

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 24, 2001, AT**  
4 **9:00 A.M., NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-**  
5 **DISPATCH ON MAY 3 AND 10, 2001.**  
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 meeting of the  
9 Board of Zoning Appeals. Before we get started, I'll have the Secretary read the rules.  
10

11 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies  
12 and gentlemen. The rules for this meeting are as follows. The Secretary, myself, will  
13 call each case. Then the applicant will come to the podium to present the case. At that  
14 time I'll ask all those who intend to speak, in favor or opposition, to stand, and they will  
15 be sworn in. The applicants will then present their testimony. When the applicant is  
16 finished, anyone else will be given an opportunity to speak. After everyone has spoken,  
17 the applicant, and only the applicant, will be given the opportunity for rebuttal. After  
18 hearing the case, and asking questions, the Board will take the matter under  
19 advisement. They will render a decision at the end of the meeting. If you wish to know  
20 what their decision is, you may stay until the end of the meeting, or you may call the  
21 Planning Office at the end of the day. This meeting is being tape recorded, so we will  
22 ask everyone who speaks, to speak directly into the microphone on the podium, and to  
23 state your name for the record. Out in the foyer, there are two binders that include the  
24 staff report for each case, including the conditions recommended by the staff. Mr.  
25 Chairman, there are two requests for withdrawal on the 9:00 o'clock agenda. On page  
26 one, case **A-56-2001 GARLANA BURT** has requested withdrawal.  
27

28 Mr. Kirkland - Do I have a motion?  
29

30 Upon a motion by Mr. Nunnally, seconded by Mr. Wright, the Board of Zoning Appeals  
31 **granted withdrawal without prejudice** of **A-56-2001 GARLANA BURT's** application  
32 for a variance to build a modular home at 7902 Battlefield Park Road (Tax Parcel 236-  
33 A-5).  
34

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

36 Negative: 0  
37 Absent: 0

38  
39 Mr. Blankinship - Then on page 3, **A-69-2001 STEVEN D. and MARY**  
40 **LANDRUM** have requested withdrawal.

41  
42 Upon a motion by Mr. Wright, seconded by Mr. Balfour, the Board **granted** your request  
43 for **withdrawal without prejudice** of application **A-69-2001 STEVEN D. and MARY**  
44 **LANDRUM s** for a variance to build a sun room/office addition at 12032 Cottage Creek  
45 Court (Chapelwood) (Tax Parcel 56-21-A-19). The Board allowed withdrawal of the  
46 variance at the request of the applicant.

47  
48 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
49 Negative: 0  
50 Absent: 0

51  
52 Mr. Blankinship - There is one other case that I would call your attention to, Mr.  
53 Chairman, before we go forward, which is on page 2. It's **A-63-2001**. The Kranzes are  
54 here; there was some confusion in the notification procedure, and in lieu of certified  
55 receipts for all of the notice letters, they have produced written waivers of the notice  
56 requirement from the surrounding property. Would you bring those up.

57  
58 Mr. Kirkland - Do we have one signed from all of the adjacent property  
59 owners?

60  
61 Mr. Blankinship - There are only 3 adjoinders.

62  
63 Mr. Kirkland - We'll accept those. We'll hear the case when it comes up.  
64 Call the first one.

65  
66 **A - 43-2001 MELANI BROS.** requests a variance from Section 24-41(e) of  
67 Chapter 24 of the County Code to build a sunroom at 1829 Random  
68 Winds Court (Townes of Quail Woods) (Tax Parcel 77-18-N-6),  
69 zoned RTHC, Residential Townhouse District (Conditional)  
70 (Tuckahoe). The rear yard setback is not met. The applicant has 22  
71 feet rear yard setback, where the Code requires 30 feet rear yard  
72 setback. The applicant requests a variance of 8 feet rear yard  
73 setback.

74  
75 Mr. Kirkland - Does anyone else wish to speak on this case? Sir, if you  
76 would, raise your right hand and be sworn in.

77  
78 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
79 truth, the whole truth, and nothing but the truth, so help you God?

80  
81 Mr. Kirkland - Would you state your name for the record. Have all your

82 notices been turned in according to County Code? We have them in the file, sir. Okay,  
83 proceed with your case.

84  
85 Mr. Rogge - Yes I do. Drewes Rogge. Yes. Mr. and Mrs. Webb would  
86 like to replace a screened in porch and roof covering that they have behind their home  
87 with a Melani Brothers sunroom. According to the Code, they have a 22-foot setback in  
88 their yard, and they require a 30-foot setback, so they need an 8-foot variance. By  
89 putting the sunroom there, it will increase the value of the property. Also, it's going to  
90 improve the looks of the property as to what's there already with the screened in porch.  
91 I have pictures if you'd like to take a look at them. Also, 4 doors up the street from them  
92 in the same townhouse, there is a Melani Bros. sunroom there already, which is where  
93 they got the idea to put one in.

94  
95 Mr. Nunnally- Do you know when this house was built?

96  
97 Mr. Rogge - No I don't know exactly when the town homes were built.

98  
99 Mr. Nunnally- You don't know when this porch was added on either, do  
100 you, or was that on there when they built it?

101  
102 Mr. Rogge - No, I really don't know whether it was on there when they  
103 built it or not. I believe it was, because they haven't been in there that long, and in  
104 talking with them, he didn't state that it was there when he purchased the home, but I  
105 got the idea that it was.

106  
107 Mr. Balfour- Mr. Secretary, what are those 3 buildings noted on the  
108 adjacent building map? On the building to the right, the 3 little squares, are they yard  
109 buildings?

110  
111 Mr. Blankinship - I would guess that they're storage buildings.

112  
113 Mr. Balfour- But there are not anywhere this man's property is, I gather?

114  
115 Mr. Blankinship - I'll look back at the photograph. Well, there is one actually  
116 shown on the property line on the survey. It's just cut out of the photograph.

117  
118 Mr. Wright- What is your position? You're not the Webbs, so what are  
119 .....

120  
121 Mr. Rogge - I represent Melani Bros. And Mr. Webb chose not to be here  
122 this morning. Matter of fact, I stopped by his house last night and asked him if he  
123 wanted to appear, and he said, "no, I'd rather have you handle it for me.

124  
125 Mr. Wright- So you're the contractor to put it on there? What's located to  
126 the rear of this property?

127

128 Mr. Rogge - Yes. An alley easement type situation. It's a fenced in back  
129 yard, with trees and beyond that I don't know what's there.  
130  
131 Mr. Balfour- The porch I gather, is what you want to enclose to make a  
132 sunroom.  
133  
134 Mr. Rogge - Yes, there is a cement patio there, and what we propose to  
135 do is make sure there's a proper footing in there and replace the wood and screen with  
136 a sunroom where they can use it approximately 11 months out of the year, rather than 2  
137 or 3 months of the year. I know they purchased the property in '97, if that helps, and I'm  
138 still looking here to see if I can tell what date the property was built. Now this property  
139 will not show the date the property was build in.  
140  
141 Mr. McKinney- Mr. Secretary, this says the porch violates the rear yard  
142 setback? And they bought this in '97, and you say this porch was on there in '97?  
143  
144 Mr. Rogge - I believe it was; I cannot testify to that fact that it actually  
145 was. I can only go by the inclination that I received from Mr. Webb when I spoke with  
146 him.  
147  
148 Mr. McKinney- I'm wondering how they bought it with a clear title if it was in  
149 violation.  
150  
151 Mr. Rogge - I don't know. That happens a lot in different counties.  
152  
153 Mr. McKinney- I bet they paid cash and didn't want a title policy.  
154  
155 Mr. McKinney- Mr. Rogge, you say you've got a picture of the one just up  
156 the street?  
157  
158 Mr. Rogge - No, I'm sorry, I do not have a picture of the one that's up the  
159 street.  
160  
161 Mr. McKinney- Didn't you make that statement, that you have a picture of  
162 the one up the street?  
163  
164 Mr. Rogge - No, I said there is, there was one 4 doors up the street, no I  
165 don't have pictures of the one up the street. I couldn't get them in time, and I went over  
166 there last night, and unfortunately I didn't have my camera with me; I couldn't take  
167 pictures of it. Besides that, the back yard was closed and locked. There's a fence  
168 around the back yard, but the top of the sunroom is very visible from the neighborhood.  
169  
170 Mr. Kirkland - Any other questions? Any other questions, Mr. McKinney?  
171 Anyone else wish to speak on this case? If not, that concludes the case.  
172

173 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.  
174 McKinney, the Board **granted** your application **A-43-2001** for a variance build a  
175 sunroom at 1829 Random Winds Court (Townes of Quail Woods) (Tax Parcel 77-18-N-  
176 6). The Board granted the variance subject to the following condition:

177  
178 1. Only the improvements shown on the plan filed with the application may be  
179 constructed pursuant to this approval. Any additional improvements shall comply with  
180 the applicable regulations of the County Code.

181  
182 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
183 Negative: 0  
184 Absent: 0  
185

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

191  
192 Mr. Kirkland - Next case sir.

193  
194 Mr. Blankinship - **A-56-2001** has been **withdrawn**.

195  
196 **A - 62-2001** **KARL AND TONY WOLPERT** appeal a decision of the Planning  
197 Director pursuant to Section 24-116(a) of Chapter 24 of the County  
198 Code with respect to nonconforming status of the Richmond Yacht  
199 Basin, 9950 Hoke Brady Road (Tax Parcels 284-A-3, 4 and 5)  
200 zoned A-1, Agricultural District (Varina). The Planning Director has  
201 determined that Richmond Yacht Basin may continue its current  
202 operation without a Provisional Use Permit.

203  
204 Mr. Kirkland - If you would come forward, sir. Who's the applicant? While  
205 he's walking forward, does anyone else wish to speak on this case? Please stand up  
206 and be sworn in at the same time.

207  
208 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
209 truth, the whole truth, and nothing but the truth, so help you God?

210  
211 Mr. Kirkland - If you would sir, state your name for the record. Have all the  
212 notices been turned in?

213  
214 Mr. Karl Wolpert - Karl Wolpert.

215  
216 Mr. Blankinship - Yes, the County does that on appeals.

217  
218 Mr. Kirkland - State your case sir.

219  
220 Mr. Karl Wolpert - My case is this – my brother and I are adjacent property  
221 owners to the Richmond Yacht Basin. Our case is this – the Richmond Yacht Basin has  
222 undergone several expansions over the years, the most recent one in approximately  
223 1996. These expansions have taken place without any County approval, any  
224 permitting, any zoning adherence, or notices to the County. The last expansion, I  
225 believe there's a picture that was issued in your package – did everybody get this  
226 picture in your package?

227  
228 Mr. Kirkland - I don't think so. Put it under the camera there so we can all  
229 see it.

230  
231 Mr. K. Wolpert - The last expansion placed structures in the river that are  
232 within our river frontage; we have a separate, ongoing litigation in conjunction with the  
233 Richmond Yacht Basin to have that structure removed. However, in addition to that, the  
234 road and the access into the marina is over private property, namely the property that's  
235 owned by my brother and me. Through these expansions, our property has been  
236 adversely affected. There is insufficient parking for the marina, we have overflow  
237 parking that invariably ends up on our property; there are speeders on our property;  
238 there is litter control; there are individuals who, after a day's boating activities, have  
239 maybe been partaking a little too much and are a bit rowdy. I've had individuals stop in  
240 my front yard and urinate. This is all a reason because the marina keeps expanding,  
241 and they have chosen not to comply with any of the zoning requirements. When we  
242 have brought this to the attention of the County, there has actually been a violation  
243 issued back in January or December, and for some reason the County has decided that  
244 this marina did not need to adhere to any of the zoning requirements. I'm very  
245 frustrated that after having made this aware to the County, that the County has, for  
246 whatever reason, decided not to take any action on this. The marina has been in  
247 existence for some time. I believe in the 30's; however if you will notice.....

248  
249 Mr. Kirkland - Before you go any further, which buildings did you say were  
250 added? You need a microphone for him, Ben.

251  
252 Mr. Karl Wolpert - I can probably yell a little bit so you can hear me.

253  
254 Mr. Kirkland - It won't be taped.

255  
256 Mr. Blankinship - I can point while you describe it.

257  
258 Mr. Karl Wolpert - The first structure there is a covered boat shed that was  
259 constructed in approximately 1986. What was interesting about that is, the end of that  
260 structure coincides with the end of our property line. The marina did apply for a permit  
261 with the Virginia Marine Resources Commission, but failed to do so with the County and  
262 any of the County zoning offices or requirements. What's interesting on that application,  
263 they clearly show our property line, and they don't go across the property line. Then in  
264 1996, the second structure, which is a little more vague there, what that is, is what they

265 call dolphin piers that extend upward the river, and they extend about somewhere in the  
266 50 to 75 feet up river, where they dock 3 or so boats. These structures are clearly  
267 within our river rights, and that's where we're actually going to litigation, to have a judge  
268 settle that, but they did not apply for any permitting from the VMRC or again, from the  
269 County, so what's happened by this continued expansion, they've overgrown the land  
270 facilities. They don't have the parking; that's why it overflows on our property, and it's  
271 one of the things in the zoning requirements, there's a minimum requirement of  
272 something like 10 acres; there's requirements that the property has to have direct  
273 access to a public road; well it doesn't have it. If you can point to that first parcel there,  
274 that's where the road intersects to go to the left a little, down a little, at that point they're  
275 now on my property. From there, all the way back, if you trace that up the page, go to  
276 the right, follow that road all the way around, that point right there, that's now federal  
277 property. This is the park service down in Varina. That whole road there is private; it  
278 belongs to my brother and me, and they have a right-of-way across it, but they park  
279 vehicles on it, they've got speeders on it, they've got people who are intoxicated, I have  
280 a liability there if somebody gets injured. There's just no regard for that by the marina,  
281 the liability that they're exposing me to. I realize that the marina was in existence some  
282 years ago, but if you go to the left, all the way to the left, there's a house up there. That  
283 house was built in 19, in the late 1800's, well before the marina, so this area has been  
284 established as a residential area, and the marina has been allowed to evolve in not  
285 having to comply with any requirements for a business. So what I'm asking for is for the  
286 County to re-look at this and assess the situation, see how much growth has taken  
287 place, see what's reasonable for the property there, put some constraints on the marina,  
288 have the marina remove the structures that they've build in my river rights, and put  
289 some limits on what they can do, so they can't just park on my property, so they can't  
290 just have folks that are intoxicated running over my property, littering, stopping and  
291 urinating in my front yard. It's just an unacceptable situation, and again, what's really  
292 troubling to me and my brother is, that once we made this matter known to the County,  
293 it seems like this is just getting pushed to the side, and nobody wants to deal with it.  
294 That's what I'm asking the Board.

