. Relying on the approval, the sign was built at a cost of about \$8,600.00. The sign was put up, a CO for the building was issued; there's absolutely no problem with it. No neighbors have complained, no residential area or commercial neighbors complained about the sign.

Only then did the County notify Mr. DeCapri that it was an illegal sign and had to be removed. We have estimated the cost at about \$2,000 to remove that sign alone.

I would propose to you that this is a classic case of having a vested right to certain rights of use of property, which has been recently passed by the General Assembly, but the case file allows for a vested right based on the following:

“That there be a significant governmental act” of which the issuance of a permit is included in that. “Reliance by the landowner within a reasonable time “of which obviously they relied on the approval of the permit; put up the sign at the cost of \$8,600 within a month of the approval and at a significant cost. In this case, not only is it the cost of the installation and the removal of the sign, which is in excess of \$10,000, which is not insignificant. But there is also the cost of Capri Jewelers and Tiffany's of the loss of business given the location, and also the cost of reconfiguring the attached signage on the building

There is also the cost of reconfiguring the attached signage on the building itself. I have got some pictures here that I can pass to you if you want to see them in more detail. They have got signage for Tiffany's on one corner.

This is a picture of the signage and you can see the building...you can see the Capri Jewelers on this side...it is kind of hard...maybe I will pass it around to you afterwards,

but also on the other one is that the Tiffany's location is on the other side of that building as well.

If the sign permit for the detached signage had been denied, there certainly would have been a revision of the attached signage and that really should be included in the cost to Mr. DeCapri as well to reconfigure the attached signage which costs in excess of \$16,000 to put the signage up and in addition to \$2,000, it will cost an additional cost to reconfigure all of that signage. When you take everything, it is obviously going to exceed \$20,000 beyond and then we have to add in the cost of the loss of business.

Beyond the vested right, and I will say the policy, according to my reading is the whole reason for the vested rights law, that it is inherently unfair to improve construction allowed to occur with significant expense, and then require its removal at the cost of the landowners.

Quite honestly, it has little impact, if any, on the surrounding area given its commercial nature. Despite the fact that it is contrary to the Code, it is all-commercial, and I don't think, I certainly think it blends in, the building is very pretty, and it is very nice. It blends into the mall as you look at these pictures; you can see the mall in the background and the sign, I think, blends in as well with the entire area.

I also wanted to point out and took some pictures on the opposite side of the parking lot; again, I will pass these around so you can get a closer look. There's also a telephone switching device, transformers, and electrical boxes to serve the entire loop. The theatres, the Goodyear, the out parcels...this entire area, which really as you look at these...and, if you look at these pictures that are on the screen and then I will pass them around. It actually hides the building from the location and the additional response to that is that at one end of the parking lot, I would claim it to be a somewhat displeasing fact that they have these utility boxes and electric transformers, which is almost somewhere between around six feet tall at that location, and then it is a sign at the other end of the parking lot. That, again, having no complaints and having an aesthetic pleasing quality as it surrounds this area.

This is a classic case again of something that seems inherently unfair to ask Capri Jewelers to move the sign at their cost. Well, the little one actually does create an unnecessary hardship on behalf of Mr. DeCapri.

The property was acquired; the sign application was applied for in good faith. There is no doubt that this is an extraordinary or exceptional situation that you don't see on many occasions. It will not be a detriment to adjacent property owners, and for these reasons we ask that you approve this case for the variance.

If I may, I will send around these additional pictures to the Board members. I can answer any questions you have at this time.

Mr. McKinney- Mr. Condlin, North Park Associates, LP applied for this sign.

Mr. Condlin- Yes, sir. I believe they were the mall owners at the time. It's part of the contract. They are the mall owners. They owned that property at that particular time.

Mr. McKinney- So, they applied for the permit, and who paid for it?

Mr. Condlin- Mr. DeCapri did. Then the land was conveyed within that time period.

Mr. McKinney- What we have is just a signed application that says North Park Associates, LP. They are out of North Carolina.

Mr. Condlin- Yes, sir, the property was under contract at the time that Mr. DeCapri actually purchased and built this sign within that time frame.

Mr. McKinney- You have the estimated cost on the permit of \$16,000.

Mr. Condlin- The permit was \$16,000, and then the removal of the detached sign alone is approximately \$2,000 and with the reconfiguration of the attached signage...that has to be in excess of that as well, so that brings it beyond the \$20,000 mark for the signage change alone.

Mr. McKinney- Any other questions of Mr. Condlin by Board members? Do you have anything else to add, Mr. Condlin?

Mr. Condlin- No, sir.

Mr. McKinney- All right, Mr. Tokarz.

Mr. Tokarz- Members of the Board, I am Tom Tokarz, and I am in the County Attorney's office. I have been requested to appear today on this variance application on behalf of the County Administration, the County Managers Office, and the Director of Planning.

I would begin my remarks, members of the Board, by saying to you that I believe that this is not the appropriate form for this matter to be resolved.

I think Mr. DeCapri and Mr. Condlin have presented some evidence, which do provide some information, which needs to be addressed by the County, but I suggest that it is not appropriate to be addressed by this Board.

I would suggest to you that this is the type of case where the no good deed goes unpunished is fully appropriate. I would suggest to you that this is not a 'nice lady' case. This case has precedental value far beyond the situation that has been presented to you

today, and I would like to tell you why I believe the variance is not permitted under state Code.

As Mr. Condlin has told you, the applicant does have a sign on the building. This is not a situation where Capri Jewelers cannot be found by the public. It has been put up by the expense by a professional sign company intending to make sure that the public could find the building. So, it is not a situation where there is our view a hardship, which meets the test under the variance provisions of the state Code.

I would also suggest to you that there are two other reasons under the state Code why this is not a permissible variance. One, it does not present in the language of 15.2-2309 a situation of unusual topography, or shallowness or the size lot. Secondly, it does not alleviate a hardship approaching confiscation. If this sign is removed, Mr. DeCapri's store will be treated like every store in every other shopping center in the County of Henrico.

What he is asking to do instead is to have a special privilege, a special exception to the provisions of the zoning ordinance, which no other store in the County has. In fact, Mr. Condlin has proved that point by submitting the letter to Mr. DeBartloto. He told you Mr. DeCapri got a special exception from the shopping center rules. The reason he had to do it was because this is not the customary practice at the Virginia Center, or elsewhere in the County. I would suggest to you that what we have before you is in the language of the Code a request for a special privilege or a convenience that is sought by the applicant and that is not authorized for a variance in the Code of Virginia.

Let me tell you the practical concern I think this application raises. Under 15.2-2309, the Code provides that no variance shall be authorized unless the hardship is not shared generally by other properties in the same zoning district and the same vicinity. I believe that this application has precedential value of saying that any store in any shopping center which wishes a detached sign contrary to the zoning ordinance may come to this Board and request that, and you will have a flood of variance applications for detached signs unless we say no that we are not going to give a special privilege to people in violation of the zoning ordinance passed by the Board of Supervisors.

With respect to the question of vested rights, I respectfully submit to you that is a matter for the Court to decide and not this Board.

I suggest to you that Mr. Condlin's analysis of the vested rights doctrine is incorrect. The vested right doctrine does not arise when the original approval was invalid. That has been established by the Supreme Court in the Segaloff case in which in the City of Norfolk a building permit was erroneously issued and a canopy was put on a building, and was forced to be removed by the Supreme Court, which said that if the original approval was in error, and that is not contested here, if that original approval was in error, they do not have a vested right to continue. But, in any event, the determination of a vested right is not to be made by the Board of Zoning Appeals. It is to be made by a court if they believe that they do have a vested right to proceed.

I believe with this matter with the respect to the cost of removing the sign to come into compliance with the zoning ordinance is not a matter, which should be considered by this Board because of the failure to meet the variance requirements under the State Code. I believe that it is a matter that should be taken up with the administration, which has responsibility for the Planning Office, and would be in a better position to adjust this issue with the jewelers. I'd be glad to answer any questions.

Mr. Balfour- I understand that the County's Planning Department as a rule should work with them?

Mr. Tokarz- I'm sorry I didn't hear the last words.

Mr. Balfour- I'm saying that you think counsel should talk with the Director of Planning?

Mr. Tokarz- Yes, sir. I think this is a proper case for them to approach the County about administrative relief. I think in this particular situation that is a factor that Mr. Condlin has not addressed yet and that is, in fact, that they engage a professional sign company to put up these signs and to make the sign application.

I would submit to the Board, if it were relevant, that the professional sign company should have been on notice as to what the sign ordinance provides. I submit to you that the original error was the application submitted for the jewelers in the first place. The ordinance is clear...there is to be no detached sign. It was erroneously submitted; it was erroneously approved. At best...at best, you have got shared blame here. It is not a situation where they were misled into anything, and I don't believe Mr. Condlin has said that, and I don't believe that there are any facts that suggest that. They were misled.

This was a matter that was a business decision by Capri Jewelers. Their decision was to try to get a detached sign, and I would simply suggest to you that every store in every shopping center would love to have a detached sign if the Ordinance would permit it.

Mr. McKinney- Why was the permit issued?

Mr. Tokarz- It was apparently just an error in the review process in the Planning Office. Maybe Mr. Silber addresses that.

Mr. McKinney- Can you address that, Mr. Silber?

Mr. Silber- Yes, sir, Mr. McKinney. My understanding is that there was a sign package that was submitted for review and consideration for the detached sign as well as an attached sign. The entire sign package was approved; the detached sign being an error.

Mr. McKinney- Being an error by the....

Mr. Silber- The Planning Office.

Mr. McKinney- They take each individual sign, and this is just one that they miss.

Mr. Silber- Yes, sir.

Mr. Tokarz- I would simply close, Mr. McKinney, by saying that we certainly understand that the concern about the erroneous, and we think that ought to be addressed by the administration rather than the Board of Zoning Appeals in the variance process.

Mr. McKinney- I understand that, but how can the Administration and the Planning Director do anything about the....

Mr. Tokarz- If the question is a matter of the cost sharing, which, as I understand, is Mr. Condlin's argument to be that which establishes the hardship here. That hardship is something that is a matter of arriving at a financial resolution of the matter.

It is different in our view from the question of a variance where we are talking about a hardship approaching confiscation, which is the standard under the Code. If this sign is removed, whether the cost is shared or the cost is borne completely by the jewelry store, the store will be able to continue the use just as before. They will have an attached sign, which clearly identifies the store to the public, and they will have the benefit of all the shopping center traffic as they do today.

That's why we don't believe we have got a confiscation, which is one of the triggers for a variance under the Code.

Mr. McKinney- But what can the Planning Director do?

Mr. Tokarz- I expect the Planning Director will talk with the County Manager and discuss whether the County would be willing to share in addressing the financial cost of removing the sign.

Mr. McKinney- Or either they would have a right to take it to court.

Mr. Tokarz- They would have a right to bring any claim, a vested right to the court, and I would be addressing the administration in that.

I don't agree with Mr. Condlin on the vested right analysis. I think the better and the appropriate course here is to discuss the financial cost of removing the sign because of the erroneous approval.

Mr. McKinney- This is kind of an unusual situation that apparently North Park Associates or whoever under their original agreement gave them authority to put this sign up. Because they had no right to do that to start off with.

But, they got a sign permit to put it up and they bore the expense. I don't see the blame is there and I am not putting the blame anywhere. It is unfortunate, but I don't think that these gentlemen should be out. The expenses are something probably the court will decide on.

Mr. Tokarz- I fully understand the argument about the expenses, Mr. McKinney. I would be the first one to say to you that I am concerned about the fact that there was an erroneous approval in this particular case, but I think there is enough concern about the fact that the erroneous application was submitted in the first place because it is not something that should be viewed solely as the County's responsibility.

Had the special permission not been obtained from the shopping center itself and had the erroneous application not been submitted to the County, we wouldn't been in this position.

Mr. McKinney- I can't imagine the sign company knowing this as long as they have been in business.

Mr. Tokarz- Well, I think that's hard to believe too, sir. You go around all of the shopping centers; you don't see the signs up around the County.

Mr. McKinney- Any other questions? Okay, Mr. Condlin.

Mr. Condlin- Well, I have certainly been given a lot to respond to. I will try to make it quick.

With respect to the improper forum, I would present to you that the Code does not allow for a freestanding sign in a shopping center. We are asking for a variance from that Code for whatever reason, and I would, therefore, suggest to you that this is the proper forum whether it be approved or denied. In fact, when this whole issue came up it was suggested to Mr. DeCapri that he apply for the variance and that this was the proper forum from the Planning Office, and I understand that they suggested they go ahead and do that.

I don't believe, and I have been in situations such as this where the County Manager and the Planning Office said we have no authority to give you the right to put a freestanding sign. Look at our Code; the Code says you can't do it. Therefore, we have no authority, and you will have to go to the BZA, and that's why we are here. I would suggest then that this is exactly the proper forum.

It may be improper, maybe the improper forum to discuss the vested rights issue, but I guess we are agreeing to disagree. I can cite my cases; I have them here. I reviewed them again last night to talk about the rights for vested right. I have looked at the State Statute, and I would say that you have the authority and that we have met the pre-conditions that are required by the statute as required by the County Code.

A little enforcement results in an unnecessary hardship. I believe that's true. It was acquired in good faith. I can't speak for Talley Signs; I don't know how long they have been in business. Maybe they haven't done a lot of shopping centers, but I can tell you that everything was done like Melton's, the one that's been dealing with all of the contractors on behalf of Mr. DeCapri...everything was done in good faith and that there are exceptional extraordinary situations. I would say the extraordinary exceptional situation here is the fact that it was approved by the County. This is not a precedent setting where Goodyear, Appleby's...pick any out parcel out at Virginia Center Commons; pick any out parcel anywhere. If a sign is approved by the County, and applied for in good faith, I would suggest to you, and I would suggest that the Planner who made the mistake probably will not be making this one again for awhile.

But I would propose to you that the precedent here is that if it is approved by mistake and there is substantial reliance upon this and an expenditure of fund of cost and reliance upon that approval by mistake and in good faith applied for, that's the precedent that we are talking about. This is not, I don't believe Goodyear or any other company has an out parcel to come before the BZA, 'DeCapri got it...why can't I get it?'. I think that's the precedent we are talking about.

As far as the hardship itself goes, I would suggest that when you talk about the exceptional circumstances of this beyond the mistake of the application, beyond the mistake of the approval of the application, if you want to talk topography why can it not be that we have the topography of the utility equipment that I showed you that I have the pictures here for the switching device. That's part of the property. That's required to be on there. There's an easement for that. I would suggest to you that that is part of the topography. That hides the building from that location and if we need to have an exceptional circumstance beyond that which was a mistake, I believe we have met that burden by that. I think that prohibits to require the sign to be eliminated and to be taken down is beyond the cost of simply putting the sign up and taking the signs down...including those that are on the building. But it is also a substantial loss of business that Mr. DeCapri in his good faith opinion can testify here today if you feel it is necessary about the loss of business from what he gains from that single sign. I would propose that to you as beyond the cost of just the actual removal of the signs.

Again, I would state to you that this is inherently unfair to require us to go to the County Manager, when it is strictly against the Code. I would say that it is totally unfair to have Mr. DeCapri to take the entire cost upon himself when he relied upon that approval and built it and not be able to gain the benefit from that. I would also say that it is unfair to say that it sets a precedent when I don't know...the Planning Staff have been accused of buttering up...they do a great job. I have never heard of a mistake like this having happened. As a matter of fact, when I got this phone call, I said Chris must be nuts. No way. This is too good to be true. They approved a sign, and we actually put it up and it was illegal. I said it can't be. There's something wrong. I will have to go look at the file, and that's exactly what it was.

The precedence here is not what Mr. Tokarz is saying and every out parcel come forward. I'd be happy to answer any questions, but, again, I would say it is inherently unfair to impose this upon Mr. DeCapri.

Mr. McKinney- Any questions of Mr. Condlin? Thank you. That concludes the case.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board **denied** A-27-99.

Affirmative:	Balfour, Kirkland, McKinney, Nunnally	4
Negative:		0
Absent:		0
Abstain:	Wright	1

REASON: The Board **denied** this request as it found from the evidence presented that authorizing this variance will materially impair the purpose of the zoning regulations and that the granting of this variance would have amounted to the granting of a special privilege to the applicant which is not within the power of the Board.

A-29-99 **Joan M. Sabau** request for a variance from Section 24-43(b) and 24-13.1(2) of Chapter 24 of the County Code to build a single car garage at 3633 Danewood Drive (Danewood at Wellesley)(Tax Parcel 46-8-B-20), zoned RTHC, Residential Townhouse for Sale District (Conditional)(Three Chopt). The rear yard setback is not met. The applicant has 23.0 feet rear yard setback where the Code requires 35.0 feet. The applicant is requesting a variance of 12.0 feet rear yard setback.

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

Ms. Sabau- Yes, sir. My name is Joan M. Sabau, and I am asking the Board to grant my request for a variance to build a single car garage at 3633 Danewood Drive...Danewood at Wellesley. The rear yard setback is not met. My rear yard setback is 23 feet where the Code requires 35 feet. I am requesting a variance of 12 feet in the rear yard setback.

The garage I wish to construct will be attached to the left side of the house...attaching the garage on the right side of the house is not an option because the subdivision is a zero lot line development. The house abuts the right side property line.

The left side attachment provides a pleasing appearance as you drive down either Danewood Drive or Chimney Stone Court. I have explored the option to construct a detached garage in the rear yard, which would not require a variance but that location would be less attractive and more obstrusive to my neighbors. It essentially would be putting the garage in the middle of the backyard.

The location of the garage is such that it does not crowd my neighbors nor does it push the setback requirement to the limit. I'm requesting a variance of 12 feet. There are still 23 feet to the rear property line. My neighbors are within 15 feet of the property line to my rear. The location of my garage seems reasonable in comparison to that.

I have notified all the property owners immediately adjacent and adjoining across the street. I have talked to many of them personally and none that I know have expressed disapproval.

