

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY HELD IN THE COUNTY ADMINISTRATION BUILDING IN THE**
3 **HENRICO COUNTY GOVERNMENT COMPLEX ON THURSDAY, MAY 25, 2000, AT**
4 **9:00 A.M. NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES**
5 **DISPATCH ON MAY 4 AND MAY 11, 2000.**
6

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

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

7
8 Mr. Kirkland - Welcome, ladies and gentlemen, to the May Board of Zoning
9 Appeals meeting. Before we get started, Mr. Secretary, would you read the rules,
10 please.
11

12 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
13 and gentlemen. The rules for this meeting are as follows. The Secretary, myself, will
14 call each case. Then the applicants will come to the podium to present their case. At
15 that time I'll ask all those who intend to speak, in favor or opposition, to stand, and they
16 will be sworn in. The applicants will then present their testimony. When the applicant is
17 finished, anyone else will be given an opportunity to speak. After everyone has spoken,
18 the applicant, and only the applicant, will be given the opportunity for rebuttal. After
19 hearing the case, and asking questions, the Board will take the matter under
20 advisement. They will render a decision at the end of the meeting. If you wish to know
21 what their decision is, you may stay until the end of the meeting, or you may call the
22 Planning Office at the end of the day. This meeting is being tape recorded, so we will
23 ask everyone who speaks, to speak directly into the microphone on the podium, and to
24 state your name for the record. Out in the foyer, there are two binders, which have the
25 staff reports for each case, including the conditions suggested by the staff. Mr.
26 Chairman.....
27

28 Mr. Kirkland - Mr. Secretary, do we have any requests for deferrals or
29 withdrawals on the 9:00 o'clock agenda?
30

31 Mr. Blankinship - We have a request to defer on UP-16-2000, which might be
32 on the 10:00 o'clock agenda; no, that's still on the 9:00 o'clock agenda. UP-16-2000,
33 Mr. Chairman.
34

35 Mr. Kirkland - Do we have a motion to defer?
36

37 Upon a motion by Mr. Wright, seconded by Mr. McKinney, the Board **deferred** the **UP-**
38 **16-2000** application for 30 days, from the May 25, 2000, until the June 22, 2000
39 meeting, at the request of the applicant.
40

41 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
42 Negative: 0
43 Absent: 0
44

45 Mr. Kirkland -- Anyone else? That it? Mr. Blankinship, is that it?
46

47 Mr. Blankinship - Yes sir, for the 9:00 o'clock agenda; there will be another at
48 10:00 o'clock.
49

50 Mr. Kirkland - If you would, sir, call the first case.
51

52 **A - 24-2000** **LORENZO AND MASHELL GOODE** request a variance from
53 Section 24-9 of Chapter 24 of the County Code to build a single
54 family home at 10845 Good Oak Lane (Tax Parcel 30-A-21A),
55 zoned A-1, Agricultural District (Brookland). The public street
56 frontage requirement is not met. The applicants have 0 feet public
57 street frontage where the Code requires 50 feet. The applicants
58 request a variance of 50 feet public street frontage.
59

60 Mr. Kirkland - Anyone else wish to speak on this case, A-24-2000? If not
61 sir, raise your right hand.
62

63 Mr. Blankinship - Do you swear the testimony you are about to give is the
64 truth, the whole truth, and nothing but the truth, so help you God?
65

66 Mr. Goode - Yes sir.
67

68 Mr. Kirkland - Have all your notices been turned in according to County
69 Code? We have them in file.
70

71 Mr. Goode - Yes sir.
72

73 Mr. Kirkland - If you would, state your name for the record and present
74 your case. Let's hear what you've got to say.
75

76 Mr. Goode - Lorenzo Goode. Well, actually, I'm trying to build a single
77 family house on Good Oak Lane, and the County's requiring us to have street frontage
78 so I can put in my driveway.
79

80 Mr. Kirkland - Do we have a map we can throw up on the viewer? Are you
81 part of the Goode family that lives back there?

82
83 Mr. Goode - Yes sir.

84
85 Mr. Kirkland - So that's all a family area, is that correct?

86
87 Mr. Goode - Yes sir, and the house is going right beside my grandmother,
88 which she's been out there a right good while.

89
90 Mr. Wright - Mr. Goode, how would you access this property, from the
91 main, from the public road?

92
93 Mr. Goode - Okay, we will be using Good Oak Lane to come in to the
94 property, and our roadway will be connected also to Good Oak Lane.

95
96 Mr. Wright - Do you have a legal access to the property?

97
98 Mr. Goode - Yes sir.

99
100 Mr. Wright - Have you read the conditions that have been proposed on
101 the case? The five conditions attached to the staff report that was mailed to you?

102
103 Mr. Goode - Yes sir, I have read that.

104
105 Mr. Wright - You understand that you have to comply with all those
106 conditions if this is approved?

107
108 Mr. Goode - Yes sir, and I also know that the Board doesn't have to grant
109 this, you know, but if I don't get it granted, I wouldn't be able to access the property.

110
111 Mr. Kirkland - Any other questions of the Board members? Anyone else
112 wish to speak on this case? If not, sir, that concludes the case. You can get your
113 answer this afternoon.

114
115 Mr. Goode - Thank you very much.

116
117 Mr. Kirkland - Next case, sir.

118
119 **UP- 7-2000** **CHRISTOPHER PENROSE** requests a use permit pursuant to
120 Section 24-95(a)(4)c. of Chapter 24 of the County Code to install
121 antennas on the roof at 1970 East Parham Road (Tax Parcel 52-A-
122 5(part)), zoned O-2C, Office District (Conditional) (Brookland).

123
124 Mr. Kirkland - Does anyone else here wish to speak on this case? If you
125 would, sir, please stand and raise your right hand and be sworn in. Ma'am, if you're

126 going to speak, you need to be sworn in.

127

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

130

131 Mr. Kirkland - Have all your notices been turned in, according to the
132 County Code?

133

134 Mr. Jones - I do. Mr. Chairman, the notices were turned in by the
135 Penrose Corporation, so to the best of my knowledge, they have been turned in.

136

137 Mr. Kirkland - We have them in the file. If you would, state your name for
138 the record.

139

140 Mr. Jones - My name is Douglas Jones, I am with the FBI, administrative
141 officer here in Richmond, VA. I am here today on behalf of the Penrose Corporation
142 who is constructing the new FBI headquarters facility at 1970 Parham Road. Our
143 request today is to have the authority to install antennas that exceed the county height
144 limitations. Basically, to explain what we want to do, should it become necessary, we
145 would like to have the ability to install 6 whip type antennas that would range anywhere
146 from 4 to 21 feet in height, 2 four-foot whip antennas, and one 4-foot dish. Depending
147 on the communication ability from our building, it's a three-story building, we may not
148 have to install this many antennas, or antennas at far less than 21 feet. We need to get
149 into the building and see how our communications capability is going to be. Further, I
150 would tell you that much of our communications are hard wired or by telephone lines,
151 and a lot of this is for back-up purposes.

152

153 What did you say the height of those antennas is going to be
154 again?

155

156 Mr. Jones - Six of the antennas would be from 4 to 21 feet; again, that
157 would depend on the communication ability from the roof of this building; 2 would be no
158 more than 4 feet; and one 4-foot dish, kind of like a home receiving dish for your
159 television.

160

161 Mr. Jones, do you have any brochures on these antennas?

162

163 Mr. Jones - I do not have any brochures; we have a picture of our

164

165 You do have a picture of them? Because we weren't
166 submitted anything on what they are to look like.

167

168 Mr. Jones - I would like to introduce my associate, Karen Rufus; she's
169 the FBI's telecommunications manager.

170

171 Ms. Rufus - These are examples of antennas that we have on our

172 existing facility, which is a one-story building, so these were the needs on our current
173 building.

174
175 Now Mr. Jones, you said that you're not sure what you're
176 going to need at this point, till you find out – what, do you have to get an engineer, an
177 electronics engineer, to decide which antennas you need, etc.?

178
179 Mr. Jones - Let me defer to Ms. Rufus.

180
181 Ms. Rufus - Ultimately, we do not want to put a tower up, so whatever is
182 going to be the most feasible for us to use. When Mr. Jones said that we may use a 4-
183 foot antenna, I'm going to try to use a 4-foot type whip rather than a 21-foot whip,
184 because we also do all our own installations, and it's a lot easier to maintain and
185 install a four-foot whip than a 21-foot whip; that would be the example on the left, the
186 white stick. We only had to go with this type of set-up on our 1-story building; we are
187 assuming on the 3-story building, we're also on higher land, so we're not going to have
188 the desire for the height that we have now.

189
190 How high is the mast?

191
192 Ms. Rufus - Six feet.

193
194 The mast is six feet.?

195
196 Ms. Rufus - Oh, I'm sorry, the mast itself is 21 feet; the pole that it's
197 attached to is 6 feet.

198
199 So the actual antenna is 6 feet?

200
201 Ms. Rufus - Yes. No, the actual antenna is 21 feet.

202
203 So it's a full wave antenna?

204
205 Ms. Rufus - Yes.

206
207 On a 6-foot mast? So the mast will come off the top of the
208 building 6 feet, then you've got another 21 feet, so you're talking about 27 feet?

209
210 Ms. Rufus - It's possible. Yes.

211
212 What do you mean possible?

213
214 Ms. Rufus - It's going to be the same type of set-up. Mr. Penrose built a
215 screen so he can monitor antennas to the screen; we're above the treetops at that point,
216 so the conduit that it's going to be mounted to will vary, but no more than 6 feet.

217

218 Mr. Kirkland - Any other questions of the Board members. Okay, anyone
219 else to speak? If we have opposition, you'll have time to rebut the opposition.

220
221 Mr. Jones - Thank you, Mr. Chairman.

222
223 Mr. Kirkland - Yes sir, come on down.

224
225 Mr. Rowe - My name is Dan M. Rowe; I live at 1823 Hungary Road,
226 which is adjacent to the FBI property. I am not really familiar with what is going to be
227 installed over there any more than you are. I had understood that the County limit on
228 the height of these antennas was 20 feet, and I had also understood that they wanted to
229 go to 30 feet; I could be wrong on that, but that was my understanding. I assume the
230 County had some reason for limiting antennas to 20 feet. I do not know what the
231 reasoning was, but if they have that limit, I assume that they do have good reason for
232 that. I would hope that it would not be necessary to have antennas going above that
233 height. I do not have any idea of the power or the waves that would be coming off of
234 these antennas. I have a microwave oven, and I hope that I'm not going to be able to
235 microwave a potato on my back porch, next door to these things. It would seem that 20
236 feet above the roof of a 3-story building would be ample. I do have one other question.
237 I'm not certain, you can cut me off if you want to, If you feel it's not relevant to this. This
238 is the second variance that has been requested at that location. Also there's a request
239 for a proffer change – these things were never mentioned, to my knowledge, prior to
240 receiving notice of it. There have been many meetings with the FBI, among the people
241 in the community. These things, to my knowledge – I was at most of those meetings –
242 were never mentioned, and why they're coming up now, I don't know. It seems like they
243 would have known this in the beginning and could have consulted with people in the
244 neighborhood, but that was not done. My question is, and I don't know that you would
245 be able to answer it, but how many more variances are going to come up? This is being
246 done in the same fashion as I have mentioned to the people at the FBI. This is being
247 done in the fashion of cooking the bullfrog. You don't put him in cold water; I mean, you
248 don't put him in hot, boiling water to cook him. You put him in cold water, and then you
249 turn up the heat gradually, and that's what's happening to us on this case. I would like
250 to know if there are more changes or variances that are going to be requested, and
251 what they are, so that we could have a little time to examine them. Thank you.

252
253 Mr. Kirkland - Sir, the answer to your question is that we don't know how
254 many variances there will be.....

255
256 Mr. Rowe - I don't either.....

257
258 Mr. Kirkland -and we judge each case by its merit, and we have no
259 idea of what's coming up months in advance.

260
261 Mr. Chairman, this is not a variance; this is a use permit.

262
263 Mr. Kirkland - A use permit; that's correct.

264
265 All right, same thing to me.
266
267 Mr. Kirkland - Well it's a little bit different in the Code, so that's the only
268 way I can answer; I don't know any part of any

269
270 Mr. Rowe, he said, I think that Mr. Jones said the antennas
271 would be no higher than 21 feet. They have 4 going in there at 21 feet high.....
272
273 27.....
274
275 21 I have here.....
276
277 That's the antenna; you have the mast also.
278
279 Right, I understand that. I assume that's 7 feet above the
280 County limit, which is why they are here. I had understood, now I don't know where, it
281 may be in my file, but I'd understood 30 foot antennas, but nothing that I'd received
282 indicates, really, the notice here, doesn't give any idea even that it's antennas or
283 anything else.
284

285 Mr. Kirkland - Okay sir, anyone else have any questions of Mr. Rowe?
286 Okay, anyone else wish to speak? Yes ma'am.....
287

288 Ms. Barrett - Good morning Mr. Chairman and Zoning Board members.
289 My name is Gladys Barrett. I am President of the Civic Association for the North Run
290 Terrace subdivision, that is immediately to the northeast of the property that's being
291 developed by the Penrose Corp. for the FBI. We have voiced our concerns on the
292 many meetings that we've had, with Mr. Penrose and his attorneys and the
293 representative from the FBI. The facility that's being built there; we're perfectly aware
294 that antennas must be in place, because they have to be able to transmit and to receive
295 data; we're aware of that, but we took the liberty, several of us from the community, took
296 the liberty of going by Green Court, where their facility is currently located, and there are
297 several, we didn't count them 1-2-3, but there are several antennas on that building.
298 That building is a 1-story structure, and my best estimation for the tallest one that's on
299 the existing building, is 20 feet if it's an inch. Now our thinking is that they're going to a
300 more modern, a much larger facility; they would need more higher powered equipment
301 to be able to transmit and to receive, and reading in the log out in the hall, the last time
302 we were here, the request was for 35 feet, and we read the current stipulation of 20 feet
303 restriction set for the County. We're concerned for health reasons; the building of this
304 facility is a welcome, we welcome change, positive change, but we do not see, we do
305 not envision that antennas 35 feet high on an existing 3-story building is going to
306 enhance our wellbeing, our health, our cellular phones, our televisions, our microwave
307 ovens, and anything else that's electronic that we use on a daily basis. We do not see,
308 we cannot understand why a 35 foot antenna would enhance our life and our wellbeing
309 and our homes where we live. Repeating, we do not object to antennas being put on

310 that building; we realize they are necessary, but it's the height and the intensity of the
311 power of that equipment that we oppose.

312
313 Mr. McKinney - Ms. Barrett, all of these antennas, transmission lines, and so
314 forth, are governed by the FCC, which is another arm of the federal government, and if
315 any of this would disrupt any of your appliances or anything else, the FCC would make
316 sure that that was taken care of immediately. They can't infringe on any of the
317 equipment that you have or anybody else has. And as I understand it, what they have
318 said to this point, is that these antennas will only be used basically in emergency
319 situations, if they lose their land lines, their telephone lines, these are back-up systems,
320 as I understand it at this point.

321
322 Ms. Barrett - Well I did sir, talk with someone at the FCC. The young
323 lady's name, please forgive me, but I did not make note of it, and she spoke more or
324 less in terms of correcting an existing problem. We're aiming for prevention of creating
325 the problem in the first place. I don't know how informed she was, but those were the
326 statements that she made to me, that they come out and they check and use whatever
327 is available to them, after a problem is in existence.

328
329 Mr. McKinney - Usually, when they apply for their license to transmit, the
330 license goes to the FCC, and it goes into their system, to make sure it doesn't conflict
331 with any other channels or frequencies that other people use, whatever the case may
332 be.

333
334 Ms. Barrett - See I don't know that high powered, this may be off the
335 course of what we're talking about, though, but, just a little bit, I know that our high
336 powered electric lines have an impact on health of individuals nearby. I don't know if
337 anybody would ever admit that publicly, but we're thinking that antennas as being
338 discussed here today, may have the very same health problems, not today, not
339 tomorrow, but in the future. That's where our primary concern is as a community.

340
341 Mr. McKinney - Well I'm sure they will address that on their rebuttal, Ms.
342 Barrett. We'll hear what they have to say about it.

343
344 Ms. Barrett - Thanks for your time.

345
346 Mr. Kirkland - Anyone else wish to speak? Mr. Jones, would you like to
347 come back up to the podium.....

348
349 Excuse me, just a moment, Mr. Chairman. Mr. Secretary, in
350 your staff report, you said that the FBI intends to erect antennas on the roof to a
351 maximum height of 35 feet. Now I've heard 27, which is going to be correct?

352
353 Mr. Blankinship - Well, 35 is what we took off the plans that they submitted,
354 but it sounds to me like they have not "specked" the equipment yet, so perhaps they
355 were asking for a little more

356
357 So what they're looking for in this use permit is an additional
358 7 feet above what the Code states. The Code says that they can have it up to 20?
359
360 Mr. Blankinship - That is what I understood them to say this morning, yes sir.
361 The plan shows 35, so.....
362
363 Well maybe Mr. Jones or Ms. Rufus could let us know – is
364 this the maximum height to be 27 feet?
365
366 Mr. Jones - With the mast.
367
368 Ms. Rufus - I'd say 27 feet. What they saw on the original, current
369 building, there is a 35 foot antenna on there now; it's an HF antenna, and it's just a 35-
370 foot whip; it's on the existing building now. I'd planned on changing that antenna out,
371 and it should not be 35 feet any longer; it should be 25, 26 feet.
372
373 So you don't have any problem with the condition being 27
374 feet? Thank you.
375
376 Mr. Kirkland - Would you like to answer any other questions about the
377 antennas?
378
379 Mr. Jones - Yes Mr. Chairman, I'd like to make a couple of points.
380 Currently, in our current office at 111 Greencourt Road, there are about 6 family homes
381 right across the street from our office. We have no problems with any of our equipment
382 interfering with televisions or microwaves or anyone's health. Primarily these antennas
383 are for the receipt of data; there's nothing about them that would affect anyone's health
384 or any equipment in their home.
385
386 How long have you been at Greencourt Road?
387
388 Mr. Jones - About 10 years.
389
390 Ms. Rufus - The antennas that we are currently using, the equipment that
391 we currently have, will be moved to the new facility, and right now we put out 80 to 100
392 watts on a couple of antennas, that's it. We don't transmit any more than that. We
393 follow all FCC regulations; we're constantly being audited every 6 months; we check our
394 equipment to make sure it's not out of alignment; we don't go above what the standards
395 are.
396
397 These are VHF, UHF, what type?
398
399 Ms. Rufus - VHF.
400
401 Mr. Jones - And again, once we move into this building and assess our

402 communication capability, the antennas could certainly be even below what we're
403 asking for today.

404
405 Ms. Rufus - We want our building to look as pleasing as, you know, the
406 money that's going into this building, we want it to look the best. I don't want to erect a
407 tower; I don't want to put up 21-foot antennas that are going to make the building look
408 unpleasing to the neighbors or even to us. I'm going to put up the best antenna
409 available; I just don't, I want to have the limitations there to get our needs put out.

410
411 So these go to a repeater station anyhow, don't you?

412
413 Ms. Rufus - Repeaters that we have in the building.....

414
415 No, I'm talking about the antennas on the outside, go to a
416 tower.....

417
418 Mr. Rufus - No, actually, we have repeaters in the building that are there
419 for back-up.....

420
421 I'm talking about when you transmit on these antennas, their
422 frequency goes out, goes to another antenna somewhere, and is repeated, isn't it?

423
424 Ms. Rufus - No, they're for in-house repeaters that are around for the
425 area. We have the repeater itself in a transmitter room on the roof.

426
427 Well what distance does this antenna get, in miles?

428
429 Ms. Rufus - I don't have a propagation to really show you that; it's just for
430 back-up, if our main line communications go down, and the agents are out on the street,
431 we have a means for them to call back and forth.

432
433 So by using VHF, this is just for the metropolitan area?

434
435 Ms. Rufus - Yes.

436
437 Mr. Kirkland - Any other questions for Mr. Jones? If no other questions,
438 that concludes the case, sir.

439
440 Mr. Jones - Thank you, Mr. Chairman.

441
442 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
443 Wright, the Board **approved** the case **UP-7-2000**.

444
445 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
446 Negative: 0
447 Absent: 0

448
449 The Board of Zoning Appeals granted your application for a conditional use permit
450 pursuant to Section 24-95(a)(4)c. of Chapter 24 of the County Code to install antennas
451 on the roof at 1970 East Parham Road (Tax Parcel 52-A-5(part)). The Board granted
452 the use permit subject to the following conditions:

453
454 1. Only the antennas shown on the plan filed with the application may be constructed
455 pursuant to this approval. Any additional improvements shall comply with the applicable
456 regulations of the County Code.

457
458 2. The antennas shall be limited in height to 27 feet above the roof.

459
460 The Board granted this request, as it found from the evidence presented, that
461 authorizing this variance will not be of substantial detriment to adjacent property and will
462 not materially impair the purpose of the zoning regulations.

463
464 Mr. Kirkland - Call the next case, sir.

465
466 **A - 29-2000** BARNES & NOBLE BOOKSTORE requests a variance from
467 Section 24-105(k)(5)d of Chapter 24 of the County Code to position
468 a sign above the roofline at 11552 W Broad Street (Tax Parcel 36-
469 A-21 (part)), zoned B-2C, Business District (Conditional) and
470 WBSO, West Broad Street Overlay District (Three Chopt). The sign
471 height requirement is not met. The applicant has a sign above the
472 roofline where the Code allows signs no higher than the roofline.
473 The applicant requests a variance to allow a sign above the
474 roofline.

475
476 Mr. Kirkland - Is anyone here to speak on this case? Anyone else – if you
477 would, if you plan to speak, stand and be sworn in by the Secretary, please.

478
479 Mr. Blankinship - Do you swear that the testimony you are about to give is the
480 truth, the whole truth, and nothing but the truth, so help you God?

481
482 Mr. Kirkland - Have all your notices been turned in, according to the
483 County Code? We have them in the file. If you would, state your name for the record.

484
485 Mr. Theobold - Yes sir. My name is Jim Theobold, here on behalf of Barnes
486 and Noble.

487
488 Mr. Kirkland - Would you present your case sir.

489
490 Before we get started, I need to ask Mr. Blankinship a
491 question – did you check on my situation?

492
493 Mr. Blankinship - No sir, I apologize.

494
495 Mr. Kirkland - Now you can proceed.

496
497 Mr. Theobold - Mr. Chairman, gentlemen, again, my name is Jim Theobold,
498 and I'm here on behalf of Barnes & Noble. If we could have the light
499 table.....thank you, there we go. With me as well is Greg Belanger, who is the
500 architect for Barnes & Noble. This is a request for a variance to permit building
501 mounted signage on the parapet of the proposed Barnes & Noble Bookstore at the
502 shopping center being constructed at the corner of West Broad Street and Pouncey
503 Tract Road. This request is needed because the parapet in the sign is technically
504 above the roof line. This is really a case of not being able to get where we need to go,
505 under the Henrico County Ordinance, without a certain amount of artifice or intrigue, as
506 has been engaged in by others, which we'll show you in a moment. What we're trying
507 to accomplish here is to be able to use our national prototype architectural design in
508 terms of our façade and signage, but if you focus on the second story of the Barnes &
509 Noble building, with all the glass on the second floor immediately under the sign, that
510 whole front second floor toward the front is our reading room, and as such, those
511 windows go from virtually floor to ceiling, and to lower the parapet there or to bring down
512 the signage to meet the technical requirements for the Code, we would be reducing the
513 natural light in that area by some 40%. I don't know about you, gentlemen, but I'm
514 finding myself at an age where I need a big spotlight glued to my head to be able to
515 read things, most evenings, and we do think this also contributes to the design. The
516 restrictions on

517
518 Jim, I'm sorry, but I didn't understand what you're just trying
519 to tell me there. What about the light and not being able to see it?

520
521 Mr. Theobold - If you look at this part of the second floor, it's a 2-story
522 building; this is all ceiling-to-floor glass, and this whole front area – Penny, do you have
523 the floor plan there, showing the second floor? This whole front area of the building is a
524 reading area for the bookstore, where people, you can see across the front, here, these
525 are all tables where people will take books of interest to them, read them in a quiet,
526 library-like setting, and so the natural light is a purposeful design element of the building
527 and is why this front parapet gets shoved up a little bit. The restrictions that.....

528
529 Well, you made a choice; you could shrink the sign.....

530
531 Mr. Theobold - We can shrink the sign, but we're still going to be over on
532 this parapet, we're still going to be over – let me show you what those restrictions are –
533 Penny, if you've got the front drawing like this, well that'll work. Basically the roof line
534 here, the flat roof, which is the building height, essentially is at a point right about here
535 where you see this black band, and that's at about 34-35 feet. That is the height of the
536 building permitted by proffered condition; that's really where the flat roof is; this little bit
537 of parapet above it is at about 37 feet. This next level of parapet is about 39 feet 8
538 inches; the very top parapet is up to 47 feet; this is all permitted; the parapet is all
539 permitted by Code. The problem we run into is the definition of building height and

540 signage above the roof line, and so the top of these letters is about 40 feet 9 inches,
541 obviously above the 39, the 34 foot roof line. The County does have, through years of
542 interpretation, permitted signs to be 40 inches on a parapet above a roof line,
543 presuming that you have a parapet on 3 sides. That's not written down anywhere, but
544 it's been confirmed to me this week by staff. So we find ourselves, basically a couple of
545 feet higher. Let me show you what some others have

546
547 Mr. Blankinship - Before that moves, may I ask one question, Mr. Chairman?
548 Could you put that back, please, just for a second. I'm just trying to figure out exactly
549 where the permitted line is myself – would the word “Booksellers” be allowed?