295  
296 Mr. McKinney- Mr. Wolpert, where is your residence on your property?  
297

298 Mr. Karl Wolpert - There are 2 residences. The first one, up to the left a little,  
299 that's my brother. I'm going to have to walk over here and show this gentleman my  
300 house.....  
301

302 Mr. Wright- There's a microphone there, if you want to use it, Ben.  
303

304 Mr. Karl Wolpert - That's my house, right there.  
305

306 Mr. Balfour- Did you grant the easement or the right-of-way across your  
307 property down there? Is that a public road or a private road you let them use across  
308 your property down there, that you're complaining about?  
309

310 Mr. Karl Wolpert - That is a private road; my parents purchased that property in  
311 1974, and prior to that, the marina's previous owner and the property that my parents  
312 bought, the previous owner, had come up with a right-of-way agreement, and there is a  
313 deeded right-of-way across our property to the marina.  
314  
315 Mr. Balfour- Have you ever called the police when you've had problems  
316 with people down there, drunk and things like that?  
317  
318 Mr. K. Wolpert - At times, yes we have.  
319  
320 Mr. Balfour- Have you pursued a warrant against them?  
321  
322 Mr. K. Wolpert - No sir, we have not.  
323  
324 Mr. McKinney- Mr. Wolpert, you said the last expansion was in '96?  
325  
326 Mr. K. Wolpert - Yes sir.  
327  
328 Mr. McKinney- When did you start your action against the marina?  
329  
330 Mr. K. Wolpert - I believe it was in 19..... Let me go back a minute – we  
331 have another property dispute that was resolved in '95. There was some property that  
332 the marina claimed belonged to them, and it clearly was our property; it had been  
333 deeded such, and we had to initiate litigation on that, and just before going to court, the  
334 marina agreed to purchase the property from us, so again it was our property.....  
335  
336 Mr. McKinney- Which property was that?  
337  
338 Mr. Kirkland- Here's a mike, Ben, if you want to give it to him. Right along  
339 the water.  
340  
341 Mr. K. Wolpert - So at that time, things had gotten a little contested, so we  
342 were trying to be amicable and try to work through this, so after that, the expansion of  
343 '96, you can't really see from our property. This picture doesn't do it justice, but there's  
344 a bluff; we're up about 70-75 feet above the river, and there's lots of woods there, so it's  
345 really hard for us to see down towards the river, but we noticed that this expansion had  
346 taken place. I tried to deal with this with the owner, Mr. Parker. Initially, he stated that  
347 "no, no, no, that was within the marina's property rights." We went ahead and had the  
348 property lines surveyed and showed it to him, that it was in fact over the line. He initially  
349 made statements to me, that "yes, I'm sorry, what can we do to work it out?" When we  
350 said there was really only one way to work it out, we need you to remove that because  
351 we want to protect our river frontage, at that point there became an obstacle, and he  
352 refused to do anything, and that's what precipitated us taking some legal action again to  
353 have those structures removed.  
354



355 Mr. Wright- You own the property that's west of their property, right on  
356 the river there? You own that?  
357  
358 Mr. K. Wolpert - Yes sir, that whole tract there.  
359  
360 Mr. Wright- You go all the way back up? But your house is up north  
361 there?  
362  
363 Mr. K. Wolpert - I have a house there. Basically, it's one square the  
364 gentleman's pointing to, and the other square were all part of one tract of property,  
365 about 51 acres. When my brother and I both decided to build on the property, we were  
366 going through the permitting process that we had to split off an acre, so I have an acre  
367 there, my little brother has an acre there, and the rest we own jointly.  
368  
369 Mr. Wright- You own all that jointly? Now which surrounds the marina?  
370  
371 Mr. K. Wolpert - It surrounds the marina basically on I guess 2 ½ sides there.  
372  
373 Mr. McKinney- When did you build your home, Mr. Wolpert?  
374  
375 Mr. K. Wolpert - I got a permit in 1985, and I moved in, in late '86.  
376  
377 Mr. McKinney- Your brother?  
378  
379 Mr. K. Wolpert - My brother, that house that he's at, was in existence since  
380 the late 1800's, and he tore it down in 1992 and rebuilt on the exact same house  
381 location. One of the arguments that the marina's made is that they need these  
382 structures up river, to protect the covered structure from floods. When there's floods,  
383 there's a lot of debris that washes down the river. I don't disagree; if there's not  
384 something ahead of that covered structure, the covered structure is potentially going to  
385 get damaged. The problem I have is, if that protection is required, it should be within  
386 the marina's river frontage, not mine. What gives an adjacent property owner the right  
387 to put something in my property rights to protect his structure? I don't believe that's fair  
388 or legal.  
389  
390 Mr. Balfour- May I ask the Secretary a question? What authority do we  
391 have, Mr. Chairman, either to say they need to get a provisional use permit or not – is  
392 that the only issue before us this morning?  
393  
394 Mr. Blankinship - The Planning Director, who I guess will speak next, has  
395 issued a decision in writing, both to the yacht basin, and to Mr. Wolpert, stating that a  
396 provisional use permit is not necessary at this time, but if there is any further expansion  
397 in the future, a provisional use permit will be required at that time.  
398  
399 Mr. Balfour- And our decision is whether or not he was correct in requiring  
400 one currently or not?

401  
402 Mr. Blankinship - Exactly.  
403  
404 Mr. Kirkland - Okay, anyone else wish to speak on Mr. Wolpert's side first?  
405  
406 Mr. Wright- Let me ask another question. Do you have any survey or  
407 plat or whatever that shows where the main water line is on that property? I know  
408 something about this – your property line goes to the mean water line.  
409  
410 Mr. K. Wolpert - What we have is, we've done a riparian survey, which  
411 essentially establishes the perpendicular division line into the water. That's the basis of  
412 our current litigation, to establish that line, and that line does tie into the mean low water  
413 line. I'm pretty confident it's established. They go out there, and they go through  
414 several tide cycles, and they establish what that line is, and that's been established on  
415 that survey.  
416  
417 Mr. Wright- Does that extend out to where they built those obstructions?  
418  
419 Mr. K. Wolpert - I'll be honest with you; I don't know that I have that with me,  
420 and I can't answer that question.  
421  
422 Mr. Kirkland - Okay, does anyone else wish to speak on Mr. Wolpert's  
423 side? Yes sir.  
424  
425 Mr. McKinney- He was not sworn in.  
426  
427 Mr. Kirkland - You didn't get sworn in? Come down to the microphone, and  
428 we'll swear you in, and you can speak your piece. If you would, raise your right hand.  
429  
430 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
431 truth, the whole truth, and nothing but the truth, so help you God?  
432  
433 Mr. T. Wolpert - Tony C. Wolpert. I just want to add one little tidbit that Karl  
434 didn't, if I could go back. If you would look at this piece of property here, in Mr. Marlles  
435 defense of not taking action, he said the marina had been existent since the 1930's, and  
436 therefore did not require a provisional use permit. That's what he told me during our  
437 conversations. This was added in 1986; the marina did not buy this piece of property  
438 until 1971, so in his letter to me, Mr. Marlles stated that anything here may need a  
439 building permit if it was built after 1973, so this was built in '86, and we think this was  
440 built in '96, and they didn't own the piece of property, so that's not a continuous use of  
441 this piece of property. That's all I needed to say. Thank you.  
442  
443 Mr. Kirkland - Okay, sir are you going to speak on the marina's behalf? Let  
444 me hear Mr. Marlles first. Okay, we'll listen to you first then.  
445

446 Mr. Marlles - Mr. Chairman, I think I should probably go first. This is the  
447 property owner, but it's my decision that's being appealed. Good morning, Mr.  
448 Chairman, members of the Board. By the way, this is a slide actually showing those  
449 dolphins and finger piers, just to give you an idea of what we're talking about here. The  
450 finger piers extend to the right of the boat shed. These things at the end, the bundles of  
451 pilings are what the dolphins are, but it's the finger piers are the deck that walks out, or  
452 extends out, to the dolphins. Mr. Chairman, members of the Board, I do believe the  
453 facts in this case are fairly straightforward. There were several considerations I took  
454 into account in making my determination that a PUP was not required in this case.

455  
456 First, as has been pointed out, by both the appellant and in the staff report, this is not a  
457 new use for this site. The Richmond Yacht Club has existed at this location for over 60  
458 years. The use itself was established long before there was a requirement for either a  
459 CUP or a PUP in the County's zoning ordinance. During the 60-year history of the  
460 facility, there have been a number of additions to the docks and the facility; however, at  
461 no time in the past has the County required the facility to obtain a CUP or a PUP. I  
462 believe this is because the use was established before these requirements were added  
463 to the Code.

464  
465 Secondly, I think as has been pointed out, the most recent addition to the facility, the  
466 finger piers and the dolphins, were actually added to the end of the boat shed or to the  
467 facility almost 5 years ago in 1996. Often, when the Planning Office receives a delayed  
468 complaint of this type, it is usually because there is a dispute between the property  
469 owners. I think it's clear from Mr. Wolpert's testimony that that is the case in this  
470 situation. I believe the real issue, as Mr. Wolpert has indicated, is that the finger piers  
471 that were added to the extreme western end of the boat sheds, across what Mr. Wolpert  
472 considers as an extension of his property line into the James River. I can verify that this  
473 is a very complex issue, because the finger piers are constructed in what is the  
474 navigable portions of the James River. Staff from the Planning Office and Building  
475 Inspections Office have spent a considerable amount of time, trying to determine if the  
476 County even has jurisdiction in this matter. In the final analysis, I do not believe that the  
477 PUP was required, since the use was established long before these requirements were  
478 added to the Code. In addition, in this situation where we have an addition that  
479 occurred almost 5 years ago, we, as the Planning Office, as policy, are reluctant to get  
480 involved in essentially what is a dispute between the property owners, and we believe is  
481 really a matter, in fact it is in Civil Court and being handled as a civil matter. So staff  
482 would be glad to answer any questions at this point.

483  
484 Mr. Wright- I noticed in your letter to Mr. Wolpert, the February 28 letter,  
485 you state that the County has determined that a building permit may be required for the  
486 construction which occurred after September 1, 1973 – what does that mean?

487  
488 Mr. Marlles - Yes sir, that was a determination by the building official that  
489 in order to insure that the construction meets the building code and is safe, he has  
490 determined at this point (at the time that letter was written, it was not clear), he has  
491 recently determined that a building permit is required for the work after that point in time.

492 The reason for that date, is that's when the current uniform statewide building code  
493 went into effect. He has, just within the past few days, determined that a building permit  
494 is in fact required.

495  
496 Mr. Wright- What will happen in that respect?

497  
498 Mr. Marlles - Basically, what Mr. Wolpert will have to do, not Mr. Wolpert,  
499 but the property owners for the yacht basin will have to do, is to submit plans that will be  
500 reviewed by the Building Department, again, to make sure that the structure itself is  
501 safe, any electrical work that's been done is according to Code, but it has no bearing on  
502 whether a PUP is required or not.

503  
504 Mr. Wright- Or anything to do with parking, or anything of that nature.

505  
506 Mr. Wolpert - No sir.

507  
508 Mr. Kirkland- Could I ask you one question? He said the Virginia Marine  
509 Resources – did they permit this?

510  
511 Mr. Marlles - I believe they have permitted additions to the boat shed in  
512 the past. The property owners are represented, and the property owner can probably  
513 answer that question. It does bring up the issue, that there are other bodies that have  
514 jurisdiction in this matter, both the Virginia Marine Resources Commission, and the  
515 Army Corps of Engineers, and it involves riparian rights, and it gets very complicated  
516 very fast.

517  
518 Mr. Kirkland - Do you know where the mean water line is?

519  
520 Mr. Marlles - I do not, sir.

521  
522 Mr. McKinney- Mr. Marlles, if this is in navigable waterways, is it beyond the  
523 mean water line.

524  
525 Mr. Marlles - And I think that may actually be in dispute between the  
526 property owner – I have never seen the survey that Mr. Wolpert is referring to, but the  
527 Army Corps of Engineers and the Virginia Marine Resources Commission certainly  
528 have jurisdiction on the boat sheds that extend out into the James River.

529  
530 Mr. McKinney- Has your office determined whether you have any rights in  
531 navigable waterways?

532  
533 Mr. Marlles - It was not clear, actually, but I'll tell you what happens along  
534 the James River. Portions of the James River, our zoning line actually extends over to  
535 the Chesterfield side of the river in the east end of the County, so we do have zoning  
536 authority here. On the west end of the County, the line between Chesterfield County  
537 and Henrico County is actually on the Henrico side, so it flip-flops, so we have

538 determined fairly recently that we do have jurisdiction and zoning authority over the river  
539 on this end of the County.

540  
541 Mr. McKinney- The western line where?

542  
543 Mr. Marlles - Well I'm not sure exactly where that flip-flop occurs, but on  
544 this end of the river in eastern Henrico County, the County of Henrico, and that would  
545 extend our zoning authority, actually extends over to the far side of the river, where it  
546 abuts Chesterfield County.

547  
548 Mr. McKinney- I know that the city has control of it.

549  
550 Mr. Marlles - Yes, where it passes the city.

551  
552 Mr. McKinney- But the western part, I was under the presumption the  
553 County still had it, because Chesterfield cannot take any water out of the James River.

554  
555 Mr. Marlles - On the western end of the County, that is correct. Let me  
556 back up on that. On the western end of the County, the zoning line and our jurisdiction  
557 is on our side of the river; it does not extend over to the other side of the river – that's  
558 what I've been told.

559  
560 Mr. McKinney- So the Chesterfield zoning line comes over to our side?

561  
562 Mr. Marlles - Yes it does, over the river.

563  
564 Mr. McKinney- I think somebody's wrong on that.

565  
566 Mr. Wright- Let me clear up something. This is what you would call a  
567 nonconforming use, is that correct?

568  
569 Mr. Marlles - Technically, in my opinion, this use existed before we had  
570 any requirements for a marina in our zoning ordinance, so.....

571  
572 Mr. Wright- Under our ordinance, any use like that, the County has no  
573 jurisdiction to do anything with respect to that, unless they want to do something with it?

574  
575 Mr. Marlles - I think that would be a fair statement. In this case, the use  
576 has been established, long before we had any requirements for a CUP or a PUP, the  
577 use was established. A PUP normally provides approval, or CUP, for a use to be  
578 established. What I'm saying, is this use was established before either of those  
579 requirements was in the Code.