Also, after reviewing my plans the Wellesley Homeowners Association approved my request to build a garage and with all of this information for your consideration I sincerely ask that you approve my request for a variance.

Mr. McKinney- Any questions by Board members?

Mr. Wright- It appears to me that from the survey or plat that we have before us that you have a peculiarly shaped lot.

Ms. Sabau- Yes, sir.

Mr. Wright- And that seems to cause you a problem because of the way that line runs. I guess it would be the west line.

Ms. Sabau- That's correct. The only other location where to locate the garage would be if you are looking directly at the picture on the screen it would be in the lower left hand corner, and I would have to put in a very long driveway to reach the corner of Chimney Stone Court. That's the reason I went for attaching it to the side of the house.

Mr. McKinney- Any other questions? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted a variance of 12 feet rear yard setback.

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

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

1. This approval is only for the rear yard setback variance for the attached garage included in this case. Future improvements to the property shall comply with the applicable regulations of the County Code.

A-30-99 **Pruitt Properties, Inc.** request for a variance from Section 24-94 of Chapter 24 of the County Code to build a one family dwelling at 10809 Rimbey Court (Lexington) (Tax Parcel 48-11-D-4), zoned R-3AC, One Family Residence District (Conditional) (Three Chopt). The front yard setback is not met. The applicant has 25.0 feet front yard setback where the Code requires 35.0 feet. The applicant is requesting a variance of 10.0 feet front yard setback.

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

Mr. Joseph- Yes, sir. I'm Haley Joseph, and I am with Biohabitats of Virginia, and I am representing the applicant in this case.

This lot in Lexington is of a rather unique situation and the lot itself is of a normal configuration single-family subdivision. When we impose the setback limitation by the jurisdictional wetland in the rear yard, it creates a very shallow lot. If you refer to the dashed line protruding through the proposed home, that's the standard setback of 35 feet. The ten-foot exception would allow us to build the home that's pictured on the screen at this time.

If you look at the home that we propose to build, it is already some degrees smaller than the adjacent homes. The nearest corner of the house would be approximately seven feet from the jurisdictional wetland. The rear corner of the proposed deck would be five to seven feet from the jurisdictional wetlands.

The Department of Public Works typically would like to see 10 feet of separation between construction and jurisdictional wetlands. They have been very helpful in stating that they would allow us to go closer to than that and would help us monitor the construction practices adjacent to the wetlands. The developer in this case, has under contract with Parker Lancaster, Inc. the sale of this lot. I initially took the case as a representative for Parker Lancaster and through research discovered that Pruitt Properties is still the owner of record.

As I understand it, the contract failed based on being able to get a building permit, and I believe a building permit for the house that meeting the minimum according to the zoning and conditions of recordation would be possible.

Parker Lancaster feels that the configuration for the size of the house that would meet the 35 foot front yard setback would be such that it would be viewed as offensive to the adjacent property owners, and be detrimental to the well being of the marketability of the neighborhood as a whole.

So they asked me prior to beginning any smaller home in there that we seek the Board's help in providing the ability to construct a home that is more in keeping with the neighborhood on the peculiarly shaped building envelope.

If the Board has any questions I would be happy to answer them.

Mr. Wright- What is the size of the proposed dwelling?

Mr. Joseph- The proposed structure that's pictured is their Newburry that generally is 20 feet by 65 feet including the garage. So, with rough math it is going to be in the 2,220 square foot area.

Mr. Wright- Includes the garage?

Mr. Joseph- Well, if you subtract that garage off the first floor. The first floor I guess is 30 feet by 40 feet, which is 1,200.

Mr. Wright- Is it two-story?

Mr. Joseph- Yes, sir, and that's what predominates in this area. As I understand from Mr. Parker, a garage and a deck aren't necessary items in this market.

Mr. McKinney- Any other questions of Mr. Joseph by Board members? Anyone here in opposition?

Ms. Danielson- My name is Suzanne Danielson, and I own the property at 10808 Hurley Court. That property is right behind this property.

I received a letter from Mr. Joseph on of behalf Parker-Lancaster. Parker-Lancaster, in their letter stated to me that due to the standard front yard setback and to protect the wetlands in the rear yard, it would be only possible to build a small house. In the letter, they further stated that us building a small home would be detrimental to the value and marketability of our neighborhood in Lexington who wanted to build a larger home.

It is my opinion that building a larger home would also be detrimental to the value and marketability of the neighborhood on the Rimbey cul-de-sac as well as Hurley Court, which includes my home.

I bought my home approximately a year ago. I moved here from Louisiana. I like wetlands, and I certainly was aware that there was wetland behind my home, and I bought the home because there is a protected wetland behind me, and I was assured by Parker-Lancaster that a large home could not be built on that property behind me because of the size and shape and the protected wetlands.

I am here before you today because I have serious reservations about the impact of building this large home, or larger home on that lot and the impact on the wetland, and also the impact on the neighborhood including my property.

Thank you for your time.

Mr. McKinney- Where do you live?

Ms. Danielson- I live at 10808 Hurley Court directly behind that lot. I'm a street behind it.

Mr. McKinney- Any questions of Ms. Danielson by Board member? Mr. Joseph, do you have any rebuttal?

Mr. Joseph- I understand Ms. Danielson's concern about the larger home. If we can have that plat back up on the screen for a minute you will see that what we are proposing to build is not a larger home. What we are proposing to build is a Newberry, which is smaller than the homes that are currently in existence on that cul-de-sac. When I say larger I mean larger than what we would be faced with meeting current setbacks.

The home that we propose is smaller than the homes that are out there. Thank you.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted a variance of 10 feet front yard setback.

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

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

1. This approval is only for front yard setback of the dwelling included in this case. Any future improvements to the property shall comply with the applicable regulations of the County Code.

A-31-99 **Robert E. Sherrill** request for a variance from Section 24-94 of Chapter 24 of the County Code to build a church at 7370 Strath Road (Tax Parcel 215-A-84), zoned A-1, Agricultural District (Varina). The lot width is not met. The applicant has 120.0 feet of lot width where the Code requires 400.0 feet. The applicant is requesting a variance of 280.0 feet of lot width.

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

Ms. Secrets- Yes, sir. My name is Crystal Secrets, and I represent the...I am a realtor with Bowers, Nelms, Fonville, Long and Foster, and I represent the applicant, Robert Sherrill as well as the Fountain of Deliverance Outreach Ministers.

Fountain of Deliverance Outreach Ministries contacted me in looking for a parcel of land. They are presently located at 9 East Clay Street in downtown Richmond. They are looking to move out of the area so they can expand and take their ministries into a long term investment and creation.

The property at the intersection at Strath Road is one that they can identify and one that they can grow with in a tremendous amount of time. The applicant has 120 feet of lot width, and the Code requires 400 feet and the applicant is requesting a variance of 280 feet of lot width.

The property is conducive to a church's use for two reasons: the access off of Yarnell Road and the access off of Strath Road would make it very conducive for them to have an ingress and egress to the property.

They are looking to put the bulk of their property between the Colonial right-of-way and the Vepco power lines. We have received through Colonial Pipeline their approval for us to cross their line with a four-inch schedule 40 PVC's sewer line.

The present septic system that's in place has been identified as one that will be substantial for the church in there beginning stages. We have obtained this request from Colonial Pipeline to cross....

Mr. Nunnally- Did you say that this church is now located on Clay Street in Richmond?

Ms. Secrets- Yes, East Clay Street.

Mr. Nunnally- What size membership do they have?

Ms. Secrets- They presently have a membership of about 300, and they are growing.

Mr. Nunnally- You have 300 members?

Ms. Secrets- Presently.

Mr. Nunnally- And they are continuing to grow – I don't think they are going to be able to grow too much on a 120 foot lot.

Ms. Secrets- That's why we are asking for a variance for the lot width because the bulk of the property is located to the rear of the property where they will place their parking up toward the Colonial right-of-way, but their main structure will be within the bulk of the 15.29 acres.

Mr. Wright- This problem is really...from the County Ordinance viewpoint back from the road where the building line would be is only 120 feet, but you don't propose to build your building there.

Ms. Secrets- Correct. We do not. That's just an ingress or egress.

Mr. Wright- That's a technical problem that you are facing.

Ms. Secrets- Yes, that's why we are requesting a variance of 280 feet.

Mr. McKinney- Anything else, Ms. Secrets?

Ms. Secrets- No, sir.

Mr. McKinney- Is there anyone here in opposition to this request?

Mr. Martin- My name is James Martin and I live at the corner of Yarnell and Strath, and as you can see, I will be surrounded by church and parking lot and driveway, real close to my house. I wouldn't care for the noise and I just oppose it.

Mr. McKinney- So, your driveway is right adjacent to where....

Mr. Martin- My driveway comes out on Strath right by the 120 foot right-of-way. I'm right there on the corner.

Mr. McKinney- Right, okay. Anyone else who wishes to speak in opposition to A-31-99?

Mr. Wishon- I'm Benjamin Wishon. I live on Yarnell Road on the curve. I am actually not adjacent or directly across from it, but I am opposed to it. I wouldn't appreciate the traffic that it would be.

Mr. McKinney- Any questions of Mr. Wishon by Board members?

Mr. Silber- Sir, could you spell your last name for us?

Mr. Wishon- W I S H O N.

Mr. Silber- Thank you.

Mr. McKinney- Anyone else in opposition? Please come forward.

Ms. Savitts - My name is Beverly Savitts. I am directly across the road from this lot. There was a gentleman, who was going to put a house on there, and we are a residential section, and we are a neighborhood, which is hard to find at this time. We would like a house there and not a church.

I think 300 people even though that is a...you are thinking about a big lot, but once you put a church on there you know, and we are a woodsy area. I don't know if you know Strath Road, but we would like it to maintain a neighborhood. Strath Road now is becoming so hectic because they have put a light on New Market, so we will be getting tractor trailers down Strath Road, and I don't think if 200 to 500 more people on Strath Road....

Also, churches anymore are very lucrative and they are for money. It is just like schools, you have your childcare during the day; you may have after school. You are going to have nights where they have meeting, whatever, and Sundays all day it is going to be in and out. We are early too early to rise; we are an older section of town, and I just think it is just like...it doesn't matter. I don't want a gas station in there. Just give us a house with a nice neighbor, and we know our neighbors. We take care of our neighbors and this is not going to be supported by the neighborhood, and I don't care what denomination goes in there. You just don't drop a church down in the middle...and the houses are really close to this. They are closer than...they are right in their backyards almost and more trees will go down. That's why I am against it. I would just like a nice house and a nice family.

Mr. McKinney- Ms. Savitts, do you think someone would buy 15 acres and build a house on it today, or do you think they would apply for a subdivision down there?

Ms. Savitts- There was a man who bought this, and he has a trailer setting on it, and he was going to build on that land. I don't understand it. But, yes, because of the power lines...because of all of that back in there, it is sort of cut up. But there was a gentleman who bought it and he has a trailer on it and apparently he could not sell his house from the river or whatever, and he decided he would sell this off.

You mean anybody who buys a lot of land is not going to buy just for residential?

Mr. McKinney- I think a developer would probably look at it and try to develop it with single family houses, if you had 15 acres. Probably only about 12 of them would be available.

Ms. Savitts- We are certainly hoping not, because as I said, we have only been up here nine years, and it is hard to find a community like Strath Road is. It is an old road that in an old part of Varina, and we are a neighborhood. We don't want any gas stations or any stores, we are just a neighborhood, and we would like to continue to be that way.

Mr. McKinney- Unfortunately, Varina is about the only area that has any land left to build in.

Ms. Savitts- Yes, and this is being shoved down our throats and this road. We are going to a meeting tonight. The road is coming through Yarnell, that new road, and that is going to disrupt all of Yarnell and Strath. We only have two ways out, and that's Route 5 and Darbytown, and you are talking about a lot of people on one road. Thank you very much.

Mr. McKinney- Anyone else?

Mr. Silber- Let me just remind the Board that a church is permitted in the A-1, Agricultural District by right; it is permitted in our single-family districts by right. What is really before the Board today is a request for a variance on the lot width. These are uses that are typically showing up in our residential districts so...I think it is important that you understand that.

Mr. McKinney- Is there anyone else to speak in opposition?

Mr. Mihalcoe- I'm Herbert Mihalcoe, 7399 Strath Road. The thing I would like to express to the Board is that the Board set these lot widths, 400 feet, and the present width is 120 feet. To get a single family home, I don't think you have got to get a variance for it, is that right?

Mr. McKinney- If you don't have the lot width, yes sir.

Mr. Silber- You would need 150 feet of lot width.

Mr. Mihalcoe- That's right. We are talking about over two and a half times of what the County Code is.

The other thing is this church is big business, and it is out of context with the surrounding neighborhood. It is going to make a change in the way of life in the area. I have lived there for 35 years and raised a family. The road in front of my house is in the same

condition, the same width, that it was 35 years ago. I imagine there's 1,000 more cars running down it now than it was 35 years ago.

Mr. McKinney- You live on Strath Road?

Mr. Mihalcoe- And Yarnell Road is the same way. This new highway is coming through here, and it is going to throw all of the traffic...they are going to close Route 5, and they are going to close Osborne Turnpike. A lot of the traffic from these is going to have to go down these secondary roads. I can't get out on my road at times because of the traffic.

This piece of property is right at the end of a curve, and it is very dangerous. There's a 25-mph zone there, which isn't heeded to at all. People just blaze through there. That's the only thing...it is completely out of context with what is in the area.

Mr. McKinney- We will hear your rebuttal, Ms. Secrets.

Ms. Secrets- Thank you. I do appreciate Mr. Silber pointing out that it is zoned A-1, and that a church can go in that residential area.

Let me start off by saying that the church presently has pastoral services on Wednesdays at 7 p.m., which goes for maybe an hour and a half to two hours. It ends before 9 o'clock, and on Sunday they have services beginning at 10:30 a.m. and then again at 6:30 in the evening. Pretty much like all churches around.

I find that a church in this area would be very welcome. I was marketing it to developers as subdivision with one-acre minimum from lot size, and I have no knowledge that the property doesn't perk in other areas. It is my understanding that it will perk. I have a perk test.

In places that I met with the County Health Department and here as well. I find that it is a viable resource for the County, and I ask that you grant us our variance.

Mr. McKinney- Any questions of Ms. Secrets by Board members? Thank you. That concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted a variance of 280 feet lot width.

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

REASON: The Board **granted** this request as it found from the evidence presented that authorizing this variance will not be of substantial detriment to adjacent property and

will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions?

1. This approval is only for the lot width requirement for the proposed church included in this case.
2. This approval is subject to all conditions that may be placed on the proposed development by the Planning Commission in the Plan of Development approval.

A-32-99

Carl Pitchford request for variances from Section 24-94 of Chapter 24 of the County Code to build a carport at 235 Gawain Drive (Hechler Village) (Tax Parcel 147-9-AA-5), zoned R-3, One Family Residence District (Fairfield). The minimum and total side yard setbacks are not met. The applicant has 5.0 feet minimum and 13.0 feet total side yard setbacks where the Code requires 12.0 feet and 30.0 feet respectively. The applicant is requesting variances of 7.0 feet minimum side yard setback and 17.0 feet total side yard setback.

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

Mr. Pitchford- Yes, sir. I'm Carl Pitchford, and I am applying for a variance of seven feet minimum side yard setback and 17 feet total side yard setback to put up a carport. That's about it.

Mr. McKinney- Your existing home, Mr. Pitchford, is that frame or masonry or....

Mr. Pitchford- Brick.

Mr. McKinney- How about your addition?

Mr. Pitchford- That will be frame and brick; brick columns...it is just going to be an open carport with brick columns supporting the roof.

Mr. McKinney- What is the size of the proposed carport?

Mr. Pitchford- It is 18 feet wide and 37 feet long.

Mr. Wright- Thirty-seven feet in depth?

Mr. Pitchford- Yes, sir.

Mr. Wright- Why would it be so deep?

Mr. Pitchford- For a motor home?

Mr. Wright- What is the height going to be?

Mr. Pitchford- Thirteen feet in height.

Mr. McKinney- Well, the eave height on your house is about nine feet. Is that correct?

Mr. Pitchford- Yes. It will step up three feet.

Mr. Wright- A flat roof?

Mr. Pitchford- It will be a pitch roof. Same pitch as the house.

Mr. McKinney- Is it going to be higher than the be

Mr. Pitchard- It will be higher than the existing house. Same pitch as the front - different pitch on the rear - and it will be supported by brick columns, six brick columns.

Mr. McKinney- You have a one-car garage on the other side of your house.

Mr. Pitchford- Yes.

Mr. Nunnally- How high is the motor home?

Mr. Pitchford- Eleven foot, six-inches.

Mr. McKinney- You still won't be as high as the house to your left?

Mr. Pitchford- No.

Mr. McKinney- Any other questions of Mr. Pitchford by Board members? Anyone else to speak in reference to A-32-99? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. Wright, the Board denied this request.

Affirmative:	Balfour, McKinney	2
Negative:	Kirkland, Wright, Nunnally	3
Absent:		0

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

A-33-99

Lee A. and Eula Smith request for a variance from Section 24-9 of Chapter 24 of the County Code to build a one family dwelling at 1530 Burning Tree Road (Tax Parcel 225-A-3A), zoned A-1, Agricultural District (Varina). The street frontage requirement is not met. The applicant has 0.0 feet street frontage where the Code requires 50.0 feet. The applicant is requesting a variance of 50.0 feet street frontage.

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

Mr. Smith- Yes, sir. I'm Lee A. Smith, and this is my wife, Eula Smith. We are requesting 50 feet of public frontage, which we are required to have, and we do not have any frontage but request an entrance and exit on the adjacent property on the left of 50 feet to the other property.

You have a sketch of the property that I submitted with the applicant.

Mr. Wright- Mr. Smith, have you read the conditions that are applicable to this case?

Mr. Smith- Yes.