550
551 It would, based on the 40 inch rule.

552
553 The top of the “Booksellers” line is below the roof.

554
555 Sir, if you're going to speak, you're going to have to come up
556 to the mike[unintelligible].

557
558 I didn't mean to interrupt you, Jim. If you took a look.....

559
560 Would you identify yourself, please?

561
562 Mr. Belanger - My name is Greg Belanger. If you took a look at the line
563 drawing that's in your packet, there is a line that's designated as 34 feet, which is at the
564 roof line. As you see from looking at it, if you took a parallel line across from that point,
565 the top of the “Booksellers” letters would be right at the roof line.

566
567 Mr. Blankinship - So that's the roof line, the top of the word “Booksellers?”

568
569 Mr. Theobald - We'll show you a couple of examples, some real world
570 examples, all of which have very different legal implications of

571
572that needs to come down,pull back a little
573 bit.....

574
575 Mr. Theobald -of how you can achieve basically the same results
576 through, sort of working the ordinance, there we go.....

577
578 Excuse me, sir, how did Petsmart achieve it next door to this
579 building?

580
581 This Petsmart is in which Center?

582
583 Right next door to the building, and it's the same height –
584 how did it achieve it?

585

586 I don't know the answer to that.

587
588 Mr. Blankinship - That's what I was supposed to research, and I failed to; I
589 apologize.

590
591 Yes, I honestly don't know.

592
593 What you see here is obviously the same result, although in
594 the Circuit City case, what happened was, they managed to enclose and heat and cool
595 this space and make it part of sort of an interior lobby, and that met the definition of this
596 being now the roof line up here, and so you achieve the same result, although sort of
597 going around your elbow, the same really has happened here with S&K; you're above
598 the, what most of us would consider the roof line, except that they have managed to
599 somehow incorporate this into their vestibule, apparently heated and cooled, so that this
600 very top edge is considered the roof line, and so no violation. Something similar with
601 Best Buy, where there's this sort of strange open wedge on the interior that goes up, but
602 again the signage above the real world roof line, and here's an example of what the
603 ordinance causes in terms of its application. Here's a 7-11 at Pouncey and Broad,
604 across the street from this proposed facility. In order to get a building mounted signage
605 under the roof line, of course, you can see it here, but what then happened was, that
606 when you put the canopy where you would expect the canopy to be, it blocked the
607 signage, and so they shoved up the canopy, which is probably not as desirable a result
608 as you might hope. So interestingly we are below the height limitations for the district;
609 in a B-2 you can have 45 feet in height; again, we are burdened by a 35 foot proffer, but
610 our sign is under what would otherwise be experienced in other similarly zoned facilities,
611 and the amount of signage on the front, we're not being greedy; we're under the amount
612 of square footage permitted in a B-2 district with what you see. And Penny, if you could
613 put on the other whole shopping center colored. Yeah, put on that. You can see that
614 the design is intended to compliment the other architectural features of the attached
615 center in terms of the tower features. It is in proportion; it is in scale; again, the whole
616 thing is lower than you would see in the district. Would you put up the other
617 photographs of the existing center, please? -

618
619 This, as you know, sits in front of the American Family
620 Fitness, Skate Nation, there's a new Arby's under construction, there's a Burger King,
621 and a Regal Cinema is about to be constructed. But this is the same center where the
622 Barnes and Noble will be located, and again, you can see examples of some fairly
623 significant signage that you may find to be more or less pleasing than the work we're
624 proposing, that being inherently subjective. But an example of the 2-story Burger King
625 that exists on site; again that meets code because of the way they have their sort of
626 mansard and enclosed parapet, but what I would suggest to you, gentlemen, is what
627 we're seeking to do is architecturally pleasing; it is an extraordinarily helpful design
628 element for the reading function that goes on here, to the point where, we'd be happy to
629 entertain a condition that this variance would only apply so long as that was used as a
630 bookstore. We're really not trying to set up anybody in the future for huge signage or
631 other retail-type use. I don't believe that this is contrary to the public interest, based on

632 the foregoing, and I believe that a literal enforcement could create an unnecessary
633 hardship in this case. Strict application of the ordinance, I think, is not necessarily
634 reasonable, would promote poor design, and result in an application really contrary to
635 other things that have been approved, albeit under a different guise. Not only is this not
636 detrimental, but I suggest to you that the design of this is actually beneficial to the
637 overall look and feel of that area, which has become somewhat eclectic, and if anything,
638 this may be the most conservative building in that entire quadrant. And with that, I
639 would respectfully ask for your approval of the variance request. I would be happy to
640 answer any questions.

641
642 Mr. McKinney - Mr. Theobold, the height limitation in the B-2 is 45 feet; is
643 that correct? And you said you had a proffered condition in your case, to go to 35
644 feet,.....

645
646 Mr. Theobold -but for architectural features.

647
648 Mr. McKinney - Why would you go to 35 feet with proffered conditions, if the
649 Code allows 45 feet?

650
651 Mr. Theobold - This was zoned a combination of M-1 and B-2, probably 12
652 to 15 years ago, Mr. McKinney.

653
654 Mr. McKinney - So really in essence, this parapet is 7 feet 7 inches, I mean 2
655 feet 7 inches above what the Code allows – the top of your sign is at, as I see it, at 39
656 feet 6 inches?

657
658 Mr. Theobold - The top of the Barnes and Nobel sign is right at about 40
659 feet 9 inches.....

660
661 Mr. McKinney - So it's below what the Code requires for

662
663 Mr. Theobold - For B-2, yes sir.

664
665 Mr. McKinney - So in other words, if you did like one of these other places
666 and came back 5 or 6 feet with this, and put a skylight in this, and.....

667
668 Mr. Theobold - I couldn't do that, because that would then be considered the
669 top roof line, and I'd be bumping above the

670
671 Mr. McKinney -You'd be bumping above the 2 feet 7 inches. But you
672 could lower that 2 feet 7 inches and do the same thing.

673
674 Mr. Theobold - The only thing I could do under the current design, is,
675 basically I can get 40 inches above what effectively is the current legal roof line and
676 then shrink the size of the letters and bring the whole thing down and possibly block
677 some of the windows.....

678
679 Mr. Blankinship - Just what they need to do.
680
681 Mr. McKinney - Okay, thank you.
682
683 Mr. Kirkland: Mr. Theobald, what I was referring to, is that you have
684 another Barnes and Noble store that's further east on Broad, down around Willow
685 Place, and you have the same design. Is that particular one above the height restriction
686 there, or is that a different zoning on that property, or do you know?
687
688 Mr. Theobald - I honestly do not know.
689
690 Mr. Kirkland: Okay, because it's exactly what

691
692 Mr. Theobald: It's in Libbie Place?
693
694 Mr. Kirkland: It's across the street from Libbie Place; it's where the old
695 Computer Store was, and there's a Petsmart there and all the signs are way above the
696 roof line.
697
698 Mr. Theobald: Wasn't that site redeveloped by the Sauer Family and not
699 rezoned. So my guess is that that was ancient business zoning.
700
701 MR. Kirkland: Any other question of Mr. Theobald?
702
703 Mr. Theobald: Mr. Belanger has suggested that if you are uncomfortable
704 about the relative height we could lower the top of the signage by another foot if that
705 would give additional comfort it would still be at that point a couple of feet above the
706 technical requirements and would still require a variance. We are trying to work with our
707 design to make you as comfortable as possible. Thank you.
708
709 Mr. Kirkland: Any one else wish to speak on this case? If not that
710 concludes the case. Next case.
711
712 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
713 Balfour, the Board **approved** the case **A-22-2000**.
714

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

718
719 The Board of Zoning Appeals granted your request for a variance from Section 24-
720 105(k)(5)d of Chapter 24 of the County Code to position a sign above the roofline at
721 11552 W Broad Street (Tax Parcel 36-A-21 (part)). The Board granted a variance of
722 sign height requirement subject to the following conditions:
723

724 1. Only the signs shown on the plan filed with the application may be constructed
725 pursuant to this approval. Any additional improvements shall comply with the applicable
726 regulations of the County Code.

727
728 2. The sign shall be no higher than 39 feet, 9 inches above the first floor finished
729 elevation.

730
731 The Board granted this request, as it found from the evidence presented, that
732 authorizing this variance will not be of substantial detriment to adjacent property and will
733 not materially impair the purpose of the zoning regulations.

734
735 **UP- 12-2000** **W. C. ENGLISH CONSTRUCTION CO., INC.** requests a
736 conditional use permit pursuant to Sections 24-52(d) and 24-103 of
737 Chapter 24 of the County Code to extract materials from the earth
738 at 7101 Strath Road (Tax Parcel 215-A-100B), zoned A-1,
739 Agricultural District (Varina).

740
741 Mr. Kirkland: Any one else wish to speak on this case? If this is the same
742 testimony at the last hearing I prefer that you all pick a spokesperson and present new
743 information. Raise your right hand and be sworn in.

744
745 Mr. Blankinship - Do you swear that the testimony you are about to give is the
746 truth, the whole truth, and nothing but the truth, so help you God?

747
748 Mr. Kirkland - Have all your notices been turned in, according to the
749 County Code? We have them in the file. If you would, state your name for the record.

750
751 Mr.Higginbotham: I am James Higginbotham I am with W. C. English Inc. we
752 are the contractors building the I-895 toll road. I was here last month and at a
753 suggestion of the Board, we did agree to defer to give us an opportunity to meet with
754 the local citizens who had questions. We did that on May 11, 2000 at the Eastern
755 Henrico Government Center. I created this list of issues and have copies for the Board.

756
757 The meeting lasted about 2 hours and we do have some have some new individuals
758 here that were not at the meeting. If it pleases the Board, I would like to run through
759 these issues briefly.

760
761 1. Traffic on Strath road. There was some confusion about letting trucks travel on
762 Strath Road. I have talked to County Officials and Strath Road can be used by trucks.
763 We talked about damage to the road bed. My response to that is, if English damages
764 the road bed we will be responsible for that. The intersection of Strath and Darbytown
765 Road and the width of Strath. I am here to agree to install a temporary traffic signal at
766 the intersection that would blink yellow and red during the actual haul operation. We
767 would install that if the Department of Public Works determines that the traffic counts
768 would warrant the signal. We could only do it with Public Works permission. There was

769 a concern about coming out of Barnsworth, and I thing the temporary signal would help
770 that.

771
772 Affect on area wells. On the previous 4 borrow pits that have been approved, we have
773 posted a \$25, 000 well bond. W. C. English has agreed to double that to \$50,000 for
774 this Strath Road borrow pit. That would need to be added to the suggested conditions.

775
776 The depth and contours of the borrow pit. The approximate depth is 12 to 13 feet deep
777 and it has 3 to 1 slope. At the last meeting there was a misunderstanding that the depth
778 was going to be 36 feet. That was incorrect.

779
780 Restoration of the site. The topsoil will be stripped and replaced and the area re-
781 seeded.

782
783 We discussed the impact to health under dust control. There will be a water truck to
784 control dust and the entrance off of Strath Road. We propose that the entrance road be
785 paved approximately 75 feet into the site to help eleviate the dust control concern.

786
787 Settlement damage to homes and fields. One resident on Yarnell Road was very
788 concerned about the settlement. It was suggested that a \$50,000 bond be posted. W.
789 C. English has agreed to post to guarantee that they have adequate insurance to
790 protect surrounding property owners from the remote chance there was settlement
791 damage to their property.

792
793 The future use of the property. The property is zoned Agriculture and the center of the
794 property will be re-seeded it will either grow trees grass or serve as a wetland
795 vegetation area. The balance of the property would be in agriculture , forest or
796 subdivided in to residential lots. E & S would be in accordance with the plans submitted
797 with the case.

798
799 We discussed school bus traffic and W. C. English has agreed to not haul dirt until after
800 public school is out for the summer. And will make every effort to move as much
801 material as possible during the summer months. To assist us in doing that we ask that
802 we be able to haul from 7:00 am to 3:30 pm on Saturdays as oppose to 8 am to 1 pm,
803 which is the current suggested conditions.

804
805 The impact to surrounding properties. The site is zoned Agriculture, it meets the buffer
806 requirements, And the excavation actually creates a preserved area which minimizes
807 the over development of the property. And I do not see any diminishing value to
808 surrounding properties.

809
810 Environmental Impacts. Some citizens raised the question that was flooding on Strath
811 Road. This site would not increase flooding because the drainage would be going away
812 from Strath Road and this site would act more like a retention basin than contributing to
813 the flooding

814

815 The historical impacts have been addressed in the conditions. There was some
816 questions that federal funds were allocated for this project, I-895, there are not. It is not
817 deemed to be a federal project. I would like to thank the citizens for their cooperation
818 during the meeting. There was a questions about some graves on the property. We
819 hired Lewis burger and assoc. to come out and identify a boundary about the 15 graves
820 we did locate.

821
822 Trees in the buffer zone, There will have to be a few trees in the buffer zone along
823 Strath Road remove to improve the site distance for the trucks coming out onto Strath
824 road. We propose leaving a 100 foot buffer of trees around the entire site and we have
825 flagged that 100 foot limit. We may be able to increase that some, but I would like to
826 leave the buffer at 100 feet.

827
828 Hours of operation. At the last meeting, it was asked if we could start at 9 am instead of
829 6 am. We would propose working from 7 am to 7 pm instead of 6 am to 6 pm.

830
831 There was discussion about the angle of the entrance. It was asked to angle the
832 entrance onto Strath Road. The entrance has been located to provide the best site
833 distance for the trucks.

834
835 There was concern that this site would be used as a permanent borrow pit. That is not
836 the case. The bulk of the work is to be done this year. There may be some loads
837 coming out of the site next year to be used to top dressing the road bed. This site will
838 only be used for the I-895 corridor job.

839
840 There was a question about the \$2,000 per acre and I think that I asked that several
841 times. It has been deemed adequate. We continue to look for alternate sites, but have
842 not been successful as of this date. We will still need the Strath Road site, but another
843 site may reduce the amount of material taken from this site.

844
845 Another issue that there were concerns over was the burning. I just found out that there
846 is a new law that came into effect in January that Henrico cannot burn for certain
847 reasons in June, July or August. I don't think this applies to road construction, but we
848 will not burn during this time, I have to get a burning permit from the Fire Marshall, and
849 it is my understanding that one will not be issued until September. We would have to
850 work with the Fire Marshall and if smoke becomes a problem we would make every
851 effort to burn it as cleanly as possible. And the drying of the wood over the summer
852 would help the situation.

853
854 Also I have discussed this with the neighbors, the additional screening could be done by
855 creating a berm within the buffer. When the project is ready to be restored, it would be
856 graded into the pit area to re-seed and restore the site.

857
858 I would ask the Chairman, to have the citizens who speak to identify where they live in
859 relation to the site.

860

861 Mr. Kirkland: Mr. Higgenbotham, in the code it points out that you will
862 have to have a 200 foot setback all in trees. Excavation will be confined to 200 feet
863 away from the right of way. It has to be in trees. There are trees there now?
864

865 Mr. Higgenbotham: On previous sites, the property owners have cleared cut an
866 entire site. Those site do not have those areas in trees.
867

868 Mr. Kirkland: Can you go farther than 100 feet?
869

870 Mr. Higgenbotham: Yes sir, I can but I would rather not. If we could do some
871 selective cutting to still provide a screen, I could do that.
872

873 Mr., McKinney: On your no. 2, the area wells. You have doubled your
874 amount to \$50,000. How many wells will that amount take care of?
875

876 Mr. Higgenbotham: I think we discuss this with every site, ...
877

878 Mr. McKinney: You can drill a well up to 2,000 feet and it can be dry and the
879 well digger is not going to guarantee it and he will have to go somewhere else on the
880 site and dig again until he hits water.
881

882 Mr. Blankinship: Their liability would not be limited to \$50,000, That would
883 just be the amount we could get to immediately.
884

885 Mr. McKinney: What would their liability be limited too?
886

887 Mr. Nunnally: They would be liable for what ever damage they did.
888

889 Mr. Blankinship: To anyone who could prove that their well had been
890 damaged by English Construction.
891

892 Mr. McKinney: No.9 you wanted to change your hours of operation. You
893 stated at the last meeting that you thought this would take about 3 months to do. So
894 when school starts back after Labor Day, do you have any problem with your hauling be
895 done will school is in session? Instead of putting these kids at risk on the road with the
896 haul trucks and the school buses? You should be almost done by then.
897

898 Mr. Higgenbotham: We are going to try to get the bulk of this done by then.
899 Everything has to click to get this pit opened up and running.
900

901 Mr. McKinney: Also no 14. You were talking about removing those trees,
902 maybe you should have a signal man out there directing traffic? Then you don't have to
903 remove those trees.
904

905 Mr. Higgenbotham: I am not interested in cutting any trees it would only be those
906 to improve the site distance.

907
908 Mr. McKinney: No. 20. Our condition concerning length of time for this
909 permit. Are we going to change this to the fall of 2000 as the termination date of the
910 operations on this site?
911
912 Mr. Nunnally: I think he made a statement that he would be done within 3
913 or 4 months.
914
915 Mr. Higgenbotham: If I have to do some additional work on the road bed, and it
916 requires some dirt, I will need to obtain it if possible from this site.
917
918 Mr. McKinney: Over a year?
919
920 Mr. Higgenbotham: We have 2002 in there? If we could go through the fall of
921 2001 and restoration after that, that would work.
922
923 Mr. McKinney: This is taking a whole lot longer than you told us it would.
924
925 Mr. Higgenbotham: No sir, We do a rough grade, then we do a fine grade and
926 then if you need some dirt to bring the shoulder of the road back up that is the reason
927 that it might take longer than a couple of months. After the paved road bed is laid, there
928 is some fine grading and dressing of the road bed that usually needs to be done. That
929 will require additional dirt from the pit. That is why the pit will be opened longer than a
930 few months.
931
932 Mr. Wright: How many trucks are we talking about for that type of work?
933 They won't be running all day will they?
934
935 Mr. Higginbotham: No sir. The quicker we can get out of there, the better off we
936 are.
937
938 Mr. Kirkland: What is the completion date on this highway?
939
940 Mr. Higginbotham: The project is to be finished by 2002.
941
942 But that's the whole thing; he's working in one area right
943 now.
944
945 Am I out of line, asking this, or do you agree, do you
946 disagree, I'm asking you.
947
948 Mr. Higginbotham - Well, I think I tried to explain it, and I wasn't very clear, but,
949 you know, we've got the bulk of the material we want to move this construction season,
950 and we're going to make an effort to get it moved as quick as possible, as quick as we
951 can get the pit opened up. That hopefully would be 200-250 yards of dirt, and then

952 there might be another 20,000 yards needed to dress up, which cannot be done right
953 away, has to wait till the pavement structure's down and go from that.

954

955 How long does it take to do the paving? Roughly.

956

957 Mr. Higginbotham - Well, we're talking 3 miles of road. This would be in one
958 section of it. This material wouldn't be used to go from one end to the other, but I would
959 say 6 or 8 months to put the pavement down on the.....

960

961 So that's 10 months roughly.

962

963 Mr. Higginbotham - And then, I mean the other thing, we can have the road all
964 finished, and they come through for the punch list, and here's a gully that's washed out,
965 and I need one dump truck load of dirt. If we've developed this site, you know, we'll try
966 to restore it, you know if I can't go back and get that last dump truck of dirt, you know I
967 would like to be able to do that. That would be normal industry standards, but I'm not
968 trying to drag you out or anything; it's the nature of the business.

969

970 It's not me; it's the citizens who live down there that we're
971 trying to look out for. Mr. Secretary, if we put a deadline on this of August or September
972 2001, doesn't he have the right, if he hasn't quite finished, to come back and get an
973 extension.

974

975 Mr. Blankinship - Yes, the rest of that condition does read "unless a new
976 permit is applied for."

977

978 Is that all right with you?

979

980 Mr. Higginbotham - Yes sir.

981

982 So we go back to September 30, 2001?

983

984 Mr. Blankinship - And restoration complete at the same time, or the following
985 planting season, or

986

987 That's everything - if he sees he can't make it, he can come
988 back to us.

989

990 How many pits are you operating to do this road section.

991

992 Mr. Higginbotham - This is the fifth one.

993

994 Mr. Blankinship - Is it the last one, or.....

995

996 Mr. Higginbotham - Well, we don't know; we're going to try to find another pit, but
997 if we can't, then we'll have to deal with what we've got. Part of that depends on how

998 much undercut we hit in the job too; if we hit bad material that has to come out, you
999 really can't finite the exact quantity you need until you kind of get through it.

1000

1001 Mr. Kirkland - Did you have a question, Mr. Balfour? Any other questions,
1002 Mr. McKinney? All right, Mr. Higginbotham, you can sit down, and we'll hear from the
1003 other people. Yes sir, whoever goes first.

1004

1005 Ms. Anderson - Yes sir, I'm the person that Mr. Higginbotham alluded to, that
1006 lives at the other end of Strath Road; I'm Carol Anderson at 7971 Strath. I respectfully
1007 request to be able to speak, since Mr. Higginbotham quoted some of the things that I
1008 brought up as issues in the meeting. Specifically, he alluded to the fact that this is not
1009 federal involvement. The Virginia Department of Transportation has now admitted that
1010 federal funds were used, and what I'm saying is that it is a violation of the National
1011 Environmental Policy Act and the National Historic Preservation Act. Beyond that, that's
1012 for a court to decide, I imagine, the Virginia Department of Transportation does have a
1013 policy where they do environmental impact assessment. They have a memorandum of
1014 agreement with the Department of Environmental Quality, and they have a Memorandum
1015 of Agreement with the Department of Historic Resources. My concern is that Mr.
1016 Higginbotham's willingness to answer questions, really didn't give us a whole lot of
1017 answers as far as scientific evidence of what the impacts would be. You alluded to, sir,
1018 about the health and wellbeing of the citizens and residents of that area, and that's what
1019 I'm concerned about. So I'd like to specifically address just a couple of the
1020 environmental impacts, and then go to the issue of historic resources, which Mr.
1021 Higginbotham brought up. The first one was, I brought up in the meeting that he
1022 wouldn't be able to burn during June, July and August, because of ozone alert days; I
1023 believe that's why the law was passed. I understand his willingness to burn later;
1024 however there is my concern over air quality. If you notice the location of the site, in
1025 between 895 construction and the site of the borrow pit, there will be dust, and I know
1026 he said that he would suppress the dust with water trucks, dust from the excavation,
1027 dust from the road travel, also from the burning, and no one's taken into consideration
1028 the fact that heavy equipment and bulldozers do not have pollution controls, and so
1029 there is increased emissions. There is some concern, and there are individuals who
1030 have respiratory illnesses, that are adjacent to the property. What I'd like to see is a
1031 proper assessment, a scientific assessment, no disrespect to Mr. Higginbotham, but
1032 most of what I heard the other night at the meeting was his opinion. I believe he is a
1033 professional engineer, so I trust his opinion on certain things, but maybe not on air
1034 quality issues. The other issue has to do with water quality; I simply asked the question,
1035 "did you reach ground water, do you have soil borings?" I didn't get an answer. I don't
1036 know the depth of the ground water in that area. Again, I applaud English Construction
1037 for increasing their bond as far as well protection. He dug a pit; I simply asked, "did you
1038 hit ground water?" My question is, "will they have to de-water the site as they are
1039 excavating the material?" My guess is "yes," if it's down to 12 to 13 feet, even up to 18
1040 feet, I think was the greatest depth. I have a concern over de-watering of the site, and
1041 that may have an impact on shallow aquifers in the area; again, that's a hydrologic
1042 study that could be done prior to issuance of any special use permit for this site. And
1043 finally, I'd like to address the historic resources issue. Again, I applaud him for bringing

1044 in Lewis Berger; originally there were 6 graves identified; I believe that he did bring in
1045 Lewis Berger, and they delineated the area where there are unmarked graves. But now
1046 we have specific evidence for the national park service, the historian at the national park
1047 service, who gave us information, gave us maps, we certainly had anecdotal evidence
1048 from lots of families, whose families had lived there for generations, that this was a
1049 battlefield. Well, it certainly was. In October of 1864, the first and second battles of
1050 Darbytown Road occurred, not just in that area, but the retreat actually occurred across
1051 that site. Now what I'm asking for is compliance with the National Historic Preservation
1052 Act. Their contention is that it's not a federal undertaking; my contention is that it is, and
1053 I've asked the advisory council in historic preservation to enter into this, and they have
1054 agreed, and they're sending a letter of investigation to VDOT and the Federal Highway
1055 Administration. So what I'm asking of you is, there were failures on the part of other
1056 people to assess the impacts, and I guess I'm asking you as the stewards of Henrico
1057 County, to take up that standard, understanding you can't preserve every inch of the
1058 Commonwealth. Most of it was a battleground, but if we could get an archeological
1059 survey team in there to identify any other archeological historic, potentially very valuable
1060 historic resources, not to say that the graves are Civil War – they're probably not – but it
1061 would be in compliance with the law at least, and I believe in good faith, to go ahead
1062 and have an archeologist come in and investigate the historic resources, identify the
1063 resources, evaluate them and certainly recover them if possible, or to mitigate impacts.
1064 They're certainly willing to mitigate a lot of impacts; they've shown a willingness to do
1065 that, and so I would urge you to deny the special use permit until those impacts are
1066 properly assessed.