580  
581 Mr. Wright- Don't you require that if you have a nonconforming use and  
582 somebody wants to enlarge it or expand it, doesn't that pull them within the County's

583 requirements, and you then have to have a conditional use permit, or provisional use  
584 permit.

585  
586 Mr. Marlles - It could be interpreted that way, yes sir.

587  
588 Mr. Wright- We've had testimony here that these conditions were put on  
589 in '96, is that correct?

590  
591 Mr. Marlles - The finger pier additions, as far as we know, we do not have  
592 a building permit for exactly when those were added.

593  
594 Mr. Wright- Why wouldn't that bring that within the purview of the County  
595 requirements?

596  
597 Mr. Marlles - I can't answer that sir, only because the use, again, from my  
598 standpoint, no building permit was issued. We were not sure we had jurisdiction, given  
599 the fact that this is over the navigable portions of the James River. No PUP or CUP had  
600 been required for any previous additions, and I believe that is because it was  
601 considered by staff that the use had been established prior to those requirements being  
602 added to the Code.

603  
604 Mr. Wright- Haven't you stated that if they make any additions or any  
605 future improvements to the property, they would have to get a use permit?

606  
607 Mr. Marlles - I have told the owners that if they were to make any further  
608 expansions to the facility, that I would require them to submit a PUP, yes sir, I have told  
609 them that.

610  
611 Mr. Wright- Well why wouldn't that apply to what they've already done, if  
612 it was after the time that the Code was in effect?

613  
614 Mr. Marlles - For the reasons that I've stated, and for the fact that the work  
615 was done almost 5 years ago.

616  
617 Mr. Wright- So what difference does that make?

618  
619 Mr. Marlles - It does make a difference, sir, in that what we think we have  
620 here is a neighborhood dispute, and .....

621  
622 Mr. Wright- I mean, irrespective of that, when somebody does  
623 something, if they don't get the permit, the statute doesn't begin to run on that, if you  
624 find somebody who does something that's illegal or improper, you can go back and  
625 require them to do something about it, can't you.

626  
627 Mr. Marlles - We could do that, yes sir.

628

629 Mr. Wright- I mean we do that all the time. Don't we find people who  
630 violate, we've had cases before where people put up structures for which they didn't get  
631 building permits, or they didn't get use permits, and we require them to come in and  
632 apply it – why wouldn't we do that here?

633  
634 Mr. Marlles - I would say sir, we don't do that frequently.

635  
636 Mr. Wright - Well I've seen it done, we've had cases before us where it  
637 was done. You mean to say that somebody could come in, I could go and just build  
638 something without a permit, and it goes for 10 years, and you can't come in and make  
639 me comply?

640  
641 Mr. Marlles - I would say we would not typically do that as a practice, no  
642 sir.

643  
644 Mr. Wright - That astounds me; it really does.

645  
646 Mr. Balfour- Is there an average time – if it's 3 years, you can go back,  
647 but if it's 5 years you won't go back. What's the standard?

648  
649 Mr. Marlles - Again, sir, what we have here is a use that's been  
650 established since probably 1938 or 1939.

651  
652 Mr. Balfour- What Mr. Wright's talking about, though, is the usage after  
653 that point in time.

654  
655 Mr. Wright - They've done something after that time, if they let it sit, and  
656 they don't change it at all, I agree with you. But once they come to make a change,  
657 they have to comply with the Code, that's my understanding of the application of the  
658 Henrico County Code.

659  
660 Mr. McKinney- I still have a question, of what rights does Henrico County  
661 have in navigable waters? You say the zoning line goes to the other side; on the other  
662 hand, you have not determined whether you have a right. If you don't have a right, how  
663 can you require them to get a building permit? That should come under the state  
664 building officials, I would think, not Henrico County, because that water's controlled by  
665 the state and the Corps of Engineers.

666  
667 Mr. Marlles - The land that's actually under the James River, under the  
668 river itself, is owned by the state. The building official has determined, recently, working  
669 with the County Attorney's office, and I believe he has actually been in contact with the  
670 state, that the County can require a building permit for the dock improvements, even  
671 though they're attached to the land that's owned by the state, and even though they're  
672 in navigable waters. The building official has recently determined that we can require a  
673 building permit. The County Attorney's office has also recently advised us that, in this  
674 case, the zoning line in the east end of Henrico does extend over to the far side of the

675 river so we do have zoning authority. These questions were not clear until fairly  
676 recently.

677  
678 Mr. McKinney - Last year we put a pier up beside Coles Point in lower  
679 Machodo Creek, in Westmoreland County. Westmoreland County had absolutely  
680 nothing to do with that pier, as far as building permit or anything else. It was all handled  
681 through the Corps and the state.

682  
683 Mr. Marlles - It's very possible, and again, the staff that were here when  
684 these previous decisions were made, are not here today. It's very possible that that  
685 was the position that they were taking at that time, and it was not until recent, and I  
686 mean very recently, that we've gotten, we think, clear direction that we do have  
687 jurisdiction.

688  
689 Mr. McKinney- When will you know that for a fact?

690  
691 Mr. Marlles - When did I know that for a fact?

692  
693 Mr. McKinney- When will you know that for a fact?

694  
695 Mr. Marlles - Well, I believe I know it now, but it's information that we just  
696 received within the past 2 weeks.

697  
698 Mr. McKinney- That was determined by the County Attorney?

699  
700 Mr. Marlles - The County Attorney has so advised us, yes sir.

701  
702 Mr. McKinney- And his information came from the state attorney, or what?

703  
704 Mr. Marlles - I believe the review of the Code. The building official, I can  
705 tell you, has been in touch with the state building department, but I believe as far as the  
706 jurisdictional questions for zoning, that came from the County Attorney's office, based  
707 on a recent review of the Code.

708  
709 Mr. Kirkland- Mr. McKinney, I believe when you got that pier, you had to  
710 contact all the adjacent landowners too, didn't you?

711  
712 Mr. McKinney - Oh yes, we did.

713  
714 Mr. Wright- Well, it appears to me then, if it's your position that you have  
715 jurisdiction, and they have expanded the facility, they were in the purview of the Code in  
716 your jurisdiction. It's not consistent to me that we would take any other position.

717  
718 Mr. Kirkland - Any other questions of Mr. Marlles?

719



720 Mr. Balfour- Is it your position, then, Mr. Marlles, that not whether or not  
721 you have jurisdiction, which you've been advised recently that you do, but that  
722 regardless of whether or not you have jurisdiction, that because they were  
723 grandfathered in, that they are protected from having to get a conditional or provisional  
724 use permit? That's your position, I guess?

725  
726 Mr. Marlles - At this point, given all of the facts of this case.

727  
728 Mr. Wright - Let me ask you then, to really bring the point to issue.  
729 Suppose that they had not built those finger piers, and they wanted to build them today,  
730 what would your position be?

731  
732 Mr. Marlles - My position today?

733  
734 Mr. Wright - If they had not built them in '96, but say they had just  
735 completed them last week, what would your position be?

736  
737 Mr. Marlles - Mr. Wright, I still think it would not be a clear cut decision for  
738 me, because I believe the use was established before the requirements for a CUP or a  
739 PUP were added to the Code.

740  
741 Mr. Wright - Well see, you've said in some of the materials that we have  
742 here, that if they had any further expansion, they would be subject to your jurisdiction  
743 and would have to get a.....

744  
745 Mr. Marlles - Actually sir, what I said was, they may be subject to a PUP,  
746 and that would depend upon further review, that's exactly what I said to them.

747  
748 Mr. Wright - I don't understand your position – you either are, or you're  
749 not, and you're saying one way, and I understood you to say in these materials, that if  
750 they made any future expansion, they'd have to get a use permit.

751  
752 Mr. Marlles - I told them they may be..... Yes sir, it depends what  
753 they come in with, with that future expansion. I don't have a plan in front of me to  
754 review to know what they're planning on this site. I'm looking at expansions and work  
755 that was done over the past 60 years, as well as previous decisions that were made by  
756 the County over the past 60 years.

757  
758 Mr. Kirkland - Any other questions? Thank you very much, Mr. Marlles.  
759 Okay sir, are you with the marina? If you would sir, state your name for the record.

760  
761 Mr. Harris - My name is Russell B. Harris. I'm one of the owners of the  
762 Richmond Yacht Basin. I have been one of the owners for 43 years, and as Mr. Marlles  
763 has stated, the marina has been in existence there for more than 60 years. This is a  
764 photo of the marina many years ago, my guess is about 1949 or 1950. Let me also  
765 point out in the beginning that Mr. Wolpert and his brother filed a suit in the Circuit Court

766 of this county, alleging the same violations that they are asking this Board to consider.  
767 That case is still pending in the Circuit Court, and it was set for trial, and the trial date  
768 was then continued by the Wolperts to permit them time to go to the Virginia Marine  
769 Resources Commission and file a complaint, the result of which was a public hearing  
770 held in February of this year, in which the Virginia Marine Resources Commission then  
771 denied their request and permitted the uses that you see on the present day map or  
772 photos of the marina. When they lost that action, with the Henrico Circuit Court case  
773 still pending, they then filed this complaint that is being heard by you gentlemen today.  
774 The Circuit Court case addresses the identical complaints that are before you today,  
775 and they asked that the Circuit Court determine whether there has been a zoning  
776 violation, and if so, to abate it. I have 2 copies of the suit here. If I may pass them up to  
777 you to see, specifically paragraphs 5, 7, 14, and 15, ask the same relief.  
778

779 Mr. Balfour- Mr. Harris, what did they ask the Virginia Marine Resources  
780 Commission to do, that they refused to do?  
781

782 Mr. Harris - The complaint before the Virginia Marine Resources  
783 Commission was that their rights were in some way being violated by the structures that  
784 you see in the present-day pictures of the marina.  
785

786 Mr. Balfour- Roughly the same thing that the lawsuit says, I assume?  
787

788 Mr. Harris - Yes sir. So this is the third form that they're seeking the  
789 same relief.  
790

791 Mr. McKinney- Mr. Secretary, if this Board acted on this today, if it's in the  
792 Circuit Court, would the decision of this Board become moot after the Circuit Court  
793 decision?  
794

795 Mr. Blankinship - I think that the 2 questions are severable. I think the one is a  
796 property dispute, and the other is whether a provisional use permit should be required.  
797

798 Mr. McKinney- Will the Circuit Court determine that? I have not read 5, 7,  
799 14, and 15 yet. I understand that from what Mr. Harris says, they're identical.  
800

801 Mr. Wright- Well, they say in # 5, that one of the pleadings is, that the  
802 placement location of the dock and other boat structures violate the applicable Henrico  
803 Zoning Ordinance, including those relating to setbacks, etc. Number 7 says that as a  
804 direct and proximate result of the defendants continuing encroachment, in violation of  
805 applicable Henrico Zoning Ordinance, the plaintiffs have been damaged. Now let's see  
806 what the prayer is on that.  
807

808 Mr. McKinney- Will the Circuit Court, or do you know yet, set aside the  
809 Planning Director's opinion, if they rule in favor of the applicant to the court?  
810

811 Mr. Blankinship - They could not hear that appeal on first impression – it would  
812 have to come from you. His decision has to be appealed to you, and then your decision  
813 appealed to the Circuit Court. They can't .....

814

815 Mr. McKinney- I know that's normal the way it's on his decision, but they  
816 have filed a separate suit, which includes the same thing. Now if the court chose to  
817 hear it because it's been continued till it comes to this body.

818

819 Mr. Wright- But that doesn't mean they're going to hear all of these  
820 cases.

821

822 Mr. Balfour- Mr. Harris, has the court said in its continuance that they will  
823 only hear one or two counts, for example, have they said that they are not going to hear  
824 the .....

825

826 Mr. Harris - There's been no determination at all.

827

828 Mr. Balfour- No determination at all, of what they're going to take  
829 jurisdiction about and what they're not?

830

831 Mr. Harris - There's been no determination by the Circuit Court at this  
832 point.

833

834 Mr. Balfour- They've made several claims here, and the court could easily  
835 say "I'm not going to hear this claim because the Board of Zoning Appeals hasn't acted,  
836 but I will hear another claim." So far as you're saying, the court hasn't acted at all at this  
837 point?

838

839 Mr. Harris - Well, I think that the Wolperts chose to bring suit in Circuit  
840 Court.

841

842 Mr. Balfour- I understand. What Mr. Wright and I are saying is, as you  
843 know, because you're a lawyer, that court may not have jurisdiction over 1 or 2 of these  
844 points until we act. All I'm asking you is, if that point has been raised in the court, and  
845 has the court ruled on that point?

846

847 Mr. Harris - The court has not ruled; the court has heard no testimony at  
848 this point.

849

850 Mr. Wright- Of course once we would rule on it, then it could be appealed  
851 from our decision to the court, and that would be proper procedure.

852

853 Mr. Harris - I would like to also say, that during the years that the  
854 Richmond Yacht Basin has been in existence, that we have gotten all of the necessary  
855 permits from Virginia Marine Resources Commission, and from the Corps of Engineers,  
856 including the most recent structures in 1986. We met with Mr. Revels, who is the

857 building official, on the site, and discussed the status of the present buildings. I told him  
858 at that time that we had applied for a building permit in 1986, and Mr. Revels said he  
859 was unable to locate it, but that he would not rule out our contention that we had indeed  
860 applied for a permit at that time, and suggested that there may have been a  
861 determination then, in 1986, that a building permit was not necessary, and because of  
862 the permits from the Virginia Marine Resources Commission and the Corps of  
863 Engineers. We decided jointly, to clear up that situation, whatever it was, by submitting  
864 plans and applying for a building permit at this time. That has been done. Our  
865 engineering firm has submitted copies of the original drawings for the most recent shed  
866 in 1986, and that is continuing at this time. I would like also to address the issue, or the  
867 complaint of parking and traffic caused by the marina, which we certainly contest. We  
868 absolutely have not had any of our people parking on the road or blocking the access.  
869 We have ample parking at our facility. We can park more than 50 cars, and we do not  
870 need additional parking.