Mr. Wright- You are okay with those?

Mr. Smith- The property on the left we also own where we are requiring the road. So, we are bringing the road across the other property to that piece of property.

Mr. Wright- And the parcel that you are proposing construction on is four-acres?

Mr. Smith- Yes.

Mr. Wright- That's what the plat says.

Mr. McKinney- Any others questions of Mr. or Mrs. Smith? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Balfour, the Board granted a variance of 50 feet public road frontage.

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

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

1. A well and septic system approval by the Health Department must be obtained.
2. The owners of the property, their heirs or assigns, must accept responsibility for maintaining access to the property until such a time as the access is improved to County standards and accepted County road system for maintenance.
3. The applicant must present proof with the building permit application that a legal access to the property has been obtained.
4. The applicant must submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.

UP-12-99 **West End Assembly of God** request for a temporary use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to locate two storage trailers at 401 N. Parham Road (Tax Parcel 112-A-52), zoned R-1, One Family Residence District (Tuckahoe).

Mr. Balfour abstains from voting on this request.

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

Ms. Johnson- Yes, sir. I'm Cynthia Johnson. Each year we have a yard sale to raise money for world missions, and because of limited storage space in our facility, it is all unused at this time. We would like to put two trailers on the back of our property that will not be visible from Parham Road or to our neighbors. We did that last year and to my knowledge had no complaints. They will be there for 30 days prior to the yard sale and taken away immediately after the sale, which will be about May 17th.

Mr. McKinney- This says remove prior to May 19th.

Ms. Johnson- That's right. Our yard sale is May 17th and typically they get it out the next day.

Mr. McKinney- Any questions of Ms. Johnson by Board members? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Nunnally, the Board granted this request.

Affirmative:	Kirkland, McKinney, Nunnally, Wright	4
Negative:		0
Absent:		0
Abstain:	Balfour	1

REASON: The Board **granted** this request as it found from the evidence presented that authorizing this use permit will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following condition:

1. This approval is only for locating a storage trailer on the property beginning April 17, 1999 and ending May 18, 1999. The trailer shall be removed prior to May 19, 1999.

A-34-99 **George V. Wise, Jr.** request for a variance from Section 24-94 of Chapter 24 of the County Code to build a one family dwelling at 8550 Gibbs Lane (part of Tax Parcel 249-A-23A), zoned A-1, Agricultural District (Varina). The lot width is not met. The applicant has 113.8 feet lot width where the Code requires 150.0 feet. The applicant is requesting a variance of 36.20 feet lot width.

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

Mrs. Wise- Yes, sir. I am Jane Wise and they have been notified; however, it was brought to my attention that after I arrived here this morning that they were notified by regular mail, so I don't have any proof of that except for the fact that I have talked to the neighbors and they know that we are having today for this variance.

If we need to defer it to next month.

Mr. McKinney- We will.

Mrs. Wise- Okay, we will do that. That date will be the 22nd of April?

Mr. McKinney- Is there a motion to defer this because the notices have not been correctly served?

On a motion by Mr. Nunnally, seconded by Mr. Wright, this request was deferred from the March 25, 1999 meeting to the April 22, 1999 meeting.

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

REASON: This case was **deferred** from the March 25, 1999 meeting to the April 22, 1999 meeting because the applicant failed to comply with the notification requirements of adjacent property owners.

A-35-99 **Gary Tolley and Anthony Collins** request for a variance from Section 24-94(h) of Chapter 24 of the County Code to build an addition at 8511 Oakview Ave (Brookland Gardens) (Tax Parcel 61-7-5-5), zoned M-1, Light Industrial District (Brookland). The rear yard setback is not met. The applicant has 5.0 feet rear yard setback where the Code requires 50.0 feet. The applicant requests a variance of 45.0 feet rear yard setback.

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

Mr. Collins- Yes, sir. I'm Anthony Collins. As I have outlined in a letter to the Board and some sketches and plans of our hopes of building an addition to this property. I own the property personally, and I have operated my business out of there since 1984, which is 14 years. The last few years we have grown and expanded. We have some great tenants downstairs that have been with us for about eight years and that's who is present in the audience. I just need to expand or either find another place.

I looked into the market as far as trying to find a comparable property that would maybe meet my needs, and it is just the cost of property right now. I could not find anything that would be affordable because I have a certain amount of equity in this property. An addition would suit my needs for certainly some years to come.

I am looking at possibly a five to seven year window, and I would have hopes of maybe staying there. It is a good location, and I want to keep my business there. My tenant...it is a good convenient location for them, and they don't want to have to relocate.

I have notified the owners and met with them and know two or three of them personally, and talked to them personally as far as the business owners on both sides of me and they have absolutely no problem.

I have a letter here from Bartley Tree Service that does not oppose, and we met with the lady yesterday and my tenant and we met with her yesterday and I talked with her and her son, and I think she had notified someone on the Board or either been in contact with a supervisor. I'm not sure. Her name is Estelle Sprouse and her son came over to visit me yesterday morning and the only concern that she had was with this construction which was less than 2500 square feet, so we won't get into the land disturbance issues and etc.

She had a concern about any roof runoff or any water running off in her property and I assured her that through the design and any work that I would have to fill in in the back anyway and deter all the water. Basically, from what I can tell we are going to create a

situation that is going to improve any runoff from our property. I told her that I would be willing to do and take whatever measure that would require.

Mr. Wright- Would you be willing to have a condition on this case that would protect her property from water draining off your roof?

Mr. Collins- Yes, I have no problem with it.

Mr. McKinney- What kind of business are you in, Mr. Collins?

Mr. Collins- Mechanical contractor; plumbing, heating and air conditioning.

Mr. Kirkland- Mr. Collins, from these sketches that we have here, you are going to provide new parking places. Are you going to remove all of those trailers you have?

Mr. Collins- Yes, all of that would come out. I feel like we have one of the nicest looking buildings on that road, and we hope to maintain that. As a matter of fact, the two walls because of the County Code requirements and etc.; they would be masonry construction on both of the exterior corners of the lot. The front wall I was going to try and do something decorative in the front. So, asthetically and the viewing would be more pleasing.

Mr. Kirkland- The wooden fence that was there would remain and it would be maintained by you?

Mr. Collins- Yes. It's a metal fence and it has the privacy inserts to have a bit of visual barrier. If that is not adequate and if I had to do something to raise that I would be willing to do whatever. I don't think anyone would have any opposition.

Mr. Kirkland- That would probably come under the POD at the time.

Mr. Collins- Right.

Mr. McKinney- Any other questions of Mr. Collins by Board members? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing, and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board granted a variance of 45 feet rear yard setback.

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

REASON: The Board **granted** this request as amended for it found from the evidence presented that authorizing this amended variance will not be of substantial detriment to

adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. This approval is only for the variance of the rear yard setback for the addition illustrated on the plans submitted with this case.
2. This approval is subject to all conditions that may be placed on the proposed development in the Plan of Development approval.
3. The rear property line shall be screened in such a manner as to minimize any adverse impact from the uses on the subject property upon the residential zoned property to the east.
4. The trailers shall be removed from the property and all visible materials or equipment used by the occupants of the subject property shall be removed or screened from view in accordance with the regulations of the County Code.

UP-13-99 **Broad Street Seafood** request for a temporary use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to conduct outdoor concerts at 7408 W. Broad Street (Tax Parcels 81-A-34 and 35), zoned B-3, Business District and R-6, General Residence District (Brookland).

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

Ms. Carlson- No, sir. I'm Barbara Carlson, and I would like to ask for a deferral of this request to April 22, 1999.

On a motion by Mr. Kirkland, seconded by Mr. Wright, the Board deferred this request from the March 25, 1999 meeting to the April 22, 1999 meeting.

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

REASON: This case has been deferred from the March 25, 1999 meeting to the April 22, 1999 because the applicant did not satisfy the requirement of notifying the adjacent property owners.

A-36-99 **W. Randolph and Joan Robins** request for a variance from Section 24-94 of Chapter 24 of the County Code to build a breezeway and garage at 404 South Mooreland Road (Tax Parcel 124-A-8), zoned R-1, One Family Residence District (Tuckahoe). The minimum side yard is not met. The applicant has 3.0 feet minimum side yard setback where the Code requires 20.0 feet. The applicant requests a variance of 17.0 feet side yard setback.

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

Mr. Franko- Yes, sir. I'm Mark Franko, building contractor. What we are here for is a side yard setback for a garage. Just to give you a little more background on it, we had an architect here this morning who is also working on it.

The program calls for a two-car garage with some additional space for the storage of lawn equipment. We looked at a variety of configurations before this program in order to satisfy the zoning and planning requirements.

One of the configurations we looked at was a configuration to put a detached garage in the backyard in which you can't see from the plans I have given you. What I do have now is a topographical map of the area in question if I could give that to you to give you an idea as to how the yard slopes off in the back of the house.

Mr. Franko passes topographical plan to Board members.

Mr. Franko- As you can see, as you come down the line there, there is a good deal of difference in the grade from the front of the house to the rear of the house. You have a walkout basement and you walk from the front of the house to the back. Placing a garage in the backyard would be a considerable distance above grade simply to get it in there.

The other configurations we looked at revolved around putting an attached garage. In order to fill the program requirements we need to do one of two things. We would either go again into the setback or start to be affected by that same grade situation.

The other hardship that it entails is in blocking off a window that the client wishes to retain on the end of the building. As far as the other end of the building...just to let you know, the way the house is configured...when you come off that drive you come into a very small entry hallway which leads into the kitchen. The other end of the house has the bedrooms and would not be a suitable entrance for this purpose.

Mr. Wright- What is the distance between the proposed garage and the house?

Mr. Franko- That's a good question. The proposed garage and the house, we have approximately about 15 feet.

Mr. Wright- The garage couldn't be put closer to the house to reduce the amount of the variance request?

Mr. Franko- It could be, but one of the other things they are hoping to accomplish here, and again, this doesn't fall necessarily into your discussions here. We are trying to create an inviting entrance toward the garage and the house. One of the things that is being contemplated is that area behind the back door you see the trees, etc.

We want to create a better entrance. Again, I know that is not necessarily a concern of yours but bringing the garage closer to the house, there are a couple of things that ruin that.

The other thing is that the end gable of the garage all of a sudden becomes very, very apparent from the road, and what we are trying to do is tuck this garage back out of the way behind those trees that you see noted just before the garage headed toward the entry road.

Mr. Wright- What's located on the east side of the property, on the side that the garage would be?

Mr. Franko- On the side of the garage is a very large open area. If you refer back to the first page of your report...the house next to it is on a very large parcel of land. I believe it is somewhere in the area of ten acres, and there's better than 250 feet between my clients house and the adjacent owners. A good deal of that is wooded. There's some trees right behind where the garage is wanted to be located, and if it is a condition of being accepted, the owner has expressed the willingness to put any sort of landscape type barrier on that back side of the garage.

Mr. Wright- Is that a buildable lot adjacent to that?

Mr. Franko- I don't know. The adjacent owners have been there for a very long time, and we don't anticipate anything....

Mr. Wright- That lot, the adjacent lot, is owned by the residents to the east, which you say is 250 feet away.

Mr. Franko- Or more; that's just an estimate. It is all one parcel as far as we know. It has not been subdivided.

Mr. McKinney- Any other questions of Mr. Franko by Board members? Is there anyone here in opposition to this request? That concludes the case.

After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr. Nunnally, the Board granted a variance of 10 feet side yard setback.

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

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

The Board's amendment provided for less of a variance than requested by the applicant. The approval granted a variance of 10.0 feet versus the 17.0 feet requested. The Board granted this request subject to the following conditions:

1. This approval is only for the minimum side yard setback for the garage/breezeway addition as amended by the Board.
2. The garage/breezeway addition may encroach into the minimum side yard setback no more than 10 feet, leaving a minimum side yard setback of 10 feet.

A-37-99

W. Jeffery Edwards request for a variance from Section 24-43(a) of Chapter 24 of the County Code to build an addition at 2816 Harding's Trace Lane (Harding's Trace) (Tax Parcel 55-14-D-5), zoned RTH, Residential Townhouse for Sale District (Three Chopt). The rear yard setback is not met. The applicant 16.0 feet rear yard setback where the Code requires 40.0 feet. The applicant is requesting a variance of 24.0 feet rear yard setback.

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

Mr. Edwards- Yes, sir. My name is Jeff Edwards. What we are requesting here today is a variance of 24 feet from the rear of the setback requirement. My wife and I moved into this house in December, 1990 in the Harding's Trace area. We were one of the first residents of that subdivision, and it is now built out completely. It is off of Church Road, which is a very dynamic area, and as you well know as in many cases when we moved in there was two of us and now there's four of us; one seven years and one five years and both growing.

We intend to convert the garage to living space and add an addition off of the garage, a two-story garage with the new garage a bedroom upstairs and a bathroom upstairs, and convert the current laundry room, which is upstairs to the downstairs addition.

We talked to all of our neighbors who we have known and watched move in the neighborhood before we decided to proceed along this route. We enjoy the neighborhood; the neighborhood is strong and the children have many friends there and that's why we want to stay. There is no objection to the addition. The people affected most are those behind us, and they have asked us to build an addition instead of moving. I talked to each of the neighbors about today's hearing and they have no objection.

With respect to the addition, our lot is a reverse corner lot, so our rear line is the sideline for our neighbors. As you see from the picture that's attached to the staff report, the addition will be completely in the driveway. Even though the amount of the variance is 24 feet it doesn't effect the backyard at all. That is a fenced backyard and that will

remain, no trees will be taken out. In fact, none of the yard spaces affected by the addition at all extend back into the driveway.

Mr. Wright- This addition then would be constructed immediately behind your present garage?

Mr. Edwards- That's correct, sir.

Mr. Wright- What is the size of the proposed garage?

Mr. Edwards- Twenty-four feet by thirty-two feet.

Mr. Wright- You say it would be a two-story garage?

Mr. Edwards- Two-story garage.

Mr. Wright- What would you use the upper portion of the garage for?

Mr. Edwards- The bedroom and another bathroom.

Mr. Wright- In the garage?

Mr. Edwards- No, it would be above the garage.

Mr. Wright- That's what I am saying. In the garage construction.

Mr. Edwards- The garage that's currently there...the second story there is a bedroom now. The attic space is a pull-down attic in another part of the house, and currently, with the addition there will be a bedroom upstairs and another bathroom upstairs.

Mr. Wright- You access that through the rear of the present dwelling?

Mr. Edwards- Actually, we haven't got that worked out yet. I think the plans are going to call for a second stairway in the addition to the house that will allow access both from the hallway both from the existing upstairs and also a new stairway up the back part of the house.

Mr. Wright- That stairwell would be inside and not on the outside of the garage?

Mr. Edwards- That's correct.

Mr. McKinney- Any other questions by Board members? Is there anyone here who wishes to speak in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted a variance of 24 feet rear yard setback.

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

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

1. This approval is only for the addition illustrated on the plans submitted with this case. Future improvements to the property shall comply with all the applicable regulations of the County Code.

A-38-99 **Erik M. Sandvig** request for a variance from Sections 24-9 and 24-94 of Chapter 24 of the County Code to build a single family dwelling at 12201 Kain Road (part of Tax Parcel 26-A-43B), zoned A-1, Agricultural District (Three Chopt). The lot width and street frontage requirements are not met. The applicant has 49.16 feet lot width and 49.16 feet street frontage where the Code requires 150.0 feet and 50.0 feet respectively. The applicant is requesting variances of 100.84 feet lot width and 0.84 feet street frontage.

A-39-99 **Gregory S. and B. M. Sandvig** request for a variance from Section 24-94 of Chapter 24 of the County Code to build a one family dwelling at 12207 Kain Road (part of Tax Parcel 26-A-43B), zoned A-1, Agricultural District (Three Chopt). The lot width requirement is not met. The applicant has 50.0 feet lot width where the Code requires 150.0 feet width. The applicant is requesting a variance of 100.0 feet lot width.

Mr. Silber- Mr. Chairman, with your permission, I would like to call the next two cases together, as they are companion cases. The Board can take separate action, but I can call them at the same time.

Mr. McKinney- There's no problem with that. Let's call the cases.

Mr. Silber calls A-38-99 and A-39-99 together.

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

Ms. Sandvig- Yes, sir. I'm Barbara Sandvig. I bought five acres of property on Kain Road...my son and I, and he is going to take two acres and I am going to take three acres. When we bought it we had a surveyor, we had a real estate attorney, and we were told that we had ample road frontage. Since that time, I have talked with the surveyor and he expresses that it is the interpretation and that I do have enough road frontage. I said the County said I didn't have enough, and we need a variance to grant us enough so that we can each have a driveway in order to get to our property and build homes. It is a hardship. We can't get back there.

Mr. Balfour- Which way are your houses going to face on the property. Toward Kain Road or sideways?

Ms. Sandvig- Toward Kain Road. Our houses will face Kain Road.

Mr. McKinney- Let me ask now, on A-38-99, Parcel B, that is going to be your son's.

Ms. Sandvig- Yes.

Mr. McKinney- So he is on the front part? And you are Parcel A, the 3.92 acres on the rear?

Ms. Sandvig- Yes, sir.

Mr. Wright- How wide is the area for both lots together that front on Kain Road?

Ms. Sandvig- How wide is it?

Mr. Wright- Yes, ma'am.

Ms. Sandvig- As you see they chopped it off so much, but I had people out there and we had a survey and we went out there with the well and septic.

Mr. Silber- Mr. Wright, is your question as to how much road frontage she will have? Combined it would be just shy of 100 feet.

Mr. McKinney- And the Code requires 150 feet public road frontage.

Mr. Silber- Parcel A would have 50 feet of road frontage and Parcel B would have 49.16 feet public road frontage.

Mr. Wright- It is off on one of those less than one foot.

Mr. Silber- That's right, on Parcel A is a road frontage variance for less than a foot and lot width. The second one, Parcel B, is just for lot width.