1067
1068 Mr. Kirkland - Thank you ma'am. Anyone else have, anyone have
1069 questions?

1070
1071 Mr. Chairman, you might tell her that we cannot continue this
1072 again. This is it.

1073
1074 Mr. Blankinship - The Board is required by law to render a decision within 90
1075 days of application, and it's been.....

1076
1077 Ms. Anderson - Then I would urge you to deny the permit because of the
1078 substantial environmental and historic resources that would be impacted, without the
1079 lack of scientific and technical information in this case. Excuse me, I have letters that
1080 would detail the information that I just provided.

1081
1082 Mr. Kirkland - If you would, give them to the Secretary. Ma'am, that
1083 gentleman had his hand up next, if you don't mind.

1084
1085 Mr. Lunsford - Thank you and good morning. I appreciate again the
1086 opportunity to speak in this matter; I will not be redundant.

1087
1088 Mr. Kirkland - What is your name?
1089

1090 Mr. Lunsford - Jerry Lunsford. I do live on adjoining property on Darbytown
1091 Road, 2795. It's located approximately on the south side of Darbytown, just below the
1092 letter "O" on "Darbytown." The one statement, real briefly, that is the only redundant
1093 statement, is although this is zoned agricultural, it is in fact, residential. There were 2
1094 issues left hanging from the last hearing, that Mr. Higginbotham did not have the
1095 answers to, which I now do. One was, if you'll recall, there was a question as to how
1096 much weight a tandem dump truck will be putting on Strath Road. Those are licensed
1097 without any special permit, they can just roll up and down the roads, for 80,000 pounds.
1098 Again, I live on Darbytown; it is wider and it can handle it. Strath Road cannot handle a
1099 continual beating of 40 tons.

1100
1101 The other issue left hanging from the last hearing was, Mr. Higginbotham stated that
1102 this pit will not be a pit, and you can check the record if I am wrong, he said will not be a
1103 pit of standing water. Well I'm telling you this morning, testifying to you, that on
1104 Darbytown Road where I live, right on the surface, I have standing water. I, on more
1105 than one occasion, get my vehicle stuck in the back yard, and I have to wait till it dries
1106 up; that's why I have to have 2 or 3 cars, because they get stuck, and I have to leave
1107 them there. How much water will be standing if you dig between 12 and 18 feet. Okay,
1108 that's to tie up the loose ends; we'll call that old business.

1109
1110 Now, since our meeting, the English construction people, Mr. Higginbotham's people,
1111 have already brought the surveyors out there; they have stretched the ribbon through
1112 there. I have heard, my neighbors will probably be more accurate about it, but I've
1113 heard chain saws, I've heard other machinery. I can't say that I've seen the work going
1114 on, but it seems like to me that that's the height of presumption. And I will also add, Mr.
1115 Higginbotham, your surveyors have littered my property with scrap pieces of
1116

1117
1118 Excuse me, sir, you need to address the Board.
1119

1120 Mr. Lunsford - Pardon me, pardon me, excuse me, my property has been
1121 littered with scrap pieces of the surveyors' ribbon, thrown on my ground. Is that any
1122 indication about the regard for the adjoining neighbors? Finally, I'll close, and I
1123 appreciate your patience with me. As I told you last time, I'm from York County, and we
1124 grew up there with borrow pits in the county over there, and as I said, in this residential
1125 area, there's a lot of small children; I can't give any personal experience about that, but
1126 as young teens, these pits were great party areas. My younger brother, they were good
1127 swimming holes, nice cold water in the summer to swim in, but my younger brother was
1128 pulled out, unconscious, and it was by just a thread that he didn't drown. Also a good
1129 friend of mine, O. C. Moore there in York County, he was swimming there too, partying,
1130 he jumped in and though it was deeper in certain areas, there was a ledge there, and he
1131 misjudged it. To this day he's in a wheelchair, paralyzed from the neck down. I would
1132 urge you, I would plead with you, not only as members of this Board, but also as my
1133 fellow citizens, that we would wish the English Construction Company well in their
1134 search for an alternative site that is not in a residential area. Thank you. God bless
1135 you.

1136
1137 Mr. Kirkland - Ma'am, if you would, hope you don't have anything to say
1138 that hasn't already been said.

1139
1140 Ms. Smith - I promise to try not to be redundant. I'm Lisa Smith; I'm a
1141 homeowner at 7134 Strath Road, directly across from the site, and Mr. Higginbotham is
1142 a nice man too. I'm back before you this morning; we did have a meeting; there were
1143 about 60 residents at the meeting with Mr. Higginbotham. We came up with a list of
1144 about 24 concerns; he gave those to you. There are still many items on the original list
1145 that we are opposed to. Primarily public safety – traffic concerns are not alleviated and
1146 cannot be. I have brought some photographs to show you, of the surrounding road and
1147 intersection. The distance on Strath is 0.3 of a mile; 0.1 of a mile from the proposed
1148 entrance and exit is Barnesway, which is the main road of a subdivision, with traffic
1149 heading north. As we've discussed, Strath is 17 feet wide with 0.00 shoulder, much
1150 more narrow than any new roads in Henrico are built. Here's a picture of what 17 feet
1151 really is; this is a Ford Contour, which is a smaller of a mid-sized car. As you can see,
1152 just backing out of a driveway, this car takes up an entire roadway. The effects of no
1153 shoulder on the same amount of surface beside the normal roadway, you can see the
1154 cars are routinely driving off the road, not just dodging tandem dump trucks. The big
1155 traffic issue that's been brought up repeatedly is the intersection of Strath and
1156 Darbytown. If you're not familiar with this intersection, it would be hard to visualize. As
1157 you can see, these roads are joined at an angle. This, in itself, with regular traffic, is not
1158 an easy experience. In the five minutes I stood taking pictures there, you can see a
1159 near miss that occurred when turning traffic cut in too close onto Strath, nearly causing
1160 a head-on collision. Imagine if this car was a dump truck. Even more so, a line of dump
1161 trucks. We're talking about a serious traffic problem, especially when you factor in more
1162 trucks returning from the site and also turning at this intersection. I know that Mr.
1163 Higginbotham has suggested a stop light there. You can imagine that hanging over that
1164 intersection, a flashing light, and the traffic that's going to be going down Darbytown.
1165 The intersection with 895 is only a tenth of a mile this direction, so you're going to have
1166 a flag man there, waving those trucks out, then going 0.1 of a mile to a stoplight here,
1167 more traffic concerns, then going 0.3 of a mile down Darbytown to another flagman at
1168 the site. It's going to cause a giant backlog. This intersection is already extremely
1169 dangerous; there were numerous accidents. Throwing 40 dump trucks an hour onto a
1170 17 foot wide road is a disaster waiting to happen. Also, these trucks will have to get to
1171 the site every day.. They'll have to go to lunch every day, and they'll have to go home,
1172 and we would expect they'll probably be going up Strath Road, which you know is
1173 extremely winding with curves. Going back to the issue, is, we still have the burning
1174 issue, but we've already addressed that this evening. We are still concerned about a
1175 200-foot setback. This is the burning at Britton Road – this photograph shows you the
1176 kind of pollution and smoke that we're talking about. The area of the setback has
1177 already been taped off; we have talked about that; the County had requested a 200 foot
1178 setback, but did not say it had to be vegetative, so they are intending to clear behind the
1179 100 feet. We don't understand, necessarily what they're doing of the other 100 foot
1180 setback, but they are intending to clear all of the trees that are there. We still have the
1181 grave concern, now we're saying that there's 15 graves, he's going to try to go around

1182 them. I sort of have a vision if you're clearing 17 feet deep around them, of these
1183 graves up on a mesa, falling over at some point. I'm certain that there would be a
1184 bigger, wider clearance than that, but it seems implausible that a bunch of construction
1185 trucks are going to know where the parallels exactly are, of the graves. Lastly, I'd like to
1186 readdress what this will do to our neighborhood. I truly believe that Mr. Higginbotham is
1187 well meaning in his desire to alleviate our concerns, and has certainly made some
1188 concessions, and that he does intend to abide by the law, but he's not at the job site 24
1189 hours a day, and he won't even be in Richmond when the project is completed. As an
1190 illustration, I'd like to go back to the Britton site, which was approved last month. Here
1191 is a copy of the rules, which were approved and outlined by the BZA for UP-11 – these
1192 call for several restrictions, which are being blatantly disregarded. Condition # 2 – the
1193 hours are to be 6 to 6 – I was at the site on May 8, 9 and 10, at 7:30 pm, and there were
1194 still trucks running and clearing. Neighbors say that they have been out there until 8:30
1195 pm on several nights. On Saturday, May 13, I was at the site at 2:15 pm; they were
1196 clearing; Saturday hours are supposed to end at 1:00. The site is also only supposed to
1197 be accessed by the 895 roadway; as you can see here, there is widening, regravelling,
1198 and usage of an existing driveway to accommodate truck traffic, in direct violation of
1199 Condition # 5. Condition # 13 says there should be "No Trespassing" signs posted
1200 every 250 feet along the perimeter; you can see, and I saw, there was no such sign.
1201 Also there is supposed to be a locking gate, and at the entrance to the property, you
1202 can see, there is no such equipment at this entrance. To summarize, these are fairly
1203 easy rules to follow, especially hours of operation, and yet without even looking hard, I
1204 found these. Because of this, I feel that whatever possible concessions or rules are
1205 made and placed upon a Strath Road dig pit, the contractor is going to do what they
1206 want. Unfortunately, try as hard as they might, the County can't be everywhere,
1207 monitoring everyone 24 hours a day. Once the damage has been done, you can't undo
1208 it. We're going to have to live there when this project is over. We beg of you, you take
1209 all of these items seriously into consideration. Yes, we know the English family owns
1210 this property, but we are certain they will find another use for it. Yes, we know that
1211 English is short the needed material for their project, but we are certain they will find
1212 other material. Perhaps at a higher price, but it will be found, and yes, 895 will be built.
1213 Yes, dirt pits are allowable usage of agricultural zoning; however we are all aware they
1214 are subject to your approval or denial. The residents of this neighborhood have stated
1215 sufficient facts to show this project is totally unacceptable for northern Strath. Please
1216 deny it.

1217
1218 Mr. Kirkland - Thank you, ma'am. Any questions?
1219
1220 Mr. McKinney - Mr. Blankinship, were you taking notes?
1221
1222 Mr. Blankinship - It's all on tape, Mr. McKinney.
1223
1224 Mr. McKinney - I think Ms. Smith gave you something to work with.
1225
1226 Mr. Kirkland - Anyone else wish to speak? Again, please do not be
1227 redundant.

1228
1229 Mr. Owens - My name is Ron Owens. My wife Margaret and I reside at
1230 7201 Strath Road; our house is on the southern border of the proposed, we call it,
1231 abomination. That's a perjorative term. People who build borrow pits, as borrow pits
1232 go, will come to know and love this thing, but this is in a residential area, as many
1233 people have said, and for us, is nothing more than an abomination; it doesn't belong
1234 here. I would give you 6 brief reason why we want denial of this request. Before I do
1235 that, talk to the nature of this hearing, I know it's just the nature of the beast, it has to be
1236 this way, we met with the contractor. Jay is a good professional guy, very likeable, and
1237 as Ms. Smith said, he did a lot of things to meet our concerns. However, the main thing
1238 I have a problem with is, I guess we're coming before you, for a stay of execution, and
1239 we're out here dealing with details of the burial. We want this site not approved, this
1240 application not approved. Period. The fact that we engage in conversation that start at
1241 9:00 o'clock, when schools in session, this that and the other, we don't want any feeling
1242 left whatsoever, that we want this pit approved with any conditions – we want it
1243 disapproved. If it is approved, then all these other things, of course, take place.
1244

1245 This site should be disapproved for 6 reasons: the nature and magnitude of the
1246 proposed development is totally out of character with the existing neighborhood, and I
1247 emphasize "neighborhood," and the approval would be contrary to numerous criteria
1248 specified in the legislation for the zoning of Virginia, the Henrico County Code, Chapter
1249 24, and the Henrico 2010 Land Use Plan. In the documents I gave Mr. Higginbotham,
1250 and don't worry, I won't be reading those, that is for the record, and I hope in your
1251 deliberations, you'll at least scan through the highlighted areas, specific sections of the
1252 Code, the Virginia law, and the 2010 Land Use Plan are illuminated for you. Many,
1253 many. The preponderance of all those citations, for me at least, and residents of the
1254 area, conclude that you and your stewardship – you're out there protecting us on the
1255 front lines – we think there are enough provisions there that this request should be
1256 denied, that W. C. English should find another site that's more suitable.
1257

1258 The second reason is the immediate, long term negative economic impact on
1259 neighboring residents, and, I think not insubstantial, the opportunity costs in lost tax
1260 revenues to Henrico County in perpetuity are going to be enormous. That site, we know
1261 it doesn't perk now, for the whatever, 20, 30, 40, 50 houses that could be put there if it
1262 were fully developed. Water is at Darbytown; there's something in the Land Use Plan, I
1263 don't have the exact citation; there's a hatched area that shows the current and
1264 projected facilities for a pumping station sewer; this area is in that area. I don't know
1265 what the plans are, how much it would take, but evidently it's in the next area that would
1266 be approved. If sewer and water came down Strath, you could get your 40, 50, 20, 30,
1267 whatever, houses in that area. Several million dollars of increase to the tax base and
1268 taxes in perpetuity. That would be the higher use of the land, not a 17-acre pit.
1269

1270 Number three, the applicant has not established that the numerous existing material
1271 extraction sites in the vicinity are not viable alternatives, with lesser long term negative
1272 impacts on the community and the County's tax coffers.
1273

1274 Number four, neither the applicant's planning inadequacies, nor the applicant's quest for
1275 maximizing profits, serve as a reasonable nor sufficient criteria to justify the permanent
1276 disfigurement and economic marginalization of this neighborhood.

1277
1278 Number five, the applicant has not performed the geological and hydrological studies
1279 that would be necessary to be reasonably assured that no harm would be done to area
1280 wells and buildings as a result of the pumping during the excavation, or the effect on
1281 these structures, after the excavation is completed.

1282
1283 And finally, number six, the applicant has not provided sufficient detailed information to
1284 describe the appearance and use of the land after the excavation and rehabilitation are
1285 completed, nor to describe the efforts and measures to be taken to insure the area will
1286 not be a permanent potential hazard to the health and welfare of the neighborhood
1287 residents and others. And by that, I mean, this is to be 17 acres, as one gentleman
1288 alluded to, they're going to go anywhere from 12 to 18 feet, I don't know how that area
1289 could not have several feet of water covering the whole 17 acres. Maybe it won't;
1290 maybe it will drain; I don't know. My experience in that area is, it's water sodden. As I
1291 told you last time, if you or I just put a 12 by 20 swimming pool in our back yard, and we
1292 didn't put fences up to keep the neighborhood children out, you know the attractive
1293 nuisance laws would come up and bite you if someone got drowned in that pool. This is
1294 going to be a 17 acre pit. There's nothing specific in the criteria, in the suggested
1295 conditions, that would suggest to me, although there's something in there about an
1296 indefinite fencing capability, I'm not sure what that means, exactly.

1297
1298 Mr. Blankinship - It means they're responsible, indefinitely.

1299
1300 Mr. Owens - I'm sorry?

1301
1302 Mr. Blankinship - They're responsible for maintaining the property in a safe
1303 manner, indefinitely.

1304
1305 Mr. Owens - Right. And if my grandchild, or God forbid, someone else's
1306 person, grandchild, child, drowned back there, because there were no fences there – I
1307 don't want to take up your time with a lot of details, but some of the criteria, the other 2
1308 or 3 paragraphs – we want a substantial fence put in there. We would like something in
1309 a covenant to run with the land to make sure it's maintained. And the reason that's an
1310 extraordinary measure, a lot of these measures are extraordinary that are outlined in
1311 here, but the reason why they're extraordinary, why they're needed, is because this is a
1312 residential area. This doesn't belong here. He has opportunities and alternatives. I've
1313 spoken to one of the pit owners in that area, who said he was approached by English,
1314 and they didn't reach an agreement because of the monetary amount. I asked about
1315 what it was, up front, to be nosy, and he said it was the normal, whatever customary
1316 commercial amount was, but English chose not to do it. And I would submit to you that
1317 they bought this land, I understand, for \$100,000; they hoped to get, at one point I heard
1318 250, 350 cubic yards out of it; they proposed to go back after it was all over and get 6 or
1319 8 or 10 building sites along Strath Road. I would suggest that they paid \$40, \$50,

1320 \$60,000 for the land that they're going to destroy, and they only get several hundreds of
1321 thousands of dollars of cheap soil, as opposed to going out and buying it commercially.
1322 I think they've already been paid; I'm sure when they bid this project, they estimated
1323 how much dirt it would take to build this overpass at Darbytown Road. They knew they
1324 had to get it from somewhere.....

1325
1326 But this is really isn't relative to the case, as far as getting
1327 dirt from here and there.....

1328
1329 Mr. Owens - It's not irrelevant, sir, because what they're doing is taking
1330 necessary time, equipment and materials to build this road. They built that doing the
1331 normal process; now they're going outside the process, in my opinion, doing land
1332 speculation. To buy that, you know, 4 grandchildren, W. C. English owning this
1333 property, it's ridiculous. I'm not sure it's a breaking of the law, but I just think it's
1334 unethical, maybe conflicts of interest. They are taking the soil out of this site as a profit-
1335 making venture, not as a necessity to build a highway; they can get the dirt someplace
1336 else to build a highway; they're getting excess money out of this site; it doesn't belong
1337 there.

1338
1339 Mr. Kirkland - Thank you, sir. Any questions? Any more speakers?

1340
1341 Mr. Johnson - My name is Jim Johnson. I reside at 7711 Lampworth
1342 Circle; that's in the Varina Meadows subdivision. My house is approximately 30 yards
1343 from where Lampworth ties into Strath Road. Back in March, the first week of March, I
1344 encountered a fleet of dump trucks on Strath Road, and one of them passed me,
1345 causing me to run off the shoulder, what shoulder's there, on the road.
1346 At that time I called the traffic police department for Henrico, and didn't receive a
1347 response. After that, I called the County Manager's office, and in turn I was called back
1348 immediately, and told someone would get with me regarding this situation. I received a
1349 phone call from a Mr. Robert Pinkerton; I guess he's with the department of Public
1350 Works or with the County Manager's office. And I told him what happened to me, and
1351 the exact words Mr. Pinkerton gave me were, "the trucks that were used for 895 were
1352 not supposed to be on Strath Road," that he would advise all parties, and he must have,
1353 because the truck traffic stopped. So when I received a notice that Strath Road was to
1354 be used as a haul route, I was confused because I felt that the County's representative
1355 telling me that no 895 truck traffic was to use this road, and here we are looking at using
1356 it as a haul route for this borrow pit. Not to be redundant on some of the issues, one of
1357 the items that I was really concerned about, was that Strath Road was the amount of
1358 trucks that would have to be used to haul this dirt. These trucks are hired trucks; they
1359 work on a basis of profit, on the amount of dirt they move as quickly as they can, the
1360 more money they make. There's only two eating areas in that particular area that trucks
1361 can go to, both of them at Strath and Route 5. One of them is the Fastmart; the other
1362 one is Dennis's Restaurant. I can envision what it would look like, having these trucks
1363 running up and down Strath Road during the day, no matter whether it's during school
1364 or whatever. There's a lot of truck traffic that's used it over the years, and it's done
1365 cordially. VDOT's guidelines, and I know this is not a VDOT project, but normally VDOT

1366 guidelines will ask that contractor's will put in their bid proposals or their specifications,
1367 that the bulk of waste material is used, is hauled through the haul routes of the grade.
1368 In other words, they'll use the existing grades that are planned for the new roadway as
1369 the haul routes. When I talked with Mr. Higginbotham at the meeting, I mentioned about
1370 the west property, which has been a source of material for the whole area over the
1371 years. That's located on Strath Road, but that's south of Route 5. That road is set up
1372 and designed to carry truck traffic, as well as Route 5 and Wilson Road. And again, not
1373 to be redundant, I have a big concern about the overall outcome of this thing after the
1374 borrow pit is put into place, and I have here with me, something – I don't want you to
1375 feel like I'm trying to say these things can happen, but right here with me is Amoco's
1376 polypropylene liners that are currently DEQ approved, Army Corps approved, and
1377 federal guideline approved, as far as usage of pit areas, where they want to use them
1378 as dump sites, in other words, either hazardous material, landfill material, or trash,
1379 whatever the case may be. And this is a concern that I would have as a property
1380 owner, in that area, and not that Mr. English is going to do this, but if they choose to sell
1381 the product, or sell the area to someone else, it's very possible that this type of situation
1382 can happen. I'll leave a copy of that with you.

1383
1384 Mr. Blankinship, question, a statement he made about no
1385 trucks using Strath Road – do you know anything about that?

1386
1387 Mr. Blankinship - No sir, Mr. Higginbotham, I know, has tried to track down
1388 that statement, but I don't have any specific knowledge of it.

1389
1390 Call Bob Pinkerton – that's who he talked to.

1391
1392 Mr. Blankinship - I think in rebuttal, Mr. Higginbotham can address that
1393 question.

1394
1395 Mr. Kirkland - Does anyone else wish to speak? One more. Yes ma'am,
1396 please don't be redundant.

1397
1398 Ms. Rankin - I'm Dolly Rankin. I live at 7279 Strath Road. I live 4 pieces
1399 of land away from where this proposed digging is, This land has so much historical
1400 value. Mr. Whitt, former pastor of Pioneer Baptist Church, when writing the history of
1401 the church, told me that, on historical records, they talk of a large battle on Strath Road,
1402 that Pioneer Baptist Church was holding prayers for the soldiers, and the battle started,
1403 coming through Strath Road, across Dorey Park, and soldiers were falling dead
1404 everywhere. My land has Civil War soldiers buried on it, and it is documented on some
1405 of the Civil War maps in Washington. Much of this land has got Civil War bodies on it. I
1406 beg you, please don't let this man dig up a piece of land like that and ruin all this history;
1407 you can't get it back. I thank you.

1408
1409 Could I ask a question? Would you prefer the park service
1410 owned the land, since it's a battlefield?

1411

1412 Ms. Rankin - Well, anybody, so long as the land is preserved, I don't care
1413 who owns it..

1414
1415 Suppose a developer wants to put houses on it – would you
1416 object to that because it's a battlefield?

1417
1418 Ms. Rankin - I didn't know that you could put houses over Civil War
1419 bodies; I thought if you found some.....

1420
1421 That's my question to you; they're not bodies on the whole
1422 piece of property; there must be 15 graves there, but.....

1423
1424 Ms. Rankin - Well, my land has 5 bodies on it, that I know of, and it is
1425 documented in some of the Washington Civil War maps, I've been told.

1426
1427 If the park service wants to condemn your land and make a
1428 park out of it, what would you think of that?

1429
1430 Ms. Rankin - I just hope they don't, a truthful answer.

1431
1432 I just find it ironic that some people want to preserve history
1433 for various reasons, but some reasons they don't mind tearing it up.

1434
1435 Ms. Rankin - But this piece of land, to come in there and to take a piece of
1436 land where he has chosen on a narrow road, heavily populated. I've always, I've lived
1437 70 years, and I've always pictured gravel pits as in out-of-the-way places, not very
1438 populated, back off of roads, not come in a community where people are living, buses
1439 are coming, traffic, buses come up that road all day long, school buses. There's several
1440 schools, from the high school to the elementary; you have no one time that buses come
1441 up that road, school buses. To take a piece of land like he's proposing, where he's
1442 proposing that, I just don't understand English Construction's thoughts, and I know
1443 they're digging on Britton Road. I know Mr. Palovitch has had water on his land and
1444 has had a problem over there. I've been told by the neighbors, Mr. Hicks over there. If
1445 they're doing so great, why is Mr. Palovitch having all this trouble over there? I ask you
1446 to please turn this piece of property down.

1447
1448 Mr. Kirkland - Mr. Higginbotham, would you like to rebut these questions?

1449
1450 Mr. Higginbotham, before you get started on your rebuttal,
1451 how long have you owned this land?

1452
1453 Mr. Higginbotham - The land was purchased by Henrico Properties LLC about,
1454 she said they closed on it April 2; it was probably under contract, you know, probably a
1455 couple of months prior to that.

1456
1457 Of this year?