871  
872 Mr. Balfour - Mr. Harris, I don't think that issues really before us, unless  
873 one of our members agrees, so we can pass that point to save a little time.  
874

875 Mr. Harris - In support of that contention, I would show you a letter  
876 written by Mr. Wolpert to the National Park Service, in which he complains that the  
877 traffic is caused by park visitors and doesn't mention any illegal parking or traffic or  
878 annoyance from tenants at the Yacht Basin.  
879

880 Mr. Wright- I agree with Mr. Balfour, that issue is not before us. We're  
881 here to determine whether they need this conditional use permit, not what the conditions  
882 would be. That may come up at a later time. I know he's addressing it because it was  
883 raised by the other side, but I discounted that already.  
884

885 Mr. Kirkland - Anything else, Mr. Harris?  
886

887 Mr. Harris - I believe not, sir.  
888

889 Mr. Kirkland - Any questions of Mr. Harris?  
890

891 Mr. Wright- I'd like to ask Mr. Marlles one further question. Since our  
892 discussion, I think I've got this thing clarified in my mind. I understand from what you're  
893 saying then, that this particular expansion that was done in '95 or '96, was not serious  
894 enough, or was not enough expansion to require a use permit – is that what you're  
895 saying? It was a matter of degree?  
896

897 Mr. Marlles - I would say that that's true, yes. It is, and I think from staff's  
898 perspective, we have to interpret the Code, and we have to make these types of  
899 decisions every day. I think from a practical code administration standpoint, that was  
900 certainly a consideration, yes.  
901

902 Mr. Wright- So then my question, if it were built today, you would not  
903 deem it necessary to have a use permit for that.

904  
905 Mr. Marlles - Yes sir, that's why I indicated the answer that I did. If it were  
906 a larger expansion proposed, I would probably take that into consideration.

907  
908 Mr. Kirkland - Mr. Wolpert? Just a second for rebuttal – okay?

909  
910 Mr. K. Wolpert - Real quick, just to clarify a couple of things that were just  
911 said, the 1986 expansion, his last finger piers, there was not a VMRC permit gotten, so  
912 the statement is incorrect that they've gotten permits for everything.

913  
914 Mr. Kirkland- 1986 or 1996?

915  
916 Mr. K. Wolpert - 1996 – in 1986 they did. In 2000, we did contest it to VMRC.  
917 They have not granted a permit; they have granted it conditional on the outcome of our  
918 civil case, and I have a copy of that right here, if anybody wants to see that. In the  
919 County Zoning Ordinance, you do have clear cut jurisdiction over marinas, covered  
920 slips, uncovered slips, etc. – it's in the copy, so you do have jurisdiction.

921  
922 Mr. Wright- I don't think they denied that; I don't think that's the position  
923 of the Director. Understand what my question was. The Director's position is that the  
924 expansion that was made was not extensive enough to require a conditional use permit.  
925 Even if there had been a use permit, I take it that he would have said that that wouldn't  
926 have been extensive enough to require any addition to the use permit.

927  
928 Mr. Wolpert - I guess I have a hard time with that; they've added 25 slips in  
929 their expansion, which I believe was about a 25 to 30% increase in the size of the  
930 marina and the associated traffic and the sundries that go along with that, and in my  
931 mind that's a pretty substantial expansion.

932  
933 Mr. Wright- When was that done?

934  
935 Mr. K. Wolpert- That was in 1986. And again, to your point, if you're going to  
936 require a building permit for anything beyond 1970, why don't you require zoning at the  
937 same time.

938  
939 Mr. Wright- I was addressing the '96, and we really haven't focused on  
940 the '86 expansion that much.

941  
942 Mr. Wolpert - Okay, any other questions of me?

943  
944 Mr. Kirkland - Any other questions of the Board members? Anyone else  
945 wish to speak? That concludes the case.

946

947 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
948 Nunnally, The Board reversed the decision of the Planning Director, that the Richmond  
949 Yacht Basin may continue its current operation without a Provisional Use Permit.

950  
951 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
952 Negative: 0  
953 Absent: 0

954 Mr. Kirkland - Next case sir.

955 **A - 63-2001** **YOSSEL AND NECHOMI KRANZ** request a variance from Section  
956 22-94 of Chapter 24 of the County Code to build a single-family  
957 home at 517 Portwest Court (Weston Hills) (Tax Parcel 99-18-A-  
958 16), zoned R-3C, One-family Residence District (Conditional)  
959 (Tuckahoe). The rear yard setback is not met. The applicants have  
960 33.9 feet rear yard setback, where the Code requires 40.0 feet rear  
961 yard setback. The applicants request a variance of 6.1 feet rear  
962 yard setback. The applicants request a variance of 6.1 feet rear  
963 yard setback. The applicants request a variance of 6.1 feet rear  
964 yard setback.

965  
966 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,  
967 raise your right hand and be sworn in.

968  
969 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
970 truth, the whole truth, and nothing but the truth, so help you God?

971  
972 Mr. Kirkland - State your name for the record. Have all your notices been  
973 turned in? I've got them. Okay, state your case.

974  
975 Mr. Kranz - I affirm. Yossell Kranz. Yes sir. Good morning, gentlemen.  
976 I'll be brief. The case is, as was just stated, we have a lot that's very peculiar. It's at the  
977 end of a cul de sac; it's triangular in shape, and we are requesting an approximately 6-  
978 foot variance so that we can fit a sufficient house on that lot. As I understand, the lot  
979 originally was supposed to have more room on it when it was first submitted, and at  
980 some point later in time it changed by about that 6 feet, so that's the request.

981  
982 Mr. Blankinship - Mr. Chairman, if I could interrupt at that point – Mr. Kranz,  
983 when I was reviewing this application, it appeared to me that what you have submitted  
984 is the original plat, and the revised plat which would make the property smaller, has not  
985 been approved and recorded. So if that were to happen, you would actually be getting  
986 6 feet more variance than what you have applied for. Did I misunderstand something in  
987 the record?

988  
989 Mr. Kranz - You know what? I'm not even familiar. The only plat that we  
990 have is this one. The first that I heard that it may be resized, and I don't know if it's  
991 been recorded, was in the information received from you.

992

993 Mr. Blankinship - My understanding, Mr. Chairman, is that what's before you is  
994 how the low stands today. There is a dispute, a boundary line dispute, with the property  
995 owners to the north, and there is a possibility that this lot will become 6 feet shorter and  
996 that the variance would go from 6.1 to 12.1 feet. I think that you need to be aware of  
997 that, and it would be good if there were some decision on the record as to whether you  
998 wanted to see this case a second time if that revised plat .....  
999

1000 Mr. Kirkland - You mean it would have to come back again?  
1001

1002 Mr. Blankinship - Well, I think if you made it explicit in your decision that it's the  
1003 design of the house that you're approving, I think we could apply that again if a revised  
1004 plat is filed. But if you want the case to come back, then I think it would be better if that  
1005 were explicit.  
1006

1007 Mr. Balfour- I hate to see them have to spend two fees and come back,  
1008 but at the same time, you've got a notice problem that somebody may object,  
1009 potentially, I suppose, if this variance is okay, but if they don't like the additional 6 feet.  
1010

1011 Mr. Blankinship - I think all the parties are aware of that, because they're all  
1012 involved in the dispute.  
1013

1014 Mr. Balfour- You're saying that they already have notice that the variance  
1015 could be 6 feet off?  
1016

1017 Mr. Blankinship - Yes sir.  
1018

1019 Mr. Wright- What is the revised plat going to do to this?  
1020

1021 Mr. Blankinship - It would shorten the lot by about 6 feet, off the rear, like that.  
1022

1023 Mr. Wright- So it's going to take 6 feet off the rear?  
1024

1025 Mr. Balfour- But the rear is sort of a slanted line to begin with, it looks like.  
1026 He's got a difficult time getting a house sitting on that.  
1027

1028 Mr. Blankinship - Exactly. But the design of the house wouldn't change, the  
1029 location of the house relative to the buildings wouldn't change, the impact on the  
1030 neighbors wouldn't change, just the location of the lot.  
1031

1032 Mr. Balfour- You're comfortable that we can approve it, and if a neighbor  
1033 later objected, we'd be on safe ground?  
1034

1035 Mr. Blankinship - I would like to have that decision made explicit. At the end of  
1036 the meeting when you take the vote, I'd like that to go into the record, one way or the  
1037 other, so that if that happens, we know how to treat it.  
1038

1039 Mr. Kranz - If I may, I know that there's a question on the low adjacent to  
1040 us, lot 17, with regard to how big it should be. I know at this point it's not even  
1041 considered buildable, but I didn't know that it applies to our lot as well. Are you saying  
1042 that the same question or discrepancy with the neighbors to the north runs along our lot  
1043 16 as well?

1044  
1045 Mr. Wright- Looks like it would affect all of those lots, wouldn't it?

1046  
1047 Mr. Kirkland - Mr. Secretary, what happens when it goes to retitle this  
1048 thing?

1049  
1050 Mr. Blankinship - That's the significance, Mr. Chairman. If it were to be  
1051 transferred after the plat is revised, then the title search would come upon this variance,  
1052 and someone would need to determine at that point, is this variance still valid or do they  
1053 need a new one? That's why I think it should be explicit in your record.

1054  
1055 Mr. Kranz - Can I apply for a 6 or 12-foot variance, depending on what's  
1056 needed?

1057  
1058 Mr. Blankinship - We're treating the property as it stands today, and taking  
1059 your request for a house on the property as it stands today, but then also trying to  
1060 anticipate a future issue that will hopefully save everyone the time and bother in the  
1061 future.

1062  
1063 Mr. Kirkland - Any other questions of Mr. Kranz? Anyone else wish to  
1064 speak? That concludes the case.

1065  
1066 Mr. Kranz - Can I say just one thing – I don't know if it's important or not?  
1067 I just noticed in the staff report, we have tried, specifically my wife has tried for many  
1068 weeks, and for many months in fact, to try and resize this house some way that it can fit  
1069 on the existing lot without having to go through what we're going through right now with  
1070 the variances, and the architect and the builder just really found it almost impossible,  
1071 very difficult to do so. So it's really a last choice that we have to ask for this variance.  
1072 We really did try to make it work with what was there, and just couldn't, and that 6 feet  
1073 seems to make all the difference in the world.

1074  
1075 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1076 Balfour, the Board **granted** your application **A-63-2001** for a variance build a single-  
1077 family home at 517 Portwest Court (Weston Hills) (Tax Parcel 99-18-A-16). The Board  
1078 granted the variance subject to the following condition:

- 1079  
1080 1. Only the improvements shown on the plan filed with the application may be  
1081 constructed pursuant to this approval. No substantial changes or additions  
1082 to the layout may be made without the approval of the Board of Zoning  
1083 Appeals. Any additional improvements shall comply with the applicable  
1084 regulations of the County Code.



1085  
 1086 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
 1087 Negative: 0  
 1088 Absent: 0

1089  
 1090 The Board granted this request, as it found from the evidence presented that, due to the  
 1091 unique circumstances of the subject property, strict application of the County Code  
 1092 would produce undue hardship not generally shared by other properties in the area, and  
 1093 authorizing this variance will neither cause a substantial detriment to adjacent property  
 1094 nor materially impair the purpose of the zoning regulations.

1095  
 1096 Mr. Kirkland - Next case, sir.

1097  
 1098 **A - 64-2001** **CARL E. WALKER, SR.** requests a variance from Section 24-  
 1099 95(c)(4) of Chapter 24 of the County Code to build a covered front  
 1100 porch at 7813 Dalmain Drive (Woodland Hills) (Tax Parcel 72-4-A-  
 1101 16), zoned R-4, One-family Residence District (Brookland). The  
 1102 front yard setback is not met. The applicant has 32.67 feet front  
 1103 yard setback, where the Code requires 35.00 feet front yard  
 1104 setback. The applicant requests a variance of 2.33 feet front yard  
 1105 setback.

1106  
 1107 Mr. Kirkland - Mr. Walker, would you raise your right hand and be sworn in.  
 1108 Anyone else who wishes to speak on this case?

1109  
 1110 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
 1111 truth, the whole truth, and nothing but the truth, so help you God?

1112  
 1113 Mr. Kirkland - State your name for the record. Have all your notices been  
 1114 turned in according to the County Code? We have them in the file. Okay, if you would,  
 1115 state your case.

1116  
 1117 Mr. Walker - Carl Walker, Sr. Yes sir. You don't have my picture up  
 1118 there. Should I put – okay. I bought this house in 1986, and it had this front porch on it  
 1119 then. This porch is getting in a bad state of repair. It needs to be taken down and  
 1120 another one put up in its place. While doing that, I would like to make it wider and cover  
 1121 my front door. I found out that I'm 2.66 feet out of regulation on my setback, so that's  
 1122 why I'm here today, to get a variance to put the porch back the same way, only just to  
 1123 make it wider just to cover my door.

1124  
 1125 Mr. Wright- Mr. Secretary, I take it when this house was built, that it did  
 1126 not violate the zoning ordinance at that time?

1127  
 1128 Mr. Blankinship - That's right.

1129  
 1130 Mr. Walker - The zoning ordinance was changed to cause it to violate.

1131  
1132 Mr. Blankinship - That's right.  
1133  
1134 Mr. Kirkland - Mr. Walker, you'll use the same finish material, the vinyl  
1135 siding and everything on this, just enlarging the A basically, moving it over and making it  
1136 bigger?  
1137  
1138 Mr. Walker - Right sir.  
1139  
1140 Mr. McKinney- Mr. Walker, how are you going to handle the roof on the new  
1141 addition if it's granted?  
1142  
1143 Mr. Walker - I want to bring it higher on the roof of the house and keep the  
1144 same pitch that's on it now.  
1145  
1146 Mr. McKinney- What's above this porch? Is it going to be used for anything?  
1147 Through the attic?  
1148  
1149 Mr. Walker - No. There will just be an opening in the attic for ventilation.  
1150  
1151 Mr. Kirkland - Any other questions of Mr. Walker? Anyone else wish to  
1152 speak on this case? If not, sir, that concludes your case.  
1153  
1154 Mr. Walker - I would like to add one thing if I could  
1155  
1156 Mr. Kirkland - Everybody wants to add one thing.  
1157  
1158 Mr. Walker - I thought you might have asked me. Since I've lived there,  
1159 I've had to put up 2 different storm doors because the weather gets to them with no  
1160 shelter over them, and that's one of the reasons that I want to cover my whole porch.  
1161 That's all I have. Do I need to stay, or will I be notified?  
1162  
1163 Mr. Kirkland - You can call the Planning Office probably after 2:00 o'clock,  
1164 Mr. Blankinship?  
1165  
1166 Mr. Blankinship - We'll send you a letter, but it won't be until Monday.  
1167  
1168 Mr. Kirkland- You won't send one Monday because it's Memorial Day  
1169 weekend.  
1170  
1171 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
1172 Nunnally, the Board **granted** your application **A-64-2001** for a variance build a covered  
1173 front porch at 7813 Dalmain Drive (Woodland Hills) (Tax Parcel 72-4-A-16). The Board  
1174 granted the variance subject to the following condition:  
1175

1176 1. Only the improvements shown on the plan filed with the application may be  
1177 constructed pursuant to this approval. No substantial changes or additions  
1178 to the layout may be made without the approval of the Board of Zoning  
1179 Appeals. Any additional improvements shall comply with the applicable  
1180 regulations of the County Code.