Mr. Wright- And we are faced with the requirement that the County Code requires the lot width to be met at the building line from Kain Road. That's what causes the problem. There's plenty of width to the rear to build the house.

Mr. Silber- That's correct. They have to meet their lot width basically 50 feet back, which would be the minimum front building line.

Mr. Wright- Which means that they don't have enough width on the parcel itself once they get back to where they are going to build it.

Ms. McKinney- Do you have anything to add, Ms. Sandvig?

Ms. Sandvig- Only that if we don't get the variance we can't build, and we have spent a lot of money on this property, and we had an attorney, and we had a surveyor that...you know they are professionals and they told us we had road frontage, and I told them I was building two houses. I went with the professionals and if we don't we can't do anything with this property.

Mr. McKinney- You ought to be making them pay your fees.

Ms. Sandvig- That's what somebody suggested, but I am not that type person. I am going to make them aware that they are not aware of the Code. There are too many lawsuits in this country.

Mr. McKinney- Yes, but they are the professionals.

Ms. Sandvig- Yes, they are the professionals and I will make them aware that they didn't, and the person I bought it from told me he was giving me ample footage. That I had extra.

Mr. McKinney- Is there anyone here to speak on A-38-99 or A-39-99?

Ms. Warner - My name is Catherine Warner, and I live on Kain Road and I moved up there in 1941. That road has not been improved since we have been there. It is a two-lane road and it has no shoulders and it has deep ditches. I live...my driveway comes out on this 'X'...I'll give you a copy of this in a minute. That is right in front of where the 43B people want to come out with two driveways. I can't move my driveway because I have underground telephone lines...two lines there and also a post that the telephone people come and check the service. So, I can't move my driveway, but it would be very hard to get out there with two driveways coming out.

Would you like to have this?

Mr. McKinney- We can see where you are Mrs. Warner.

Mrs. Warner- I live on 10A and sold 10B...this doesn't show up where though.

Mr. McKinney- We have got it. We have got it on the screen.

Mr. Silber- We have got it up there. Thank you very much.

Mr. Marshall- I'm Mark Marshall and I am the adjoining property owner to the east of this property, second property, but mine adjoins to Eric's, the son, and also Barbara's.

Mr. McKinney- Yours adjoins where, Mr. Marshall?

Mr. Marshall- Mine adjoins to the east of Eric's property. I'm on the Pouncey Tract Road side. The same side of the street as they are.

Mr. McKinney- You are in that little area where they cut around?

Mr. Marshall - Yes, sir.

Mr. McKinney - Okay. Continue, please.

Mr. Marshall- My concerns that I have and my property...what I have got now is real hard to see on that drawing, but their layout of their property is 5.08 acres, and that is being subdivided by Eric Sandvig and also Barbara Sandvig.

My concerns that I have and I don't know if I am in the right situation or whether we need to defer this...I'm asking whether we can defer this until my concerns regarding some wetland issues. This property prior to being sold...the Sandvig's also have a son-in-law and a daughter that owns the property back to them. That is the property that comes around the backside of their property, which is Callo. I think that's their last name.

My concern on this is that I have owned my property since 1977. The property was up for sale, the five acres plus eight plus a few more, which is a total of like 16 acres. A well known developer did go in and try to determine if he could buy the property and develop it and found out that it was wetland issues and too much to deal with. So, he backed off of the issue.

The issue of where this parcel of the 2.0 acres is in some wetland areas. I would like it to be addressed, at least to look at, because my concerns from this are that all of my property in the rear is all. I wish I had taken a picture recently of the flooding. There is a pond that Mrs. Warner which is across the street from my property, if you will look right up there a little pond is shown on the other side of the street. That sometimes will flood and that road sometimes will flood completely and comes over the spillway. It fills all in the back and why my concern is I don't have a problem of development and I don't have

a problem is there was one lot with a house going back there because it is up on a high hill, but where they want the other house and I know my property pretty well, and I have been back there and seen their survey markers, and I have concern about what it is going to do to my property in the rear property area because this is an area that has hardpan. You can walk in the yards; my lawnmower in the summer time is like mud because of the water above the ground and staying on top of the ground.

Mr. McKinney- Excuse, me, Mr. Marshall, but did you look at the conditions in the report.

Mr. Marshall- Yes, I looked at the conditions, and they are looking for a variance and I understand that.

Mr. McKinney- No, did you look at the conditions where #2 states that the “applicant must submit all necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the Code requirements to be brought up to standards.” In other words, we are here only for the road frontage.

The wetlands and all of that, the delineation of those will be handled when they file for the building permit, if it is granted. All of that will be addressed by those departments. We don’t have anything to do with that.

Mr. Marshall- Correct. I understand that. I went to the County and talked with your people...this person right here...I talked to him about my concerns and then went to the County Wetlands and talked to that department. I asked them how could it be handled and they said what it should be for two pieces of property ahead of time without the issues all being addressed maybe it needs to be addressed all at one time and to defer it. That’s what I did. I talked to my attorney about it and he said he would agree that the total thing before you give a variance on something without it being looked at let’s look at it as a total package deal.

I would like to sit down with the Sandvig’s; the issue I have is two driveways coming in, also. It adjoins my father’s property, and the well is three feet from that property line and his drainfield is right on the line of coming into that parcel, which would be the two acre parcel

Our concern is our well is only a shallow well. The runoff from gasoline fuels or anything else...I know you get some from the road and that is only going to add to the problem because it drains right there to the well area.

Having two driveways there...I don’t see the need of it since it is one family. I see it as being one driveway that was needed and the reason I say that also is that we have reports numerous times and checked with the County Police of problems with speeders on that road.

One of the police officers lives next door to my property. He knows of the problem and has no where to pull off to stop the people from running up and down the road. Their driveways where they want to put them into is at the peak of the hill and it is not at the top...they are just down below it. My parent's driveway is maybe no more than maybe 200 feet or 150 feet from that point, and they have a hard enough time to get in and out of their driveway to get out on Kain Road. It is a road that does not have any shoulders on it. People that come onto that road have to park on the sides because usually they can't get into the people's houses because the driveway are not long enough or wide enough. That's not a problem that happens all the time, but I am asking that before we start giving variances on certain things, maybe we ought to look at some other issues.

I am willing to talk to them and work out something because I could maybe give them...the issues are is wetland...give us a portion of mine for a right-of-way and actually get a right of way from theirs to get to the back of my piece. So, I'm willing to work with the Sandvigs on this to give up a piece of mine and move the road down further. I don't know what that would involve in changing their driveway but I think the impact on my parents' house, the impact on the hill, the drainfield that my father had, the well, and all of that, which I will inherit one day. I have concerns about it, and I'm looking out for that.

Mr. McKinney- Mr. Marshall, in this situation you have got two lots, and you are going to have two driveways. Even though it is all in the family today, 50 years down the road it may not be.

Mr. Marshall- Yes, sir.

Mr. McKinney- And, each person that has a lot has to give ingress and egress to it.

Mr. Marshall- Question to you: if I gave a 50 foot County right-of-way and meet specifications County specifications and that doesn't mean they have to build to County specifications...give them a 50 foot right-of-way because Mr. Orvis, he is no longer alive, but his family owns the property in the rear. You know that this is one of the areas that is going to grow. It is the last area in Short Pump that is for development.

If we worked out a 50-foot right-of-way and at a later time someone wants to come in and develop this property, the County that we have already established an easement. The County has got the rights to be able to use this as a County road....

Mr. McKinney- That would be entirely up to your attorney, her attorney, and you can work that out and this variance possibly wouldn't be necessary. It is before us today and we have to address it.

Mr. Marshall- Right. Thank you.

Mr. McKinney- Anyone else who would like to speak? Would you state your name for the record, sir?

Mr. R. Marshall- My name is Roy Marshall and I am the house adjacent to that property, which would be as I look at it to my right of that entranceway. I am not opposed to a driveway at all, although our well is very close to the edge. The property was divided that way before I bought my house and my drainfield in the back is very close to the edge.

I am opposed to two roads, and I guess after what I have just heard you say, that two pieces of property had to have two roads. I would like that maybe the variance be that two pieces of property have one road. If you look at that property, one road going back would run along at what is the west end of that property. It appears to me that in both entrances back there to both pieces of property.

I also feel that two roads between these two houses are a little bit defacing to the property even though you read everyday about Henrico County's reputation nationwide. We can't continue to do that if we add roads like this everywhere. I know you people don't have the time to do it, but look at the access road, and I don't think anyone of you would like to live next door to most of the those access roads. I hate to see two on that small piece of land.

Ms. Sandvig- I would like to say that I'm sorry that you guys, you know like with your driveway. I would do whatever I could so my driveway wouldn't be directly in front of hers. I don't expect her to move her driveway. I haven't gotten that far as far as wetlands. I have this lady coming out Tuesday from Norfolk. I know your are not interested in all of that, but what should I ask her to come out if I can't build on it?

So, my first step was to get a variance, and my second step, if it is wetlands, and I was assured by the county that it is only a minimum and where I am building it will not be affected by the wetlands. My drainfields will be away from it. All I need is a culvert to get over it. When I bought the land it was dry. There was no water; I bought it in June. I had no idea; I thought I had a dry creek. I'm happy to death that it is wet.

As far as sharing rights of way with this gentleman, I am not interested in sharing a driveway. That's why my son and I aren't sharing a driveway. Today you are fine, and tomorrow you have a dispute. That's why my son and I aren't sharing a driveway. He's young; he's 27; he will be selling. He's young; he will be selling. I'm not interested in selling my house handicapped accessible, and I plan to stay there for a while. That's why I'm building on the back lot.

So, I really want a separate driveway. I thought I was doing this in the right steps and so it really would be a hardship if I couldn't put the two driveways there. I would do everything I could as far as helping the lady with the pond. I understood it was her pond that was coming over; that's what someone told me. I don't know. All I know is that I would work with my neighbors and try to be a good neighbor and make everybody happy.

Mr. McKinney- Ma'am, you need to address your concerns to us.

Ms. Sandvig- Nobody has contacted me. One of the neighbors has contacted me, and I talked to her today. I'm not interested in sharing a driveway and I'm not interested in giving him 50 percent, and I don't want that down the road.

Mr. McKinney- I think where he was coming from if you have got a 150-foot frontage to work out later. We are not interested in that process. That would be of benefit to both of you.

Ms. Sandvig- Right. As far as the driveway coming out on the hill...I really am ignorant on that one. I will have to go and check that out because Kain Road is a sort of flat land but it does elevate, but that would be up to the County Engineer and etc.

Do you gentlemen have any questions?

Mr. McKinney- Thank you, and that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted (A-38-99) variances of 100.84 feet lot width and 0.84 feet street frontage.

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

REASON: The Board **granted** this request as **amended** for it found from the evidence presented that authorizing this **amended** variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. A well and septic system approval by the Health Department must be obtained.
2. The applicant must submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.
3. This approval is only for the lot width and street frontage requirements. All other improvements on the property shall comply with the applicable regulations of the County Code.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted (A-39-99) a variance of 100.0 feet lot width.

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

REASON: The Board **granted** this request as **amended** for it found from the evidence presented that authorizing this **amended** variance will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. A well and septic system approval by the Health Department must be obtained.
2. The applicant must submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.
3. This approval is only for the lot width requirement. All other improvements on the property shall comply with the applicable regulations of the County Code.
4. The applicant shall share a driveway entrance for the subject property (12207 Kain Road) with the adjacent property (12201 Kain Road) so that only one access point onto Kain Road will be created. The driveway shall not exceed 15 feet in width.
5. A cross-access and maintenance agreement for this driveway shall be provided with the building permit application.

UP-14-99 **Gerrit S. VanVoorhees, ETAL** request for a conditional use permit pursuant to Section 24-12(e) of Chapter 24 of the County Code to in order to maintain a private kennel for the keeping of four or more dogs at 7511 Fourdale Lane (Lyn-Juan Acres) (Tax Parcel 227-I-E-4), zoned A-1, Agricultural District, (Varina).

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

Mr. VanVoorhees- Yes, sir. I'm Gerrit S. VanVoorhees, and we are applying for a kennel permit or a conditional use permit to keep eight show dogs on our premises. These dogs are extremely well trained and socialized and not people aggressive. They are maintained in top condition, which is required for show quality dogs and only receive the very best food, health care and living conditions.

The dogs are shown in competition events offered by the American Kennel Club and have won numerous awards.

The dogs are kept outside all day in pens between the hours of 7 a.m. and approximately 6 p.m. All of the dogs sleep inside at night in crates. Several of the dogs are debarked. The property is cleaned daily; all the trash is disposed of in heavy duty plastic bags and all of the trash is placed in containers.

I was not aware until just now...I was handed some letters you received against my case, of any complaints against us by our neighbors. None of our neighbors have ever spoken with me about any of their complaints. I, therefore, didn't know what the nature of the complaints were.

Mr. McKinney- You have not spoken with your neighbors?

Mr. VanVoorhees- Not personally, no.

Mr. McKinney- You say some of these animals has been debarked?

Mr. VanVoorhees- Yes, sir.

Mr. McKinney- Can you do that to humans?

Mr. VanVoorhees- I'm not sure, sir.

Mr. McKinney- I've got a couple I would like to do that to!

Mr. Nunnally- You say you have eight dogs?

Mr. VanVoorhees- Yes, sir.

Mr. Nunnally- And they all belong to you?

Mr. VanVoorhees- Correct.

Mr. Nunnally- What kind of dogs are they?

Mr. VanVoorhees- They are Chesapeake Bay Retrievers and American Statue Terrier for terriers.

Mr. Nunnally- Do you have any pit bulls?

Mr. VanVoorhees- American Statue Terrier is what the AKC commonly calls the same breed of dog, yes.

Mr. Nunnally- How many of them do you have?

Mr. VanVoorhees- Six. I have some binders that I would like to give to you. In the binders there are some letters of reference of a vet and other kennel owners that are associates of ours. There is also some obedience certificates. The dogs are very well trained. They are not people aggressive at all. In the time that I have lived there, I have had one dog get out. One occurrence in two years I don't think is too bad. It didn't threaten anyone; it was on the property.

There are also some health certificates and other things listed in this binder just to show that these dogs are a substantial part of my life.

Mr. McKinney- Now this folder that you just gave us...you just put this together?

Mr. VanVoorhees- Yes.

Mr. McKinney- Do you expect us to sit here and go through all of this now?

Mr. VanVoorhees- No, sir, I thought whenever you deliberate on the case you might look at it.

Mr. McKinney- These dogs that are debarked. Are they the pit bulls?

Mr. VanVoorhees- One is and one is a Chesapeake Bay Retriever.

Mr. McKinney- Well, you hear a lot of bad stories about pit bulls.

Mr. VanVoorhees- Yes, sir. I am aware of that.

Mr. McKinney- People, etc...dogs are supposed to be good dogs and all of that. When you say that you have a pit bull that is debarked that concerns me if it gets out and all of a sudden he decides he wants to go after some child or something like that. He's not even barking, so you don't even know he is coming.

Mr. VanVoorhees- They still make noise, sir, they just don't bark very loud

Mr. McKinney- Explain to me what debarking is.

Mr. VanVoorhees- They actually scrape the vocal cords of the dog, so that they are not capable of making that high pitch barking sound. What they sound like is sort of like they are horses.

In the back of the binder, there is a certificate in there one of our pit bulls is up for therapy dog and has passed the first level of tests. That's very nonaggressive; they are used to visit patients in hospitals.

Mr. Wright- What size is your property? What size lot do you have?

Mr. VanVoorhees- It's two and a half acres.

Mr. Wright- How do you keep these dogs outside? Where are they located?

Mr. VanVoorhees- There is a fence that adjoins the house and goes back roughly 110 feet or so and their pens is on the back of that outer fence. So, there are basically two levels of fence. What you see extending from the house here in this picture would be the

front level and on the back edge of that there are actually sectioned off pens within the larger fence.

Mr. Wright- Have you seen these letters that we have got from the neighbors?

Mr. VanVoorhees- I was just handed them.

Mr. Wright- One neighbor says that one of the dog pens is within a few feet of her well. How could that be?

Mr. Van Voorhees- I'm not aware of that, sir.

Mr. Wright- How close to the side lot line is the dog pen?

Mr. VanVoorhees- On which side?

Mr. Wright- Either side. You have got neighbors on both sides.

Mr. VanVoorhees- There is I would say approximately 30 feet or so on each side.

Mr. Wright- Are you saying the pen is 30 feet from the side line?

Mr. VanVoorhees- Yes, sir.

Mr. McKinney- Where are the Reed's in reference to your property?

Mr. VanVoorhees- Where is the Reed's? She is on the left side.

Mr. McKinney- And how far is your fence from her property?

Mr. VanVoorhees- The fence is roughly about 30 feet from her property line.

Mr. McKinney- Your fence is not on her property line?

Mr. VanVoorhees- Not at all. There was that homeowner had when we bought the house, the driveway went over the corner of her property line and to get a clear deed, we had to remove it. Therefore, I think there may be some leftover, but no, the property line is longer on that side, if anything, than the other.

Mr. Nunnally- How long have you been living at this location?

Mr. VanVoorhees- About two years.

Mr. Wright- How long have you had these dogs there?

Mr. VanVoorhees- The entire time.

Mr. Wright- Have you had any complaints from the neighbors prior to this about the dogs in any way?

Mr. VanVoorhees- Not personally, no, sir. I had one complaint come in at the end of the years. Somebody called in and complained about rats or something of which I had seen no evidence of and had never seen a rat on my property.

Mr. Wright- Mr. Silber, have there been any complaints to the Planning Office concerning these dogs?

Mr. Silber- I may have to consult with the staff. Mrs. Blackburn says we have had one complaint.

Mr. Wright- You say you have eight dogs there now?

Mr. VanVoorhees- Yes, sir.

Mr. Wright- Your request is that you be permitted to keep four more dogs?

Mr. VanVoorhees- Yes, sir.