1458
1459 Mr. Higginbotham – Yes sir.
1460
1461 Well see, on this case here, it says Vera H. Brown and
1462 Orville I. Hansen – is that who you purchased it from?
1463
1464 Mr. Higginbotham - I guess to address the Bob Pinkerton issue, I did call Bob
1465 Pinkerton immediately after the meeting, or a day or two after, and asked Bob what his
1466 understanding was and his conversation, and Bob said he did not tell anybody that
1467 Strath Road was off limits to trucks. He said trucks can use that road like any other
1468 road in the County. And obviously there's a misunderstanding there, but I'm sure you
1469 can ask Bob Pinkerton because I did contact him.
1470
1471 What about those pictures the lady had that showed no gate
1472 up there?
1473
1474 Mr. Higginbotham - That's on Britton Road, which is another borrow pit site that's
1475 been approved; that's actually the entrance road to Ms. Preston's house. That's not the
1476 road, the haul road where the material is going onto 895. I don't see any violation there;
1477 that's her entrance road to her house. As a matter of fact, she's moving out of the
1478 house, but she's still living there as of today, and that's the entrance road to get into her
1479 house. We've actually built a haul road, kinda through the center of the pit, that the
1480 pans will use to haul dirt from the pit over to 895. Also, another thing that's misleading,
1481 there are loops that run back into the Wooten track; there's an access road that runs
1482 down beside Mrs. Preston's track, that are part of the 895 construction, so it's not real
1483 easy to define all the time, whether you're actually in a pit or actually on state right-of-
1484 way when they join right up to it. The excavation and restoration areas are all in
1485 accordance with the County setbacks, 200 feet Strath Road, 100 feet from all the
1486 property lines, 50 feet from wetland areas and 100 feet from RPA features. We have
1487 placed the construction entrance as close as we could to 895, and again, it's a very,
1488 very short distance to get to 895 from the site, approximately 0.3 mile, which is 2 or
1489 3,000 feet to get from the site, onto the 895 project. I am jumping around a little bit.
1490 The only federal funds that have gone into this project were in an early, early, design
1491 phase, which, and this is based on my conversations with the VDOT representative,
1492 which was not sufficient to deem that the project was federally funded. Therefore, this
1493 project is a non-federally funded project, and the federal regulations concerning the
1494 archeological studies are not required. And I think Mr. Lunsford said that I said last
1495 time, "there would be no water." I think that's inaccurate. If I did say last time, there will
1496 be some water ponding in this excavation after the site is through, and there's also a
1497 pond right up Strath Road on the left-hand side that's right adjacent to the road, so there
1498 are ponds in that area.
1499
1500 How deep will that be?
1501
1502 Mr. Higginbotham - How deep will the water – I'm going to say 4 to 5 feet is my
1503 guess. But we're being required to feather the, you know we don't leave a straight

1504 edge; we have to slope it in, so that, and I believe it's either 3-to-1 or 4-to-1 slope, so
1505 you can't, I mean I guess you can jump in, but the water, there's no edge to jump off of,
1506 if you walk, you'd have to walk yourself to drown yourself like that. In other words,
1507 there's no straight edges that drop off from the area that will pond water.

1508
1509 Truck weights on Strath Road. Any truck, any legally loaded truck can drive up and
1510 down Strath Road. Truckers pay taxes, and if we damage the road, we'll be responsible
1511 to repair it.

1512
1513 And the other comment, you know, we have been in to put the flagging up to show
1514 where the limits were. We have not been in with chain saws. We have been in with a
1515 backhoe to help locate where the graves were located, but we have not been in on this
1516 site trying to cut down trees prior to any approval from the Board.

1517
1518 How wide is a truck?

1519
1520 Mr. Higginbotham - How wide is a truck. Seven and a half, eight feet, something
1521 like that? Round 7 ½ feet wide. And Strath Road, I actually measured Strath Road.
1522 Strath Road is 21 feet wide, not 17, I think Ms. Smith.....

1523
1524 That's between the lines, I mean if you're measuring all of it,
1525 go in between the lines, is 18 feet 6 inches.

1526
1527 Sir, if you would, come up here and speak, if you're going to
1528 make a statement, come further than that. What did you say?

1529
1530 If you measure in between the inside of the lines, which
1531 would be the legal definition of the width of the road as far as where you could legally
1532 drive, it's 18 feet, 6 inches.

1533
1534 Okay, thank you.

1535
1536 Mr. Higginbotham - Edge of pavement to edge of pavement is 21 feet. The
1537 materials are necessary for the I-895 construction. It is a 30-acre site, of which only 17
1538 acres will be utilized. We talked about the federal funds. We did put up the yellow
1539 flagging, to allow the neighbors to see the limits of where we were clearing to. The
1540 conditions do limit the trucks to no more than 3, so that no more than 3 at a time. The
1541 restoration plan must be approved by the County. Unless you all have some other
1542 questions, I'm not sure we haven't pretty well addressed....

1543
1544 Mr. Kirkland - Any other questions of Mr. Higginbotham? I guess that will
1545 do it. All right, we've gone over till 10:00 o'clock. I want to check and make sure there
1546 aren't any deferrals, if you would, so we can get this out of the way.

1547
1548 Upon a motion by Mr. Nunnally, seconded by Mr. Wright, the Board of Zoning Appeals
1549 **denied** your **UP-12-2000** application for a conditional use permit pursuant to Section

1550 24-52(d)24-103 of Chapter 24 of the County Code to extract materials from the earth at
1551 7101 Strath Road (Tax Parcel 215-A-100B). The Board denied your request as it found
1552 from the evidence presented that approving the permit would be of substantial detriment
1553 to adjacent property or would materially impair the purpose of the zoning regulations.

1554
1555 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1556 Negative: 0
1557 Absent: 0

1558
1559 Mr. Blankinship - I found my list, Mr. Chairman, but there wasn't one. **A-38-**
1560 **2000 Ralph B. Higgins** – he had to go. Okay, he has submitted a written request. I
1561 respectfully request to defer our application for variance, as captioned above, neglected
1562 to get all the proper notifications to the neighbors, but will do so prior to the next
1563 meeting, and it's signed Ralph B. Higgins.

1564
1565 Which one is that?

1566
1567 Mr. Blankinship - Higgins, A-38-2000.

1568
1569 Mr. Kirkland - Do I have a motion to defer A-38-2000?

1570
1571 Upon a motion by Mr. [REDACTED], seconded by Mr. [REDACTED] the Board of Zoning
1572 Appeals **deferred** your **A-38-2000** application for a variance to allow a dwelling to
1573 remain at 912 South Gaskins Road (Tax Parcel 123-A-2.) The case was deferred for 30
1574 days, at your request, from the May 25, 2000, until the June 22, 2000, meeting,

1575
1576 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1577 Negative: 0
1578 Absent: 0

1579
1580 Mr. Kirkland - Any others?

1581
1582 Mr. Balfour - Ben, I have on this sheet that was given to me, UP-16-2000?

1583
1584 Mr. Blankinship - Oh thank you, Mr. Balfour, I missed that. Also UP-16-2000
1585 Chestnut Oaks.

1586
1587 We've already deferred that one.

1588
1589 Mr. Blankinship - Oh, that's right; that was on the 9:00 o'clock agenda.

1590
1591 Mr. Kirkland - We'd like to take about a 10-minute break, if you don't mind.
1592 If everyone would please take their seats. All right, Mr. Secretary, if you'll call the next
1593 case.

1594
1595 **UP- 13-2000** **E. R. PLASTER, JR.** requests a use permit pursuant to Sections

1596 24-52(d) and 24-103 of Chapter 24 of the County Code to extract
1597 materials from the earth at 6650 Hines Road (Tax Parcels 221-A-4
1598 and -5), zoned A-1, Agricultural District (Varina).
1599

1600 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,
1601 raise your right hand and be sworn in by the Secretary.
1602

1603 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1604 truth, the whole truth, and nothing but the truth, so help you God?
1605

1606 Mr. Kirkland - Have all your notices been turned in, according to County
1607 Code?
1608

1609 Mr. Deal - I do. Yes sir.
1610

1611 Mr. Chairman, I don't have the notices, but I have a note that
1612 they were going to be delivered yesterday.
1613

1614 Mr. Kirkland - He has them with him. If you would, turn them in to the
1615 Secretary. Yes sir, if you'd state your name.
1616

1617 Mr. Deal - My name is John Deal; I'm an attorney, and I represent E. R.
1618 Plaster, Jr., Inc. Mr. Plaster's had this sand pit on Hines Road now, since the mid-
1619 1970's. As you can see from the condition sheet that you have before you concerning
1620 this project, the pit is in compliance with all the requirements of Henrico County. The pit
1621 is probably 75 to 80% mined out; depending on the market conditions, will determine
1622 how long it will take to mine out the rest of it. To our knowledge, everything the County,
1623 the State, or anybody's required, we're in compliance with, and we submit that this
1624 permit be granted.
1625

1626 Mr. Deal, does Mr. Plaster use this for his own personal use,
1627 or does he sell it off to other contractors?
1628

1629 Mr. Deal - His own personal use, for his jobs.
1630

1631 As always?
1632

1633 Mr. Deal - Yes sir.
1634

1635 You haven't had any complaints, have you Mr. Blankinship?
1636

1637 Mr. Blankinship - Not that I'm aware of, sir.
1638

1639 You read the conditions, Mr. Deal?
1640

1641 Mr. Deal - Yes sir, we've read the conditions, and we have no problems
1642 with the conditions.

1643
1644 Mr. Kirkland - Any other questions of Mr. Deal? Sir, if you would come up
1645 front, and you need to be sworn in. Raise your right hand, please.

1646
1647 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1648 truth, the whole truth, and nothing but the truth, so help you God? Will you state your
1649 name please.

1650
1651 Mr. Frazier - Yes sir. I'm Steve Frazier, and I back up on this property,
1652 and I just really have one question. Mr. Plaster's a very good neighbor. If my choice
1653 were to speak for or against, we I'm not against, and I would like to see it gone, but how
1654 much longer is this operation going to last? The reason I bring that up, when this initial
1655 permit was applied for, I forget the gentleman's name who was on the Commission at
1656 the time, asked how long the operation was going to be, and they said it would be 5
1657 years. And that was I think 1982 when I heard that from the Commission. Well, it's
1658 been 5 and 5 and 5, and we're going into the other 5, so I don't have a problem – that's
1659 just my question.

1660
1661 Mr. Deal, would you like to respond to that?

1662
1663 Mr. Deal - Yes sir. My response to that, sir, is that market conditions,
1664 and the number of jobs that Mr. Plaster gets, dictates how long it takes for the permit to
1665 be mined out. Like I said, it's probably 75-80% mined out now, and it depends on what
1666 the market does. If the housing market, and the construction market stay good, it'll be
1667 shorter. If it doesn't, it'll take a longer period of time to do that.

1668
1669 Mr. Kirkland - Any other questions? If not, that concludes the case.

1670
1671 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by
1672 Mr. Wright, the Board **granted** your application **UP-13-2000** for a conditional use
1673 permit pursuant to Section 24-52(d)24-103 of Chapter 24 of the County Code to
1674 extract materials from the earth at 6650 Hines Road (Tax Parcel 221-A-4 and -5).
1675 The Board granted the use permit subject to the following conditions:

1676
1677 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the
1678 County Code.

1679
1680 2. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
1681 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

1682
1683 3. No operations of any kind are to be conducted at the site on Saturdays, Sundays,
1684 or national holidays.

1685

- 1686 4. Open and vertical excavations having a depth of 10 feet or more, for a period of
1687 more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the
1688 public safety.
1689
- 1690 5. Trucks shall be loaded in a way to prevent overloading or spilling of materials of
1691 any kind on any public road.
1692
- 1693 6. All means of access to the property shall be from the established entrance onto
1694 Hines Road.
1695
- 1696 7. The operation shall be so scheduled that trucks will travel at regular intervals and
1697 not in groups of three or more.
1698
- 1699 8. A standard stop sign (R-1-B) shall be installed and maintained at the Hines Road
1700 entrance.
1701
- 1702 9. Standard "Truck Entering Highway" signs shall be erected on Hines Road on
1703 each side of the entrances to the property. These signs will be placed by the County, at
1704 the applicant's expense.
1705
- 1706 10. A superintendent who shall be personally familiar with all the terms and
1707 conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and
1708 conditions of UP-13-2000 shall be present at the beginning and conclusion of
1709 operations each work day to see that all the conditions of said Code and said Use
1710 Permit are carefully observed.
1711
- 1712 11. Topsoil shall not be removed from any part of the property outside of the area in
1713 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
1714 respreading in a layer with five (5) inches of minimum depth. If the site does not yield
1715 sufficient topsoil, additional topsoil shall be brought to the site to provide the required
1716 five inch layer of cover. All topsoil shall be treated with a mixture of seed, fertilizer, and
1717 lime as recommended by the County of Henrico after soil tests have been provided to
1718 the County of Henrico. All topsoil shall be stockpiled within the authorized mining area
1719 and provided with adequate erosion control protection.
1720
- 1721 12. The rehabilitation of the property shall take place simultaneously with the mining
1722 process. Rehabilitation shall not be considered completed until the mined area is
1723 covered completely with permanent vegetation.
1724
- 1725 13. Responsibility for maintaining the property, fences, and roads in a safe and
1726 secure condition indefinitely, or converting the property to some other safe use, shall
1727 rest with the applicant.
1728
- 1729 14. Entrance gates shall be erected and maintained at all entrances to the property.
1730 These gates shall be locked at all times, except when authorized representatives of the
1731 applicant are on the property.
1732

1733 15. Before beginning any work, the applicant shall submit erosion control plans to the
1734 Department of Public Works for review and approval. Throughout the life of the
1735 operation, the applicant shall continuously satisfy the Department of Public Works that
1736 erosion control procedures are properly maintained, and shall furnish plans and bonds
1737 that the department deems necessary. The applicant shall provide certification from a
1738 licensed professional engineer that dams, embankments and sediment control
1739 structures meet the approved design criteria as set forth by the State. If this condition is
1740 not satisfied within 90 days of approval, the use permit shall be void.

1741
1742 16. The areas approved for mining under this permit shall be delineated on the
1743 ground by the erection of five (5) foot high metal posts at least five (5) inches in
1744 diameter and painted in alternate one (1) foot stripes of red and white. These posts
1745 shall be so located as to clearly define the area in which the mining is permitted. They
1746 shall be located, and the location certified by a certified surveyor, within ninety (90) days
1747 of the date of approval of this use permit by the Board of Zoning Appeals, or this use
1748 permit is void.

1749
1750 17. "No Trespassing" signs shall be posted and maintained on the property to warn
1751 against use of the property by unauthorized persons. The minimum letter height shall
1752 be three inches and signs are to be posted every 250 feet along the perimeter of the
1753 property. The applicant shall furnish the Chief of Police a letter authorizing enforcement
1754 by the County Police Officers of the "No Trespassing" regulations, and agreeing to send
1755 a representative to court for purposes of testimony whenever required or requested by
1756 the Division of Police.

1757
1758 18. Excavation operations shall be discontinued on said site by May 31, 2002, and
1759 restoration accomplished by not later than May 31, 2003, unless a new permit is applied
1760 for by not later than 60 days before the expiration of the permit, and is subsequently
1761 granted by the Board of Zoning Appeals.

1762
1763 19. A financial guaranty satisfactory to the County Attorney shall be posted with the
1764 Secretary of the Board of Zoning Appeals for extracting material from 9.3 acres, in an
1765 amount of \$2,000.00 per acre for each acre of land included under development, for a
1766 total of \$18,600.00 guaranteeing that the land will be restored to a reasonably level and
1767 drainable condition with a minimum slope on the restored property being five to one or
1768 flatter. The financial guaranty may provide for the termination of the obligations by the
1769 surety giving a 90 day notice in writing to the principal and obligee of the bond, of its
1770 intention so to do. Such notice shall be served upon the principal and upon the obligee
1771 as provided by law for the service of notices. At the termination of the aforesaid 90 day
1772 notice to the principal, all authority of the principal under this use permit to extract
1773 materials, and work incident thereto, shall cease provided the applicant has not
1774 furnished another bond suitable to the County within said 90 days. The principal shall
1775 then proceed within the next ensuing 90 days following the termination of its authority
1776 under this use permit, to accomplish the complete restoration of the land as provided for
1777 under the terms of this permit. A notice of termination by such surety shall in no event

1778 relieve the surety from its obligation to indemnify the County of Henrico for a breach of
1779 the conditions of this use permit.

1780
1781 20. The applicant shall furnish a certification from his bonding company each year,
1782 verifying that the bond is in effect, premiums have been paid, and the bonding company
1783 reaffirms its responsibility under the use permit conditions. This certification shall be
1784 submitted to the Board on May 31 of each year.

1785
1786 21. This permit does not become valid until the bond, required in condition No.19,
1787 has been posted with the County, and necessary approval received. This must be
1788 accomplished within 90 days of the Board's action, or the action becomes invalid.

1789
1790 22. An accurate and detailed progress report shall be submitted to the Board on May
1791 31 of each year from the date of the Board's action. This progress report must contain
1792 information concerning how much property has been mined to date of the report, the
1793 amount of land left to be mined, and how much rehabilitation has been performed as
1794 approved by the County of Henrico, and when and how the remaining amount of land
1795 will be rehabilitated, and any and all pertinent information about the operation that would
1796 be helpful to the Board.

1797
1798 23. The haul road shall be paved for a distance of 400 feet off of Hines road and the
1799 pavement shall be kept in good repair.

1800
1801 24. The applicant shall comply with the Chesapeake Bay Preservation Act and all
1802 state and local regulations administered under such act applicable to the property and
1803 shall furnish to the Planning Office copies of all reports required by such act or
1804 regulations.

1805
1806 25. In the event that an appeal of the Board's approval action is filed, all conditions
1807 requiring action on the part of the applicant within 90 days are considered satisfied if the
1808 required actions take place within 90 days of final action on the appeal process by the
1809 courts.

1810
1811 27. The applicant must obtain a mine license from the Division of Mineral Mining,
1812 Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90 days of
1813 the approval of this use permit or the use permit is void.

1814
1815 28. No offsite generated materials shall be deposited on the mining site unless the
1816 materials and the plans for their placement have been approved by the Planning Office.

1817
1818 29. A sign shall be posted at the entrance to the mining site stating the name of the
1819 operator, the Henrico use permit number, the Division of Mineral Mining mine license
1820 number, and the phone number of the operator. The sign shall be 12 square feet in
1821 area and shall be properly maintained.

1822

1823 30. All drainage and erosion and sediment control measures shall conform to the
1824 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
1825 drainage structures in place prior to October 14, 1992, and which do not conform to the
1826 Mineral Mining Manual Drainage Handbook may remain in place until such time as any
1827 reconstruction is required at which time said structures shall be brought into
1828 conformance with the Mineral Mining Manual Drainage Handbook.

1829
1830 31. The operation of all trucks shall be supervised by E. R. Plaster, Jr., Inc.

1831
1832 The Board granted this request as it found from the evidence presented that authorizing
1833 this use permit will not be of substantial detriment to adjacent property and will not
1834 materially impair the purpose of the zoning regulations.

1835
1836 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
1837 Negative: 0
1838 Absent: 0

1839
1840 Mr. Kirkland - Next case.

1841
1842 **UP- 14-2000 SIMONS HAULING COMPANY, INC.** requests a use permit
1843 pursuant to Sections 24-52(d) and 24-103 of Chapter 24 of the
1844 County Code to to extract materials from the earth at 2655
1845 Lacywood Lane (Tax Parcel 157-A-80), zoned A-1, Agricultural
1846 District (Varina).

1847
1848 Mr. Kirkland - Does anyone else wish to speak on this case? Raise your
1849 right hands and be sworn in by the Secretary. You too, also, sir.

1850
1851 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1852 truth, the whole truth, and nothing but the truth, so help you God?

1853
1854 Mr. Kirkland - Have all your notices been turned in, according to the
1855 County Code? We have them in the file. Okay, state your name and your case.

1856
1857 Mr. Cochran - Yes sir. Mr. Chairman, I am John Cochran, with
1858 Youngblood, Tyler and Associates. I'm representing Simons Hauling Company for the
1859 Grapevine Borrow Pit. This is a pit that's been under continuous operation for the last
1860 10 years. It is a pit that material is extracted and used by Simons Hauling Company, for
1861 their own jobs. We have, there's no machinery on site other than a trackhoe, which
1862 loads the trucks. We have reviewed the conditions and are in agreement, and I'd be
1863 happy to answer any questions you may have.

1864
1865 Mr. Blankinship, have we had any complaints about this
1866 site?

1867
1868 Mr. Blankinship - No sir, not that I'm aware of.

1869
1870 How about in this Background, where it says “ violating the
1871 boundaries of the Erosion and Sedimentation Control Plan.” – all that’s been taken care
1872 of?

1873
1874 Mr. Blankinship - Yes sir. Mike Hackett is here from Environmental if you
1875 have any specific questions on that.

1876
1877 Mr. Kirkland - Okay – does that conclude your case? Does anyone else
1878 wish to speak?

1879
1880 Ms. Slater - Members of the Board, my name is Carol Slater, and I’m
1881 here today to speak about my home on Grapevine Road, a place that we reside by
1882 choice. My husband and I chose this specific area of eastern Henrico County because
1883 it has offered us the environment we sought to raise our children. Zoned agricultural, it
1884 has offered us the rural setting, peace and quiet, and a park-like setting. Grapevine
1885 Road is unique, with a few small farms and 60 plus well kept homes, our community has
1886 been the kind of place we all seek to raise our children. It is a place of historical
1887 significance, where an occasional tour bus will stop to visit the Trent House, an old
1888 Confederate hospital. Grapevine Road has 2 relatively small subdivisions, which feed
1889 into it, adding to our sense of community. It is a place where people frequently go for a
1890 stroll, or even a bike ride. It is a street where there is a unique mixture of both young
1891 and old, where neighbors meet at the mailbox on a shoulder of the road. But all of this
1892 has changed. The change started gradually at first, but now has spread like an
1893 epidemic. One issue is speed. Despite an ongoing debate with the County over the
1894 excessive 45 mile per hour speed limit for the past 8 years, we still have received no
1895 relief. And then came the trucks. First it was the Benz Pit on Lacywood Lane, with
1896 modest traffic. Then came the JJB Pit on Meadow Road. While the BZA placed route
1897 and other restrictions on this truck traffic, they have not always been obeyed. While I do
1898 not have specific knowledge of violations by the trucks using the Benz Pit, the JJB Pit’s
1899 trucks violated the provisions this Board imposed, on a regular basis. And much to the
1900 dismay of the residents of Grapevine Road, when this Board approved the permit for
1901 West Sand and Gravel, to operate yet a new pit on Meadow Road, the railroad tracks,
1902 you put no route restrictions on it. Our complaints and pleas for relief for an appeal to
1903 the permit’s provisions, have been met with Planning and Zoning officials telling us that
1904 no such appeal can even be brought forward until next October. So our once peaceful
1905 road has gone from one of tranquility, to scenes like this. It also should not go unstated
1906 how Grapevine Road is ill equipped to handle truck traffic. While the County has
1907 classified Grapevine Road as a collector road in its major thoroughfare plan, it has
1908 made a huge mistake. The road’s lack of road width does not even permit the County
1909 to place lines on it. In addition, trucks cannot make turns off of Grapevine Road, without
1910 either going into oncoming lanes, or traveling off of the roadway. The skid marks that
1911 have appeared are testament to the difficulty loaded trucks have in stopping, especially
1912 at 45 miles per hour. And the fresh patches on our road, that was asphalted just last
1913 year, show proof of the wear. We now hear the truck traffic on Grapevine Road as early
1914 as 6:15 am, even on Saturdays. The movie clips you saw a few minutes ago, were all

1915 shot within an hour time frame, and that was not all of the trucks that were present. In
1916 fact, some residents have counted over 75 dump trucks and 18-wheelers on the road in
1917 a single day. It is not unusual to have to wait for as many as 4 such vehicles to pass
1918 before pulling out of the driveway. Many of the elderly who reside on this street, are
1919 imperiled going to get even their mail, especially with sometimes limited line of sight.
1920 We have petitioned Mr. Donati, who has now asked traffic engineering to consider both
1921 the speed limit and the road density, in order to determine if our street can even stand
1922 the hard toll that dump trucks and tractor-trailers extract. Traffic engineering has get to
1923 respond, but why should a place where people walk, move farm equipment, visit historic
1924 sites, and ride bicycles, be classified as a collector road. Why should the scores of
1925 people who use Grapevine Road, designated as a state bicycle route, be forced into the
1926 ditches by passing commercial traffic? Members of the Board, our backs are against
1927 the wall. Between the potential for truck traffic from each individual pit, despite the
1928 restrictions the Board might impose, the new mammoth sized VDOT truck service depot
1929 being built on Ponderosa Drive, and the prospect of the state fair, our quiet street has
1930 turned into a major highway, with no end in sight. Many of the reasons we chose this
1931 location for our homes, have now vaporized before our eyes, not to mention the value of
1932 our property. After all, who would want to buy a house on a truck route, where you are
1933 exposed to the noise and hazards of 75 commercial vehicles per day. But the bottom
1934 line is my children. I no longer allow them to play in the front yard; I no longer allow
1935 them to retrieve the mail or even ride their bikes in our own driveway. I cringe as the
1936 school buses travel, and frequently stop on Grapevine Road, with the trucks behind
1937 them. Having directed a childcare center in Varina for over 10 years, I know all about
1938 liability, and I also know about accountability. Today I simply ask the BZA to do the
1939 right thing and help protect health, welfare and safety of our community, especially our
1940 children. Deny Simons' request to bring additional trucks to our neighborhood. Thank
1941 you.

1942
1943 Questions? Any questions?

1944
1945 Excuse me, yes, are you opposed to our renewing it, or are
1946 you just asking us to make more restrictions?

1947
1948 Mr. Slater - Yes, I've been on Grapevine Road, we've been on
1949 Grapevine Road since 1991, shortly after the permit was.....