1181  
1182 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1183 Negative: 0  
1184 Absent: 0  
1185

1186 The Board granted this request, as it found from the evidence presented that, due to the  
1187 unique circumstances of the subject property, strict application of the County Code  
1188 would produce undue hardship not generally shared by other properties in the area, and  
1189 authorizing this variance will neither cause a substantial detriment to adjacent property  
1190 nor materially impair the purpose of the zoning regulations.

1191  
1192 Mr. Kirkland - Next case sir.

1193  
1194 **A - 65-2001** **ELLOWEES S. HINTON** requests a variance from Section 24-  
1195 95(c)(2) of Chapter 24 of the County Code to enclose an existing  
1196 porch at 2218 Holly Street (Central Gardens) (Tax Parcel 139-8-M-  
1197 13), zoned R-4, One-family Residence District (Fairfield). The rear  
1198 yard setback is not met. The applicant has 19 feet rear yard  
1199 setback, where the Code requires 25 feet rear yard setback. The  
1200 applicant requests a variance of 6 feet rear yard setback.

1201  
1202 Mr. Kirkland - Anyone else wish to speak on this case? Would you raise  
1203 your right hand and be sworn in again.

1204  
1205 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1206 truth, the whole truth, and nothing but the truth, so help you God?

1207  
1208 Mr. Kirkland - State your name for the record. Have all the notices been  
1209 turned in? We have them in the file. State your case.

1210  
1211 Mr. Rogge - Drewes Rogge. Yes they have. I think that you have before  
1212 you a Board of Zoning Appeals case report on this. Mrs. Hinton wishes to enclose or  
1213 just replace a covered porch that she has there, leaving the same structure, the same  
1214 roof. At one time the Code permitted, according to this, covered porches as allowable  
1215 projection into required yards, and it's since been amended to disallow this.  
1216 Consequently, to enclose the existing structure, a variance request must be approved.  
1217 Because the porch is an existing enclosure, it should have little impact on the adjacent  
1218 properties. I do have pictures, if you do not, of what's up there. As it is now, it's an  
1219 enclosed structure with an awning, and what we propose to do is simply remove the  
1220 awning all the way around there and enclose it with glass and screens so that she can  
1221 use the room more efficiently.

1222  
1223 Mr. Blankinship - Is it screened now?  
1224  
1225 Mr. Rogge - It is screened now, yes.  
1226  
1227 Mr. Wright- You're going to replace the screen with something more  
1228 substantial?  
1229  
1230 Mr. Rogge - Yes, with screen and glass, so that it can be enclosed so that  
1231 she can use it all year.  
1232  
1233 Mr. Wright- What is that fenced in area? Is that a dog pen?  
1234  
1235 Mr. Rogge - Yes it is.  
1236  
1237 Mr. Wright- The dog must be able to jump high.  
1238  
1239 Mr. Rogge - It's a big dog. Trust me, I know.  
1240  
1241 Mr. Blankinship - Would this still have the shed roof that it has now?  
1242  
1243 Mr. Rogge - Yes it would. We're not changing any structure or any  
1244 appearance of the structure whatsoever except enclosing it with glass.  
1245  
1246 Mr. Kirkland - Any other questions by Board members? Anyone else wish  
1247 to speak? That concludes the case.  
1248  
1249 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
1250 Wright, the Board **granted** your application **A-65-2001** for a variance enclose an  
1251 existing porch at 2218 Holly Street (Central Gardens) (Tax Parcel 139-8-M-13). The  
1252 Board granted the variance subject to the following condition:  
1253  
1254 1. Only the improvements shown on the plan filed with the application may be  
1255 constructed pursuant to this approval. No substantial changes or additions  
1256 to the layout may be made without the approval of the Board of Zoning  
1257 Appeals. Any additional improvements shall comply with the applicable  
1258 regulations of the County Code.  
1259  
1260 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1261 Negative: 0  
1262 Absent: 0  
1263  
1264 The Board granted this request, as it found from the evidence presented that, due to the  
1265 unique circumstances of the subject property, strict application of the County Code  
1266 would produce undue hardship not generally shared by other properties in the area, and

1267 authorizing this variance will neither cause a substantial detriment to adjacent property  
1268 nor materially impair the purpose of the zoning regulations.

1269  
1270 Mr. Kirkland - Next case sir.

1271  
1272 **A - 66-2001** **JAMES E. CAMPANA** requests a variance from Section 24-95(i)(2)  
1273 of Chapter 24 of the County Code to build a detached garage at  
1274 4125 Mountain Road (Tax Parcel 21-A-25D), zoned A-1,  
1275 Agricultural District (Brookland). The accessory structure location  
1276 requirement is not met. The applicant wishes to locate a detached  
1277 garage in the front yard, where the Code allows accessory  
1278 structures in the rear yard.

1279  
1280 Mr. Kirkland - Is the applicant here? Does anyone else wish to speak on  
1281 this case? If you would, sir, raise your right hand and be sworn in.

1282  
1283 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1284 truth, the whole truth, and nothing but the truth, so help you God?

1285  
1286 Mr. Kirkland - Would you state your name for the record? Have all  
1287 your notices been turned in? Okay, we have them in the file. State your case.

1288  
1289 Mr. Campana - James E. Campana. We're requesting a variance to build an  
1290 accessory garage. We have a flag lot and though the location of a detached garage is  
1291 technically in the front yard of the house, the house is located a quarter of a mile back  
1292 from Mountain Road. It is well hidden from adjacent homes and if any homes are built  
1293 on adjacent property in the future, they also would be unable to see this structure. The  
1294 site's well buffered by dense trees. We're currently constructing a house on the  
1295 property, and the design calls for a courtyard at the entrance of the house, created by  
1296 the house and this detached garage. We've looked at other possible sites on the  
1297 property; however, because of the topography of the land and because there's a creek  
1298 that flows right by, almost cuts the property in half, it's difficult to find another site for a  
1299 detached garage that would be convenient to the house. In fact one of the creeks  
1300 passes within about 30 feet of the house, and the land drops down to the creek, making  
1301 the construction of a driveway either nearly impossible or quite expensive. Any other  
1302 possible garage sites on that land would also be forward of the front house line. And so  
1303 it certainly limits the use of the property. I believe that the granting of this variance will  
1304 have virtually no impact on the adjacent and surrounding property owners, as they won't  
1305 be able to see the garage or even the house for that matter because of the dense  
1306 woods between the house and Mountain Road and the location of the adjacent homes.  
1307 I respectfully ask the Board to approve this variance.

1308  
1309 Mr. Wright- Mr. Secretary, the fact that this is a flag lot eliminates the  
1310 need for a variance from the building line?

1311  
1312 Mr. Blankinship - Yes sir. It was a flag lot approved before 1987.

1313  
1314 Mr. Wright- Is there any possibility, sir, of attaching this to the house in  
1315 any way?  
1316  
1317 Mr. Campana - We looked at that and there isn't much side yard on the side  
1318 where the garage is to the adjacent property owner, to allow for much of a porch or  
1319 anything there. I'm not sure what the side yard setback needs to be.  
1320  
1321 Mr. Wright- I didn't mean that, but I mean at its present location couldn't  
1322 you have a public walkway or something, that's what you had in mind, isn't it?  
1323  
1324 Mr. Blankinship - A breezeway, yes.  
1325  
1326 Mr. Wright- A breezeway or something like that?  
1327  
1328 Mr. Campana - Well again I don't know if – it probably would almost have to  
1329 be at the side of the garage, and then I'm not sure what the side property line has to be,  
1330 how many feet.  
1331  
1332 Mr. Blankinship - Twenty.  
1333  
1334 Mr. Campana - I think with the design of the house, that might look awkward.  
1335  
1336 Mr. Kirkland - How many square feet is this house?  
1337  
1338 Mr. Campana - It's about 4400 square feet.  
1339  
1340 Mr. Wright- So you're going to have a parking area between the garage  
1341 and the house, is that right?  
1342  
1343 Mr. Campana - Yes.  
1344  
1345 Mr. Blankinship - What is the space, if you don't mind my asking Mr.  
1346 Chairman, directly across the parking area from the detached garage? It almost looks  
1347 like an attached garage.  
1348  
1349 Mr. Campana - That's an attached garage.  
1350  
1351 Mr. Blankinship - It is. Okay.  
1352  
1353 Mr. Kirkland - So he's got 2 garages? Any other questions? Anyone else  
1354 wish to speak? Anything you'd like to add? That concludes the case.  
1355  
1356 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
1357 Wright, the Board **granted** your application **A-66-2001** for a variance to build a

1358 detached garage at 4125 Mountain Road (Tax Parcel 21-A-25D). The Board granted  
1359 the variance subject to the following condition:

1360  
1361 1. This approval is only for the location of the detached garage in the front  
1362 yard. No substantial changes or additions to the layout of the detached  
1363 garage may be made without the approval of the Board of Zoning Appeals.  
1364 Any additional improvements shall comply with the applicable regulations of  
1365 the County Code.

1366  
1367 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1368 Negative: 0  
1369 Absent: 0

1370  
1371 The Board granted this request, as it found from the evidence presented that, due to the  
1372 unique circumstances of the subject property, strict application of the County Code  
1373 would produce undue hardship not generally shared by other properties in the area, and  
1374 authorizing this variance will neither cause a substantial detriment to adjacent property  
1375 nor materially impair the purpose of the zoning regulations.

1376  
1377 Mr. Kirkland - Next case.

1378  
1379 **A - 67-2001 JACK AND KAREN KASPRZAK** request a variance from Section  
1380 24-94 of Chapter 24 of the County Code to build a screened porch  
1381 and deck at 12425 Summer Creek Court (Summer Creek at  
1382 Millstone) (Tax Parcel 4-24-D-39), zoned R-3C, One-family  
1383 Residence District (Conditional) (Three Chopt). The rear yard  
1384 setback is not met. The applicants have 31 feet rear yard setback,  
1385 where the Code requires 40 feet rear yard setback. The applicants  
1386 request a variance of 9 feet rear yard setback.

1387  
1388 Mr. Kirkland - Is the applicant here? Okay, come forward. Anyone else  
1389 wish to speak? If you would, raise your right hand and be sworn in.

1390  
1391 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1392 truth, the whole truth, and nothing but the truth, so help you God?

1393  
1394 Mr. Kirkland - Would you state your name for the record. We have the  
1395 notices in the file. Okay, proceed with the case.

1396  
1397 Ms. Kasprzak - I do. Karen Kasprzak. We're requesting a variance to  
1398 screen our existing 12 by 18 deck in the rear of our home. I think in the application I  
1399 talked about the deck as well. I've since then realized that that's not under scrutiny  
1400 because that's not in violation, so we're going to screen the existing deck and then add  
1401 a new deck, going no farther back, but next to it, so that part evidently isn't really  
1402 relevant anymore. We didn't really know we needed a variance until our contractor  
1403 applied for the building permit, and didn't realize we didn't have the rear setback. And

1404 this probably isn't that relevant, but we built the house 3 1/2 years ago, and my husband  
1405 and I stood there with the builder, talking about whether, he's saying, "do you want to  
1406 screen it or not," and at that time it was just cost prohibitive, and we decided not to.  
1407 Incidentally, the builder's bankrupt now, so I don't know if that's relevant. Anyway,  
1408 we're requesting the variance. We face due west; it's hot. The picture you're looking at  
1409 now, our deck is in the forefront, and then that's our neighbor's behind us. We do have  
1410 the fence, we've planted some trees, but it still doesn't provide ample shade. We,  
1411 again, face due west. Small children, it's hot. That's our house right there.

1412  
1413 Mr. Wright- Ms. Kasprzak, it looks like you're located on a cul de sac.

1414  
1415 Ms. Kasprzak - We are, we're in the piece of pie at the end. It's a wide back  
1416 yard, just not very deep at all.

1417  
1418 Mr. Wright- And the fact that you're on the cul de sac requires the house  
1419 to be set back further and causes you to have less back yard.

1420  
1421 Ms. Kasprzak - Right, we have ample-sized front yard.

1422  
1423 Mr. Wright- This is to be a one-story screened in porch?

1424  
1425 Mr. Kirkland - Any other questions? Anyone else wish to speak? Anything  
1426 you'd like to add? That concludes the case.

1427  
1428 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
1429 Balfour, the Board **granted** application **A-67-2001** for a variance build a screened porch  
1430 and deck at 12425 Summer Creek Court (Summer Creek at Millstone) (Tax Parcel 4-24-  
1431 D-39). The Board granted the variance subject to the following condition:

- 1432  
1433 1. Only the improvements shown on the plan filed with the application may be  
1434 constructed pursuant to this approval. No substantial changes or additions  
1435 to the layout may be made without the approval of the Board of Zoning  
1436 Appeals. Any additional improvements shall comply with the applicable  
1437 regulations of the County Code.

1438  
1439 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1440 Negative: 0  
1441 Absent: 0

1442  
1443 The Board granted this request, as it found from the evidence presented that, due to the  
1444 unique circumstances of the subject property, strict application of the County Code  
1445 would produce undue hardship not generally shared by other properties in the area, and  
1446 authorizing this variance will neither cause a substantial detriment to adjacent property  
1447 nor materially impair the purpose of the zoning regulations.

1448  
1449 Mr. Kirkland - Next one sir.



1450  
1451 **A - 68-2001**                    **DANIEL L. ATKINSON** requests a variance from Section 24-9 of  
1452 Chapter 24 of the County Code to build a single-family home at 325  
1453 North Linden Avenue (Greendale Park) (Tax Parcel 143-2-B-227),  
1454 zoned R-3, One-family Residence District (Varina). The public street  
1455 frontage requirement is not met. The applicant has 0 feet public  
1456 street frontage, where the Code requires 50 feet public street  
1457 frontage. The applicant requests a variance of 50 feet public street  
1458 frontage.