Mr. Wright- You notice that there is a condition if this was to be approved by the Board that you would have no more than eight dogs.

Mr. VanVoorhees- Yes, sir, and I would appeal to the Board that if you do deny my claim that you please give me some time to sell my house that I might move.

Mr. McKinney- Do you intend on keeping eight dogs at all times?

Mr. VanVoorhees- That's hard to say.

Mr. McKinney- I mean normally when you are not in compliance with the Code. You get to keep what you have now, but through death or whatever, you get it down to the three, to what the Code allows.

Mr. VanVoorhees- I would be willing to have that written in as a condition.

Mr. McKinney- That was one of the normal conditions that we have had in the past. Is that correct, Mr. Silber?

Mr. Silber- I believe that is true. I am not that familiar with how it has been worded. There's a certain period....

Mr. McKinney- This condition #3 allows the owner of this property to have eight indefinitely.

Mr. Silber- But did the condition state when the applicant had to reach the limit of three?

Mr. McKinney- No. Usually it is as they pass away, they not bring in anymore, they can't replace them, and when they get down to three they are in compliance. We don't allow a kennel in a residential neighborhood.

Mr. Silber- That's fine, Mr. McKinney, I'm just not sure how we enforce that if we went out two years from now and still found eight dogs, we would not have any evidence that they had passed away or not.

Mr. McKinney- I don't know how it was enforced in the past, but that's the way it was.

Mr. Wright- After a period of time you would know that the lifespan of a dog is about 16 years.

Mr. VanVoorhees- That's a long time.

Mr. Wright- Are you doing any breeding on this property?

Mr. VanVoorhees- I have bred one in the past two years, yes.

Mr. Wright- Do you intend to do any more breeding?

Mr. VanVoorhees- That's actually written in a condition that I would accept not to do that.

Mr. McKinney- All right, do you have anything else to add?

Mr. VanVoorhees- Only that, I bought here and was basically in ignorance. I looked at the zoning and a zoning Code for an agricultural, and didn't realize that a duly platted subdivision had different restrictions.

It was my error, but I did search very hard for an A-1 house to move into so that I could have the dogs.

Mr. McKinney- Is there anyone here to speak in reference to UP-14-99?
Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board denied this request.

Affirmative:	Balfour, Kirkland, McKinney, Nunnally, Wright	5
Negative:		0

Absent:

1

REASON: The Board **denied** this request as it found from the evidence presented that authorizing this conditional use permit to allow a private kennel could be of substantial detriment to adjacent property and would materially impair the purpose of the zoning regulations.

The Board granted the applicant 90 days from the March 25, 1999 hearing to comply with the regulations of the Zoning Code. To comply with the regulations of the zoning code (a maximum of 3 adult animals residing on the property), the applicant must remove 5 dogs from the premises by the end of the 90 days.

A-40-99 **John W. Gibbs, Jr.** request for a variance from Section 24-95(b) of Chapter 24 of the County Code to build a one family dwelling at 40 Virginia Avenue (Bungalow City) (Tax Parcels 141-4-E-347 and 348), zoned R-3, One Family Residence District (Fairfield). The lot width is not met. The applicant has lot width 50.0 feet lot width where the Code requires 65.0 feet. The applicant is requesting a variance of 15.0 feet lot width.

Mr. Balfour abstains from voting on this request.

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

Mr. Hahn- Yes, sir. I'm Nicholas Hahn, and I represent this owner of the property. Mr. Chairman, we come before you to request a variance on this property. The parcels were originally one of the parcels...it is actually two parcels, one of which was purchased in 1986, and the other one in 1987 in an attempt to achieve the lot width so they could be built upon.

Just a couple of notes: In your packet and also on display it shows that there is a residence only on one side. The corner lot actually does have a residence. The mapping I believe is a little out of date, but there is actually a residence on both sides of it.

Also, in the staff report it mentions that the applicant was before the Board in January with two similar requests in the same subdivision. Those requests were in separate subdivisions, so we had a request in this subdivision, but the other request was a different subdivision. Both of those requests were granted by the Board earlier this year.

We feel that we can meet all of the conditions other than the lot width. That's why we are simply requesting a variance for the lot width. These two parcels are the last parcels that we would come before the Board with in this subdivision.

Everything else is accurate on the staff report other than those corrections. I'd be happy to answer any questions that you would have. Mr. Gibbs is present to answer any questions you might have of him.

Mr. Wright- Your testimony is that there is no way you could buy adjacent property to meet the hardship.

Mr. Hahn- That's right. The property on either side is developed.

Mr. Wright- Are there other houses on this street on 50 foot lots?

Mr. Hahn- Yes, in the subdivision. Next door, in fact, actually does have, I believe, that's not the corner lot, that the other parcel.

Mr. Nunnally- How long have you owned this lot?

Mr. Hahn- One of the lots has been owned for some 12 years. The other lot for two or three. It was purchased in an attempt to get enough lot width.

Mr. Wright- Initially, there were two 25-foot lots here.

Mr. Hahn- That's correct. And we would be willing to vacate the property line so there would be a 50-foot rather than build on property line. We are willing to do that as a condition of approval.

Mr. Nunnally- Didn't you attempt to buy enough land to build a house on, but didn't you know at that time that it was 65 feet instead of 50 feet.

Mr. Hahn- I'm not sure he did know at that time, according to Mr. Gibbs. Certainly, 50 feet is better than 25 feet, so at least it is going in the right direction.

Mr. Wright- What size house does he propose to build on this lot?

Mr. Hahn- It would be 35 feet in width. We are pretty flexible with the size. In the packet I did try to develop a building envelope, but there's an eight foot setback on one side and seven feet on the other, so that's a total of 15 feet, so there would be 35 feet of width. There should be plenty of depth on the lot. We feel that we can meet that.

Mr. Wright- Would the house that you propose be comparable to the other houses in the area?

Mr. Hahn- Yes, sir.

Mr. Wright- In size?

Mr. Hahn- Yes, sir. If not larger.

Mr. Silber- The house that is shown on the right part of the screen, isn't that
the corner house?

Mr. Hahn- Yes.

Mr. Silber- Doesn't that set on three lots?

Mr. Hahn- Yes, that should set on three lots.

Mr. Silber- So, that meets the zoning requirements?

Mr. Hahn- Yes. That 75 feet on the other side, and, of course, it is 50 feet,
and, of course, 50 feet on the lot that we are making our request for.

Mr. McKinney- Are there any down there that sets on 50-foot lots?

Mr. Silber- Mr. McKinney, I believe that there are some that sit on 50-foot
lots, and I believe that they were probably constructed when the ordinance allowed them
to sit on 50 feet.

Mr. McKinney- Looking at this map, I really don't see any that appears to be sitting
on 50-foot lots.

Mr. Wright- The one next door is on a 50-foot lot.

Unintelligible.

Mr. Silber- I believe those house were actually built there before it was zoned
R-3. It went through a comprehensive rezoning by the Board of Supervisors. I think they
purpose was to increase the lot sizes and to upgrade the neighborhood.

Mr. McKinney- Well, I know there is a lot in the Highland Springs area, but I am
not sure how many are in Bungalow City.

Anything else, Mr. Hahn?

Mr. Hahn- That's all I have at this time, but I would be happy to answer any
questions you might have.

Mr. McKinney- Any other questions of Mr. Hahn? Is there anyone here in
opposition to this request? We will now hear from the opposition.

Ms. Jackson- My name is Debbie Jackson and my husband and I live in the new
home on the corner and when we moved there we were told that no one could build on

that because it didn't meet the ordinance and we could look at possibly purchasing the land.

When the sign went up, I called the number to purchase the land to try to purchase and she told me that we couldn't because they were going to put a home on there the same size as ours, which is 24 feet by 40 feet. Ours is 40 feet, but 24 feet by 40 foot the long way, which would be right in our driveway and right in our neighbor's window.

We would like to request a continuance because we have a letter from the civic association from Bungalow City and we are all against it.

Mr. McKinney- Ms. Jackson, did you say it would be right against your driveway?

Ms. Jackson- Yes, it would if they turn a home like ours sideways.

Mr. Jackson- I'm Reginald Jackson, and we live right on the corner.

Ms. Jackson- We have only been there since September, 1998.

Mr. Wright- What's the size of your lot?

Ms. Jackson- Our lot is 75 foot.

Mr. McKinney- If he had the lot on the left side, it would still be the same distance from your house...is what your concern is.

Ms. Jackson- Yes. He said that the house right here, the older house is on a 50-foot lot, but that house is over 100 years old. It is old, and they won't allow him to do anything to the house or with it because he is on 50 foot and he doesn't meet the ordinance.

Mr. McKinney- Your concern...if he had the 65 foot frontage, he would still be right up against your driveway...if he wanted to be because the Code says you are supposed to have so many feet of side yard.

Ms. Jackson- It would be better, it would meet code and I wouldn't have an argument.

Mr. McKinney- What is the side yard setback?

Mr. Silber- It is a minimum of 7 feet, total of 15 both sides.

Mr. McKinney- Seven foot and minimum of 15 feet.

Mr. Wilber In order to provide....

Mr. McKinney- Seven and a half and seven and a half and meet the code requirements as far as the side yard is concerned.

Mr. Silber- Yes, sir.

Mr. McKinney- Fifteen from fifty would be 35 feet.

Ms. Jackson- I have letters also, sir, from neighbors opposing it because we depreciate the area and the lady behind us over here also. We originally wanted a continuance so our league could get together with this because we really oppose not just that area but the whole Bungalow City. The Association opposes it. They wanted ample time...and they said everyone was notified, but the lady in the blue home has not yet gotten her notice. She received a notice in the mail saying it was at the post office, but she has not yet...and they are directly behind her. She did not have the time to get off to come here today.

We have letters from a couple of the other....

Mr. Jackson- We have a letter from the president of Bungalow City Association. Do you want me to read it or would you like to have it?

Ms. Jackson- The letter is asking for a continuance of the case.

Mr. Wright- What good would the continuance do?

Ms. Jackson- Well, to argue....

Mr. Jackson- Well, it was short notice and....

Mr. Wright- They have complied with the ordinance as far as you are concerned. All they are required to do is to send the notice five days ahead of this meeting.

Ms. Jackson- Whether you receive it or not?

Mr. Wright- If you send it by certified mail...that satisfies the Ordinance.

Mr. Jackson- So, the lady in the blue house wasn't home, so they took it to the post office, and she has not yet picked it up and we asked her yesterday, and she said she had gotten a notice saying that it was there, but she had not picked it up. So, she didn't even know about it until we mentioned it to her.

Mr. Wright- But they complied with the law and that's all we can do.

Ms. Jackson- Our neighbor on one side would like to possibly purchase some of the land or we would like to purchase all of it, but we would not like a house to come

there and be right at our driveway or right at his window. It is really close. I saw a house several streets over like that and the privacy fence was right here. There wasn't any area for anything. It was tight, and we would not like for that to come where we are.

They are trying to better it but yet...this is going to take it down.

Mr. McKinney- Ms. Jackson, actually the one that requests the continuance is the applicant. If Mr. Gibbs would like to give you a continuance we would entertain that for the better of the neighborhood or whatever, that's entirely up to him.

Mr. Gibbs- I'm John Gibbs, and we don't wish to give a continuance. The lot is 50-feet wide and there is no possibility of acquiring land on either side of it to make it 65 feet and it is impossible to do anything with this piece of land if we don't get a variance.

Ms. Jackson- You can sell it.

Mr. McKinney- That's entirely up to you.

Mr. Gibbs- I don't wish to give a continuance.

Ms. Jackson- I would also like to add one other thing. The gentleman said that he bought it in parcels...50-feet...he owned our land before we moved there. He owned our 75-feet, so I don't think it was purchased in parcels if he owned all of it before we moved there.

Mr. Wright- Mr. Gibbs owned it?

Ms. Jackson- Yes, he did.

Mr. McKinney- So, he sold you three lots?

Ms. Jackson- He sold the gentleman that built our house three lots.

Mr. McKinney- He bought one of these lots in 1996 and the other in 1997.

Ms. Jackson- I know that he owned all of them...five lots before we moved there.

Mr. Jackson- If it is 50 feet and doesn't meet code, how can he build?

Mr. McKinney- That's why he is here. He has got to get a variance. Anyone else to speak in opposition?

Ms. Jackson- I hope that when you all consider the people that have to live in that neighborhood and that we are trying to better the neighborhood and I don't feel that this would be a plus toward doing so.

Mr. McKinney- That's why we have five up here, Ms. Jackson.

Ms. Jackson- Thank you.

Mr. McKinney- Anyone else?

Ms. Peterkin- My name is Jan Peterkin and I live at 43 Virginia Avenue, right across from the open lot right now. One of my main concerns is overcrowding. We live on a very narrow street.

I live on two and two-third lots, and my neighbor on my right and myself, or on my left if I turn my back. Our driveways are joined. My house is 42 feet long, and when we have a couple of cars in my driveway, a couple of cars in my neighbor's driveway, it looks like a car agenda. I am really opposing them putting another house in that little lot there between those other two houses.

I think it is going to be very over crowded. That is the reason I am opposing him building another house.

Mr. McKinney- Anyone else to speak?

Ms. Lewis- My name is Cynthia Lewis, and I live on 135 Liberty and my house is the yellow house on the corner. When I was notified that a house was going in there I check with Debbie that to squeeze this house in that area they would have to turn it the opposite way of all of the other houses.

Every house in that subdivision is facing the street. I am just opposed to it. If the house was facing like everybody else's house, that would be fine, but I am just opposed to this. Just to squeeze a house on a lot and have to turn it the opposite direction to get it in there, I am very much opposed to it. Thank you.

Mr. McKinney- I didn't hear them say that they were going to put the entrance on the side, etc.

Ms. Peterski- Isn't that what they said?

Ms. Jackson- It is a sign now right there beside this sign, and the person that is supposed to be building is on there and I called and this is what I was told by....

Mr. Wright- Well, we will let Mr. Hahn address that.

Ms. Peterski- That's all I have about the matter. I am very much opposed to it, and my adjoining neighbors are also.

Mr. McKinney- Anyone else. We will hear Mr. Hahn's rebuttal at this time.

Mr. Hahn- I guess just to address a couple of concerns. First of all in regard to the orientation of the house, we would certainly make that a condition of approval or we would be willing to make it a condition of approval that the house would front, of course, on the road and the front door would be on the road. It would not be turned sideways. I'm not even sure you could do that by Code, but it certainly would not be turned side ways and built like that. It would have a front door that would front on the road.

Also, in regards to the notices. We did send the notices out actually ten days in advance so that the notices certainly....

Mr. McKinney- We don't have any problem with the notices.

Mr. Hahn- The latest lot purchased was purchased in 1997.

Mr. McKinney- Mr. Hahn, you have told us that. You have your rebuttal time and that is to address the concerns of the neighbors.

Mr. Hahn- Yes, well. There were two lots purchased and they were not adjacent lots so that's why we purchased those lots to make that lot width, but I guess the main concerns is the frontage...we would certainly front the house so that it would be typical of the homes in the neighborhood, and also in terms of the setback we would do eight feet on one side and seven feet on the other and still meet code. It would be typical of the blue house and the yellow house as you see up on the screen in terms of separation of those homes.

Mr. Nunnally- What type of house are you going to build? The front door is going to come out the front, right?

Mr. Hahn- Right.

Mr. Nunnally- Are you going to build it sideways and a door come out some other room?

Mr. Hahn- The pitch of the roof would come, in other words, the pitch line of the roof would run parallel to the road, so it would be typical say of the homes that you see on the picture here.

Mr. McKinney- It would have a gable in it?

Mr. Hahn- Yes.

Mr. McKinney- And a gable in the back.

Mr. Hahn- A gable?

Mr. McKinney- A gabled end...the ridge of the roof would run perpendicular.

Mr. Hahn- No, no.

Mr. McKinney- Run parallel?

Mr. Hahn- We would run it so it would run parallel to the road.

Mr. McKinney- How deep is this house going to be?

Mr. Hahn- Well, we have 35 feet of frontage...a 35 foot width envelope that we would be working with....

Mr. McKinney- You say the house is going to be 35 feet wide in the front?

Mr. Hahn- Yes.

Mr. McKinney- How deep is it going to be?

Mr. Hahn- At least 30-34 feet is a guestimate. There is plenty of depth on the lot actually.

Mr. Wright- Is it almost going to be a square house?

Mr. Hahn- (unitelligible)

Mr. McKinney- So, your gable is going to be on the side; it won't be on the front. And this house would be built as a speculation or is this being done to be sold, or...to a builder or what?

Mr. Hahn- It would probably be sold to be builder typical of the lot next door.

Mr. McKinney- Mr. Hahn, you represent Mr. Gibbs, correct?

Mr. Hahn- Yes, sir.

Mr. McKinney- And you are with whom?

Mr. Hahn- Dominion Land and Development.

Mr. McKinney- Okay. That concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board **denied** this request.

Affirmative:	Kirkland, McKinney, Nunnally, Wright	4
Negative:		0
Absent:		0
Abstain:	Balfour	1

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

UP-15-99 **MCI Telecommunications** request for a revised conditional use permit pursuant to Section 24-52(a) of Chapter 24 of the County Code to expand the facilities at 5156 Francistown Road (Tax Parcels 29-A-50 and 51), zoned R-3C, One Family Residence District (Conditional) and A-1, Agricultural District (Three Chopt).

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

Mr. Myrtetus- Yes, sir. I'm Duffy Myrtetus, and this is an application for a revised conditional use permit for an existing junction facility at 5156 Francistown Road. This facility is operated by MCI as a switch junction and co-location of the facility. It is the only facility of this type on the MCI system in Virginia and more importantly is the only facility of this type located within the area of Maryland north of Baltimore and Cary, North Carolina.

The facility consists of telecommunication switching and co-location equipment. The switches serve as the conduit for telecommunications traffic over the MCI system and the co-location facilities permit MCI customers to establish a direct link into telecommunication lines for the entire MCI system.