1950
1951 Are you with her, or are you a different speaker?

1952
1953 Mr. Slater - Yes, she's the head of the household today, but.....

1954
1955 What is your name sir?

1956
1957 Mr. Slater - My name is John Slater; I live at 1243 Grapevine Road. As
1958 my wife said, there have been a few complaints that we had, specifically with regard to
1959 Simons. It's just another factor; the truck traffic has become unbearable. Where do we
1960 draw the line, is my question?

1961
1962 Mrs. Slater - It's a cumulative effect; it's just more and more and more
1963 and more.
1964
1965 Mr. Slater - The school buses travel the entire distance of the road. The
1966 face that Simons runs from Lacywood to Meadow, per your route restrictions, is of
1967 some help, but there's no guarantee that the trucks always do that. At the same time,
1968 the school buses travel the entire span of Grapevine Road. Thank you.
1969
1970 Mr. Slater, did you say you reported this to the Police
1971 Department, these trucks running up and down the road at a high rate of speed, or.....
1972
1973 Mr. Slater - Yes sir, I am a police officer.
1974
1975 Oh, excuse me. Why didn't they do something?
1976
1977 Mr. Slater - To be very frank, because of my position, sometimes I can't
1978 make as much noise as I would have my wife make. But I've been as issue with, it's
1979 beyond the scope of this today, but as far as with speed on the road, since 1992, when I
1980 filed a formal complaint with disregard to the speed. A dump truck loaded, tractor trailer
1981 loaded with 80,000 pounds, it also carries a 5% permit, which allows it to carry 5% over
1982 that, the number of foot pounds of energy that truck generates, traveling down the road,
1983 at 45 miles per hour, pales compared to a car. The stopping distances don't come
1984 anywhere close. It's all these factors, the environmental factors, the impact on the
1985 community, wake up in the morning hearing trucks rumble coming up the road, really
1986 has us have some second thoughts. Thank you.
1987
1988 May I ask if the couple lives on the route that Simons' trucks
1989 travel?
1990
1991 Mr. Slater - We live south of the route.
1992
1993 So they don't travel by your house?
1994
1995 Mr. Slater - Simons' trucks don't, no sir.
1996
1997 Mr. Cochran - I think these people have a valid point, and I think some
1998 consideration should be given to limiting truck traffic on perhaps other parts of the road,
1999 but the Simons' trucks are restricted. The trucks that were shown on the video are not
2000 Simons trucks, and are not even on the route that Simons trucks travel. We're simply
2001 asking for renewal of a permit that has been in effect for 10 years, and I respectfully
2002 request you grant it.
2003
2004 How much longer do you expect this to be in effect. How
2005 much longer would you need to be there for that
2006

2007 Mr. Cochran - Well, we're requesting the standard renewal for 2 years; we
2008 have no, at the present time, no plans to close the pit down; it's an ongoing operation,
2009 and it's on a needed basis.

2010
2011 How long would you guess there will be material there to
2012 prolong this operation?

2013
2014 Mr. Cochran - There are 4 phases; this is the first phase, and we've been
2015 here for 10 years. But we have to come back every 2 years, obviously, to renew it.

2016
2017 Mr. Kirkland - Anyone else wish to speak on this case?

2018
2019 Mr. Blankinship - Were you sworn in sir? Raise your right hand. Do you swear
2020 that the testimony you are about to give is the truth, the whole truth, and nothing but the
2021 truth, so help you God? State your name please.

2022
2023 Mr. Belanich - I do. My name is Bill Belanich, and I live on the Grapevine
2024 Road, 7904. I was here ten years ago when the Simons requested the original permit,
2025 and at that time I opposed it. Simons has done a reasonable job to keep up with the
2026 restrictions that were put on the permit at the time. The trucks that Mr. and Mrs. Slater
2027 showed on the road, it's really got to be unbearable. As far as the Simons pit goes, the
2028 restrictions that were imposed in the original permit, I'm not so sure that they are always
2029 adhered to. Being that the original permit had Simons only trucks hauling from that
2030 specific site. From time to time you do see trucks with other logos, other names, that
2031 are hauling out of the pit, which is in violation of that. Also at times, I developed a piece
2032 of property, a 16-acre development that is adjacent to the pit. I also live on the other
2033 side, on the end where Simons' trucks come out and go by my house. So I don't live
2034 adjacent, but I live where the crow flies, probably within half a mile. On Saturdays I do
2035 hear machinery going over there. Originally there was no Saturday working. I'm just
2036 want to make sure that the restrictions that were imposed at first, they're still there, and
2037 that they will be adhered to. Thank you very much.

2038
2039 Mr. Kirkland - Anyone else? I thought that was the last one. Would you
2040 like to respond to that, have we pretty well covered it?

2041
2042 Mr. Cochran - The trucks that he mentioned that have other logos on the
2043 side are trucks that Simons Hauling Company has under contract to provide material for
2044 their jobs. There's no material leaving the site that goes to other jobs. And I think, in all
2045 other terms, we are in compliance with the permit.

2046
2047 Do you know of any Saturday operations?

2048
2049 Mr. Cochran - No sir, there are no Saturday operations.

2050
2051 Mr. Kirkland - Any other questions by the Board members? That
2052 concludes the case. Thank you sir.

2053
2054 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2055 McKinney, The Board **granted** your application **UP-14-2000**, for a conditional use
2056 permit pursuant to Section 24-52(d)24-103 of Chapter 24 of the County Code to extract
2057 materials from the earth at 2655 Lacywood Lane (Tax Parcel 157-A-80). The Board
2058 granted the use permit subject to the following conditions:

2059
2060 1. This permit is subject to all requirements of Section 24-103 of Chapter 24 of the
2061 County Code.

2062
2063 2. Hours of operation shall be from 6:00 a.m. to 6:00 p.m. when Daylight Savings
2064 Time is in effect, and from 7:00 a.m. to 5:00 p.m. at all other times.

2065
2066 3. No operations of any kind are to be conducted at the site on Saturdays, Sundays,
2067 nor on national holidays.

2068
2069 4. Open and vertical excavations having a depth of 10 feet or more, for a period of
2070 more than 30 days, shall be effectively sloped to a 2 to 1 slope or flatter to protect the
2071 public safety.

2072
2073 5. Trucks shall be loaded in a way to prevent overloading or spilling of materials of
2074 any kind on any public road.

2075
2076 6. All means of access to the property shall be from the established entrance onto
2077 Grapevine Road.

2078
2079 7. The operation shall be so scheduled that trucks will travel at regular intervals and
2080 not in groups of three or more.

2081
2082 8. A standard stop sign (R-1-B) shall be installed and maintained at the Grapevine
2083 Road entrance.

2084
2085 9. Standard "Truck Entering Highway" signs shall be erected on Grapevine Road on
2086 each side of the entrances to the property. These signs will be placed by the County, at
2087 the applicant's expense.

2088
2089 10. A superintendent who shall be personally familiar with all the terms and
2090 conditions of Section 24-103 of Chapter 24 of the County Code as well as the terms and
2091 conditions of UP-14-2000 shall be present at the beginning and conclusion of
2092 operations each work day to see that all the conditions of said Code and said Use
2093 Permit are carefully observed.

2094
2095 11. Topsoil shall not be removed from any part of the property outside of the area in
2096 which mining is authorized. Sufficient topsoil shall be stockpiled on the property for
2097 respreading in a layer with five inches of minimum depth. All topsoil shall be stockpiled
2098 within the authorized mining area and provided with adequate erosion control

2099 protection. If the site does not yield sufficient topsoil, additional topsoil shall be brought
2100 to the site to provide the required five-inch layer of cover. All topsoil shall be treated
2101 with a mixture of seed, fertilizer, and lime as recommended by the County after soil
2102 tests have been provided to the County.

2103
2104 12. The rehabilitation of the property shall take place simultaneously with the mining
2105 process. Rehabilitation shall not be considered completed until the mined area is
2106 covered completely with permanent vegetation.

2107
2108 13. Responsibility for maintaining the property, fences, and roads in a safe and
2109 secure condition indefinitely, or converting the property to some other safe use, shall
2110 rest with the applicant.

2111
2112 14. Entrance gates shall be erected and maintained at all entrances to the property.
2113 These gates shall be locked at all times, except when authorized representatives of the
2114 applicant are on the property.

2115
2116 15. Before beginning any work, the applicant shall submit erosion control plans to the
2117 Department of Public Works for review and approval. Throughout the life of the
2118 operation, the applicant shall continuously satisfy the Department of Public Works that
2119 erosion control procedures are properly maintained, and shall furnish plans and bonds
2120 that the department deems necessary. The applicant shall provide certification from a
2121 licensed professional engineer that dams, embankments and sediment control
2122 structures meet the approved design criteria as set forth by the State. If this condition is
2123 not satisfied within 90 days of approval, the use permit shall be void.

2124
2125 16. The areas approved for mining under this permit shall be delineated on the
2126 ground by the erection of five (5) foot high metal posts at least five (5) inches in
2127 diameter and painted in alternate one (1) foot stripes of red and white. These posts
2128 shall be so located as to clearly define the area in which the mining is permitted. They
2129 shall be located, and the location certified by a certified surveyor, within ninety (90) days
2130 of the date of approval of this use permit by the Board of Zoning Appeals, or this use
2131 permit is void.

2132
2133 17. "No Trespassing" signs shall be posted and maintained on the property to warn
2134 against use of the property by unauthorized persons. The minimum letter height shall
2135 be three inches, and signs are to be posted every 250 feet along the perimeter of the
2136 property. The applicant shall furnish the Chief of Police a letter authorizing enforcement
2137 by the County Police Officers of the "No Trespassing" regulations, and agreeing to send
2138 a representative to court for purposes of testimony whenever required or requested by
2139 the Division of Police.

2140
2141 18. Excavation operations shall be discontinued on said site by May 31, 2002, and
2142 restoration accomplished by not later than May 31, 2003, unless a new permit is applied
2143 for by not later than 60 days before the expiration of the permit, and is subsequently
2144 granted by the Board of Zoning Appeals.

- 2145
2146 19. Before beginning any work, the applicant shall provide a financial guaranty in an
2147 amount of \$2,000 per acre for each acre of land to be disturbed, for a total of \$74,000,
2148 guaranteeing that the land will be restored to a reasonably level and drainable condition.
2149 This permit does not become valid until the financial guaranty has been approved by the
2150 County Attorney. The financial guaranty may provide for termination after 90 days
2151 notice in writing to the County. In the event of termination, this permit shall be void, and
2152 work incident thereto shall cease. Within the next 90 days the applicant shall restore
2153 the land as provided for under the conditions of this use permit. Termination of such
2154 financial guaranty shall not relieve the applicant from its obligation to indemnify the
2155 County of Henrico for any breach of the conditions of this use permit. If this condition is
2156 not satisfied within 90 days of approval, the use permit shall be void.
2157
- 2158 20. The applicant shall furnish a certification from his bonding company each year,
2159 verifying that the bond is in effect, premiums have been paid, and the bonding company
2160 reaffirms its responsibility under the use permit conditions. This certification shall be
2161 submitted to the Board on May 31 of each year.
2162
- 2163 21. This permit does not become valid until the bond, required in condition No.19,
2164 has been posted with the County, and necessary approval received. This must be
2165 accomplished within 90 days of the Board's action or the action becomes invalid.
2166
- 2167 22. An accurate and detailed progress report shall be submitted to the Board on May
2168 31 of each year from the date of the Board's action. This progress report must contain
2169 information concerning how much property has been mined to date of the report, the
2170 amount of land left to be mined, and how much rehabilitation has been performed as
2171 approved by the County of Henrico, and when and how the remaining amount of land
2172 will be rehabilitated, and any and all pertinent information about the operation that would
2173 be helpful to the Board.
2174
- 2175 23. The haul road shall be paved to a minimum width of 24 feet back to the Binns
2176 property line.
2177
- 2178 24. The applicant shall comply with the Chesapeake Bay Preservation Act and all
2179 state and local regulations administered under such act applicable to the property and
2180 shall furnish to the Planning Office copies of all reports required by such act or
2181 regulations.
2182
- 2183 25. In the event that an appeal of the Board's approval action is filed, all conditions
2184 requiring action on the part of the applicant within 90 days are considered satisfied if the
2185 required actions take place within 90 days of final action on the appeal process by the
2186 courts.
2187
- 2188 27. The applicant must obtain a mine license from the Division of Mineral Mining,
2189 Department of Mines, Minerals and Energy, Commonwealth of Virginia within 90 days of
2190 the approval of this use permit or the use permit is void.

2191
2192 28. No offsite generated materials shall be deposited on the mining site unless the
2193 materials and the plans for their placement have been approved by the Planning Office.
2194

2195 29. A sign shall be posted at the entrance to the mining site stating the name of the
2196 operator, the Henrico use permit number, the Division of Mineral Mining mine license
2197 number, and the phone number of the operator. The sign shall be 12 square feet in
2198 area and shall be properly maintained.
2199

2200 30. All drainage and erosion and sediment control measures shall conform to the
2201 standards and specifications of the Mineral Mining Manual Drainage Handbook. Any
2202 drainage structures in place prior to October 14, 1992, and which do not conform to the
2203 Mineral Mining Manual Drainage Handbook, may remain in place until such time as any
2204 reconstruction is required at which time said structures shall be brought into
2205 conformance with the Mineral Mining Manual Drainage Handbook.
2206

2207 31. All loaded trucks from this site shall travel south along Grapevine Road, west
2208 along Meadow Road and south along Drybridge Road to Route 60. Empty trucks shall
2209 return by the same route.
2210

2211 32. Failure to comply with any of the foregoing conditions shall automatically void this
2212 permit.
2213

2214 Mr. Kirkland - Call the next one.
2215

2216 **A - 32-2000** **REGINA M. LAW** requests a variance from Section 24-95(i)(2)c&d
2217 of Chapter 24 of the County Code to legitimize an existing detached
2218 garage and shed at 607 Masonic Lane (Windsor Place) (Tax
2219 Parcel 153-1-G-5), zoned R-4, One-family Residence District
2220 (Varina). The accessory structure location requirement is not met.
2221 The applicant has a 2.62 foot rear yard setback and 9.38 foot
2222 minimum distance between house and garage, where the Code
2223 requires 10.0 rear yard setback and 10 feet minimum distance
2224 between house and garage. The applicant requests a variance of
2225 7.38 foot minimum rear yard setback and 0.62 feet minimum
2226 distance between house and garage.
2227

2228 Mr. Kirkland - Anyone else wish to speak on this case? If not, ma'am,
2229 raise your right hands and be sworn in by the Secretary.
2230

2231 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2232 truth, the whole truth, and nothing but the truth, so help you God?
2233

2234 Mr. Kirkland - Have all your notices been turned in, according to the
2235 County Code?
2236

2237 Excuse me, the note says that you're going to bring them
2238 with you today.
2239
2240 We were notified that you didn't receive your receipts.
2241
2242 If you would, turn them in to the Secretary.
2243
2244 All right, whichever one speaks first, state your name and
2245 proceed with the case.
2246
2247 Ms. R. Law - Yes sir. Yes sir. Okay, my name is Regina Law, and we
2248 bought the house in 1994, and it was already built, and we had a garage, and when we
2249 went to go see if we were within County codes, after we'd already purchased the house,
2250 and we found out that the garage isn't; it's too close to the house structure. But we just
2251 wanted the variance to get it back into codes. And we contacted our neighbors like you
2252 requested us to, and they all don't have any opposition to it.
2253
2254 When did you find out this garage was too close to the
2255 house?
2256
2257 Ms. V. Law - My name is Virginia Law, and we found out, I think, in April.
2258 Through the County Planning Board – they told us you needed so much feet, and we
2259 were like a half a foot off for this, and a half a foot off for that, and then there's a utility
2260 alley, and part of our property is in the utility alley, 2 feet of it, and they said the building
2261 was built in around 1960, so since we bought it in good faith, there's nothing we can do
2262 to change it. I don't know if those were the existing codes in 1960 or not, but we're just
2263 trying to get it into compliance with what you people need.
2264
2265 In other words, you didn't put a mortgage on this house?
2266
2267 Ms. V. Law - Did we put a mortgage on it?
2268
2269 Yes, when you bought it.
2270
2271 Ms. R. Law - We have a mortgage. We have title insurance for it.
2272
2273 Ms. V. Law - You have title insurance? Well, didn't they do a survey on
2274 this and find out at that time.
2275
2276 Was there a survey performed at that time?
2277
2278 It had to be if they got title insurance on it.
2279
2280 Not necessarily, typically, but not necessarily. It's not
2281 required. It's up to the person; it's up to the mortgage company; they could put an
2282 exception as to the survey.

2283
2284 Ms. R. Law - It was never an issue until we went to the Planning Board.
2285
2286 Ms. V. Law - We didn't realize; we figured if you got the mortgage, and
2287 you got the title insurance, it was all right. This says "land referred to in this policy is
2288 described as follows: "certain lots, etc., etc., etc.....references hereby are set to by
2289 the plat, which was on the regular County plat, and being in the same property
2290 conveyed to Regina Law by the deed, exceptions for coverage."
2291
2292 That's all right; you don't need to read it.....
2293
2294 Ms. V. Law - There's certain variances they had gotten years and years
2295 before, for utilities and what have you.
2296
2297 Ms. R. Law - To look at it, it doesn't, I mean I've seen a lot of houses with
2298 closer garages, so I don't know.
2299
2300 Ms. V. Law - In our area, there seems to be a lot of them. Maybe none of
2301 them meet codes; I don't know.
2302
2303 Mr. Kirkland - Any other questions?
2304
2305 Ms. V. Law - Could you tell us, so the codes change, like in 5 years, 10
2306 years, as you go along, in the County.
2307
2308 Mr. Blankinship - There are changes from time to time, but anything that's
2309 already built under an older code.....
2310
2311 Ms. R. Law - Is grandfathered?
2312
2313 Yes.
2314
2315 Mr. Kirkland - No other questions? That concludes the case.
2316
2317 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
2318 Wright, the Board **granted** your application **A-32-2000** for a variance from Section 24-
2319 95(i)(2)c&d of Chapter 24 of the County Code to legitimize an existing detached garage
2320 and shed at 607 Masonic Lane (Tax Parcel 153-1-G-5). The Board granted a variance
2321 of 7.38 feet minimum rear yard setback and 0.62 feet minimum distance between house
2322 and garage. subject to the following condition:
2323
2324 1. Only the improvements shown on the plan filed with the application may be
2325 constructed pursuant to this approval. Any additional improvements shall comply with
2326 the applicable regulations of the County Code.
2327

2328 The Board granted this request, as it found from the evidence presented, that
2329 authorizing this variance will not be of substantial detriment to adjacent property and will
2330 not materially impair the purpose of the zoning regulations.

2331
2332 Mr. Kirkland - Is Mr. Tokarz here? Okay, call the next one.

2333
2334 **A - 33-2000** John W. Montgomery appeals a decision of the Director of Planning
2335 pursuant to Section 24-116(a) of the County Code. The Director of
2336 Planning has determined that certain structures and uses
2337 connected with the Virginia State Fair may be allowed in A-1 zoning
2338 districts by conditional use permit. The affected property lies in the
2339 northeast quadrant of the intersection of Interstate 64 and Interstate
2340 295 (tax parcels 163-A-3A, 176-A-14A, 14C, 14D, 19, 20 and 21)
2341 zoned A-1, Agricultural District (Varina). The applicant requests the
2342 Board of Zoning Appeals reverse the decision of the Director of
2343 Planning.

2344
2345 Mr. Montgomery - Good late morning to you.

2346
2347 Mr. Kirkland - Before we get started here, Mr. Tokarz, we have a question
2348 for you. Mr. Wright?

2349
2350 Mr. Montgomery - I'll be glad to try to answer it for you.

2351
2352 Mr. Wright - Mr. Tokarz, I have a question as to whether this is a decision
2353 which is properly appealed to this Board.

2354
2355 Mr. Tokarz - You mean under the State Code provision?

2356
2357 Mr. Wright - Well, it says it has to be a decision? The question in my
2358 mind is whether this isn't merely an opinion of the Planning Director to an applicant,
2359 upon which he could make a decision as to whether, which way he would go. I don't
2360 know what this opinion, whether it binds anybody. I assume that the applicant can bring
2361 the case to wherever the applicant wanted, the Board of Supervisors, Planning
2362 Commission, or even this Board, and at that time the question could be raised. But it
2363 seems like to me that there's a serious question as to whether this is a decision that is
2364 properly appealed to this Board. And I think that's a jurisdictional question. I think it
2365 should be resolved before we get into the merits of the case.

2366
2367 Mr. Tokarz - Yes sir, I think that's certainly an appropriate question. For
2368 the record, my name's J. T. Tokarz; I'm from the Henrico County Attorney's Office,
2369 representing the Director of Planning. It is our view that the zoning conformance letter
2370 that is before you today, is a decision within the jurisdictional requirements for the State
2371 Code, for you to take a hearing on this. As you may be aware, during the last two or
2372 three months, the Virginia Supreme Court had a case, in which they ruled that even an
2373 oral opinion by a zoning administrator, and I forget the locality right now; if I had known

2374 this was coming up, I would have it for you. But there was a case which said that an
2375 oral opinion of the zoning administrator had to be appealed within 30 days, or else the
2376 Gwen V. Allwood Rule came into play. If that is the case, then we certainly would
2377 believe that a written zoning conformance letter would meet the requirement for having
2378 jurisdiction of this Board to review it. The purpose of the zoning conformance letter is to
2379 have a formal decision by the zoning administrator, for the purposes of applying the
2380 Code, and therefore, we believe it is within the jurisdiction of the Board.

2381
2382 Mr. Wright - Is that binding upon, say, the Board of Supervisors, the
2383 Planning Commission?

2384
2385 Mr. Tokarz - Yes, we believe that if it is not appealed within 30 days, it
2386 does have binding impact, yes sir, under Gwen V. Allwood.

2387
2388 Mr. Kirkland - Okay, Mr. Tokarz, sit down; you can start.

2389
2390 Mr. Montgomery - Thank you very much. Good morning.

2391
2392 Mr. Kirkland - If you would sir. I'm going to say this. Anyone else wishing
2393 to speak on this case, strictly to the case, this is a legal issue now, strictly the case, not
2394 about whether or not the state fair goes there or whatever, strictly the case of the appeal
2395 of the Planning Commissioner, Director, excuse me. The case, he just read you the
2396 case.

2397
2398 Mr. Blankinship - The Director of Planning has written an opinion that certain
2399 uses connected with then Virginia State Fair may be allowed in A-1 zoning districts by
2400 conditional use permit. That's a legal determination. The appellants have asked the
2401 Board to reverse that decision. So it's not about the merits of the fair, or the merits of a
2402 specific site. It's whether the terms of the zoning ordinance would allow those uses in
2403 an A-1 district by conditional use permit or not.

2404
2405 Basically [unintelligible – 3rd mike not on] if you go and this is
2406 the appeal [unintelligible].

2407
2408 Mr. Kirkland - If you would, sir, answer that question for us.

2409
2410 Mr. Blankinship - Okay, the Chairman's point is that it is not before this Board
2411 today to decide whether or not to approve the fair on that site. That decision may or
2412 may not be made at some later meeting. But the question that is before them is not
2413 about the merits of the fair or about the merits of a specific site for the fair. The
2414 question is a legal interpretation of the County Zoning Ordinance. The Zoning
2415 Ordinance. The Zoning Ordinance uses the term "fairground," and the main point I think
2416 we're going to discuss here is what that term means, in the context in which it's used.
2417 So any comments that have to do with that specific legal question will be welcomed by
2418 the Board, but any comments that are on anything else, a specific location or the merits
2419 of the state fair, would not be properly before this Board this morning.