1459  
1460 Mr. Kirkland -                    Applicant here?  
1461  
1462 Mr. Atkinson -                    Yes, I'm here, right here.  
1463  
1464 Mr. Kirkland -                    Anyone else wish to speak? Would you raise your right hand  
1465 and be sworn in.  
1466  
1467 Mr. Blankinship -                Do you swear that the testimony you are about to give is the  
1468 truth, the whole truth, and nothing but the truth, so help you God?  
1469  
1470 Mr. Kirkland -                    Have all your notices been turned in? We have them in the  
1471 file. State your case.  
1472  
1473 Mr. Atkinson -                    Yes. Yes. My name is Daniel Atkinson. The property has  
1474 been in my family probably since the '20's, so my grandparents originally lived in the  
1475 middle of that 2 ½ acres you see right there, in a house that was build in about the  
1476 1890's that was removed last year. I'm going to put another house in a similar position.  
1477 You can see the old circular driveway right there; that's what's left of the remnants of  
1478 that house right there. We're getting ready to clean that up. I plan on building a house  
1479 that's not in the exact foundation, but similar, using the slope of that property. Linden  
1480 Avenue comes down and then ends right at the driveway to that property. The way we  
1481 split the property off was, the driveway coming up to that access to the property is now  
1482 right-of-way, so really the street runs right into that, so I have 50 feet of right-of-way the  
1483 length of my property there. That's using the old driveway, and if you look back on the  
1484 plot, you can see where I've already got a septic area approved from the County. That  
1485 was the biggest problem in property in that area of Highland Springs, finding soil that will  
1486 perk. It says on the variance that I have 0 road frontage.  
1487  
1488 Mr. Blankinship -                Public. On the public street. You don't actually front to the  
1489 public street.  
1490  
1491 Mr. Atkinson -                    Okay. Because the corner, I don't know. I guess Linden's  
1492 not public, I'm not sure.  
1493  
1494 Mr. Blankinship -                The public portion ends just before your lot begins.  
1495

1496 Mr. Atkinson - Okay.

1497  
1498 Mr. Wright- Mr. Atkinson, have you read the suggested conditions that  
1499 are proposed for this case? You're in accord with those?

1500  
1501 Mr. Atkinson - Yes. Yes. No problem. And I don't think I have anything to  
1502 add.

1503  
1504 Mr. Kirkland - Anyone else wish to speak? Okay, sir, that concludes the  
1505 case.

1506  
1507 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1508 Wright, the Board **granted** your application **A-68-2001** for a variance to build a single-  
1509 family home at 325 North Linden Avenue (Greendale Park) (Tax Parcel 143-2-B-227).  
1510 The Board granted the variance subject to the following conditions:

1511  
1512 1. This variance applies only to the public street frontage requirement. All other  
1513 applicable regulations of the County Code shall remain in force.

1514  
1515 2. At the time of building permit application, the applicant shall submit the  
1516 necessary information to the Department of Public Works to ensure compliance with the  
1517 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
1518 water quality standards.

1519  
1520 3. Approval of this request does not imply that a building permit will be issued.  
1521 Building permit approval is contingent on Health Department requirements, including,  
1522 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
1523 of a well location.

1524  
1525 4. The applicant shall present proof with the building permit application that a legal  
1526 access to the property has been obtained.

1527  
1528 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
1529 Negative: 0  
1530 Absent: 0

1531  
1532 The Board granted this request, as it found from the evidence presented that, due to the  
1533 unique circumstances of the subject property, strict application of the County Code  
1534 would produce undue hardship not generally shared by other properties in the area, and  
1535 authorizing this variance will neither cause a substantial detriment to adjacent property  
1536 nor materially impair the purpose of the zoning regulations.

1537  
1538 Mr. Kirkland - Next one sir.

1539  
1540 **UP- 14-2001** **SIBYL P. SMITH** requests a conditional use permit pursuant to  
1541 Section 24-12(e) of Chapter 24 of the County Code to board five

1542 dogs at 4801 Jan Road (Lawndale Farms) (Tax Parcel 162-3-M-9),  
1543 zoned R-4, One-family Residence District (Varina).  
1544  
1545 Mr. Kirkland - Anyone else wish to speak on this case? If you would, come  
1546 on down and be sworn in.  
1547  
1548 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1549 truth, the whole truth, and nothing but the truth, so help you God?  
1550  
1551 Ms. Smith - I do.  
1552  
1553 Mr. Kirkland - Would you state your name for the record. Have all your  
1554 notices been turned in? We have them in the file, Proceed with your case.  
1555  
1556 Ms. Smith - My name is Donna Smith. Yes sir. We would like to request  
1557 a conditional use permit to be able to keep 5 dogs on our property.  
1558  
1559 Mr. Kirkland- What kind of dogs are they?  
1560  
1561 Mr. Smith - They're mixed. The father is a lab, and the mother is a pit  
1562 bull. So they're the puppies.  
1563  
1564 Mr. Wright- How long have you had these dogs? We've had the male for  
1565 10 years, going on 11 years, and the pit bull for about 2. We've had the puppies for 8  
1566 months.  
1567  
1568 Mr. Wright- Three puppies, is it? And you want to keep those puppies,  
1569 till when?  
1570  
1571 Ms. Smith - Yes sir. Yes sir. Till whenever. The male dog, I don't  
1572 believe he's going to be around much longer; he's getting pretty old. He's almost 11.  
1573  
1574 Mr. Nunnally- All these dogs belong to you, Ms. Smith? All of them stay at  
1575 your house? Owners are family members? They're right good sized dogs, aren't they?  
1576  
1577 Ms. Smith - My husband and I. Medium size.  
1578  
1579 Mr. Nunnally Those are the puppies, aren't they? How many pit bulls have  
1580 you got there?  
1581  
1582 Ms. Smith - Just one. She's the mother of the puppies?  
1583  
1584 Mr. McKinney- The puppies are mixed breed, they're not pit bull.  
1585  
1586 Ms. Smith - No, they're mixed, mixed lab and pit.  
1587

1588 Mr. Wright- What's located to the rear of your property?  
1589  
1590 Mr. Smith - Lawndale Farms. Apartments.  
1591  
1592 Mr. Wright- It appears from this picture to be some screening between  
1593 your property and the apartments.  
1594  
1595 Mr. Smith - There's 7 or 8 feet of woods there, in between the  
1596 apartments and us.  
1597  
1598 Mr. Wright- Your yard is completely fenced in where the dogs would be?  
1599 They're not allowed to get out?  
1600  
1601 Ms. Smith - No, they never leave the yard  
1602  
1603 Mr. Wright- Where do they stay at nighttime?  
1604  
1605 Ms. Smith - They stay in the house with us at night  
1606  
1607 Mr. Smith - They're just like our babies.  
1608  
1609 Mr. McKinney- Have they ever gotten out, Ms. Smith?  
1610  
1611 Ms. Smith - No sir. The only time they go out is to go to the vet.  
1612  
1613 Mr. Wright- Where do they stay in the daytime?  
1614  
1615 Ms. Smith - I'm home with them all the time, so I let them out early in the  
1616 morning and then around 11:30, and in the afternoon I'll let them in, and they'll take a  
1617 little nap, and then stay until about 4 or 5, and then I'll let them back out for a little while,  
1618 and then it's back in to bed.  
1619  
1620 Mr. Wright- So you're not working, you're there all the time?  
1621  
1622 Mr. Nunnally- What is that right in the middle of your back yard? Isn't that a  
1623 pen or something.  
1624  
1625 Ms. Smith - Yes, it's a dog pen.  
1626  
1627 Mr. Nunnally- You don't keep them in there at all?  
1628  
1629 Ms. Smith - Every once in a while we keep them in there, not all the time.  
1630  
1631 Mr. McKinney- That's called "solitary."  
1632  
1633 Ms. Smith - Doggie jail.

1634  
1635 Mr. Balfour- You've read the conditions that were attached.  
1636  
1637 Mr. Smith - Yes.  
1638  
1639 Mr. Kirkland- How old are the dogs again?  
1640  
1641 Ms. Smith - The father is almost 11; the mother is 2, 2 ½, and the  
1642 puppies just turned 8 months.  
1643  
1644 Mr. Kirkland - Four of them are going to be around a while.  
1645  
1646 Mr. Wright- Do you plan to breed any more dogs?  
1647  
1648 Ms. Smith - No sir. We didn't plan for these to happen; this was an  
1649 accident.  
1650  
1651 Mr. McKinney- Have they been neutered and spayed?  
1652  
1653 Ms. Smith - The 2 males already have; I'm in the process of having the  
1654 females done this month.  
1655  
1656 Mr. Kirkland - Mr. Secretary, any complaints?  
1657  
1658 Mr. Blankinship - Not that I'm aware of.  
1659  
1660 Mr. Kirkland- Did this come to us as a complaint?  
1661  
1662 Mr. Blankinship - I'm not sure.  
1663  
1664 Mr. Kirkland - Anyone opposed to this? Anyone else wish to speak?  
1665 Anything you'd like to add? That concludes the case.  
1666  
1667 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
1668 Wright, the Board **granted** your application **UP-14-2001** for a conditional use permit to  
1669 board five dogs at 4801 Jan Road (Lawndale Farms) (Tax Parcel 162-3-M-9). The  
1670 Board granted the use permit subject to the following condition:  
1671  
1672 1. This approval is only for the five dogs owned by the property owner and family  
1673 members. The approval is not for the boarding or breeding of dogs at any time.  
1674  
1675 2. No new or replacement animals may be added, so that the number of animals  
1676 will be reduced by natural means to the 3 animal limit allowed in a residential district.  
1677  
1678 3. The applicant must maintain the property so that odors are controlled.  
1679

1680 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
 1681 Negative: 0  
 1682 Absent: 0

1683  
 1684 The Board granted the request because it found the proposed use will be in substantial  
 1685 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
 1686

1687 Mr. Kirkland - Last case on the 9:00 o'clock agenda is coming up. Would  
 1688 you please call that.

1689  
 1690 Mr. Blankinship - **A-69-2001** has been **withdrawn**.

1691  
 1692 **UP- 15-2001** **C. EDWIN WEEKS** requests a temporary conditional use permit  
 1693 pursuant to Section 24-116(c)(1) of Chapter 24 of the County Code  
 1694 to locate a portable retail building at 2314 Hungary Road (Tax  
 1695 Parcel 51-A-66), zoned B-2C, Business District (Conditional)  
 1696 (Brookland).  
 1697

1698 Mr. Blankinship - He brought some new exhibits this morning, which I'll hand  
 1699 out to you. Mr. Weeks, have you seen the letter of opposition?

1700  
 1701 Mr. Weeks - No I haven't. You told me there was one.

1702  
 1703 Mr. Kirkland - I haven't seen that. Okay, anyone else wish to speak on this  
 1704 case? Everybody stand up and raise their hands and be sworn in.

1705  
 1706 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
 1707 truth, the whole truth, and nothing but the truth, so help you God?

1708  
 1709 Mr. Kirkland - Okay, would you state your name for the record sir. Have all  
 1710 your notices been turned in according to County Code? We have them in the file. State  
 1711 your case.

1712  
 1713 Mr. Weeks - I do. I'm Eddie Weeks. Yes sir. I propose to put a portable  
 1714 retail building in Laurel Park Shopping Center, to sell shaved ice drinks. It would be one  
 1715 product, shaved ice with syrup poured on top of them. There are 2 similar retail  
 1716 businesses in Hanover County, one at the Hanover County Industrial Air Park, and one  
 1717 in downtown Mechanicsville. I'm applying for a conditional use permit for 2 years to  
 1718 place my building in Laurel Park Shopping Center.

1719  
 1720 Mr. Wright- What would happen after the 2-year period?

1721  
 1722 Mr. Weeks - I would be required to put the building on a foundation to  
 1723 become a permanent structure.

1724  
 1725 Mr. Wright- Is that what you intend to do? Do you intend to do it before

1726 the end of the 2-year period? I wonder why you don't do it at the outset, that was my  
1727 question.  
1728  
1729 Mr. Weeks - Yes sir. I could do it. I just want to try the business, to see if  
1730 it would work?  
1731  
1732 Mr. Wright- So you're going to do this as a trial balloon sort of thing?  
1733  
1734 Mr. Weeks - I've watched the shaved ice business in downtown  
1735 Mechanicsville Shopping Center. It's been in business for about 5 or 6 years, and it's  
1736 very profitable.  
1737  
1738 Mr. Wright- I mean the reason you don't want to make it permanent now  
1739 is, you want to try it before you go into the expense of making it permanent?  
1740  
1741 Mr. Weeks - Yes sir, but I do want to make it permanent.  
1742  
1743 Mr. Wright- Where will you put it if you make it permanent? It would  
1744 have to be part of the shopping center, wouldn't it?  
1745  
1746 Mr. Weeks - I would put it, if you look on the plot, UP-15-2001, it would be  
1747 in the shopping center, under one of the parking lights in the parking lot there.  
1748  
1749 Mr. Blankinship - That's for the temporary location. Would the permanent  
1750 location, would you try to put it in the same place?  
1751  
1752 Mr. Weeks - I would try to, yes.  
1753  
1754 Mr. Wright- It would be in the shopping center?  
1755  
1756 Mr. Weeks - The idea behind these portable shaved ice stands – they  
1757 have not been introduced in Virginia that much, is to be in the parking lot, visible, not  
1758 part of the structure of the shopping center.  
1759  
1760 Mr. Wright- Would this be permitted if he made it a permanent thing?  
1761  
1762 Mr. Blankinship - I think so. There's plenty of parking there. I'm not sure how  
1763 he'd lease it, but that's not our concern.  
1764  
1765 Mr. Weeks - I met with the Henrico County Health Department. They  
1766 have a stipulation that I have running water from a sink and wastewater from a sink.  
1767  
1768 Mr. Wright- You would have that?  
1769  
1770 Mr. Weeks - That's the County stipulation, but the 2 shaved ice  
1771 businesses in Hanover County have appealed to the State Department of Health, and

1772 they have been granted permission to operate portable shaved ice businesses by the  
1773 Board of Health, based on certain stipulations. They're governed by the Hanover  
1774 County Health Department. I'm proposing to go to the State Health Department and try  
1775 to get permission from the State Health Department, as did the 2 shaved ice businesses  
1776 in Hanover, that they did, and they have been granted permission.

1777  
1778 Mr. Wright- There is a condition if this is approved, that you comply with  
1779 the requirements of the Virginia Department of Health, so whatever they require, you  
1780 would have to do.

1781  
1782 Mr. Weeks - The local health department says I've got to have waste  
1783 water and running water from a sink, not from a restroom, but from a sink.

1784  
1785 Mr. Kirkland - What are you going to do about a restroom, for the poor  
1786 person that sits in that little shed all day?