The brief history of this site includes an application, UP-9-97 in 1997 for an approval of an expansion of the premises. Unfortunately, that application was approved at a time when at a time MCI was in the throes of a merger with WorldCom, at the time, the largest merger between telecommunications service providers in history.

One of the by-products of that merger was an administrative delay in commencement of construction, and, unfortunately, the approval lapsed before work could begin.

This application, by design, is intended to address that expansion with certain limited revisions.

This facility is critical to MCI's operation. A number of customers have noted, including the Commonwealth of Virginia Governmental Agencies including all services for the Department of Motor Vehicles and American Online to name two.

In pursuing its application in this matter, MCI has made a committed effort to work both within the perimeters authorized by Ordinance and also addressing concerns of its adjoining property owners. And to that end, it conducted a meeting at the facility on March 15, 1999, and all owners that received notice of this proceeding received an invitation to attend that meeting at the MCI facility.

They were invited to hear a presentation by MCI of its expansion at the facility and an opportunity to voice their concerns and to tour the facility. At that meeting on March 15, 1999 a number of the adjoining owners did appear and stated a number of critical concerns they had about the expansion that is intended for the facility. At the conclusion of that meeting, and at that meeting, that meeting was attended by a variety of representatives of MCI, all of whom are here today. They have flown in from Texas to attend this meeting.

At the conclusion of the meeting on March 15, 1999, with the adjoining property owners, MCI went back to Texas and directed their engineers to go back to the drawing board and attempt to the extent it was economically feasible to address the concerns of the neighbors which were limited generally to resulting noise upon completion of the facility. MCI's engineers have now made dramatic changes to the intended construction on site and I wanted to point out staff's reporting includes a number of housekeeping matters that I need to bring to the Board's attention.

On page 1 of the report, it indicates that the facility expansion will consist of approximately 2,700 square feet...that should be 27,000 square feet. There are a number of recitals included in the staff report regarding issues raised by neighbors in relation to noise. What MCI has done is gone back from an engineering standpoint and completely eliminated the exterior chillers and radiators that were objected to by the various neighbors. They have, in short, committed themselves to invest in excess of a million dollars on this project to contain within the expansion premises the cooling facilities and related pertinent equipment that had presented an issue of concern for adjoining owners.

I have Mr. Greg Scheurich, a manager who is here today and can describe for you in more detail MCI's specific attempts to make those changes.

Mr. Scheurich- Good morning. My name is Greg Scheurich; I am with MCI WorldCom, and I am the project engineer for this expansion. Briefly, as Duffy has indicated currently there are some air cool chillers on the exterior of the facility and in looking at this diagram it will be located on the lower left-hand side of the property. That is close to the adjoining southern property line property owners.

We had an open house as Duffy had indicated. The property owners that showed up did overwhelmingly state that these chillers were a great nuisance to their living in that area.

To that end, MCI has gone back to the drawing board. We have come back with what we feel to be the best solution for all parties involved, and that would be we are proposing to eliminate those air cooled chillers on the lower left-hand side of the picture, and we are replacing those with the a water cooled chiller system.

The location of that is, if you look in the cross thatched area of this picture is basically the knob at the top of the picture, so we are essentially replacing the air cool chillers with a water cooled system on the opposite side of the building. The water-cooled chillers are located inside the building rather than having air-cooled chillers located outside of the building.

They are now located on the opposite side of the property; we have the additional distance as well as the building itself acting as buffers to the noise from these chillers. Further, we propose that we are going to pull the existing generator, which has no special silencing equipment on its radiator, and we will replace that with new generator systems in the expansion area which will have special sound dampening equipment on it as will the new water cooled chillers on the north side of the facility.

Essentially the premium we are looking at in moving this equipment and installing this special sound dampening equipment is in excess of approximately a million dollars. I would indicate that as more a show of good faith on MCI's part as acting as a good neighbor, than in actually having the Board concerned about our cost.

Finally, and essentially in summary, the relocation of the plants as well as the different types of equipment and the special attention to the sound dampening equipment, our acoustical engineer that Duffy referenced has done some research on this and taken some of the existing sound levels from the south property, and he has found that the existing equipment is radiating approximately in the 58 decimal range, and we anticipate that we will significantly reduce that with the changes.

Mr. Wright- What will it be?

Mr. Scheurich- The range that we are projecting at this time is in the mid-forty decimals with this new equipment, which will be a reduction of possibly 10 to 15 decimals from where we are at at this time.

Mr. McKinney- Is that at the property line?

Mr. Scheurich- Yes, sir.

Mr. McKinney- Twenty-four hours at that?

Mr. Scheurick- The chilling equipment would run on and off 24 hours a day. Generator equipment will only run when exercised. We will run those alternately and they would be run approximately once a week at the discretion of the site.

Mr. Balfour- What time of day will they be run?

Mr. Scheurick- Typically, the generators will run at night. In case there is a problem with the generators that does effect the system it does effect the least traffic at the equipment during that time.

Mr. McKinney- How many square feet do you have there now?

Mr. Scheurick- The existing facility is approximately 26,000 and change in square feet, and the expansion proposals approximately 27,000 square feet. We will be doubling the facility essentially.

Mr. McKinney- You are looking for a 53,000 square foot facility.

Mr. Scheurick- That's correct, sir.

Mr. McKinney- Right in the middle of a residential neighborhood.

Mr. Scheurick- At this time, there is significant development to the south and across Francistown Road to the east....

Mr. McKinney- I have asked our secretary to find a map because I want to see what is behind you and the surrounding areas.

Mr. Scheurick- To the north and the west, as I understand it, is undeveloped....

Mr. McKinney- We will know in just a second. We will have it right up on the screen.

Mr. Silber, would you point out their location on that map.

Mr. McKinney- Is there a school next to it?

Mr. Scheurick- Directly to the north, there is barren property, trees, essentially dumping grounds is what it looks like. Unfortunately, to the north of that there is an elementary school that is being constructed at the present time.

Mr. McKinney- I think it is supposed to be a new Echo Lake Elementary School going in out there.

Mr. Balfour- You don't have room to expand any more. This is it or you guys have got to move, right?

Mr. Scheurick- Actually, we own the land all the way up to Francistown Road.

Mr. McKinney- You mean that's north?

Mr. Scheurick- I believe that's to the east.

Mr. Silber- It is the R-3C piece, Mr. McKinney, to the east.

Mr. McKinney- Oh, the R-3C is to the east. This is not pointing due north.

Mr. Silber- Yes, it is. The orientation is north at the top of the map.

Mr. Wright- It's north.

Mr. McKinney- Well, then it would be north.

Mr. Silber- No, I think he owns parcel 50, to the right of there.

Mr. McKinney- Okay, at the R-3C?

Mr. Silber- Yes.

Mr. McKinney- They own that piece?

Mr. Scheurich- Yes, sir. The piece of property between our existing facility and that which adjoins Francistown Road, we do own.

Mr. Wright- You have got to have something that has some access, don't you?

Mr. Scheurich- There is a curb cut coming off Francistown Road that it borders or is our north property line.

Mr. McKinney- How many employees are at this facility?

Mr. Scheurich- I believe that is approximately 15 on a day-to-day basis.

Mr. McKinney- Fifteen, and their hours of operation....

Mr. Scheurich- The majority of them are eight to five, and I think there is a skeleton crew at night.

Mr. McKinney- Skeleton crew is....

Mr. Scheurich- Possibly two to three people.

Mr. Wright- There's fifteen now, or you project 15?

Mr. Scheurich- Fifteen now. We don't project any significant increase in personnel. This type of building is populated by telecommunication equipment. The only

significant personnel required on site are those who monitor the equipment. It is my understanding that the building increase does not call for an increase in personnel.

Mr. McKinney- Ever thought about putting this underground?

Mr. Scheurich- Actually, there is some topographic situations to the east which dip down and comes back up; rather than using it as a basement we had some concerns about drainage. If ever there were significant rain and flooding getting into the building and percentage of bringing down our building and equipment is about 24.7 percent. So, we really did not like that option.

Mr. McKinney- Anything else?

Mr. Myrtestes Just briefly I need to emphasize how critical it is for MCI that this expansion be granted. They are in a position now where their Internet service alone doubles at the rate of every three to four months.

The delay with UP-9-97 and their inability to complete that expansion back in 1997 resulted in some very severe pressure on their existing infrastructure. I want to re-emphasize again that this expansion contemplates primarily additional switching and co-location equipment. There won't be any appreciable change in employment or traffic.

Mr. McKinney- I remember when this case came up to begin with to put that equipment in there, the neighbors were assured that that was it. Now you want to come in and double the size of it.

Mr. Myrtestes- I believe the neighbors concern at the time was - I just would mention to the Board that if you have any questions we have representatives here from MCI.

Ms. Labofish - My name is Joann Labofish. Two years ago I stood in front of you and I complained completely about MCI's putting these chillers in. I am 100 feet...my backyard to theirs...100 feet.

We had no idea at that time what the decibel levels of these chillers are going to be. I said to you then, after the noise got started and before the wall was put up, that the noise came through my walls, I couldn't open the windows in the back of the house; I couldn't open the door. When I went into my yard I had to put cotton in my ears just to protect myself from the noise.

We complained, complained, and we complained and I am talking for myself and my neighbors as well. Believe it or not, MCI listened, and I don't know of too many corporations that really and truly listen, but they did.

My neighbors and I came today to ask you please let these people do what they intend to do. They have got the space. Let them use it. If they are going to put another cooler

in...or chiller in and they have got all of this behind me and they want to move it, I say please let them do it because I will have peace of mind and I will also have peace and quiet that I have not enjoyed for two years.

You have to come into my yard, and I have told MCI this too, and they are aware of it and they know it. You cannot understand unless you are there as to what 65 and 70 decibels are...even with the wall in place. It's not as loud...no. But, it is still there. During the summer time, the noise is horrendous.

The County Attorney came to my house one day two years ago, and I mentioned this to the folks at MCI. My neighbor, Mr. Callin approached him and said 'could you live here with this noise?' His response was, 'no, I couldn't.' We have been living with it for two years. These folks invited us over to the facility a couple of weeks ago, but did not tell us then what their proposal was except to let us know that another chiller was going to be put in place.

We found out just this week that they were approaching you and were going to ask that these chillers that are behind us...or rather in front of my property, be removed and relocated. We were overjoyed just to get peace and quiet back in the neighborhood. I have friends who live in another subdivision and they tell me they can hear it. That's how loud it is. I have the support behind me sitting right here; we are all in agreement.

MCI has said to us many times, 'we want to be good neighbors'. This is a chance for them to prove it. I commend them wholeheartedly for at least coming forth and saying 'we goofed'; we did some poor planning. It is in our interest and theirs also that you please consider this proposal that they have.

Mr. Wright- I take it you are in favor of it?

Mrs. Labofish- Oh, yes.

Mr. McKinney- Mr. Silber, the conditions on the last case when they came up before are the decibels that they.... Sir, I am trying to ask the secretary a question. We are trying to get through this quickly. Were there any conditions when they came up with this facility at the property line?

Mr. Silber- Yes, I believe there were conditions. Sixty-one is the proposed condition now proposed, Mr. McKinney. I believe the condition then was something greater than that. I think it was 71...the sound barriers were supposed to reduce that by about ten decibels. The staff is recommending 61 decibels with this condition.

Mr. McKinney- Is there anyone in this room who can show us what 61 decibels is? I know a lot of schoolyard lots are about 150 decibels.

Mr. Binns- No, no, no. I'm Michael Binns with Acoustical Solutions. Seventy-one decibels is loud for a homeowner. I will agree with that. What we did when

we put up the wall... A ten-decibel reduction is half as loud as the existing level of noise. Seventy-one to 61 is half as loud.

For instance, we did a test up on Francistown Road with a truck going by, and it was 81 decibels...15 feet from the road.

Mr. McKinney- I am looking at a chart here that says diesel truck...90 decibels. It says ordinary conversation is 60 decibels.

Mr. Binns- Correct. When you are not in a microphone...when I am talking at this level right now, that's about 60 decibels.

Mr. McKinney- A quiet library is 40 decibels.

Mr. Binns- Right.

Mr. McKinney- Can we get a quiet library here?

Mr. Binns- Well, we can be pretty close. We can make it down to the fifties.

Mr. McKinney- We can change this 51 decibels to 50?

Mr. Wright- He just said awhile ago he could go to 40-41.

Mr. McKinney- He says he could try.

Mr. Binns- We can install silencers and things of that sort to get it down to a level where it is quiet.

Mr. McKinney- I'm not asking for quiet. Can you get it to 50?

Mr. Binns- Yes.

Mr. McKinney- So, we can change this condition to 50 decibels.

Mr. Binns- I can't answer that.

Mr. McKinney- What do you mean you can't answer that?

Mr. Binns- It depends on what you are talking about.

Mr. McKinney- I'm talking about the sound. When these people come out in the summer time and sit on their back porch, you have got an industrial facility running right here in the middle of a residential neighborhood.

Mr. Binns- That's correct, and MCI, after talking with the people, has decided to move it on the other side of the building so that the pieces of equipment will be completely blocked moving the present generator system off the roof, so that all of the equipment will be blocked by the building; will be silenced. We have done an analysis with an acoustical engineer that has given us pricing and specifications on equipment that should take the property to a noise level down between 40 and 50 decibels.

Mr. Wright- They said they were going to put them inside.

Mr. Binns- Well, yes, you put a generator inside, but you have to get air to it.

Mr. Wright- I understand.

Mr. Binns- So, you have to have a muffler in order to allow the air in, but muffle the noise from leaving.

Mr. McKinney- But if you are moving these existing ones over on the other side of the building, as Mrs. Labofish said, she had neighbors a distance away that heard it, are you going to impact other neighbors when you do this?

Mr. Binns- No.

Mr. McKinney- Now I am asking you at your property line, are you going to reduce this down to 50 decibels?

Mr. Binns- Yes.

Mr. McKinney- Then that's the condition we are going to put in here. There's to be no more than 50 decibels at the property line. You can work it out with your engineers or technicians or whatever.

If someone would like to speak on that they are welcome it.

Mr. Myrtestes- Mr. Chairman, I would just like to point out to the Board that the existing threshold that has been authorized for the facility is a 71-decibel operation level. What has been proposed by staff is a 61-decibel level.

Mr. McKinney- Staff doesn't vote, sir!

Mr. Myrtestes- I understand. I am simply trying to make sure that we are not grabbing at speculative or arbitrary numbers here. The change from 71, which was authorized by the Board previously to what has been proposed as a condition of 61, is a reduction in half of the noise level as it exists. There are certain economics that MCI is facing in terms of how it can engineer and meet certain decibel levels. It has targeted the proposed condition of 61 in terms of being here today and present to you that they are

doing the best that they can. I would argue that it is not reasonable to request a telecommunication provider to be as quiet as a homeowner.

Mr. McKinney- But you are right in the middle of homes.

Mr. Myrtestes- But this facility was constructed in 1985, well before the residential uses came to the site and, again, the level that I am referencing the 71-decibel level was authorized for the prior expansion in 1985. We have gone to great expense to mitigate the noise and this is another effort on their part to eliminate and reduce the impact on neighbors.

MCI's concern is that we not have an arbitrary number selected today that's going to present a problem in terms of operation in the future. Our engineers and the folks on the construction site seem comfortable that what has been proposed...61 decibels can be achieved. If we would lower that number, I can't represent to you that what is on the Board can be accomplished by MCI from an economic standpoint. In fact, they may not be able to go through with the expansion and if that would occur, they would have to leave the chillers and the other equipment that exist in place. It is a difficult problem for MCI and they really are trying to do the best that they can to accommodate peoples needs and the interest of the neighbors.

Mr. McKinney- So, you are telling me that if you are not granted this request, that you have given me the threat that you are going to leave it just like it is and you are not going to help these people.

Mr. Myrtestes- No, sir.

Mr. McKinney- That's what you just said.

Mr. Myrtestes- No, sir, that's not the intent at all. I think you have heard from the neighbors and they have made it clear to you that MCI is committed to addressing their concerns and doing....

Mr. McKinney- Sir, you just came to the neighbors; it has been going on for a long time and all of a sudden you decide you want to do this, and you want to go to the neighbors now and try to satisfy them.

Mr. Myrtestes- I am not trying to be argumentative, Mr. Chairman, but the staff report indicates to you that there weren't any complaints to you prior to this application.

Mr. McKinney- Sir, a staff report is a recommendation.

Mr. Myrtestes- I understand that, Mr. McKinney.

Mr. Balfour- You are saying you are not sure what the expense will be to get from 60 to 50 and you are not in a position to commit because you don't know what it will take for that?

Mr. Myrtestes- That's correct. I think it is safe to say, from MCI standpoint...they want to target the lowest possible level, but they have to do that within the perimeters of what their engineers and construction folks tell them they can achieve.

Mr. McKinney- Anything else? Hearing none that concludes the case.

After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr. Kirkland, the Board granted this request.

Affirmative:	Kirkland, McKinney, Nunnally, Wright	4
Negative:		0
Absent:		0
Abstain:	Balfour	1

REASON: The Board *granted* this request as *amended* for it found from the evidence presented that authorizing this *amended request* to revise a conditional use permit for expansion of the switching station will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. This approval is only for the building addition and parking lot shown on the plans submitted with this case. Future improvements on this site must be submitted as a revision to the existing use permit and require approval by the Board of Zoning Appeals.
2. The applicant must present a complete grading, drainage, and erosion control plan prepared by a Professional Engineer certified in the state of Virginia to the Department of Public Works for approval. This plan must include the necessary floodplain information if applicable
3. A detailed site lighting and landscape plan shall be submitted with the building permit for Planning Staff review and approval.
4. The activities at this site shall be limited to those which are required to properly operate this facility and shall not be used as a sales office, a parts or supplies storage area, or offices for MCI operations not being conducted on this site.
5. A detail of the generator and chiller facilities shall be included with the building permit application showing the noise reduction measures to be constructed.
6. Any noise generated from this facility will not exceed 50 decibels at the property line. If at any time there is reason to question the noise levels at the property line, MCI will be required to provide data to ensure compliance with this condition.
7. All the chillers on the property shall be enclosed within the building structure.