2420
2421 Mr. Kirkland - Okay, since that's been said, all those who wish to speak on
2422 this case, please stand up and raise their right hands. Okay, Mr. Secretary, would you
2423 swear them in.
2424
2425 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2426 truth, the whole truth, and nothing but the truth, so help you God?
2427
2428 Mr. Kirkland - And all the notification landowners have been contacted
2429 according to County Code?
2430
2431 Mr. Blankinship - That was done by the County, for the record.
2432
2433 Mr. Kirkland - If you would, sir, state your name and the case.
2434
2435 Mr. Montgomery - Absolutely. John W. Montgomery, Jr. I am, as the, I believe
2436 it's a little misleading the way the case is titled; I actually am the representative of the
2437 appellants. I am an attorney, and I have, they are my clients, and I have been retained
2438 to do that. I have no problem with the way the notice was sent; however, it's just
2439 somewhat inaccurate in that regard. I think the rest of the papers are accurate.
2440
2441 Whom do you represent?
2442
2443 Mr. Montgomery - I represent sir, you should have received a list of the
2444 appellants in my original filing, and, believe it or not, sir, in order not to use too much
2445 paper, contrary to what you may think by the book I just provided to you, I did not
2446 provide another copy of that, but there's approximately 18 folks, I believe.....
2447
2448 But they will be in the record, I take it?
2449
2450 Mr. Montgomery - Yes, that's right.
2451
2452 Just wanted to make sure they are in the record.
2453
2454 Mr. Montgomery - That's correct, and along with myself, I also have my
2455 colleague Everette Felts, who has been involved in this matter, and is also council, and I
2456 also much thank the assistance of Lisa Quesinberry, who has just completed her third
2457 year of law school, and she probably wished that perhaps she was still back in it
2458 because I've used her for leg work more than she would be willing to admit, I'm certain.
2459 Mr. Chairman, members of the Board, may it please the Board, as I've just told you, my
2460 name is John Montgomery, and as I've seen the proceedings this morning, it does not
2461 appear there's a requirement that I request an opportunity for reply or rebuttal, but if it
2462 was, I would like to do that. As you mentioned, I am representing approximately 18
2463 folks who have filed the appeal, and these people are indeed aggrieved by the decision
2464 which Mr. Tokarz and Mr. Blankinship has described for you. The issue which you must
2465 decide, and that's important, and Mr. Blankinship's done a good job, I believe, of at least

2466 setting it up. But the issue you must decide is whether year-round commercial
2467 activities, activities which you're going to hear, through evidence and testimony, that
2468 ARE and the County have admitted are non-fair commercial money-raising activities,
2469 whether such activities can in fact, be bootstrapped into A-1 zoning under the umbrella
2470 of fairgrounds. That's the issue; that's the question. Now, Mr. Marles, the Planning
2471 Director, of course, whose decision we're appealing, has relied upon three issues to
2472 support his position, support his argument, if you will. He's created a three-legged
2473 stool. The legs of that stool are 1) past practice, which he says is consistent over a
2474 number of years, and before I go to the other two, I want to tell you that that past
2475 practice argument that he's going to make, through his counsel, and has made in his
2476 papers, is indeed intertwined with all three legs of the stool. And so you will soon see,
2477 as that falls away, the two-, the three-legged stool becomes somewhat wobbly. Next,
2478 he relies upon the dictionary definition, which in fact he has adopted. And finally, he
2479 relies upon the use of the word "fairgrounds," the use of the use "fairgrounds," within the
2480 Code itself. Without any one of those legs of that argument, gentlemen, his position
2481 fails. And as you will see, we're going to eliminate those, and any that are left, are
2482 going to be at least considered wobbly. Now there are a couple of preliminary issues.
2483 We've touched on one. The other one I think we need to knock out very quickly, is
2484 whether these folks are in fact aggrieved persons, which Mr. Tokarz has identified in his
2485 papers, as being a requirement. I would like to suggest to you that they indeed are.
2486 The test is whether there's substantial property and personal impact, or interest that is
2487 impacted substantially and pecuniarily and otherwise, by the decision. As you look
2488 through the list, and the map that Mr. Tokarz provided, you see that they're scattered
2489 about, but the vast majority of them are located very closely to the proposed site. And
2490 indeed, one of the folks whom you will have an opportunity to hear from, the Trues, are
2491 less than a quarter of a mile from the site. Furthermore, and in just a moment, I'm going
2492 to ask one of the Trues to come up and speak to that issue for you so we'll have it on
2493 the record. The other thing that I would like to point to is in the book that I provided to
2494 you earlier, if you will look behind tab # 4, we have hired a real estate appraiser to go
2495 out and look at the properties, look at the location, and to render an expert opinion if you
2496 will, a professional opinion, and I would just point to, at the bottom of the first page, he
2497 says, "When Mr. True (the gentleman you're going to hear from, or his wife perhaps)
2498 decides, were Mr. True to place his home on the market with a professional realtor for
2499 sale, it would be difficult to find a purchaser without a severe discount to its current
2500 assessed value. You turn to the next page, and he concludes by saying, "I can state
2501 that it is my professional opinion that residential properties nearby will have been
2502 significantly impacted with the loss of market value and increase in market timing,
2503 lessening the value of the closest properties to the site in the 15 to 20% range, and the
2504 further you get away from it, the further you get away from it, the less that impact will be.
2505 So that expert opinion, which I don't think will be challenged, indicates that there will be
2506 immediate, substantial, pecuniary impact. I would ask that the Trues come forward, and
2507 they can tell you about the personal impact that it will have, as well. And I think that
2508 they can do that briefly.

2509
2510 Ms. True - My name is Melissa True, and we reside at 3633 Old
2511 Williamsburg Road. As residents on Old Williamsburg Road, we feel that our family will

2512 be directly and negatively impacted by the relocation of the state fair park. Despite what
2513 Atlantic Rural Exposition, Inc. has expressed, we think the community will be affected
2514 by additional noise, trash, traffic, and a decrease in property value. We feel the
2515 proposed use of Old Williamsburg Road as a delivery road, as told to us by state fair
2516 representatives, is unnecessary. The enjoyment of this dead end road will pose a threat
2517 to the children at the day care facility also located on Old Williamsburg Road. With the
2518 large trucks already using the road to gain access of reconstruction of 295 and 64
2519 interchange, additional traffic would make the use of the road for recreation or necessity
2520 dangerous. We are very disappointed to hear of ARE's plans of relocating and
2521 developing a state fair park in our quiet community. Our intentions, as young residents,
2522 of raising a family and enjoying our home in this area, have dissipated. Thank you.

2523
2524 Mr. Montgomery - Did you all have any questions of the Trues?

2525
2526 No, not at this time.

2527
2528 Mr. Montgomery - With that having been said, I believe it's fair to say that we
2529 have addressed that issue, and indeed that we do have standing if you will, so we'll
2530 move on, but I'd be glad to answer that question now or at any other point if you would
2531 like. So with that having been said, the question, we get back to it. Can you bootstrap
2532 these admittedly non-fair activities under the use "fairgrounds" into A-1 zoning. Looking
2533 at the past practice, the definition, and the use in the code, we would suggest to you
2534 that it's not. Leg 1 – "past practice" – I mentioned to you that this is the linchpin of their
2535 argument, and when the linchpin is removed, we all know what happens. And why do I
2536 say it's a linchpin? If you would like, you can follow along behind tab 3, which is Mr.
2537 Tokarz's letter, but I will just point to a couple of things to indicate that to you. He says
2538 on page 3 of his letter, he in fact italicized it for us, but it says,

2539
2540 *"...for over 40 years both the State Fair and the various "between fair" activities*
2541 *have been permitted at Strawberry Hill under the category ..."fairgrounds" in ...*
2542 *B-3"*

2543
2544 It's the linchpin of its past activity. If you turn to page 5, under the definition, he
2545 concludes, he says,

2546
2547 "Second, the County has never regarded the term "fairgrounds...."

2548
2549 He says,

2550
2551 "Over 40 years of experience includes the use of permanent buildings at the
2552 fairgrounds at Strawberry Hill(s)...."

2553
2554
2555 Thus it's the linchpin of his definition argument. And finally, the use within the Code
2556 itself, if you look to page 4, he says it again, he points to Mr. Glover's letter, and in that
2557 case, he says,

2558
2559 *"Put...simply, the ... "fairgrounds" in ... A-1 district has the same meaning as the*
2560 *term "fairgrounds" in ... B-3...."*

2561
2562 So he's looking back at into B-3 at the existing site, and once we address that, I think
2563 you will see that there's a significant problem there. No why is that a problem? Lisa, if
2564 you could put the time line up, please. We have gone to the liberty, and I want to divert
2565 just a moment, and tell you that Ms. Quesinberry did an outstanding job of reviewing
2566 what indeed was a tough job of going back and finding the code, the series of the code,
2567 which I know you all have dealt with before, but you had to really do some digging to
2568 find it, but indeed we did find it, and we're comfortable in that and convinced of that. So
2569 rather than refer.....

2570
2571 Could I interrupt you just for a second.

2572
2573 Mr. Montgomery - Yes sir.

2574
2575 I want to bring up one point on this letter. Mr. Glover's 1959
2576 comments – who is Mr. Glover?

2577
2578 Mr. Montgomery - It's my understanding that

2579
2580 Mr. Blankinship - He was with the fair.

2581
2582 Mr. Montgomery - ...he was the past president of the ARE, Inc., and his letter,
2583 which appeared as part of Tom's correspondence,.....

2584
2585 I don't want to get him confused with Mr. Glover's on the
2586 Board of Supervisors, because he wasn't on in 1959.

2587
2588 Mr. Montgomery - I understand; he would probably appreciate your making that
2589 certainly clear. Now what I want to do, is I want to walk you through how we got to the
2590 time line, which you're seeing there. If you turn to tab # 7, what you're going to see is
2591 an excerpt of the Code, the Zoning Code, as it appeared from 1933 until 1953, and if
2592 you want to look quickly, onto the third page is B-3 districts, I can tell you it does not say
2593 anything about the fairgrounds or fairs. If you look on the agricultural districts, which
2594 then was called Section D, it says nothing about either of those events. So if you look
2595 at the time line now in front of you, that's the item that shows back in 1930, basically
2596 until the '50's. Now turn with me, if you will, to 1953, which what you're looking at there,
2597 is a portion of the Code as it existed from 1953 until 1988. And what I want you to do is
2598 turn to the 11th page, and you'll see under B-3 use, 1022, it says, "carnivals, fairs, and
2599 circuses"; it does not say "fairgrounds." It does not say "fairgrounds."

2600
2601 What page are you on?
2602

2603 Mr. Montgomery - Sir, at the bottom of the page; it's actually the last behind tab
2604 # 8; it's the very last paper, and it's got the numeral 24 at the bottom. Is everybody with
2605 me now? It's actually up on the projector now, if you need that as a reference. So what
2606 we're seeing is, to review, from '33 to '53, there's no mention of it. From '53 until '88, in
2607 B-3, which is the parcel where the Strawberry Hills facility is now, which is what they
2608 hang their hat on, it was not a "fairground," rather it was a fair, a carnival, circus, fair,
2609 and if you look in the other B-3 provisions, there's other business-like uses going on
2610 there. Nowhere does it say "fairgrounds." And then, before we leave, and we don't
2611 have a tab that refers to this, but in 1959, there was a comprehensive rezoning, but
2612 what happened with the comprehensive rezoning, was a redrawing of the boundaries.
2613 And then some change, and you will note that one of the things that they're going to
2614 point to is the fact that the Strawberry Hills facility went from B-1 to B-3. But when it
2615 went to B-3, it didn't go under fairgrounds use. We don't know what it was, but one
2616 thing we know it was not, was a fairground. It couldn't be, it couldn't be, not unless the
2617 County's going to get up here and tell you that they were asleep at the switch, and I
2618 know that that didn't happen; certainly that didn't happen, so that it could have been a
2619 fairgrounds.

2620
2621 Now then, in 1988 is the first place, and that's behind tab # 10, is the first place, and
2622 what we have there is the actual minutes of the Board of Supervisors, and if you will
2623 look at page 15 of 19, and in the upper right-hand corner it lists 15 of 19, you see
2624 "fairgrounds" for the first time, 1988. So what does all of this tell us? What it tells us is,
2625 that until 1988, the past practice, all of these things, that they're going to tell you about,
2626 and they've already said it, they can't run from it now, they've said it in their papers, for
2627 40 years, these things have been going on. They point to Mr. Glover's letter, and they
2628 say, "see there, look here, all of these things have been going on, and because it was a
2629 "fairgrounds" in B-3, that must be what a "fairground" is, and therefore, but it wasn't; it
2630 was something else. It was not a fairgrounds; that leg is gone. That leg is gone. Now
2631 let's don't leave that for just a moment though, because we don't have to rely just on
2632 what they've told us thus far. Let's look at what's happened here recently. I kind of feel
2633 like I'm in church, "Join me as we turn....." My wife tells me I often get to going, and
2634 I sound like I might wish I was in church pontificating, but I'll try not to do that for you all.
2635 Join me, if you will, behind tab # 6. This is February 10 of this year. The testimony of
2636 Miss Elizabeth Via, who was charged with the responsibility of overseeing the process
2637 for the move, from the County's side. She was asked by Ms. O'Bannon, of the Board of
2638 Supervisors, who of course sits on the Planning Commission – I want to read it to you,
2639 it's on page 39. Ms. O'Bannon, "I have one question, if I could just ask it of the Planning
2640 staff....." She's allowed to do so. Ms. O'Bannon asks, this would be to Ms. Via,
2641 "Just a basic question, if I can ask this – the State Fair is obviously the Atlantic Rural
2642 Exposition, and has farm animals – this property is zoned A-1; can they have a fair on
2643 A-1 property? Ms. Via, the person responsible for this action, on behalf of the Planning
2644 Director – "This was discussed when the proposal first came before the County; just the
2645 fair and the other large outdoor events, is my understanding, could be done in an A-1
2646 with a provisional use permit. The decision was made early on, and the
2647 recommendation from the staff was that, because of the year-round nature of all the
2648 other activities that would be going on, that would require commercial zoning in B-3.

2649 The year-round activities are the other things.” Ms. O’Bannon, “So they could have the
2650 fair?” She’s back to her simple question. I would suggest to you that that’s a good
2651 question for us to consider today. Ms. Via, “Just a state fair,” she answers. Ms.
2652 O’Bannon, “For a week and a half, or so?” Ms. Via, “That could potentially apply. They
2653 could potentially apply for a provisional use permit, just to run the state fair.” Ms.
2654 O’Bannon, “Okay, I just wanted to ask one basic question.” She got a very straight
2655 forward answer to it.

2656
2657 We’ve shown that the Code did not recognize fairgrounds until 1988, so their claim of
2658 40+ years of looking at the existing Strawberry Hills facility, cannot fly. You cannot rely
2659 upon that. We’ve seen that Ms. Via, the person responsible for it, told you what her
2660 interpretation was, and the staff’s interpretation was, at that time. I don’t know what
2661 happened to change it. I don’t know, and it’s really before us. Looking at tab 3, Mr.
2662 Tokarz’s letter; he attaches the testimony of the other Mr. Glover, and I want to ask you
2663 if you will turn with me to that; it’s the last 2 pages behind tab 3. Gentlemen, he doesn’t
2664 use the word fairgrounds; he doesn’t say “let’s move it from B-1 to B-3 so I can be in a
2665 fairgrounds, so we can do these things. He said “move it, if it takes moving it from B-1
2666 to B-3, to get the job done, then by all means, let’s do it.” And the County said “Do it,”
2667 and why did they say “Do it”? Because it’s a commercial business district; it didn’t say
2668 fairgrounds. He would have used the word, I’m certain, if it did. Thus there’s no
2669 consistent past use; we’ve demonstrated that. Moreover, because, and before we leave
2670 that, let’s think about what that means. If in fact they rely upon it as heavily as they do,
2671 and they were able to do these things which they’re going to tell you they were able to
2672 do, for all these years in B-3, and fairgrounds was not a permitted use, then when the
2673 Code was amended in 1988 to include fairgrounds, it didn’t all of a sudden change the
2674 nature of what they were doing. In fact, their argument, which they rely upon, leans in
2675 my favor. They’ve established, through a past practice, that what they were doing, was
2676 not indeed a fairground. In fact it was something else allowed under B-3. So
2677 accordingly, I would argue to you, the past practice, if there is one, the longer past
2678 practice, is that it is not allowed under fairgrounds.

2679
2680 Now let’s move on to leg 2, and don’t forget, please don’t forget, that leg 1, past
2681 practice, is intertwined throughout. So now we’ve got us a two-legged stool. The next
2682 thing that we need to talk about is the definition that Mr. Marlles adopted. Now the nice
2683 thing that I’ve found about this case, is that the most work I had to do is just go back
2684 and follow up behind them and read what they said, hear what they said, read what they
2685 wrote. An quite often I’ve discovered that they made my argument for me very well.
2686 He, in fact, defined ‘fairgrounds’ as a “open space where fairs are held.” Now, I believe
2687 if he were here today, and interestingly enough, he has chosen not to testify, although I
2688 would think that he would be the person who’d lead the most into what he thought it
2689 would meant, but whatever, whatever. They now say that an open space is not an open
2690 space, but an enclosed building. That defies logic. They now say, but what they do is
2691 they say, Mr. Webster envisioned something besides an open space. They now say
2692 that a fair includes non-fairs. A fair includes things that these folks have already said
2693 are not fairs, and it’s clear throughout their filing, and I want you to turn with me again,
2694 because I want to demonstrate that to you, ARE has repeatedly said so. Turn to tab 2

2695 please, and I want you to look at the, it's not very thick, but there's a list of uses, under
2696 the headline **FAIR PARK.** And I'm just going to run down there with you, and I didn't
2697 create this document. All I did was highlight it for you. Number 4, number 4 says "Hall
2698 of Fame Building, 25,000 sq. ft. permanent meeting building." Then it goes on to say,
2699 "during the fair," I'm going to read it to you, "the 25,000 sq. ft. permanent building would
2700 serve as a small exhibit hall during the fair and as a meeting, banquet, or exhibition
2701 facility during non-fair times." Now I know a little bit about the English language. I know
2702 "non" means "not." They just told you it's not a fair. The very next one, the "Showboat.
2703 Again, "the facility may be a tent or a permanent building," which oddly enough, I don't
2704 know how you, it looks like they're going to pitch a over a 100,000 sq. ft. of canvas out
2705 there at some point, for tents, or maybe they're not, because they never really come
2706 clear on that. But, "If a permanent building, the facility would be used non-fair for
2707 meetings, banquets, or small entertainment performances." "Non" means "not."
2708 Number 7 talks about year round. Number 11, exhibit halls, these "halls will be used
2709 during non-fair to host various consumer shows and performances." It's throughout
2710 there, but those are the most clear examples I would suggest to you. So what they're
2711 asking us to do, I would suggest to you, is to turn our common sense off, turn our logic
2712 away, decide that an open space is an enclosed building, decide that a fair is a non-fair,
2713 not as I've defined it, you don't even have to rely upon Mr. Tokarz, you can go right to
2714 the feet of the matter, and that's with Mr. Brown and Mr. Kidd, who vouched for the
2715 information that's presented there.

2716
2717 Now we've wrestled with two legs of the three-legged stool, and I know everyone's
2718 pleased that we're to leg 3, so I might be, what they call, overusing the metaphor, but at
2719 any rate, I think it's a good one. Use in the ordinance itself – now here we get into
2720 some interesting things. Mr. Tokarz has told you that there are three uses, three uses
2721 under that section, and what that section says, is you're allow conditional uses for
2722 fairgrounds, race tracks, or, the word or, grounds for racing or showing horses, and
2723 riding stables or academies. There's two uses there. They're talking about things to do
2724 horses with. They modified fairgrounds; they modified race track; they modified
2725 grounds. Now, if that's now the case, then what they're going to have to stand up here
2726 and tell you is, in that regard, you're able to do race tracks, whatever race tracks are.
2727 Horses have nothing to do with it any more, because it's connected by "or," not "and."
2728 There's 2 uses: the first one deals with horses, or running and showing of horses. The
2729 second one deals with riding stables and academies. That's not a redundant reading;
2730 that's a plain meaning reading.

2731
2732 Where are you with respect to the ordinance on that?

2733
2734 Mr. Montgomery - Sir, let me drive you to it real quick. Find a good example of
2735 it.....

2736
2737 I'm also looking at amusement park, the circuses, and
2738 fairgrounds.

2739

2740 Mr. Montgomery - Sir, you're looking in B-3, okay, and I would direct you to A-
2741 1, and I may not have provided you a current copy of A-1, but I'm sure Tom's got one if
2742 you need to review it, but I can tell you what the language says. How about if I just read
2743 it to you?

2744
2745 That will be fine.

2746
2747 Mr. Montgomery - It says, "fairgrounds, race tracks or grounds for the racing or
2748 showing of horses, and riding stables or academies." That's what it says; that's what
2749 the ordinance says.

2750
2751 "Fairgrounds, race tracks and grounds for the racing and
2752 showing of horses, riding stables and academies."

2753
2754 Mr. Montgomery - Sir, I believe you're reading Mr. Tokarz's brief, and I would
2755 suggest to you that while I've been accused of misreading it, I had to correct my
2756 colleague and say he's misquoted it, because it says "fairgrounds, race tracks or
2757 grounds, or, and I want to, let's take a moment and be clear.

2758
2759 Doesn't say carnivals, are carnivals in it. Uses permitted in
2760[unintelligible]

2761
2762 Mr. Montgomery - And I want to make a clarification, and Mr. Tokarz is
2763 absolutely right. He just pointed out to me that he did not quote it is his papers that he
2764 filed to you. He didn't put quotes around it or intend for it to be read as a quote. Rather
2765 it was a paraphrase. I would suggest to you that what we're dealing with is an
2766 ordinance, and while paraphrasing is appropriate in some regards, certainly when we're
2767 dealing with the words of an ordinance, and obviously that's we're dealing with, the
2768 words, we've got to read the words as they appear, as the legislative body who adopted
2769 them, insisted that they appear. So it says "and," there's 2 uses, not 3. Are there any
2770 questions about that, because I see a number of folks looking at it closely? So where
2771 does that leave us? Well, if you buy into my analogy of a three-legged stool, we've got
2772 a little piece of stool sitting on the ground right now, We've got legs that are crumbled.
2773 Past practice doesn't support them. The definition, bad as they want to run away from it
2774 now, it doesn't support them. And indeed the language of the ordinance doesn't
2775 support them. I would suggest to you that unless you're willing to close your eyes, turn
2776 off your common sense, and ignore logic, you can't do anything but come to the
2777 conclusion that fairgrounds, that the Planning Director, reached the wrong definition,
2778 and you must reverse his definition in whole. I'd be glad to answer any questions; I do
2779 wish to offer a response to what I'm sure is going to be an interesting presentation. And
2780 certainly I didn't begin by thanking you for the opportunity, but I tell you, it's a privilege
2781 and an honor to be here. A lot of the things that I've done in the practice of law, and the
2782 army and so forth, have been very rewarding, but working with the folks that I've had the
2783 opportunity to work with, my neighbors, and so forth, has been one of the most
2784 rewarding that I have had, and so I thank you for the chance here this morning.

2785

2786 Mr. Kirkland - All right, anyone else wish to speak on this case?
2787

2788 Mr. Felts - Excuse me, I'm Everette Felts, and I assisted John in this
2789 matter, and I'd just like to say, without confusing it any further, that I concur with his
2790 presentation and what he's presented to you. And I'd like to further say that if you
2791 approve Mr. Marlles letter, his determination, what you're doing here, is allowing the
2792 County, in its infinite wisdom, an administrative governing body, to make decisions
2793 based on innuendoes, speculations, and past practices, when it's clear to me that I think
2794 the governing body of any, of the people, should be expressly lended to the ordinances
2795 and statues and things of which they are to follow, and they're to be I think, exact and
2796 explicit in doing that, and not be able to use innuendoes, inferences, and past practices
2797 as a basis for their decision. Thank you.
2798

2799 Mr. Kirkland - Mr. Tokarz.
2800

2801 Mr. Tokarz - Mr. Chairman, members of the Board, Mr. Montgomery's
2802 made a very good presentation. Unfortunately some of the items that he raised today
2803 were just raised for the first time; I hadn't heard them. In particular, I had not received
2804 the Appellants' Exhibits, and one thing that I think is omitted here, that I would like to
2805 ask the Board's indulgence to take a few minutes, if you could pass us by for a few
2806 minutes, he does not contain in the exhibits the 1959 comprehensive ordinance
2807 amendment, which I referred to in what I have submitted to you. I would like, with your
2808 permission, to ask you to pass us by for a few minutes. Let me get a chance to take a
2809 look at the document, which has not been reviewed and is not in any of the documents,
2810 and I'll come back and make my presentation at that point.
2811

2812 Mr. Kirkland - What is your few minutes?
2813

2814 Mr. Tokarz - I would just ask you if you could move on to the next case. I
2815 would say 15 minutes.
2816

2817 Mr. Kirkland - Do you want to defer it?
2818

2819 Mr. Tokarz - Well, it's his case, I mean I'm in the situation, that I'm
2820 surprised at this point, because I've not gotten this information until 10 minutes ago, and
2821 I've not had a chance to go back and research the legislative history that's put before
2822 you.
2823

2824 Mr. Montgomery - Let me speak briefly. In other words, I need to get to the
2825 mike.
2826

2827 Mr. Kirkland - So it will get on the recording.
2828

2829 Mr. Montgomery - Absolutely, I wouldn't want to miss reading all this at some
2830 point. I would suggest to you that a delay, deferral or anything else is not appropriate,
2831 and I think we can answer the question. First of all, I'd like to point out that these are

2832 not my documents; these are the County's documents. We're here to interpret the
2833 Code; I think the place to begin is the Code, as it existed, as it's grown, but the question
2834 being the '59 comprehensive rezoning issue. I think we can answer that, if you look.

2835
2836 Mr. Kirkland - Do you have any problem with him taking a 10 minute so he
2837 could read it in private?

2838
2839 Mr. Montgomery - Absolutely, but let me do one thing. Let me see if I can't
2840 answer the question for him, and it'll save him from reading. If you look behind tab # 8,
2841 and Tom, I'll let you look along with me, I want you to begin with the first page of tab #
2842 8, it's the Zoning Ordinance, County of Henrico, # 179, look down at the bottom, this is
2843 taken right out of the County's Code Book in the Planning Office. The last date there is
2844 penciled in 11/26/80, but there's a typed date October 3, 1975, whatever date you
2845 choose is after the '59 comprehensive zoning matter. Turn with me, if you will to the
2846 last page, which is marked at the bottom, page # 24. You can flip back one or two
2847 pages if you want to, and you will note that we are dealing with B-3, the zoning category
2848 of Strawberry Hills. If you look at 10.22, it says "carnivals, fairs, and circuses." I would
2849 suggest to you the '59 comprehensive rezoning will add nothing to the matter, unless, I
2850 can't imagine that they went back and forth a couple of times, fairgrounds and fairs.
2851 This is the legislative history. As of, at the very latest, 1981, some, however many
2852 number of years that was after the comprehensive rezoning, the ordinance says
2853 "carnivals, fairs, circuses," not fairgrounds. I certainly will take a 10-minute break, or
2854 whatever's appropriate.