1787  
1788 Mr. Weeks - I've met with the Building Inspection and Construction in  
1789 Henrico County. The only thing that I have to be compliant with, is that I have to have  
1790 permission from one of the real estate people in Laurel Park Shopping Center, to use  
1791 their restrooms, just a letter on file.

1792  
1793 Mr. McKinney- Within 300 feet.

1794  
1795 Mr. Weeks - Yes sir. I would be in compliance.

1796  
1797 Mr. Kirkland - Shut up the shop, person goes to the bathroom, comes back.  
1798 Wintertime, what happens in the winter?

1799  
1800 Mr. Weeks - It would be a seasonal business, from May through first part  
1801 of September.

1802  
1803 Mr. Kirkland - And you would maintain it during the winter if it got in  
1804 disrepair, paint it, or whatever?

1805  
1806 Mr. Weeks - Yes I would.

1807  
1808 Mr. Wright- It's not going to be operated during the wintertime?

1809  
1810 Mr. Weeks - No sir it will not. That's maybe 4 ½ months out of the year.

1811  
1812 Mr. Blankinship - Will it remain on the site during the winter?

1813  
1814 Mr. Weeks - It would, if the County lets me. Architecturally being  
1815 compliant with the existing structures at Laurel Park Shopping Center.

1816  
1817 Mr. McKinney- Mr. Weeks, don't they have these little trucks that have this



1818 type of facility in the truck, like they do the sandwich trucks and so forth.  
1819  
1820 Mr. Weeks - Snow Shack, who's the franchiser, can give you a building  
1821 within truck. I haven't pursued that route.  
1822  
1823 Mr. McKinney- Mr. Secretary, if he had a truck that was licensed, how would  
1824 he park there during business hours?  
1825  
1826 Mr. Blankinship - I would think we would treat that as a peddler, which is  
1827 handled under a separate section of the County Code. I'm not intimately familiar with  
1828 those requirements, but I know there is a requirement to move every 30 minutes.  
1829  
1830 Mr. McKinney- Dominique's doesn't move.  
1831  
1832 Mr. Blankinship - That's not a vehicle; that's a building.  
1833  
1834 Mr. McKinney- It's on wheels; it's a trailer.  
1835  
1836 Mr. Blankinship - Not any more. The ones at Lowe's are actually connected to  
1837 water and sewer. That's not a vehicle. It's a portable building.  
1838  
1839 Mr. McKinney- I know they're connected to water and sewer.  
1840  
1841 Mr. Weeks - Ron Brady, from the Henrico County Health Department,  
1842 said I would have to have waste water and running water coming into a sink, but not  
1843 restrooms. Unless I get a variance from the State Department of Health.  
1844  
1845 Mr. Balfour- You be operating the same hours as the tenants in the  
1846 shopping center?  
1847  
1848 Mr. Weeks - No sir. I'd be operating during the week, from 3 to 9 o'clock  
1849 at night.  
1850  
1851 Mr. Balfour- What time does the shopping center close at night?  
1852  
1853 Mr. Weeks - I don't know sir. And then on weekends I'd be open from 12  
1854 o'clock till 9 o'clock.  
1855  
1856 Mr. Balfour- Is there a border from the back of your building to these  
1857 people who are complaining, who live on the street behind the shopping center?  
1858  
1859 Mr. Weeks - Is there a what sir?  
1860  
1861 Mr. Balfour- Is there a fence or a border or anything on the property  
1862 between you and the residents who are complaining who live on Brandon Forest Court?  
1863

1864 Mr. Weeks - I think there's a line of trees maybe.  
1865  
1866 Mr. Balfour- Their complaint is that people sneak through their yards, and  
1867 this will just draw more attention to it if they can go over there and get a drink. There's  
1868 not a fence, is there?  
1869  
1870 Mr. Weeks - This business is a little like Brewsters at Staples Mill  
1871 Shopping Center; it will offer an affordable, non-alcoholic beverage to families, to kids.  
1872  
1873 Mr. McKinney- So you'd be leasing space from the shopping center?  
1874  
1875 Mr. Weeks - I would be leasing space from the shopping center. I've  
1876 called Dave Myers. He owns the shopping center. He's in Bethesda, Maryland. He  
1877 says these things are very popular in Baltimore and in Bethesda, Maryland. They're  
1878 very popular down in Florida, down in Louisiana. They just haven't hit Virginia yet.  
1879  
1880 Mr. Balfour- Are you going to operate it, or are you going to have  
1881 someone else operate it.  
1882  
1883 Mr. Weeks - Me, my wife, my 3 children, hired teenagers, 15 years of age  
1884 or older.  
1885  
1886 Mr. Kirkland- Mr. Blankinship, he said that he was going to appeal the  
1887 situation with the water running in and out. If we approve this, do we need to make a  
1888 stipulation in the case that he doesn't have to have the water and the sewer?  
1889  
1890 Mr. Blankinship - The condition that staff proposes, is just that they have to  
1891 comply with Health Department requirements,\

1892  
1893 Mr. Weeks - One of the Health Department requirements for Henrico  
1894 County is if I am compliant with the State Department of Agriculture and Human  
1895 Services, I will satisfy the local Health Department requirements.  
1896  
1897 Mr. Blankinship - So it's up to them to determine what's applicable.  
1898  
1899 Mr. Weeks - If I can go through the State Department of Consumer  
1900 Services and Agriculture and meet their requirements, the local health departments will  
1901 be satisfied.  
1902  
1903 Mr. Kirkland - There's been one of these in West Point for 5 years? And it  
1904 hasn't lost money, and they're still there 5 years later?  
1905  
1906 Mr. Blankinship - There's been one in the Fredericksburg area that does  
1907 shaved ice during the summer and cappuccino during the winter.  
1908  
1909 Mr. Weeks - The owner of the shopping center, Dave Myers, is very much

1910 in support of this.  
1911  
1912 Mr. McKinney- This building is already, this is a franchise, it's not a  
1913 franchise?  
1914  
1915 Mr. Weeks - No sir. I just buy my products from Snow Shack, and I can  
1916 use their name.  
1917  
1918 Mr. McKinney- How about the building? What's that to be constructed out  
1919 of?  
1920  
1921 Mr. Weeks - It's going to be a 10 by 20, 8 feet tall. I've got a picture of it;  
1922 it's in the handout that he gave you.  
1923  
1924 Mr. Kirkland- It's one of those portable shed things?  
1925  
1926 Mr. Weeks - It's going to be architecturally compliant to look like the  
1927 shopping center. It's going to have that sprayed on EIFS siding, turquoise trimming, the  
1928 windows will be dark brown to be in compliance with the existing shopping center. The  
1929 doorframes will be dark brown to be in compliance with the existing shopping center.  
1930  
1931 Mr. Kirkland - Any other questions, Mr. McKinney?  
1932  
1933 Mr. Weeks - I have a handout here, auto-cad drawing – it will look like  
1934 that, and I've got a picture of Laurel Park Shopping Center; it will be architecturally  
1935 compliant to look like the rest of the structures in Laurel Park Shopping Center.  
1936  
1937 Mr. Kirkland - Okay, we'll give you some time to rebut any problems this  
1938 gentleman might have. I assume you're opposed, correct? Okay, if you would come on  
1939 up. If you would, sir, state your name for the record.  
1940  
1941 Mr. Hasse - David Hasse, and it was my wife who sent the letter to you,  
1942 or to Mr. Blankinship.  
1943  
1944 Mr. Kirkland - What is your address?  
1945  
1946 Mr. Hasse - 2405 Brandon Forest Court.  
1947  
1948 Mr. Kirkland - Could you point that out to me on the map? Thank you.  
1949 Okay, what do you have to say?  
1950  
1951 Mr. Hasse - Well first of all, the main reasons that we do oppose it are  
1952 simply as stated in my wife's letter. We have enough walk-through traffic through our  
1953 back yard over to the shopping center already. Many times we've had children going  
1954 through, and they're throwing stones and dropping pieces of glass. We do have 2 very  
1955 small dogs. They are house dogs; however we do put them on their chains once in a

1956 while and leave them outside. We feel that that type of business is just going to bring  
1957 more children into the area, and they do have an open access straight through. The lot  
1958 directly behind us is open with no fence in between there. We do have a direct view  
1959 over to the shopping center parking lot. One thing I don't understand from what I  
1960 received, the neighbors on both sides of me, also on Brandon Forest Court, did not  
1961 receive a copy of this. At least one of them also has a view of that area. The one on  
1962 the right-hand side, I don't believe has a direct view of the shopping center parking lot  
1963 because of a small forest area that comes off of Woodman and extends in about 100 or  
1964 so feet.

1965  
1966 Mr. Kirkland - Mr. Blankinship, was everyone contacted adjacent? It's too  
1967 late now, we've heard the case. What is the person's name you're talking about.

1968  
1969 Mr. Blankinship - There's quite a stack of them here.

1970  
1971 Mr. Hasse - They're on either side of me – we only moved in recently. It's  
1972 Joel on the property right there, and Fred and his wife on the property there. It's Joel  
1973 and Amanda, and unfortunately I can't think of Fred's wife's name. I do a lot of traveling  
1974 myself; in fact I apologize for my appearance; I just returned from Tennessee last night.  
1975 Mine is 2405, and I should have looked before I came in, but they're immediately on  
1976 both sides of me.

1977  
1978 Mr. McKinney- 2403 and 2407.

1979  
1980 Mr. Kirkland - I assume since we have the notices that they've been  
1981 checked out.

1982  
1983 Mr. Hasse - They also do advise my wife that they agree with our  
1984 viewpoint, they don't want the additional walk-through traffic either. I do appreciate Mr.  
1985 Weeks' intention of trying to bring more business into the area. Unfortunately, I think it  
1986 will be detrimental to the area.

1987  
1988 Mr. Kirkland - Have you ever called the police with these children walking  
1989 through your yard?

1990  
1991 Mr. Hasse - No sir. I also have never seen them actually throwing rocks,  
1992 but unless these things are actually falling out of the sky, I'm finding big chunks of glass  
1993 and everything else every second time I do the lawn.

1994  
1995 Mr. Blankinship - Mr. Chairman, I see 2401, 2405, 2413 2425. I don't know  
1996 whether the house numbers there are consecutive or not.

1997  
1998 Mr. McKinney- Do you have a list? It's 2407 and 2403.

1999  
2000 Mr. Kirkland - Well on my street we miss about every sixth number.

2001

2002 Mr. Blankinship - 2429. You can see that those houses are not on every lot.  
2003 2421. 2417. 2409.  
2004  
2005 Mr. McKinney- That's a fairly new subdivision, so they should run in  
2006 succession.  
2007  
2008 Mr. Blankinship - A lot of times they will leave a number for a lot that hasn't  
2009 been built on yet.  
2010  
2011 Mr. Kirkland - It's on the drawing here, that they should be consecutive.  
2012  
2013 Mr. McKinney- It was built under 911 standards; it's only about 4-5 years  
2014 old.  
2015  
2016 Mr. Wright- Mr. Hasse, did you ever consider putting a fence around your  
2017 yard to keep people out?  
2018  
2019 Mr. Hasse - We are considering doing that; however because we just  
2020 moved in recently, we moved to the Richmond area in June of last year from the  
2021 Chicago area. We're trying to get a lot of things done; we still have to paint the house,  
2022 other things.  
2023  
2024 Mr. Wright- If you did that, that would eliminate the problem as far as  
2025 you're concerned.  
2026  
2027 Mr. Hasse - Yes it would; however, I don't know what height requirement  
2028 I'm allowed to go with, with a fence, and also I don't know how far back I can go with  
2029 that fence.  
2030  
2031 Mr. McKinney- Forty-two inches in the front yard and side yard, and 7 foot in  
2032 the rear yard.  
2033  
2034 Mr. Kirkland- Right. To the line.  
2035  
2036 Mr. Hasse - If I did that, that would still not stop them from the walk-  
2037 through traffic getting through from the adjacent yards.  
2038  
2039 Mr. Kirkland - You don't think they'll walk down Woodman Road and come  
2040 in that long road there?  
2041  
2042 Mr. Hasse - They do that as a shortcut, to go through our yards.  
2043  
2044 Mr. Wright- Where do these children come from? The houses that live  
2045 across the street and up the way?  
2046  
2047 Mr. Hasse - Across the street, and also up Woodman, and I don't know

2048 what the name of the street is after Forest Court.  
2049  
2050 Mr. Kirkland - We have all the notices.  
2051  
2052 Mr. Blankinship - We have certified receipts that they were mailed.  
2053  
2054 Mr. Hasse - I can only say that, when my wife talked to them, they said  
2055 they had not received it.  
2056  
2057 Mr. Kirkland - We have certified receipts. Any other questions? Anyone  
2058 else wish to speak? Mr. Weeks, would you like to rebut anything he might have said?  
2059  
2060 Mr. Weeks - Yes, I respect your concerns, Mr. Hasse, but I think kids are  
2061 going to be kids, and we were all kids at one time, and kids are going find shortcuts  
2062 between 2 points if they're going somewhere. I think my proposed shaved ice business  
2063 will, I went to downtown Mechanicsville one Saturday night about 2 weeks ago, and I  
2064 found 24 people in line to get these shaved ice drinks, so it does draw people into the  
2065 shopping center, and when they come into the shopping center, they will probably shop  
2066 at other retail outlets in the shopping center.  
2067  
2068 Mr. Kirkland - I heard you say it would be open about 4 1/2 months, is that  
2069 what you said? When are you going to start? Not this year, because I know you're in  
2070 the late season now, but when are you going to normally have your season.  
2071  
2072 Mr. Weeks - Yes. It'll be from May 1 through September 15 or September  
2073 1. I could get started this year if I'm in compliance with the Health Department and if I  
2074 get permission from the State Health Department, or if I find it cost feasible for water  
2075 hook-up for waste water and water coming in for the sink.  
2076  
2077 Mr. McKinney- Are these hours of operation from 3 to 9 pm?  
2078  
2079 Mr. Weeks - Monday through Friday it'll be from 3 to 9, and on weekends,  
2080 Saturday and Sunday, it'll be from 12 to 9. That's the normal operating hours for the  
2081 Snow Shack in Mechanicsville and for the shaved ice business at Hanover Industrial Air  
2082 Park.  
2083  
2084 Mr. Kirkland - You would adjust downward, not upward, if it were doing  
2085 well, in other words, it would stay at 9, it wouldn't go down to 8.  
2086  
2087 Mr. McKinney- We can make that a condition. You say Monday through  
2088 Thursday, what happens on Friday?  
2089  
2090 Mr. Blankinship - He changed it to Friday.  
2091  
2092 Mr. Weeks - Monday through Friday, 3 to 9 too.  
2093

2094 Mr. Kirkland - Any other questions? That concludes the case. We're going  
2095 to take a 5-minute short break here, 10 minutes.