UP-16-99

John W. Warriner, IV requests for a renewal of a conditional use permit pursuant to Sections 24-52(d) and 24-103 of Chapter 24 of the County Code to continue to extract materials from the earth at 8381 Warriner Road (Tax Parcel 254-A-5), zoned A-1, Agricultural District (Varina).

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

Ms. Isaac- Yes, sir. I'm Laraine Isaac with Engineering Design Associates.

Mr. McKinney- You may present your case.

Ms. Isaac- This gravel pit has been in operation for 18 years. To the best of my knowledge there have been no complaints to the County or to Mr. Warriner on the business that is located at this site.

Two years ago there was quite a bit of activity at one time. Since then the operations are sporadic. Mr. Warriner sells gravel as needed, but there are few people who need it. So, it is not a day-to-day operation, which does keep truck traffic to a minimum and he is able to adequately control access to the gravel pit.

I do have some comments concerning the staff report and the suggested conditions. It is pointed out that the applicant did not comply with condition #21 in 1995. That was not the current owner that let that condition lapse; that was his father who died shortly afterwards. John Warriner IV is now the owner and this is the second time that he has renewed this use permit.

Mr. McKinney- So, you are saying that condition #21 is not being met?

Ms. Isaac- In the staff report it says that they didn't comply. That was not the current owner who didn't comply.

In condition #22, the bond amount has changed from the last renewal of this use permit from \$1,000.00 per acre to \$2,000.00, and I wanted just to make sure that that was a correct figure and that bond amounts have doubled for use permits.

Mr. McKinney- Mr. Silber, the reason it goes from \$1,000.00 to \$2,000.00.

Mr. Silber- I believe, Mr. McKinney, in this case the staff was recommending to put it at \$2,000.00 for the 21.5 acres.

Ms. Blackburn- It has been determined that over the years that \$1,000.00 per acre was no longer adequate to deal with erosion and sediment control measures and reclamation. It is just like everything else, everything has gone up.

The Planning Office in handling bonds for the use permits for extraction only handles reclamation (unintelligible).

Mr. McKinney- Who increases these fees?

Ms. Blackburn- The Planning Office. (unintelligible)

Mr. McKinney- Is that the Director of Planning?

Mr. Silber- I think, Mr. McKinney, that for each renewal you will be seeing it will be our recommendation that it be \$2,000.00.

Mr. McKinney- Well, it has been \$1,000.00 to start with and I know things go up, and I know it has been \$1,000.00 during the last ten years that I have been on the Board, and then all of a sudden it jumps up 100 percent to \$2,000.00, and we have been going along with the thousand and I guess that is the reason I am asking the question. Do we...are we bound by the \$2,000.00...I mean, we don't set bond? Someone in authority in the County should say this is what it is going to be. It is not up to us. You have got an applicant in front saying all of a sudden it goes from \$1,000.00 to \$2,000.00...somebody is going to say 'yes, this is what it is going to be', or this is what is recommended.

Mr. Silber- Yes, sir. Well, I think in this case, this is what we believe is necessary to reclaim the land, and this is the staff's recommendation. If the Board feels differently, the Board has the authority to deviate.

Mr. McKinney- Mr. Silber, it shouldn't be up to the Board of Zoning Appeals to set these bonds on this property.

Mr. Silber- I think, Mr. McKinney. that my recommendation would be it is \$2,000.00. I would suggest that you remain consistent with each mining activity. I don't think we should be bouncing around.

Mr. McKinney- I'm not saying we should be bouncing around. I am just saying that somebody should tell us this is what it takes to handle it per acre...whether it is two acres or 10,000 acres.

Mr. Silber- That's our position, yes, sir.

Mr. McKinney- So, if Ms. Issacs' decided to appeal this \$2,000.00, who would she go to?

Mr. Silber- She would need to go to the Director of Planning.

Mr. McKinney- And ask....

Mr. Silber- ...and ask that it be reduced. Once it becomes a condition approved by the Board of Zoning Appeals, I think the next time around she would have to argue that point.

Mr. McKinney- I don't know what your feeling is...would you like to continue this, or do you want to pay the \$2,000.00?

Ms. Isaac- I just had to ask the question as to whether it is \$2,000.00? If it is \$2,000.00, it is \$2,000.00, but in two years the bond amount has doubled.

Mr. McKinney- That's what I was just saying.

Ms. Isaac- We received nothing along with the staff report explaining that due to whatever, in the future, bonds will be increasing. If you approve this renewal, and these conditions of approval and you have \$2,000.00, Mr. Warriner will be posting a bond for \$2,000.00 an acre.

Mr. McKinney- I don't know if we set the precedent or what by doing this, and like I said, I'm not in a position to know it should be \$2,000.00. I can understand that everything has doubled in price.

Ms. Isaac- Maybe we could split the difference and go for a \$1,500.00 bond.

Mr. McKinney- It is not up to us; it should be between you and, you can't go to the Planning Director if we approve this because we have already cut this in stone. Now if you would like to defer this and talk to your client and find out if you want to reduce it, that's entirely up to you. Or, if you want to leave it at \$2,000.00 that's fine.

Ms. Isaac- I think we will...the question has been asked, which I had to ask, we will go with the \$2,000.00 and prior to a future renewal we may want to discuss it at that point. Now that we know who to talk to about what.

Mr. McKinney- That's fine. What were your other concerns on the conditions?

Ms. Isaac- Two new conditions have been added...which are No. 17 and No. 18. As far as I can tell, they both say the same thing, and I think maybe we can eliminate one of them.

Mr. McKinney- Do they say the same thing, Mr. Silber?

Mr. Silber- In a quick review I can't see that the substance of the two are different.

Mr. McKinney- Which one do you want to eliminate?

Mr. Silber- I would suggest that No. 18 remain and No. 17 be removed.

Mr. McKinney- Okay, we remove No. 17.

Ms. Isaac- There's one other condition that I wish to discuss, and that's No. 16. We find this completely unacceptable....

Mr. McKinney- Do you always go backwards?

Ms. Isaac- I saved the big ones until last.

Mr. McKinney- Okay, No. 16.

Ms. Isaac- The burden of making County employees do their jobs in a timely manner has been put on an individual citizen. In the almost six years that I have been submitting plans to the County for review and approval, I cannot think of one that was turned around in 90 days.

To have an approval voided because a plan has not been approved does not reflect the reality of the situation in the County of Henrico. Plans were submitted on March 18, 1999 in order to be heard today on this use permit. Other than the staff plan no comments from any department have been received.

Mr. McKinney- I agree. What would you like to see?

Ms. Isaac- We will submit plans within 30 days and then it is up to the County to approve them.

It took us six months to get comments two years ago on this project.

Mr. Balfour- We could say the preceding first deadline in the last sentence and that would correct it, wouldn't it?

Ms. Isaac- Right. We will submit plans within 30 days for signature.

Mr. Silber- Mr. McKinney, maybe we can add some language that indicates that they would work with the County and diligently pursue the approval of this. I think in some cases there may be comments....

Mr. McKinney- I think they always do, Mr. Silber, but they are the ones wanting them approved.

Ms. Isaac- We need approved plans. We can't make anybody give us comments for signatures.

Mr. Silber- But, if comments are provided by the County and there is delay on the part of the private sector....

Ms. Isaac- I don't think the private sector should have to call the County week in and week out for them to do their job.

We submitted plans on another project and they have been in the County for 11 months, and we haven't gotten comments. Someone is not doing their job.

Mr. Silber- Ms. Isaac, it sounds like you do have a particular situation. You are having some difficulty with our Department of Public Works, and I am sympathetic to that and I think...I don't think you should be bound by a problem that you are having with the County in responding. I just want to make sure that we can come up with a condition that responds to each of our issues.

Ms. Isaac- I think any condition should be directed to the Department of Public Works. When we submit a plan there should be some mechanism in place to deal with that plan, and we shouldn't have to beg, call the County Manager...we shouldn't have to do anything to have those plans addressed and problems solved.

This is not unusual; this is the way it works in Henrico County.

Mr. McKinney- Why do we need No. 16 at all?

Ms. Isaac- We have no problems submitting the plans back in within 30 days. We will submit the same plans that we submitted to get before you today and instead of five, we will submit ten.

Mr. McKinney- If you haven't started on this within six months, like anything else, it becomes null and void. Let the County do their job. I know exactly what she is saying, Mr. Silber. I have dealt with it. It gets tied up and you can't get comments or anything else from any department with the exception of Planning. They are okay.

Ms. Isaac- Yes, we have no problem with Planning.

Mr. McKinney- When you deal with some of the other departments, it is just unbelievable. The Health Department is another one and that's controlled by state.

Mr. Silber- Well, I think a resolution may be your original comment that they submit a plan within 30 days and they have met their obligations.

Ms. Isaac- There was a condition in the last renewal of this permit, which we would be willing to accept. We would turnaround in 30 days....

Mr. McKinney- So, what do you say...within 30 days the day the action by Board, the Erosion Control Sediment plan must include...be submitted to the Department of Public Works for review.

Ms. Isaac- For review.

Mr. McKinney- And scratch all the rest of them.

Mr. Silber- Yes, sir.

Mr. McKinney- That sounds good.

Ms. Isaac- That concludes all of my comments. Mr. Warriner, the owner and operator, is here if you have any questions of him.

Mr. McKinney- Any other questions of Board members? Anyone else to speak in reference to UP-16-99? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted this request with amended conditions:

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

REASON: The Board **granted** this request as it found from the evidence presented that authorizing this renewal of the conditional use permit to extract materials from the earth will not be of substantial detriment to adjacent property and will not materially impair the purpose of the zoning regulations. The Board granted this request subject to the following conditions:

1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the County Code.
2. Hours of operation shall be from 7:00 a.m. to 5:00 p.m. from December 1 to March 31, and from 6:00 a.m. to 6:00 p.m. from April 1 to November 30, EST or EDT, whichever is in effect in the County of Henrico.
3. No operations of any kind are to be conducted at the site on Sundays, nor on national holidays.
4. All roads used in connection with this use permit shall be effectively treated by sprinkling or otherwise treated with water, calcium chloride, or other wetting agents to eliminate any dust nuisance.
5. Open and vertical excavations having a depth of 10 feet or more, for a period of more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the public safety.
6. Trucks shall be loaded in a way to prevent overloading or spilling of materials of any kind on any public road.
7. All means of access to the property shall be from the established entrance onto ***Warriner Road.***

8. The operation shall be so scheduled that trucks will travel at regular intervals and not in groups of three or more.
9. A standard stop sign (R-1-B) shall be installed and maintained at the *Warriner Road* entrance.
10. Standard "Truck Entering Highway" signs shall be erected on *Warriner Road* on each side of the entrances to the property. These signs will be placed by the County, at the applicant's expense.
11. A superintendent who shall be personally familiar with all the terms and conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and conditions of *UP-16-99*, shall be present at the beginning and conclusion of operations each work day to see that all the conditions of said Code and said Use Permit are carefully observed.
12. Topsoil shall not be removed from any part of the property outside of the area in which mining is authorized. Sufficient topsoil shall be stockpiled on the property for respreading in a layer with five (5) inches of minimum depth. If the site does not yield sufficient topsoil, additional topsoil shall be brought to the site to provide the required five-inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and lime as recommended by the County of Henrico after soil tests have been provided to the County of Henrico. All topsoil shall be stockpiled within the authorized mining area and provided with adequate erosion control protection.
13. The rehabilitation of the property shall take place simultaneously with the mining process. Rehabilitation shall not be considered completed until the mined area is covered completely with permanent vegetation.
14. Responsibility for maintaining the property, fences, and roads in a safe and secure condition indefinitely, or of converting the property to some other safe use, shall rest with the applicant.
15. Entrance gates shall be erected and maintained at all entrances to the property. These gates shall be locked at all times, except when authorized representatives of the applicant are on the property.
16. Within 30 days from date of action by the Board, an Erosion and Sediment Control Plan, which Plan must include a Restoration Plan, shall be submitted to the Department of Public Works for review.
17. Erosion Control Plans shall be submitted to the Department of Public Works for review and approval within 30 days of the approval of the Use Permit. Throughout the life of this mining operation, the applicant shall continuously satisfy the Department of Public Works that erosion control procedures are properly handled and furnish plans and bonds that the department deems necessary. Applicant shall provide certification from a licensed professional engineer that dams, embankments and sediment control structure meet standard and approved design criteria as set forth by the State.
18. The areas approved for mining under this permit shall be delineated on the ground by the erection of five (5) foot high metal posts at least five (5) inches in diameter and painted in alternate one (1) foot stripes of red and white. These posts shall be so located as to clearly define the area in which the mining is permitted. They shall be located, and the location certified by a certified surveyor, within ninety (90) days of

the date of approval of this use permit by the Board of Zoning Appeals, or this use permit shall become **void**.

19. "No Trespassing" signs shall be posted and maintained on the property to warn against use of the property by unauthorized persons. The minimum letter height shall be three inches and signs are to be posted every 250 feet along the perimeter of the property. The applicant shall furnish the Chief of Police a letter authorizing enforcement by the County Police Officers of the "No Trespassing" regulations, and agreeing to send a representative to court for purposes of testimony whenever required or requested by the Division of Police.
20. Excavation operations shall be discontinued on said site by **March 31, 2001**, and restoration accomplished by not later than **March 31, 2002** unless a new permit is applied for by not later than 60 days before the expiration of the permit, and is subsequently granted by the Board of Zoning Appeals.
21. That a suitable completion bond with surety satisfactory to the County Attorney or certified check, be posted with the Secretary of the Board of Zoning Appeals for extracting materials from **21.5 acres**, in an amount of **\$2,000.00** per acre for each acre of land included under development, for a total of **\$43,000.00** guaranteeing that the land will be restored to a reasonably level and drainable condition with a minimum slope on the restored property being five to one or flatter. The completion bond may provide for the termination of the obligations of the surety on such bond by the surety giving a 90 day notice in writing to the principal and obligee of the bond, of its intention so to do. Such notice shall be served upon the principal and upon the obligee as provided by law for the service of notices. At the termination of the aforesaid 90 day notice to the principal, all authority of the principal under this use permit to extract materials, and work incident thereto, shall cease provided the applicant has not furnished another bond suitable to the County within said 90 days. The principal shall then proceed within the next ensuing 90 days following the termination of its authority under this use permit, to accomplish the complete restoration of the land as provided for under the terms of this permit. A notice of termination by such surety shall in no event relieve the surety from its obligation to indemnify the County of Henrico for a breach of the conditions of this use permit.
22. The applicant shall furnish a certification from his bonding company each year, verifying that the bond is in effect, premiums have been paid, and the bonding company reaffirms its responsibility under the use permit conditions. This certification shall be submitted to the Board on **March 31st**, of each year.
23. This permit does not become valid until the bond, required in condition **No. 22** has been posted with the County, and necessary approval received. This must be accomplished within **90 days** of the Board's action or the action becomes **invalid**.
24. A progress report shall be submitted to the Board on **March 31st**. This progress report must contain information concerning how much property has been mined to date of the report, the amount of land left to be mined, and how much rehabilitation has been performed, and when and how the remaining amount of land will be rehabilitated, and any and all pertinent information about the operation that would be helpful to the Board.

25. If, in the course of its preliminary investigation or operations, applicant discovers evidence of the existence of cultural or historical material or the presence on the site of significant habitat or an endangered species, it will notify appropriate professional or governmental authorities and provide them with an opportunity to investigate the site and applicant will report the results of such investigation to the Planning Office.
26. The applicant shall comply with the Chesapeake Bay Preservation Act and all state and local regulations administered under such act applicable to the property and shall furnish to the Planning Office copies of all reports required by such act or regulations.
27. In the event that an appeal of the Board's approval action is filed, all conditions requiring action on the part of the applicant within 90 days are considered satisfied if the required actions take place within 90 days of final action on the appeal process by the courts.
28. The applicant must obtain a mine license from the Division of Mineral Mining, Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90 days of the approval of this use permit or the use permit is void.
29. No offsite-generated materials shall be deposited on the mining site unless the materials and the plans for their placement have been approved by the Planning Office.
30. A sign shall be posted at the entrance to the mining site stating the name of the operator, the Henrico use permit number, the Division of Mineral Mining mine license number, and the phone number of the operator. The sign shall be 12 square feet in area and shall be properly maintained.
31. All drainage and erosion and sediment control measures shall conform to the standards and specifications of the Mineral Mining Manual Drainage Handbook and/or the Erosion and Sedimentation controls as regulated by the Department of Public Works which ever is more stringent. Any drainage structures in place prior to October 14, 1992 and which does not conform to the Mineral Mining Manual Drainage Handbook may remain in place until such time as any reconstruction is required at which time said structures shall be brought into compliance with the appropriate regulations.
32. The haul road shall be paved for a distance of 150 feet of Warriner Road and the pavement shall be kept in good repair.

A-42-99

Howard R. and Regina Cossey request for a variance from Section 24-95(i)(2)f of Chapter 24 of the County Code to build a swimming pool at 9820 Osborne Landing (Newstead Farms) (Tax Parcel 283-1-2-12A), zoned A-1, Agricultural District (Varina). The location requirement for the swimming pool is not met. The applicant has an accessory use in the side/front yard where the Code requires an accessory use to be in the rear yard. The applicant is requesting a variance to locate an accessory use in the side/front yard.

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

Mr. White- I'm Luther White, president of Richmond Pool Works. I think you have a packet in front of you that shows you several plans. The pertinent of which is probably toward the back of the packet, which shows a large section of the house and proposed pool location. We are kind of stuck between a rock and a hard place here and

that is that the County Ordinance requires that we place the pool in our rear yard. However, the rear yard in this case runs right down to the James River. It would be difficult to put a pool there because of some slope and also it infringes quite a bit in the protected area of the Chesapeake Bay Act.