2855
2856 Mr. Kirkland - Well, we'll keep going with the cases, so he can review all
2857 this. I think this is only fair; this is a very large case, and I think, if you really don't
2858 mind.....

2859
2860 Mr. Montgomery - I don't mind, that's a fair request, and, you know, as long as
2861 we recognize it, I think the answer's right here.

2862
2863 Mr. Kirkland - Mr. Tokarz, 10 minutes?

2864
2865 Mr. Tokarz - That'd be fine, thank you sir.

2866
2867 Mr. Kirkland - If you would, we'll pass this on, and we'll move to the next
2868 case.

2869
2870 **UP- 15-2000** STEVEN M. WILLIAMS requests a use permit pursuant to Section
2871 24-12 of Chapter 24 of the County Code to raise roller pigeons at
2872 2703 Carlisle Avenue (Shurm Heights) (Tax Parcel 161-17-A-12),
2873 zoned R-4, One-family Residence District (Varina).

2874
2875 Mr. Kirkland - If you please, keep it down so we can proceed. Anyone else
2876 wish to speak on this case, please raise their right hand and be sworn in.

2877

2878 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2879 truth, the whole truth, and nothing but the truth, so help you God?

2880
2881 Mr. Kirkland - Have all your notices been turned in, according to the
2882 County Code? We have your notices in the file. If you will, state your name and
2883 proceed with the case.

2884
2885 Mr. Williams - Yes, my name is Steve Williams, and I live at 2703 Carlisle,
2886 and I'm here to ask for a grant, a use permit, to keep my roller pigeons that I raise and
2887 house, and I also fly them. Someone complained, I don't know who did it, but they
2888 came by and asked me to go around the neighborhood and check with people, and I did
2889 all this, and everybody signed papers that they had no problem, so I don't know if it was
2890 just done out of spite or, you know, but this is where it brought it to.

2891
2892 Steve, what is a roller pigeon?

2893
2894 Mr. Williams - Roller pigeons are a type of bird that they come out when
2895 you release them, and they go up like acrobats, they flip over in circles. Like I say, it's
2896 simultaneous circling motions that they do, and they fly anywhere from 10 to 15 minutes
2897 and come down and go right back in.

2898
2899 How many do you have?

2900
2901 Mr. Williams - Right now I have a total of 85 birds, but I fly about 40 a year,
2902 because the hawk sees, the hawk takes the birds constantly, so what I do, when I start
2903 out, when I say I have 85 now, at the end of this year, by November I won't have under
2904 half of those flying birds; they'll be gone. It's just, a hawk takes them.

2905
2906 Mr. Blankinship - They just like chicken.

2907
2908 Mr. Williams - Right; they take them all, so it's a never ending.

2909
2910 Way to go, Mr. Blankinship.

2911
2912 Mr. Blankinship - Somebody had to say it.

2913
2914 You raise them from.....

2915
2916 Mr. Williams - From babies, yes. I have stock birds that I purchase and
2917 have through the year, that I've raised myself, and then I raise off of the birds and put
2918 them in a box, which is called a fly-box, and it has a trap on it, where the birds can go in.
2919 Once they go in, they can't come back out. I release them from the door. And like I
2920 say, they fly anywhere from 10 to 15 minutes, and come straight back down, and they're
2921 controlled by the feed, so it's a big difference between common pigeons and what I
2922 have. Mine are all colored, white, blue, yellow, different colored birds, and when they
2923 come back down to the feed tray, they more or less beat me to the door. They go in

2924 faster than I can get it in there. So it's not that they hang around. I keep everything
2925 clean; I put, I have like cat litter that I put on the floor for the droppings and stuff like
2926 that. There's no smell; I mean there could be if you didn't take care of it, but I clean it
2927 like twice a week, stuff like that.

2928
2929 How big are they?

2930
2931 Mr. Williams - A little bigger than a dove.

2932
2933 You can keep 85 in this house?

2934
2935 Mr. Williams - The picture here that's showing, the front part of this here is
2936 the fly box; the opening there where that wire part is, is where I release them; the part
2937 behind it right there is where the actual breeders are housed. All in sections.

2938
2939 All 85 stay in this one.....

2940
2941 Mr. Williams - No, in the front part of this, right here, holds about 40 birds,
2942 and then on the back part I have the rest of them, right behind that box.

2943
2944 Do they make any noise?

2945
2946 Mr. Williams - Just a cooing sound; it's nothing that anybody could hear
2947 unless they were in the yard.

2948
2949 Do they fly over other people's property when they fly?

2950
2951 Mr. Williams - No, they stay in the air until they come down. Like I say, it's
2952 based on the feed. If I were to over feed them, and not train them right, they could get
2953 out of hand, but that's not the point. That's why I start out with babies and fly them, get
2954 about 6 months a year to fly them, that's all, because the seasons come in and out, you
2955 can't keep them in the air, the hawk's are just so bad and stuff like that. Between my
2956 house and the Lacy's is probably 3 or 4 miles; there's probably 6 or 7 more guys that
2957 have the same type birds, and we all get together like on Saturdays and go out and
2958 have breakfast, and go to each individual person's house, and they fly their birds, and
2959 then move on to the next one.

2960
2961 How far do they fly away from your property?

2962
2963 Mr. Williams - They go up over top of my property, and they stay in like a
2964 figure eight pattern; all they do is just stay right above, probably about 100 foot in
2965 height, and they don't go in a range of probably 150 feet either way, and they stay, they
2966 stay generally, we stay in one spot, and you can see them the whole time. You can get
2967 them to where, once they're coming down closer, if you want to call them in, then just
2968 whistle, and they come right on back. Easier than training a dog sometimes.

2969

2970 How many can you fly at one time?
2971
2972 Mr. Williams - I usually fly about 20 at one time. I have, this section that's
2973 showing, holds, I've got 20 on one side and 20 on the other.
2974
2975 You let 20 of them loose at one time?
2976
2977 Mr. Williams - Twenty of them at a time.
2978
2979 And how long does it take for them to get back?
2980
2981 Mr. Williams - Sometimes if I have them real hungry, I can make them fly 5
2982 minutes, and when they come down, they'll go in, less than 30 seconds. Once they hit
2983 the top of the loft, they're real hungry. If I open the door up, they'll try to jump through
2984 the door, but I try to make them go through the trap, which is the intent of it, in case a
2985 bird gets up in the air, and it gets windy or something, and it blows it off somewhat, and
2986 it doesn't come down directly with the rest, when it comes down, it goes in. It's trained
2987 that way, so once it does go in, it can't get back out.
2988
2989 So you fly all your birds at one time? I mean, in one day?
2990
2991 Mr. Williams - Well, I usually fly them at least once a day, and I fly the first
2992 set sometimes before I go to work, and the second set when I come home. But what it
2993 is, is I've got younger sets, so one's a little older than the other, and they take turns.
2994
2995 What's the maximum time that you fly each time you fly?
2996
2997 Mr. Williams - Mine average 10-15 minutes at a time. That's my average
2998 on mine; other people have them fly longer; they can make them fly an hour if they want
2999 to, but mine, the way I feed my birds and stuff, and keep them kinda hungry; it's a
3000 control thing; they're bred and raised by me by putting the feed in to the birds, so I'm in
3001 full control of them at all times, so if I cut back on the feed some, I can make them fly
3002 less. They come and go in faster. After a routine of doing that 2 or 3 months, it's a
3003 base routine then, basically. They'll do that every time.
3004
3005 Do you ever sell any of these birds?
3006
3007 Mr. Williams - Well, what we do is a lot of guys get together. Sometimes
3008 some of the guys will purchase, what it's called, it's a blood line on the birds; it
3009 originated back in England, and we don't really know why they do it, why they tumble
3010 like they do. It's never been really figured out; it's something, a stimulation in the bird is
3011 all they've ever come up with. We do trade birds back and forth, or some guys will buy
3012 some, and what I do is sell 2 or 3 birds, get like \$10 apiece for them, and I take that and
3013 buy the feed with it for the rest of the birds, and stuff like that. But no major profit,
3014 nothing like that.
3015

3016 Eighty-five birds, that's a lot of birds, You think you'd be
3017 happy with a lesser number? Can you cut that down? Can we give you a period of time
3018 to cut that down?

3019
3020 Mr. Williams - Well, how many were you cutting back to? Like I said, I
3021 generally fly 40, and then the rest are breeding pigeons; they're never flown. They're
3022 just housed and kept in. So the only birds that people see are the ones that I do
3023 release.

3024
3025 Do you eat any of them?
3026

3027 Mr. Williams - No, I know people who do, and they ask me all the time, do
3028 you sell squabs. No, I couldn't do that. There's a store called Wilson Feed that's on
3029 Hull Street, that they purchase birds from, different guys, and they sell the feed that we
3030 use, and we take the birds up there and stuff. Now what people go up there and buy
3031 them for, I don't know. I mean, I don't know what they do with them, but I wouldn't, no I
3032 couldn't do that. Too much of a pet.

3033
3034 Mr. Davenport, I notice that your report says he's submitted
3035 a petition signed by his neighbors stating they have no objection – are they all the
3036 neighbors? In other words, there must be a complaint somewhere.

3037
3038 Mr. Williams - That's what I couldn't understand.

3039
3040 Mr. Blankinship - The complainant doesn't have to be an adjoining property
3041 owner.

3042
3043 Mr. Williams - As far as I know, the person that did this should be on,
3044 because I don't really know who would have done it, but I went and got everybody to
3045 sign on my whole block and asked them to do it, and they all did it. Somebody
3046 obviously just did it, but they didn't want to admit to it, and so.....

3047
3048 So people on your block signed it? Maybe it was one of your
3049 competitors. Maybe they didn't even live in your neighborhood.

3050
3051 Mr. Williams - Could have been.

3052
3053 You wouldn't trade him that pigeon, that's what it was

3054
3055 Mr. Kirkland - Okay, anyone else wish to say anything on this case?
3056

3057 Mr. Light - Yes, my name is Anthony Light; I've been raising pigeons for
3058 35 years; he's my protégé, and he knows what he's doing now, so the pigeons
3059 basically, what people think, they go in the air and they duke. Pigeons don't duke when
3060 they're in the air; they duke when they come down. That's what people think, but they

3061 don't do that. They do their number when they come down, and I think that the person
3062 who complained, that's what she thinks.

3063
3064 How do you know it's a she?

3065
3066 Mr. Light - Yeah, it's a she.

3067
3068 Mr. Kirkland - All right, thank you sir. Any questions? Anyone else wish to
3069 speak on this case. If not, that concludes the case. Thank you.

3070
3071 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
3072 McKinney, The Board granted your application **UP-15-2000**, for a conditional use permit
3073 pursuant to Section 24-12 of Chapter 24 of the County Code to raise roller pigeons at
3074 2703 Carlisle Avenue (Tax Parcel 161-17-A-12). The Board granted the use permit
3075 subject to the following conditions:

3076
3077 1. This approval is only for the pigeon coop shown on the plans submitted with the
3078 case. No additional coop shall be erected nor the existing coop be expanded without
3079 approval of the Board of Zoning Appeals.

3080
3081 2. The number of birds allowed to be kept shall be determined by the Board of
3082 Zoning Appeals.

3083
3084 3. The coop shall be kept in a manner to prevent odors, vermin, or disease from
3085 affecting surrounding properties.

3086
3087 Mr. Kirkland - Mr. Tokarz must need longer than 10 minutes. We'll go to
3088 the next case, and then we'll go find him.

3089
3090

3090 **A - 34-2000** JOHN MARTIN, JR. AND CASSANDRA MARTIN request a
3091 variance from Section 24-94 of Chapter 24 of the County Code to
3092 build an unheated sunroom on the existing deck at 7201 Alvis Court
3093 (Olde Colony Estates) (Tax Parcel 214-2-G-33), zoned R-3C, One-
3094 family Residence District (Conditional) (Varina). The rear yard
3095 setback is not met. The applicants have 30 feet rear yard setback,
3096 where the Code requires 40 feet rear yard setback. The applicants
3097 request a variance of 10 feet rear yard setback.
3098

3099 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,
3100 raise your right hand and be sworn in.

3101
3102 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3103 truth, the whole truth, and nothing but the truth, so help you God?

3104
3105 Mr. Smith - I do. My name is Larry Smith; I'm representing the Martins;
3106 I'm with Patio Enclosures Inc.

3107
3108 Mr. Kirkland - Have all your notices been turned in according to County
3109 Code? Yes, I see them in the file.

3110
3111 Mr. Smith - I'm not sure if I can follow that pigeon act here, but
3112 The Martins, actually Mr. Martin and Mrs. Martin purchased the home approximately 7
3113 years ago, and it is to be their retirement home, the home that they're going to stay in.
3114 They had a deck built, by permit, on the back of the home, a couple of years ago, with
3115 the original intention of, as time went on and the money got right, I guess you could say,
3116 to go ahead and enclose that deck. At the time, as I said, there was a permit obtained
3117 to build a deck, but at the time there was not a question as far as that setback coming
3118 up, because the deck obviously, does not, it's within the code requirement for setback.
3119 He did call; Mr. Martin contacted us; we went out; he had talked with several other
3120 contractors. We talked with him and had decided, obviously, to go ahead with the
3121 sunroom project. Obviously upon that time of applying for the permit, the question
3122 about the 10 foot, extra 10 feet needed on the rear setback, did come up. The Martins,
3123 unfortunately, couldn't be here today; he is a retired, actually on disability, 18 years from
3124 the Henrico County Police force, so unfortunately, as I said, he isn't here; but I kind of
3125 took the responsibility to tell him not to worry about it, because he just needed a
3126 representative in place. The sunroom actually is something, as I said, that they have
3127 planned for, for quite some time. I know that from your staff going out and taking the
3128 photographs, there are several of these in the area; as a matter of fact, many of these
3129 types of construction or rooms are visible from the Martins home. Their back yard, or
3130 the back area, where this would go, is a completely open area; there are no homes or
3131 anything of that nature, back there.

3132
3133 Mr. Smith, now you're not going to increase the size of the
3134 deck now; you're just going to enclose what's there right now?
3135

3136 Mr. Smith - Yes sir, and from the photograph, it's just the top portion; it's
3137 not the lower portion.

3138
3139 Mr. Kirkland - Any other questions? Anyone else wish to speak on this
3140 case? If not, that concludes the case.

3141
3142 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
3143 Wright, the Board **granted** your **A-34-2000** request for a variance from Section 24-94 of
3144 Chapter 24 of the County Code to build an unheated sunroom on the existing deck at
3145 7201 Alvis Court (Tax Parcel 214-2-G-33). The Board granted a variance of 10 feet rear
3146 yard setback, subject to the following conditions:

3147
3148 1. Only the improvements shown on the plan filed with the application may be
3149 constructed pursuant to this approval. Any additional improvements shall comply with
3150 the applicable regulations of the County Code.

3151
3152 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
3153 Negative: 0
3154 Absent: 0

3155
3156 The Board granted this request, as it found from the evidence presented, that
3157 authorizing this variance will not be of substantial detriment to adjacent property and will
3158 not materially impair the purpose of the zoning regulations.

3159
3160 Mr. Kirkland - May as well finish up the old 9:00 o'clock agenda here.

3161
3162 **A - 35-2000** **BETTY G. ROGERS** requests a variance from Section 24-95(b)(6)
3163 of Chapter 24 of the County Code to build a single family home at
3164 2318 Ginter Street (Parkview) (Tax Parcel 94-15-13-7), zoned R-4,
3165 One-family Residence District (Brookland). The total lot area
3166 requirement is not met. The applicant has 5,250 square feet total lot
3167 area, where the Code requires 6,000 square feet total lot area. The
3168 applicant requests a variance of 750 square feet total lot area.

3169
3170 Mr. Kirkland - Does anyone else wish to speak on this case? If not, sir,
3171 would you raise your right hand and be sworn in?

3172
3173 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3174 truth, the whole truth, and nothing but the truth, so help you God?

3175
3176 Mr. Kirkland - Have all your notices been turned in according to County
3177 Code? Proceed with your case.

3178
3179 Mr. Blake - I do. Yes sir. My name is Wayne Blake; I'm here to
3180 represent Ms. Rogers on this variance request. Ms. Rogers is an 84-year-old widow,
3181 presently living in a nursing home, and that is actually what has facilitated the sale of

3182 her present home, along with this lot, to supply her with the needed funds to maintain
3183 her living in the nursing home. When I started talking with her about this sale and
3184 purchase of this property, it was determined after doing some research, that this extra
3185 building lot beside her house, under today's standards, is not buildable. We're 750
3186 square feet short, which equates to a shortage of approximately 15 feet. From the rear
3187 property line from the back side of the house, to the existing property line, we're
3188 approximately 15 feet short. Ms. Rogers purchased this lot some time in the 50's, after
3189 having her original home built, or purchased back in the 50's. About 7 years later she
3190 bought the lot next door to her; at that time, under the zoning back then, the lot was a
3191 buildable lot, and she felt like, well it was her and her husband back then, but she felt
3192 like buying a buildable lot would be a good investment and something they could use for
3193 additional side yard during the raising of their children. Sometime in the 60's,
3194 unbeknownst to them, the County changed the lot size requirements for building in the
3195 neighborhood. This particular lot is the same size as the lots up and down the street
3196 and in Parkview subdivision. It's just that over the years the requirement by the County,
3197 it changed them to a 6,000 square foot minimum, where her lot, I believe, is 5,250, so
3198 we're 750 square feet short. All the other requirements are met; we do have enough
3199 side yard requirements, enough front yard setbacks and actually, a 45 foot back yard is
3200 not an unreasonable yard. This particular house plan has been built several times over
3201 in that general neighborhood on 50 foot lots; they're generally 50 foot by approximately
3202 130, and in some cases, depending on the neighborhood, they may be deeper. The lot
3203 will carry this house okay; the house is designed to fit on this lot, and it's in pretty much,
3204 very, very much similar to the existing houses in the neighborhood. I think you may
3205 have some pictures up there that were provided of the floor plan. It's a Cape Cod
3206 house, approximately 1100 square feet, and of course, it's new and would have the
3207 vinyl siding, but the Cape Cod style is pretty much what's in the existing neighborhood
3208 now. She needs to sell this. If she can't get the variance to sell this as a buildable lot,
3209 then it has little to no real value to her. It would have to go with the sale of her original
3210 single family home as a side yard. Her expenses are quite considerable, living in this
3211 nursing home, and she's trying to maximize the sale price on her properties there to
3212 carry her through her remaining years in the nursing home. That's pretty much my
3213 case, so I just submit that you give her the variance on that.

3214
3215 Your testimony is that there are other lots in this plot on
3216 which houses are built on the same size lot?

3217
3218 Mr. Blake - Yes sir. Probably. Well, I'm not a subdivider, but I think you
3219 have a copy of the general plat for the neighborhood, and it's not just her block; it's 2 or
3220 3 streets, 3 or 4 blocks in each direction. All of those lots, back in the 50's, or maybe
3221 40's, when they were developed, were originally 50 foot wide, and some of them may
3222 have been 105 feet deep; another developer may have done his at 125; another may
3223 have done them at 150. I have seen them as deep as 150 feet deep, but I have not
3224 seen anything any smaller than, I believe this one's 105; I haven't seen anything any
3225 smaller than that. It will accommodate this house fine. Any other questions?

3226

3227 Mr. Kirkland - Any other questions? Anyone else wish to speak on this
3228 case? If not, that concludes the case. Thank you sir.

3229
3230 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
3231 Wright, the Board **granted** your **A-35-2000** request for a variance from Section 24-
3232 95(b)(6) of Chapter 24 of the County Code to build a single family home at 2318 Ginter
3233 Street (Tax Parcel 94-15-13-7). The Board granted a variance of 750 square feet total
3234 lot area, subject to the following conditions:

3235
3236 1. This approval applies only to the minimum lot area requirement for the subject
3237 lot. All other provisions of the County Code shall apply.

3238
3239 2. If land disturbance will exceed 2,500 square feet the requirements of Chapter 10
3240 of the County Code apply. At the time of building permit application, the applicant shall
3241 submit the necessary information to the Department of Public Works to ensure
3242 compliance with the requirements of the Chesapeake Bay Preservation Act and the
3243 code requirements for water quality standards.

3244
3245 3. Approval of this request does not imply that a building permit will be issued.

3246
3247 4. Connections shall be made to public water and sewer.

3248
3249 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
3250 Negative: 0
3251 Absent: 0

3252
3253 The Board granted this request, as it found from the evidence presented, that
3254 authorizing this variance will not be of substantial detriment to adjacent property and will
3255 not materially impair the purpose of the zoning regulations.

3256
3257 Mr. Kirkland - Will you check and see if Mr. Tokarz is finished out there, so
3258 we can get that over with, so we can listen to that? All right, since I can't seem to get an
3259 answer. Mr. Sandler's indicating that he's ready to come in. He'll be in, in a couple of
3260 minutes. We'll go on to the next case then.

3261
3262 Mr. Montgomery - Let me ask you this. Is there not a point or sometime where
3263 we don't go on.

3264
3265 Yes, and you can charge him for your time too.

3266
3267 Mr. Kirkland - All right, if you would, call the next case.

3268
3269 **UP- 17-2000** THE COLLEGIATE SCHOOL requests a temporary use permit
3270 pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code
3271 to provide a temporary classroom during construction at North

3272 Mooreland Road (Tax Parcels 111-A-26, 112-A-1 and 2), zoned R-
3273 1 and R-2, One-family Residence District (Tuckahoe).
3274
3275 Mr. Kirkland - Does anyone else wish to speak on this case? If you would,
3276 sir, raise your right hand and be sworn in.
3277
3278 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3279 truth, the whole truth, and nothing but the truth, so help you God?
3280
3281 Mr. Shust - I do. My name is Chris Shust; I work at Draper Aden
3282 Associates.
3283
3284 Mr. Kirkland - Have all your notices been turned in, according to the
3285 County Code? We have them in the file. Okay, proceed.
3286
3287 Mr. Shust - They have, sir. I represent the owner in this case. The
3288 request again, is to grant a temporary use permit for classroom space, trailers to be
3289 used for classroom space. The classrooms are necessary because there is an existing
3290 building on the site that's due to be renovated and expanded. As a result of that, the
3291 request is to grant the classrooms be allowed until May of 2002, at the longest; they will
3292 be in place for a shorter period of time. The classrooms will not be visible from
3293 Mooreland Road, and in residential areas, they will be screened by an existing building.
3294 The parking lot that they will adjoin, will no be impeded for travel flow, and existing fire
3295 lanes will be maintained. With that in mind, we request that the permit be granted. Are
3296 there any questions?
3297
3298 How long do you think you will need these? I see the
3299 permit's until 2002, but how long, the full length of time?
3300
3301 Mr. Shust - No, they hope to have them out in January, if construction
3302 goes according to schedule, and that's January of 2001.
3303
3304 Why do we need to grant it to May 2002? Will you have any
3305 problems with May 24, 2001?
3306
3307 Mr. Shust - No, we do not have a problem with that.
3308
3309 That will allow for just about any bad weather situation that
3310 could take place.
3311
3312 Mr. Shust - That is correct sir.
3313
3314 Mr. Kirkland - Any other questions? That's it.
3315
3316 Mr. Shust - Thank you for your time.
3317

3318 Mr. Kirkland - Mr. Blankinship, would you go tell Mr. Tokarz to come on in
3319 here; he's over his 10.

3320
3321 Tell him if he doesn't, we're going to make a decision without
3322 him.

3323
3324 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
3325 Wright, the Board **granted** your application **UP-17-2000** for a conditional use permit
3326 pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code to provide a
3327 temporary classroom during construction at North Mooreland Road (Tax Parcel 111-A-
3328 26, 112-A-1 and 2). The Board granted the use permit subject to the following
3329 conditions:

3330
3331 1. The property shall be developed in substantial conformance with the plan filed
3332 with the application. No changes or additions to the layout may be made without the
3333 approval of the Board of Zoning Appeals.

3334
3335 2. Connections shall be made to public water and sewer.

3336
3337 3. The trailers shall be removed from the property on or before May 31, 2001.

3338
3339 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
3340 Negative: 0
3341 Absent: 0

3342
3343 Mr. Tokarz - Members of the Board, I apologize for the delay.....

3344
3345 Mr. Kirkland - Hang on just a second. You want to announce again, just
3346 what case we're on, just in case.....

3347
3348 Mr. Blankinship - It's a continuation of **A-33-2000 John W. Montgomery**
3349 appeals a decision of the Director of Planning. The applicant requests the Board of
3350 Zoning Appeals to reverse the decision of the Director of Planning.

3351
3352 Mr. Tokarz - Members of the Board, we have been looking very carefully
3353 at the ordinances that have been put forth by Mr. Montgomery, and it's very good
3354 research. We've also been taking a look at the comprehensive rezoning in 1959. At
3355 this point I am unable to give you a definitive answer on the flow of the ordinances from
3356 1959 through right now. And because of the magnitude and the import of the decision
3357 that is before you today, we would ask for a deferral until the next BZA meeting.