I have a letter; basically the Department of Public Works says that they will not allow a pool in their rear yard anyway even if we could get it in there.

With that being the case, we decided to move the pool to the side yard, which is actually the preferred location anyway. However, that is prohibited by current standards. So, what we are trying to do is get a variance to place the pool in the side yard and we have gotten a letter of waiver from the Public Works Department saying that as long as we do not protrude towards the river any closer to the house, that they will allow the pool there in the side yard. I have that letter if you would like that for part of your packets.

Mr. McKinney- How much is there on this lot, Mr. White?

Mr. White- It states on the plat 2.2 acres. There is one corner, which is partitioned off on the plot plan. However, that is owned by the Cossey's as well. Several different maps at the County showed different things. But, it is in fact, their property.

Mr. Balfour- Mr. White, it looks like there are some pools in your neighborhood that are similarly located...beside the houses.

Mr. White- As a matter of fact, the house next door has a pool in the front yard and one is in the side yard, so we are not setting any precedence here by wanting the pool in the side yard.

Mr. McKinney- Do you have anything else to say on this matter? Is there anyone here in opposition to this request? Hearing none, that concludes the case.

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted this request.

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

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

1. This approval is only for the location of the pool in the side yard. Any future improvements to the property shall comply with all the applicable regulations of the County Code.

A-43-99

Charles P. E. and J. D. Jumet request for a variance from Section 24-94 of Chapter 24 of the County Code to create two (2) lots at 6 Glenbrook Circle (Glenbrook Hills)(part of Tax Parcel 125-5-A-7A), zoned R-1, One Family Residence District (Tuckahoe). The lot widths are not met. Lot 1B is 55.0 feet wide and Lot 1 is 145.0 feet wide where the Code requires each to be 150.0 feet wide. The applicant is requesting lot width variances of 95.0 feet and 5.0 feet respectively.

Mr. Balfour and Mr. Wright disqualify from voting on this request.

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

Mr. Condlin- Yes, sir. I'm Andrew Condlin. I am here with Charles Jumet, the owner of the property and the applicant in this request. The property, the original lot, as shown is approximately 5.7 acres. We have gone through and received from the Planning Commission tentative subdivision approval for the division of three lots. This lot down here (pointing out on map) is referred to as Lot 1A and comes off of Twin Lake Lane, and is a one acre lot...one of the three lots. The existing home on this entire area in here is Lot 1, and would access off of Glenbrooke Circle, West. The third lot would be the lot that is approximately 1.33 acres and is the issue in this case.

This is one of the largest lots in the neighborhood and, in fact, I understand, this was the original developer's home, the existing home. It is one of the few lots in this subdivision to be allowed to be subdivided pursuant to restricted covenants.

The problem with this subdivision request...as you can see, there's a bottle neck potentially on both ends. In order to create three lots, they were not able to get the required frontage. The resolution on Glenbrooke Circle, West. The resolution to that based on the approvals from the Planning Commission was to put a cul-de-sac in this area. That would allow for, pursuant to the Code, to have a flag lot.

The request that we are coming with today is not a request for a subdivision. We have already received a tentative subdivision approval. Because we have asked for a flag lot, by Code we are allowed to have the subdivision as it stands subject to regular engineering provisions necessary for final approval.

If we want to subdivide, all we have to do as it exists is go through that approval process is to go through it with the construction of the cul-de-sac. Again, subject to the engineering and the final subdivision approvals.

Why we are here before you today is solely a question of whether we need to build a cul-de-sac. It is contrary to the staff report. I did not apply for it nor did I deem it to be a lot width variance. I think we get to the same result either way. It is not a creation of a

nonconforming lot. We are a conforming lot to the extent that we are allowed to build this by Code with a cul-de-sac.

What we are asking and what I am addressing right now is the question of whether we have to build a cul-de-sac or not.

I am going to hand to you a picture of standing at the road in front of Mr. Jumet's home looking both ways down the street. The second item is I put two pictures together to try to show the extent of the cul-de-sac as it exists standing at the edge of the cul-de-sac looking at the street.

I am standing at the edge of the cul-de-sac, I have circled them and it is kind of hard to see (unintelligible) comes at this location. You can see the flags, I have marked the flags, so it comes along the existing driveway and curls around where the river is or the little creek, and it comes into that. I tried to accommodate the entire with the two pictures. You can see also from one side that I am there; the other pictures were pictures of just up and down the street. I tried to get a view of the landscaping and the filled area.

The requirements of the cul-de-sac would require filling of floodplain and I apologize...I was talking to some people before hand and speaking with our engineer he said there could potentially be wetlands in the area. He didn't think so, but that would have to be accommodated, but because of the construction of the cul-de-sac, there certainly would be a filling of floodplain area. Also, as you can see in this picture and the ones I showed previously is a clearing of a substantially treed area. This is a number of mature trees...poplar trees, three to four feet in diameter and offers a natural screen off of the roadway. The cul-de-sac, as you see on the paper, has a radius of 30-40 feet in this location. It would result, and there's a driveway where that car is parked there. That driveway leads not only to the lot, which is the house on Lot 5, but also back to the Jumet's lot.

With the cul-de-sac, we would end up having two or three potentially access points off of the cul-de-sac. We would like the condition, and we have offered and talked with and without the cul-de-sac, we would have the same access driveway to serve all three lots. This is clearly a very rural looking area. It has got a hill to it with a narrow road. It is our conjecture that putting a Hansin bubble at this location...a small cul-de-sac as required by the flag lot would do a disservice because not only from an aesthetic standpoint but also having to fill the floodplain area as well as the odd road configuration.

In fact, we have met and discussed this matter with the Department of Public Works, and we were encouraged to do away with the cul-de-sac by the Department of Public Works with respect to concern over the three point of access as opposed to one point. Also, it would be confusing and would serve little purpose to have a cul-de-sac at this location as people came in for traffic flow. I have got a letter here from Mr. Tim Foster who is the Traffic Engineer that he has no objection to the above to eliminate the cul-de-sac.

The staff report admits that the cul-de-sac would have an impact on the existing look of the land. We are trying to preserve that by this request. This is a unique situation created by the old subdivision, which occurred somewhere around the 1920's, or early thirties with narrow streets and certainly an odd shaped lot, which currently exists.

The access to Glenbrooke Circle West, the traffic flow would be improved and the aesthetic value and the environmental integrity value of the property would be preserved to serve the property and the local residents better.

We request a variance in an effort to minimize the impact of the subdivision which we have already received tentative approval by eliminating the need and the requirement for the cul-de-sac.

At this time, I would be happy to answer any questions that you might have. Otherwise, I request your support for the variance.

Mr. McKinney- Any questions by Board members?

Mr. Forbes- My name is Chip Forbes, and I am speaking on behalf of the folks who are over here in the corner as the president of the neighborhood association.

The first concern is I don't see anything in the ad that pertains to a cul-de-sac in the verbiage here. If I understand this correctly, we are here to address whether or not there should be a variance of 95 feet on one lot and 5.0 feet on the other.

Mr. Silber- Yes, sir, that is correct.

Mr. Forbes- Based upon that there are three points that the folks in the neighborhood would like me to point out.

The first one of them is that, as you can tell from looking at these photographs, the aesthetic value, and we feel that the integrity of the neighborhood would be compromised by having a 95 foot variance on one of the lots. It is rather substantial. It is almost two-thirds of what is required, so we are concerned about that.

The second issue is and this is an area that I don't fully understand, because this is a flag lot, my understanding is that there may be requests for further variances for property setbacks on that particular lot. Because of the existing floodplain and creek on one side and drainage concerns on the backside of the lot.

The third point that I wanted to make is that we are also very concerned about the creek that flows through the 100 year floodplain, because it does feed into the James River, and, of course, there are also issues with the Chesapeake Bay Act that has to be taken into consideration.

The other thing that I would also like to do is submit a petition that was signed by 50 folks in the neighborhood who all are not in favor of the variance being accepted as it is stated. All of the folks who have adjoining property are opposed to it as well.

Mr. McKinney- Any questions of Mr. Forbes? Mr. Silber, does the Chesapeake Bay Act condition need to be on a piece of property like this at this location?

Mr. Silber- I would think that that is typically a standard condition.

Mr. McKinney- It is not on here.

Mr. Silber- I think it should be added.

Mr. McKinney- Are there any other cul-de-sacs in this subdivision?

Mr. Silber- I don't know the answer to that question. It is a large subdivision. Let me clarify that a flag lot is permitted off of a cul-de-sac.

Mr. McKinney- And there's only four permitted off of a cul-de-sac?

Mr. Silber- Right, or along a cul-de-sac road. That's why the issue of a flag lot comes up. I think the applicant is arguing that if they did a cul-de-sac, they could develop these two lots as flag lots, which are permitted by Code.

They don't want to do the cul-de-sac, so they need the variances to do this. Mr. McKinney, I can't really answer your question. I would have to do some research before I could give you an answer.

Mr. McKinney- The applicant could come in and do the cul-de-sac legally, right?

Mr. Silber- Yes, sir.

Mr. McKinney- And these citizens wouldn't have any input into it whatsoever.

Mr. Silber- That's correct.

Mr. McKinney- See what I am talking about, Mr. Forbes?

Mr. Forbes- Yes, I fully understand. It was also brought up to me if I may also interject the Chesapeake Bay Act situation would apply here. One of the neighbors who lives further down the creek had to comply when they built their house.

Mr. McKinney- Have you talked with the applicant?

Mr. Forbes- Yes.

Mr. McKinney- Do you like the idea of a cul-de-sac?

Mr. Forbes- Yes.

Mr. McKinney- Because he can do that.

Mr. Forbes- Understood. We understand what his legal...what he can legally do. We also know that what is being asked in a variance for the lot, but we don't want to see that happen for the reasons that were stated.

Mr. McKinney- He is asking for the variance at the front. He has got the square footage, acreage in his zoning classification. Do you have any other concerns?

Mr. Forbes- The only thing that I didn't say was that having lived there for several years now, there has been a good bit of construction up the creek down toward Ridge Road, and we have noticed that the integrity of the creek...as a matter of fact some of the members have called the County to come out and look because of concerns with erosion on the creek, in the creek bed. Obviously, that's a concern as well.

Mr. McKinney- Any questions of Mr. Forbes? Next.

Mr. Gorsline- My name is David Gorsline and I have a question that I would like to ask. I guess we as a group have pondered giving the reason we are here is that it is a width variance. I understand, and we have checked out calling and talking to the County that if you don't have the width variance, you can't have the subdivision. Now maybe we misunderstand this, but that is the way I understand it. If you can't give the 150 foot width variance to 95 feet, you can't give a normal subdivision.

Mr. McKinney- You do it on a flag lot. Then you put the cul-de-sac in and then the flag lot.

Mr. Gorsline- Right. But which comes first?

Mr. McKinney- But they don't want to put the cul-de-sac and that's why they are here.

Mr. Gorsline- I understand that.

Mr. McKinney- In other words, they want to just come off and then we don't have a cul-de-sac, but you have got a minimum front yard. But if you put the cul-de-sac in, you can reduce it into what is called in our Code flag lots.

Mr. Gorsline- What is the width on the flag lot? The way it reads on the petition is normal 150 feet, and they are asking for 95 feet.

Mr. McKinney- unintelligible

Mr. Silber- I believe the way that works is that you have to have a minimum of 20 feet of road frontage and then you have to meet the width of the minimum front yard setback. The bottom line is that what they propose to do with the cul-de-sac would meet those requirements. All you need is 20 feet of road frontage.

Mr. McKinney- Twenty feet.

Mr. Gorsline- After the cul-de-sac is in.

Mr. McKinney- Yes. If they have a cul-de-sac in you could have 20 feet instead of 95 feet.

Mr. Gorsline- Okay. Thank you. That wasn't made clear earlier.

Mr. McKinney- Anyone else?

Ms. Christian- I'm Melissa Christian and I live up here on Twin Lane, and this map does not show the 100 year floodplain, I don't know whether you have copies of those maps.

Anyway, my main concern is the wetlands.

Mr. McKinney- That's not our concern either.

Ms. Christian- That's not your problem. It doesn't matter. Well, let me ask you a question...if they indeed have to build this cul-de-sac, they will have to fill part of a wetland.

Mr. McKinney- Ms. Christian, I can't answer that. We are going to put a condition on this if it is approved, that they have got to meet the Chesapeake Bay requirements. When they go through the process of developing this lot and building that house on one of them, to meet another house, they have got to meet all of these criteria. If they fill in a piece of wetland, they have got to trade it off for another one, or however, they work this.

Ms. Christian- That was my question. Before any of this is approved, they have got to....

Mr. McKinney- They have got to cross all of their T's and dot all of the I's. Unfortunately, we found a couple of mistakes earlier this morning. Hopefully it will get better.

Ms. Christian- Okay. That is my concern that this will have to go through and before it is finally approved for subdividing. Is that correct?

Mr. McKinney- Do you like cul-de-sacs?

Ms. Christian- Actually, I like my birds and deer and blue herring. We have enough traffic in the neighborhood.

Mr. McKinney- All right, thank you. Does that take care of the opposition? Mr. Condlin.

Mr. Condlin- I will be extremely brief. With respect to the creek and maintain the aesthetic value, that's exactly why we are here today. He is trying to maintain that with the hope and the expectation that if you pass this that it would have a condition that we only have the one driveway. This is an unusual circumstance by trying to retain the existing look by not having to put in the cul-de-sac.

We are not asking for any further variances. I have got a map that shows the buildable area. There's plenty of buildable area on all three lots, including the existing home. They meet all of the Code requirements. There's no need...the concern under flag lots, I understand, with the number of flag lots around a single cul-de-sac, there tends to be a problem with houses looking at each other. That is not the situation here. Mr. Jumet is going to sell the property...1B to his mother and father-in-law next door.

With respect to the confusion as to the County notices, Mr. Jute had talked to them and I had talked to a number of folks and sent a letter, and it is our understanding that people were comfortable with the fact that if we have the right already for a subdivision, if the choice is between having a cul-de-sac and not a cul-de-sac, my personal feeling and Mr. Jumet feels the same way in talking with people that the preference was not to have a cul-de-sac.

The problem came when the County notices came that I had to send them out, and the notices said that it was for a lot width variance to go down to a five and 95 foot lot. Technically, again, we arrive at the same place, but my point was that the request for a variance was a variance for a cul-de-sac, not for the lot width. We didn't want to build a cul-de-sac, which we have a right to otherwise. I think that fostered a lot of the confusion, but some people may have objected otherwise but I think people generally are not approving of the subdivision that's occurred and has already received tentative approval from the Planning Commission.

The critical issue today is do we have a cul-de-sac or do we not have a cul-de-sac, and we are asking you, so we don't have to build a cul-de-sac. I think you understand that issue, but I just wanted to make it clear for everyone else. Thank you.

Sir, Mr. Jumet wants to say something.

Mr. Jumet- Gentlemen, I am Charles Jumet and I would like to address the Board very, very briefly and say that we have lived in Glenbrooke Hills for 14 years. We lived in the house that would directly face the cul-de-sac, which we are asking a variance on. We then had the opportunity to purchase the property next door in a private sale. We love

our blue herring; we love our deer and we put salt out for them. We put hay out and we enjoy the local flora and fauna as all of our neighbors do.

This is one of the few times that the Board can vote on a variance that will have no impact whatsoever on the neighborhood because everything will remain the same as it is today.

Our house there...we have 3.4 acres...that's why we bought it, so we would have privacy and enjoy the trees and the woods and Lot 1B is situated far enough away with sufficient building area, and that's the flag lot, you know, maintains the existing driveway the way it is today with no change whatsoever for access to any of the parties affected.

So, it is one of the few times that I think that the Board can vote on a variance and make no change. Thank you.

Mr. McKinney- Any questions of Board members? That concludes the case.

After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr. McKinney, the Board granted this request.

Affirmative:	Kirkland, McKinney, Nunnally	3
Negative:		0
Absent:		0
Abstain:	Balfour, Wright	2

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

1. This approval is only for the lot width requirement for the 2 lots in the Glenbrook Subdivision (Resubdivision of a portion of Lot 1) that access Glenbrook Circle West.
2. Future improvements to the property shall comply with applicable regulations of the County Code.
3. The applicant must submit the necessary information to the Department of Public Works to ensure compliance with the requirements of the Chesapeake Bay Preservation Act and the code requirements for water quality standards.

A-44-99

Terry McGirt request for a variance from Section 24-94 of Chapter 24 of the County Code to allow a dwelling to remain at 6417 Charles City Road (Hob Nob Hills) (Tax Parcel 243-5-A-2), zoned A-1, Agricultural District (Varina). The front yard setback is not met. The applicant has 48.9 feet front yard setback where the Code requires 50.0 feet. The applicant is requesting a variance of 1.10 feet front yard setback.

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

Ms. McGirt- Yes, sir. I'm Terry McGirt, and I made a mistake. When I pulled off the line I thought it was 54 feet, and when the engineer did the survey it was 49.10 feet.

I did not have an engineer stake the house off. On the construction loan they didn't ask for a foundation survey, and I didn't realize I had made a mistake until we were about to close. I have ten feet sitting 14 inches on the setback.

Mr. McKinney- Well, you don't mind moving it back, do you?

Ms. McGirt- Yes, sir. I do.

Unintelligible

After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr. Wright, the Board granted this request.

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

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

1. This approval is only for the front yard setback of the dwelling included in this case. Future improvements to the property shall comply with the applicable regulations of the County Code.

On a motion by Mr. Kirkland, seconded by Mr. Wright, the Board approved the minutes as corrected for September 24, 1998, October 22, 1998, November 19, 1998 and December 17, 1998.

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

All of the aforementioned decisions have been filed in the Office of the Board of Zoning Appeals as of April 6, 1999.

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

Randall R. Silber
Secretary