3358
3359 Mr. Montgomery - Mr. Chairman, may I be heard?

3360
3361 Mr. Kirkland - Yes sir.

3362

3363 Mr. Montgomery - I'm certain that you won't find it shocking that I oppose,
3364 notwithstanding, and in all deference to my colleague, I'm sure that he would present an
3365 artful argument when we came back at some point, but I have no responsibility except
3366 to my clients. They've spent the day here; the documents are not my documents; you
3367 look through there; after you get past the first one, that's the only one I wrote. They're
3368 his documents; they're in his building; they're his staff; they are Mr. Marlles, we're
3369 talking about Mr. Marlles here; he's the man who did it, chose not to testify; obviously,
3370 he chose not to look at his own documents. You should not, you cannot, in good
3371 conscience, I suggest to you, penalize my clients for someone else's failure. We have
3372 done our job; we have shown you that the legs upon which they built their argument
3373 cannot stand. I would suggest to you that Mr. Tokarz need look no farther than exhibit 8
3374 and exhibit 9, at least, on November 26, 1980, behind exhibit 9, turn to the last page, it's
3375 "carnivals, fairs and circuses." It's a little bit like that, when I was growing up, you know
3376 and they had that program on TV where you'd follow the song and the ball would
3377 bounce along there, you know, and it looks like we've been following the ball, and it
3378 jumped off the screen somewhere. I never could keep up with those things when I was
3379 little, but one day I got in a little trouble because I said, I jumped up and I ran up there to
3380 the big box TV and I said, "I'm going to turn that damn noise off," because I couldn't
3381 keep up with that bouncing ball. I'm going to ask you all to turn the noise off. Tell ARE
3382 and the County that this is their chance; there's nothing here, there should be no
3383 surprises, it's their documents, and it's time for us to move on. My clients deserve that;
3384 you can do no more for them. Thank you.

3385
3386 Mr. Tokarz - Mr. Chairman, Mr. Felts stood up a few minutes ago, and he
3387 asked you not to make a decision, and he criticized the County for making a decision
3388 based on speculation and innuendo. That was included in Mr. Montgomery's written
3389 submission to the Board. And yet Mr. Montgomery has chosen not to put in the
3390 comprehensive rezoning from 1959. I would suggest to you and if you were to act today
3391 without knowing what was in the comprehensive rezoning in 1959, which is not before
3392 you, you would be basing your decision on speculation because of the fact that you
3393 have evidence in the record that talks about the events that occurred between 1946 and
3394 1959, talks about the comprehensive rezoning, talks about the rezoning to B-3. There
3395 are ordinances in the record which Mr. Montgomery has provided, but those are
3396 amendments and reordains of the previous ordinance. We don't know what the history
3397 is from 1959 until 1978. They've not chosen to do that. And frankly, I haven't
3398 researched that because I did not know it was an issue until this morning. Had I known
3399 in advance, had I been given a copy of the Appellants' Exhibits as you were given this
3400 morning, I would know the answer. But I don't, and I would simply suggest to you, until
3401 you know what the answer is, it would be premature to make your decision, and that a
3402 deferral would be appropriate. This is an important issue. It's an important issue to
3403 these folks, and we want to get it right, and all I'm suggesting to you is, a deferral gives
3404 you the chance to get it right, because we will get everything before you that you need
3405 to make the decision. Right now you do not have it.

3406
3407 Mr. Montgomery - I'll be very brief, Mr.Chairman. Your job is to make a
3408 decision on the information that's presented. It baffles me, the reason the '59

3409 comprehensive rezoning is not included, is because the comprehensive rezoning in
3410 their office can't be found. All right? So what do we do? We go to 1980, 1988; it's still
3411 in there. Are they willing to make a straight-faced argument that it changed from "fairs"
3412 to "fairgrounds" and back again, in the comprehensive rezoning, and if they do, it's their
3413 documents, he just went and looked apparently. Certainly he can rely upon those.
3414 Your job is not to wait until the County decides what it is their case is to make my case,
3415 basically, and then go back and get ready for theirs; that's not what this is about. This is
3416 about you hearing the evidence presented; we've been, I think this thing's been noted
3417 over 40 days, hearing the evidence that's presented. The documents which you have
3418 Mr. Tokarz received at the same time. I'll tell you quite frankly, we pulled them together,
3419 finally, about 1:30 this morning, in this bound fashion, as you see right there. But
3420 they're from nowhere else but his office; they're from nowhere else but his colleague's
3421 office, right down the street, right down the hall, as a matter of fact. Quite often when
3422 we're there researching, he or someone from his office, or Mr. Blankinship and all, will
3423 walk by, and I'm kind of shocked, that they didn't see what we were looking at, but that's
3424 not our burden, that's not our burden, and I'm a little discouraged that we would be
3425 asked to bear that. That's not what your citizens deserve.

3426
3427 Mr. Kirkland - I ask the Board to defer this, due to not all the evidence
3428 being in place at the last minute. I need a motion to do this..... Do you want
3429 to make a motion? If not, the motion fails. No motion made, we proceed with the case.

3430
3431 Mr. Tokarz - Mr. Chairman, we respect the decision of the Board of
3432 Zoning Appeals in deciding not to defer the case, but given the importance of the issue,
3433 we believe that it is important for us to have all the information before you, and
3434 therefore, based on the authority of the Director of Planning, he will rescind the notice of
3435 zoning conformance letter that is before you today, and therefore, moot the case. He
3436 will, if requested, make another decision upon further request, as to what is appropriate
3437 for the use, but at this point the zoning conformance letter will be rescinded.

3438
3439 Mr. Kirkland - You don't have any further comments, do you? I assume
3440 that concludes the case.

3441
3442 After an advertised public hearing, the Board heard the **A-33-2000 appeal** of a decision
3443 of the Director of Planning. The appeal was **rendered moot** when the Assistant County
3444 Attorney, acting on behalf of the Director of Planning, rescinded the decision from which
3445 your appeal was taken.

3446
3447 Mr. Kirkland - If you all would exit as quick as possible, so we can proceed.
3448 We have a few more cases to go. Next case, sir.

3449
3450 **A - 36-2000** **THOMAS M. SHAUGHNESS** requests a variance from Section 24-
3451 43(a) of Chapter 24 of the County Code to build a screened porch
3452 over the existing deck at 13105 Carriage Pond Court (Langtree at
3453 Wellesley) (Tax Parcel 46-17-A-2), zoned RTHC, Residential
3454 Townhouse District (Conditional) (Three Chopt). The rear yard

3455 setback is not met. The applicant has 26 feet rear yard setback,
3456 where the Code requires 35 feet rear yard setback. The applicant
3457 requests a variance of 9 feet rear yard setback.

3458
3459 Mr. Kirkland - Does anyone else wish to speak on this case? It's starting
3460 to echo in here, it's gotten so empty. Would you raise your right hand and be sworn in,
3461 please.

3462
3463 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3464 truth, the whole truth, and nothing but the truth, so help you God?

3465
3466 Mr. Shaughness - I do. And I feel that pressure too. I was nervous as heck,
3467 and when I saw 300 people, I was really dying. For my screened porch.

3468
3469 Mr. Kirkland - Have all your notices been turned in, according to the
3470 County Code.

3471
3472 Mr. Shaughness - Yes, they have. And in addition, I've personally gone to
3473 each household, and I know all my neighbors. I've showed them the plans, and nobody
3474 had any objections that they brought up to me.

3475
3476 Mr. Kirkland - If you would, state your case.

3477
3478 Mr. Shaughness - My name's Thomas Shaughness. I live at 13105 Carriage
3479 Pond Court. I bought the home a little over a year ago. What I wanted to do, in the
3480 back yard, when finances allowed, was to screen in the deck, actually expand the deck
3481 about 8 feet, not into the setback, but across the back of the house. So in the picture
3482 that you have, that the County took, the bump-out for the kitchen, that will actually be
3483 under roof, and well most likely, in order to keep light into the kitchen, we'll bring in a
3484 skylight that kind of tunnels down right into that space. The deck obviously goes into
3485 the setback; it's allowed, but as soon as you put a roof structure over it, it is no longer
3486 considered a deck. It is considered a room addition. This would be just a screened-in
3487 porch, an unheated area. I ask that you grant the variance. And I can answer any
3488 questions, obviously.

3489
3490 What's located behind this property?

3491
3492 Mr. Shaughness - There are all homes. There's a common area with the
3493 sidewalk.....

3494
3495 How wide is the common area?

3496
3497 Mr. Shaughness - The sidewalk itself is about 6 feet; my property line is the
3498 side of, on my side of the house, the edge of the sidewalk is my property line, so my
3499 fence is about one lawnmower width inside the property line. The homes behind me are

3500 zero lot line homes, so there are actually 3 homes that directly, their property butts up to
3501 my property/
3502

3503 What is the distance between the rear of your property line
3504 and the property line of the house that's behind you?
3505

3506 Mr. Shaughness - The sidewalk actually sits on their property; it's a right-of-
3507 way, but it sits on their property.
3508

3509 So to their back door is how far from your fence?
3510

3511 Mr. Shaughness - There are no back doors; there are only side doors. To the
3512 back end of their house? I'm going to guess, I didn't measure that; I didn't realize, it's
3513 got to be 25-30 feet, maybe more.
3514

3515 Thank you.
3516

3517 Mr. Shaughness - The pictures, the County didn't take, I'd given them some
3518 other pictures, but both of my next door neighbors on the court to either side, they
3519 already have, one of them has a porch very similar to what I wanted to do. Is that of
3520 interest to you anyway?
3521

3522 If you turn those in to us, we keep them for 30 days.
3523

3524 Mr. Shaughness - I can at least show you what either side of the house, on
3525 either side they have bump-outs. Setback wasn't an issue for them, the way their house
3526 sits on their property, the wedge worked in their favor.
3527

3528 Mr. Kirkland - Any other questions? If not, that concludes the case.
3529

3530 Mr. Shaughness - Thank you very much.
3531

3532 You asked for any opposition, didn't you?
3533

3534 Mr. Kirkland - Is there any opposition? I think I asked at the beginning.
3535

3536 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.
3537 Nunnally, the Board **granted** your **A-36-2000** request for a variance from Section 24-
3538 43(a) of Chapter 24 of the County Code to build a screened porch over the existing
3539 deck at 13105 Carriage Pond Court (Tax Parcel 46-17-A-2). The Board granted a
3540 variance of 9 feet rear yard setback, subject to the following conditions:
3541

3542 1. Only the improvements shown on the plan filed with the application may be
3543 constructed pursuant to this approval. Any additional improvements shall comply with
3544 the applicable regulations of the County Code.
3545

3546 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
 3547 Negative: 0
 3548 Absent: 0

3549
 3550 The Board granted this request, as it found from the evidence presented, that
 3551 authorizing this variance will not be of substantial detriment to adjacent property and will
 3552 not materially impair the purpose of the zoning regulations.

3553
 3554 Mr. Kirkland - Next case.

3555
 3556 **A - 37-2000** BYRON AND GLORIA CASH request a variance from Section 24-
 3557 94 of Chapter 24 of the County Code to build a sunroom at 7408
 3558 Oakmont Drive (Oakmont Hills) (Tax Parcel 72-5-C-1), zoned R-2,
 3559 One-family Residence District (Brookland). The minimum side yard
 3560 setback is not met. The applicants have 6.99 feet minimum side
 3561 yard setback, where the Code requires 8.5 feet side yard setback.
 3562 The applicants request a variance of 1.51 feet side yard setback.

3563
 3564 Mr. Kirkland - Would you raise your right hand. Anyone else wish to speak
 3565 on this case? Raise your right hand and be sworn in.

3566
 3567 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 3568 truth, the whole truth, and nothing but the truth, so help you God?

3569
 3570 Mr. Kirkland - Have all adjacent landowners been contacted according to
 3571 Code. Have all adjacent landowners been copied?

3572
 3573 Mr. Barnes - I'm Chris Barnes – I represent Melani Brothers and the
 3574 Cash's.

3575
 3576 Mr. Dahlstedt - Mr. Chairman, I do have a point that I'd like to bring to your
 3577 attention before you actually take testimony, if I might. It involves the legal status.

3578
 3579 Mr. Kirkland - Would you state your name for the record.

3580
 3581 Mr. Dahlstedt - My name is Bob Dahlstedt; I'm here in support of my friends
 3582 Ross and Sharon Smith, who adjoin this property, and who are in opposition. But the
 3583 point that I'd like to make to the Board is that the notice, the official notice that was sent
 3584 out by the County, to the adjoining property owners, indicates that a 10 foot side yard
 3585 requirement is, has been opposed by the County, and that the applicants request a 3.01
 3586 foot side yard setback. Also, the official application in the County's file indicates that a
 3587 10 foot side yard is required by the Code, and that a 3.01 foot variance is being
 3588 requested. The agenda that you gentlemen are looking at, has a different figures,
 3589 indicating that an 8.5 foot side yard setback is required by the Code, and a 1.51 foot
 3590 variance is being requested. I note this as a potential flaw that you may want to
 3591 consider before proceeding with this case.

3592
3593 We had – someone scratched through in the file and
3594 changed the figures.

3595
3596 Mr. Blankinship - Yes. There was some confusion over which standard to
3597 apply to this, because the house was built under the exception regulations, that is prior
3598 to 1960 the lot was subdivided, and then the street that adjoins the lot was vacated, and
3599 half of the street was added to each of the 2 properties. So there was some confusion
3600 over which, that was done after 1960, after the exception standard cutoff, so there was
3601 some confusion over which side yard requirement to apply. But the operative figure, I
3602 think, is the 6.99, the distance from the proposed improvements, or actually, existing
3603 improvements, to the property line, and that does not change. The diagram that was
3604 submitted with the application shows that as 6.99, and that does not change. The only
3605 thing that is different is which of the 2 requirements to apply, and so when you subtract
3606 that 6.99 from the one requirement, you get 3 feet, from the other you get a foot and a
3607 half. But the building is not changing; it's already there, and it's, there's no proposal to
3608 change what's there now. My personal opinion is that the notice certainly made the
3609 neighbors aware of what was going on, and there may or may not be a defect in the
3610 notice, but clearly no one has been deprived of understanding of what is being applied
3611 for and whether they need to be here this morning. And I'd also note that those
3612 numbers do not show up in the advertisement. The advertisement does not include that
3613 last sentence or 2. It's only a matter of what was in the notice, and clearly what was in
3614 the notice was enough to alert the adjoining property owners that they needed to be
3615 here this morning.

3616
3617 What variance was stated in the notice – how much -- 3
3618 feet?

3619
3620 Mr. Blankinship - You've got the file down there that includes the notice letter.
3621 I'm not sure at what point it was changed in all of our paperwork. The notice letter does
3622 say 3 feet of variance, so actually we're suggesting granting less of a variance than
3623 what they were notified might be requested. It's certainly up to you whether you want to
3624 hear this now, or.....

3625
3626 Mr. Kirkland - It's going to be less than what it was advertised. We'll hear
3627 it. Okay? You swore them all in, didn't you?

3628
3629 Mr. Barnes - It's all new to me, folks. Okay, I represent the Cash's. My
3630 name is Chris Baldrige; I represent the Cash's and Melani Bros., the contractor doing
3631 the job. The work that we're doing involves enlarging this already existing structure in
3632 no way; the only thing we're expanding is the opportunity for them to use it a little bit
3633 more. I don't even understand why that's an issue with the

3634
3635 Mr. Blankinship - You're going to be removing the screen and replacing it with
3636 glass, is that it?

3637

3638 Mr. Barnes - Yes, and I've got a picture of it as now; I've got one of one
3639 that we've done that's very similar, if you'd like to see that picture to give you a better
3640 idea of what it would be like.

3641
3642 You're not changing?

3643
3644 Mr. Barnes - We're not changing anything other than we're enclosing it in
3645 glass.

3646
3647 Mr. Blankinship - The roof and the brick wall will not move?

3648
3649 So you want to take the screen out and put glass in?

3650
3651 Mr. Blankinship - The only reason it became an issue, as mentioned in the
3652 report, is because of the change in the lot line on the far side.

3653
3654 Mr. Barnes - That's basically what it would look like when it's finished. As
3655 you can see, there's not a whole lot of difference in the existing photograph and that.

3656
3657 Mr. Kirkland - Any questions? Any opposition? Will you stand. Okay, sir.

3658
3659 Could I see that picture first.

3660
3661 Show him the picture. There you go sir. We would like to
3662 have that back. If you would, state your name for the record.

3663
3664 Mr. Smith - My name is Ross Smith. I have been a resident of Oakmont
3665 Hills in the same house for 13 years, and I oppose the application for variance. The
3666 applicant has occupied his house for approximately 3 ½ years. Allow me to describe
3667 the relative position of the two homes. The applicant's home is situated sideways to
3668 Oakmont Drive, so that the back of his home faces the side of my house. It's very
3669 close. The back of his house is only 15 feet from my kitchen window. The screened
3670 porch that Mr. Cash wants to enclose is the same distance, only 15 feet. I have some
3671 pictures here, if I could.

3672
3673 Mr. Kirkland - We have to keep those pictures for 30 days, sir. Put them in
3674 the file.

3675
3676 Mr. Smith - These pictures show how, looking out my side living room
3677 window, and my kitchen window, that we're facing right to the back of their house,
3678 where they keep their trash cans and other stuff. The screened porch, although it is a
3679 screened porch, allows us some visibility, and also air flow through that very narrow
3680 area. If they enclose that, that is going to tend, even if it's glass, to shut off some of that
3681 visibility, especially if that glass is darkened, and also cut down on air flow through
3682 there. The second picture, it says, in contrast, the side yards of neighboring homes,
3683 you can see, those houses directly across the street, are normal for this area. There's

3684 approximately 20 feet between all the other houses in the area; this is the only house
3685 that is that close to another house in the area. As you gentlemen know, the Henrico
3686 County Zoning Ordinance stipulates that the owner of the property requesting a
3687 variance must show that the exceptional narrowness, shallowness, size or shape of this
3688 property, or where by reason of exceptional topographic conditions, or other
3689 extraordinary or exceptional situation, the strict application of the zoning ordinance
3690 would actually prohibit or unreasonably restrict the use of the property before the
3691 variance can be authorized. Nowhere in the applicant's presentation was there
3692 evidence of these requirements being met. The Code also states that the Board may
3693 approve a variance if it finds the evidence presented, that the granting of such a
3694 variance will alleviate a clearly demonstrable hardship approaching confiscation – as
3695 distinguished from a special privilege or convenience sought by the applicant. Again,
3696 from the evidence, it is clear that no hardship approaching confiscation is involved in
3697 this instance, and that approval of this variance would actually give Mr. Cash a special
3698 privilege that would be to my detriment, and definitely not in harmony with the spirit and
3699 purpose of the Zoning Ordinance. Any questions?

3700
3701 I have one.

3702
3703 Mr. Kirkland - Anyone else want to speak? Now you can rebut what he
3704 said.

3705
3706 Mr. Barnes - I really don't understand how this is going to restrict air flow.
3707 Maybe I'm missing something.

3708
3709 Mr. Blankinship - It flows through screen and not through glass.

3710
3711 Mr. Barnes - I know, but the fact of the matter is, I mean we're not talking
3712 about that great a distance. I mean

3713
3714 Mr. Blankinship - So you're response is that you don't believe this is going to
3715 be detrimental?

3716
3717 Mr. Barnes - I just don't believe this is going to make any difference at all.
3718 I really don't.

3719
3720 Mr. Smith - That is the problem – we're not talking about that great a
3721 distance, a very narrow distance, it's only 15 feet. And if you look at the pictures, I'm
3722 standing right on the property line, as is my wife.

3723
3724 Let me ask a question. Mr. Chairman, if the homeowner
3725 decided to put blinds on the inside of this screen porch, and drop them all the way to the
3726 floor, and shut the air flow off, there's nothing you can do about it.

3727
3728 Mr. Smith - That's right; that's true, but I hope he doesn't do that.

3729

3730 Mr. Kirkland - Any other questions? That concludes the case, sir.

3731
3732 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.
3733 Wright, the Board **granted** your **A-37-2000** request for a variance from Section 24-94 of
3734 Chapter 24 of the County Code to build a sunroom at 7408 Oakmont Drive (Tax Parcel
3735 72-5-C-1). The Board granted a variance to allow the sunroom 6.99 feet from the
3736 property line, subject to the following conditions:

3737
3738 1. Only the improvements shown on the plan filed with the application may be
3739 constructed pursuant to this approval. Any additional improvements shall comply with
3740 the applicable regulations of the County Code.

3741 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
3742 Negative: 0
3743 Absent: 0
3744

3745
3746 The Board granted this request, as it found from the evidence presented, that
3747 authorizing this variance will not be of substantial detriment to adjacent property and will
3748 not materially impair the purpose of the zoning regulations.

3749
3750 Mr. Kirkland - Next case, Mr. Blankinship.

3751
3752 **A - 39-2000 SARAH S. ELMORE** requests a variance from Section 24-41(e) of
3753 Chapter 24 of the County Code to build a sunroom over an existing
3754 deck at 10514 Red Maple Lane (Gayton Forest Townhouses) (Tax
3755 Parcel 78-14-AA-5), zoned RTH, Residential Townhouse District
3756 (Tuckahoe). The rear yard setback is not met. The applicant has
3757 18.11 feet rear yard setback, where the Code requires 30 feet rear
3758 yard setback. The applicant requests a variance of 11.89 feet rear
3759 yard setback.

3760
3761 Mr. Kirkland - Does anyone else wish to speak on this case? If you would,
3762 ma'am, raise your right hand and be sworn in by the Secretary.

3763
3764 Mr. Blankinship - Do you swear that the testimony you are about to give is the
3765 truth, the whole truth, and nothing but the truth, so help you God?

3766
3767 Mr. Kirkland - Have all your notices been turned in, according to the
3768 County Code?

3769
3770 Ms. Elmore - I do. They were all turned in, but I got a letter saying that I
3771 chose not to fill in the page on the back of the application, and it must have been an
3772 oversight, because I would have filled it out, you know, if

3773
3774 Mr. Blankinship, do you know what's up on this?
3775

3776 Mr. Blankinship - Yes, I spoke to the, I guess the contractor, on the site, and
3777 we just had a brief discussion about the manner in which the application was
3778 completed, but the notices are all complete, and I think.....
3779
3780 Ms. Elmore - Everything, all the notices and everything are in, and there's
3781 already been approved, 5 variances for this same buildings.
3782
3783 Mr. Kirkland - Okay, if you would, state your name for the record, and state
3784 your case. State your name; we have it on a recorder, and we want to make sure we
3785 tape all this.
3786
3787 Ms. Elmore - I can't see your face. Sarah Elmore.
3788
3789 Mr. Kirkland - Okay. And now, state your case. Say what you want to say.
3790
3791 Ms. Elmore - Well, I just want to say that we're building this sunporch, and
3792 we've already gotten a variance for approval for 5 of them already on my same block,
3793 and I feel that, if I had this sun porch, it would help me out a lot, because I have macular
3794 degeneration, and I need a lot of light to see, and I thought that if I had that room, I
3795 could enjoy the outside also being on the inside. And I think that's all I have to say.
3796
3797 One question – what's located behind your property?
3798
3799 Ms. Elmore - It's just, nothing,
3800
3801 Open area?
3802
3803 Ms. Elmore - Open area. No houses. All of our houses are built, and it's
3804 woods in the back, over 300 feet away, from my property line.
3805
3806 Mr. Kirkland - Thank you ma'am. Any other questions?
3807
3808 Ms. Elmore - I don't have any.
3809
3810 Mr. Kirkland - Good. That concludes the case.
3811
3812 Ms. Elmore - You see, I can't see what you're doing.
3813
3814 Mr. Kirkland - I asked if there's any opposition. We're running out of
3815 people.
3816
3817 Ms. Elmore - Well, I'm telling you, all these people in here made me so;
3818 I've been sitting here since 9:30.
3819
3820 Mr. Kirkland - Yes ma'am.
3821

3822 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.
3823 McKinney, the Board **granted** your application **A-39-2000** for a variance from Section
3824 24-41(e) of Chapter 24 of the County Code to build a sunroom over an existing deck at
3825 10514 Red Maple Lane (Tax Parcel 78-14-AA-5). The Board granted a variance of
3826 11.89 feet rear yard setback, subject to the following conditions:

3827
3828 1. Only the improvements shown on the plan filed with the application may be
3829 constructed pursuant to this approval. Any additional improvements shall comply with
3830 the applicable regulations of the County Code.

3831
3832 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5
3833 Negative: 0
3834 Absent: 0

3835
3836 The Board granted this request, as it found from the evidence presented, that
3837 authorizing this variance will not be of substantial detriment to adjacent property and will
3838 not materially impair the purpose of the zoning regulations.

3839
3840 Mr. Kirkland - Next case.

3841
3842 **UP- 18-2000** WEST BROAD STREET PROPERTIES, LLC requests a temporary
3843 use permit pursuant to Section 24-116(c)(1) of Chapter 24 of the
3844 County Code to erect a tent for a special event sale at 9515 West
3845 Broad Street (Broad Acres) (Tax Parcels 49-9-A-3B, 4C and 58-2-
3846 A-8A), zoned B-2C, Business District (Conditional) (Three Chopt).

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3855
3856