2096  
2097 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Mr.  
2098 McKinney, the Board **granted** your application **UP-15-2001** for a variance to to locate a  
2099 portable retail building at 2314 Hungary Road (Tax Parcel 51-A-66). The Board granted  
2100 the variance subject to the following conditions:

2101  
2102 1. The property shall be developed in substantial conformance with the plan filed  
2103 with the application. No substantial changes or additions to the layout may be made  
2104 without the approval of the Board of Zoning Appeals.

2105  
2106 2. Any free-standing buildings constructed on the Property shall be substantially  
2107 similar in architectural treatment to the renovated shopping center on the Property.

2108  
2109 3. The applicant shall comply with all applicable requirements of the Virginia  
2110 Department of Health.

2111  
2112 4. The hours of operation shall be limited to 3:00 - 9:00 PM Monday through Friday  
2113 and 12:00 Noon - 9:00 PM Saturday and Sunday, May 1 - October 1.

2114  
2115 5. This permit shall expire on June 24, 2003 and shall not be renewed.

2116  
2117 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2118 Negative: 0  
2119 Absent: 0

2120  
2121 The Board granted the request because it found the proposed use will be in substantial  
2122 accordance with the general purpose and objectives of Chapter 24 of the County Code.

2123  
2124 Mr. Kirkland - We're back in session here. Call the next case.

2125  
2126 Mr. Blankinship Mr. Chairman, there's one request for deferral on the 10  
2127 o'clock agenda, on page 5 of your agenda, case **A-77-2001 GARY AND LIMOR**  
2128 **SCHWAM**. They are out of town and request a deferral to your next meeting.

2129  
2130 Upon a motion by Mr. Wright, seconded by Mr. McKinney, the Board of Zoning Appeals  
2131 **deferred** the **A-77-2000** application for a variance. The case was deferred for 30 days,  
2132 at the request of the applicants, from the May 24, 2001, until the June 28, 2001,  
2133 meeting,

2134  
2135 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2136 Negative: 0  
2137 Absent: 0

2138  
2139 Mr. Blankinship - The next 2 are companion cases. Shall I call them together?

2140  
2141 Mr. Kirkland - Let's hear them together.  
2142  
2143 **A - 70-2001** **WILLIAM T. COVITZ** requests a variance from Section 24-95(b)(6)  
2144 of Chapter 24 of the County Code to build a single-family dwelling  
2145 at 9 N. Beech Avenue (Highland Springs) (Tax Parcel 148-10-B-15  
2146 (part)), zoned R-4, One-family Residence District (Varina). The total  
2147 lot area requirement is not met. The applicant has 5,000 square feet  
2148 total lot area, where the Code requires 6,000 square feet total lot  
2149 area. The applicant requests a variance of 1,000 square feet total  
2150 lot area.  
2151  
2152 **A - 71-2001** **WILLIAM T. COVITZ** requests a variance from Section 25-9(b)(6) of  
2153 Chapter 24 of the County Code to build a single-family dwelling at  
2154 11 N. Beech Avenue (Highland Springs) (Tax Parcel 148-10-B-15  
2155 (part)), zoned R-4, One-family Residence District (Varina). The total  
2156 lot area requirement is not met. The applicant has 5,000 square feet  
2157 total lot area, where the Code requires 6,000 square feet total lot  
2158 area. The applicant requests a variance of 1,000 square feet total  
2159 lot area.  
2160  
2161 Mr. Kirkland - Anyone else wish to speak on this case? If you would,  
2162 please stand and raise your right hand and be sworn in.  
2163  
2164 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2165 truth, the whole truth, and nothing but the truth, so help you God?  
2166  
2167 Mr. Kirkland - If you would, sir, state your name for the record. Have all  
2168 your notices been turned in? Let's hear your case.  
2169  
2170 Mr. Balfour- We had a note to get the originals, but I think we have all the  
2171 originals now, is that correct? We have all the originals now, because I note there's a  
2172 note in the file that we have copies.  
2173  
2174 Mr. Welbourne - I do. My name is Kenny Welbourne. Yes sir. I sent them all  
2175 to the County and to the people. Good morning Mr. Chairman and members of the  
2176 Board of Zoning Appeals. My name is Kenny Welbourne as I previously stated. I'm a  
2177 building contractor and a real estate broker. I'm here representing Mr. and Mrs. William  
2178 T. Covitz and their request to obtain a variance to build a home on 9 and 11 North  
2179 Beech Avenue in Highland Springs. The reason they are asking for a variance is that  
2180 the lots are 50 by 100 feet, and they were subdivided long before the 1960 zoning law  
2181 changed the size of the lots that you could build on from 5,000 to 6,000 square feet.  
2182 They have 5,000, so they need a variance of 1,000 square feet on each lot. The home  
2183 there was built in 1937. Mr. and Mrs. Covitz obtained it from his father upon his father's  
2184 death in 1994. I have some pictures that show the condition of the inside of the house  
2185 and the outside. They show it in great need of repair. As a matter of fact, repair would



2186 be too much to actually remodel it, I would think. It just needs to be town down. I know  
2187 it's their home now, and I hate to say that, but it needs to be torn down and a new home  
2188 constructed. As you can see, that's the interior there, where the tin roof is leaking,  
2189 water's coming down through it, their floor joists underneath the house are deteriorating,  
2190 one section of the house doesn't have a foundation under it, on the rear, and the  
2191 plumbing all needs to be replaced in it. It's just the physical condition, the interior and  
2192 exterior is just too much to try to repair it, to make a decent home out of that. They are  
2193 in a position that they do not have the money to renovate it or to build a new house.  
2194 Their only chance to have a better home for themselves and their child is to sell this  
2195 property, with 2 building lots, so they can obtain enough money to pay off the first  
2196 mortgage that's on it and buy another home. That's the only way they can do it. They  
2197 just do not have any other resource finance, because like I say, the house is in too bad  
2198 a physical condition to even consider remodeling, in my opinion. We feel like it's a  
2199 hardship case for the lack of money to repair it, pay the mortgage off and repair this  
2200 house, so therefore the only way they can obtain a home for themselves and their child  
2201 is to sell it as 2 lots and buy another home. Mr. and Mrs. Covitz are here if you'd like  
2202 any questions for them, but we would appreciate any consideration in approving a lot  
2203 variance for 9 and 11 North Beech Avenue.

2204

2205 Mr. Nunnally- Are you buying these lots Mr. Welbourne?

2206

2207 Mr. Welbourne - I will buy it, providing it's 2 lots, yes sir.

2208

2209 Mr. Nunnally- What are you going to put on there? 980 square feet, I think  
2210 it said.

2211

2212 Mr. Welbourne - I have a picture. You can see a home that I built on North  
2213 Elm Avenue about 7 or 8 years ago – that's the same home that I would put on that  
2214 property, same type.

2215

2216 Mr. Nunnally- Vinyl siding?

2217

2218 Mr. Welbourne - Vinyl siding, brick foundation, 980 square foot home. That's  
2219 a picture of it right there.

2220

2221 Mr. McKinney- Would both lots have the same house on it.

2222

2223 Mr. Welbourne - Yes sir, that's about the only size home you can put on those  
2224 lots.

2225

2226 Mr. McKinney- I mean the same elevation, on both lots....

2227

2228 Mr. Welbourne - Yes sir. That is 18 North Elm Avenue, I believe, in Highland  
2229 Springs is where that house is. I took a picture of it.

2230

2231 Mr. Kirkland - And you're going to demolish the home first before anything

2232 else gets built, correct?  
2233  
2234 Mr. Welbourne - Yes sir, I would have to, because it sits on both lots now.  
2235  
2236 Mr. Balfour- What are the ages of the other homes along Beech Avenue?  
2237 Are they older homes built in the '30's as well?  
2238  
2239 Mr. Welbourne - There's some of them older homes, yes sir, but none of them  
2240 look, but I didn't really ride to see up and down the street, but I can't remember any of  
2241 them looking like this in this condition. And the 2 lots behind it on Cedar Avenue, I think  
2242 there's homes on those that are 50 by 100-foot lots right behind it, backed up to this  
2243 property, plus up and down in this same block there's several more. I have some  
2244 numbers I could look through here and find, but that's just the make-up of Highland  
2245 Springs.  
2246  
2247 Mr. Kirkland - Any other questions by Board members? Any opposition?  
2248  
2249 Ms. Sutton - Hi, how are you. My name is Cindy Sutton, and my only  
2250 concern is, what is it going to mean for the property value in our neighborhood. I wish  
2251 them well, and I wish them well with their new house. I like them, but I'm really  
2252 concerned what it's going to mean for our neighborhood. That's the only thing that I  
2253 oppose.  
2254  
2255 Mr. Wright- Where do you live ma'am?  
2256  
2257 Ms. Sutton - I live across the street and to the left from them. I'm at 8  
2258 North Beech.  
2259  
2260 Mr. Wright- Is your house built on a 50-foot lot?  
2261  
2262 Ms. Sutton - You know, I'm not even sure. We have, where our house is,  
2263 we go all the way to the next street  
2264  
2265 Mr. Wright- Behind it, but I'm talking about on Beech.  
2266  
2267 Mr. Nunnally- Is yours the one with the fence around it? Don't you think if  
2268 he put 2 nice little houses up there, it would be a whole lot better than what you have  
2269 there now?  
2270  
2271 Ms. Sutton - That's what I'm asking, is that going to bring our property  
2272 value up there, or is it going to lower it? I don't know. I know that the house beside me  
2273 they sold that a couple of years ago and built a house behind it, and we've actually had  
2274 some problems. That's the only concern I have. I don't mind the 2 houses being there;  
2275 I'm just concerned what it means for our neighborhood.  
2276  
2277 Mr. Wright- Looks like if they were to replace this house, it looks pretty

2278 well run down, with 2 nice-looking houses, it would help you.  
2279  
2280 Ms. Sutton - I hope so. We plan to move out in a couple of years, and we  
2281 just didn't know what it would mean for our neighborhood.  
2282  
2283 Mr. Balfour-- What is your home assessed for, do you know?  
2284  
2285 Ms. Sutton - Honestly I don't know; I believe it was around 78-80,  
2286 somewhere right around there.  
2287  
2288 Mr. McKinney- How long have you been there, Mrs. Sutton?  
2289  
2290 Ms. Sutton - It'll be 12 years in August.  
2291  
2292 Mr. Wright- And do you know what's the square footage of your house?  
2293  
2294 Ms. Sutton - Actually, no I don't. And basically, that's all I have to say.  
2295  
2296 Mr. Kirkland - Any more questions by Board members? Thank you very  
2297 much ma'am. Anyone else opposed? Mr. Welbourne, do you have any ending  
2298 comments?  
2299  
2300 Mr. Welbourne - Yes sir. I am, like I said before, a real estate broker. I've  
2301 been in real estate since 1971, right in Highland Springs. The answer to the young  
2302 lady's question is that the houses will definitely improve her house and the other houses  
2303 in the block as far as value goes, because it'll be 2 newly constructed homes. I see no  
2304 way that they could downgrade the value of that block.  
2305  
2306 Mr. Balfour- What do you expect they'll sell for?  
2307  
2308 Mr. Welbourne - Approximately \$75,000. They're 3-bedroom, single bath  
2309 homes, kitchen and living room.  
2310  
2311 Mr. Kirkland - Any other questions? That concludes the cases.  
2312  
2313 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
2314 Wright, the Board **granted** your application **A-70-2001** for a variance build a single-  
2315 family dwelling at 9 N. Beech Avenue (Highland Springs) (Tax Parcel 148-10-B-15  
2316 (part)). The Board granted the variance subject to the following condition:  
2317  
2318 1. This approval is for the lot area only. All improvements to the property shall  
2319 comply with the applicable regulations of the County Code.  
2320  
2321 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2322 Negative: 0

2323 Absent: 0

2324  
2325 The Board granted this request, as it found from the evidence presented that, due to the  
2326 unique circumstances of the subject property, strict application of the County Code  
2327 would produce undue hardship not generally shared by other properties in the area, and  
2328 authorizing this variance will neither cause a substantial detriment to adjacent property  
2329 nor materially impair the purpose of the zoning regulations.

2330  
2331 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
2332 Wright, the Board **granted** your application **A-71-2001** for a variance build a single-  
2333 family dwelling at 11 N. Beech Avenue (Highland Springs) (Tax Parcel 148-10-B-15  
2334 (part)). The Board granted the variance subject to the following condition:

2335  
2336 1. This approval is for the lot area only. All improvements to the property shall  
2337 comply with the applicable regulations of the County Code.

2338  
2339 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2340 Negative: 0  
2341 Absent: 0

2342  
2343 The Board granted this request, as it found from the evidence presented that, due to the  
2344 unique circumstances of the subject property, strict application of the County Code  
2345 would produce undue hardship not generally shared by other properties in the area, and  
2346 authorizing this variance will neither cause a substantial detriment to adjacent property  
2347 nor materially impair the purpose of the zoning regulations.

2348  
2349 Mr. Kirkland - Next case sir.

2350  
2351 **A - 72-2001 VIRGINIA SOCIETY FOR MENTALLY RETARDED CHILDREN**  
2352 requests a variance from Section 24-94 of Chapter 24 of the County  
2353 Code to build an addition and a wheelchair ramp at 8201 Yolanda  
2354 Road (Ketch Court) (Tax Parcel 80-27-B-3), zoned R-2, One-family  
2355 Residence District (Three Chopt). The rear yard setback is not met.  
2356 The applicant proposes 28 feet rear yard setback, where the Code  
2357 requires 45 feet rear yard setback. The applicant requests a  
2358 variance of 17 feet rear yard setback.

2359  
2360 Mr. Kirkland - Any one else wish to speak on this case? If you would, sir,  
2361 stand and raise your right hand and be sworn in.

2362  
2363 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2364 truth, the whole truth, and nothing but the truth, so help you God?

2365  
2366 Mr. Kirkland - If you would, state your name for the record. Have all  
2367 adjacent landowners been contacted according to Code? We have the notices. Okay,  
2368 if you would, state your case.

2369  
2370 Mr. Moore - I do. My name is George Moore. Yes sir. I'm here on behalf  
2371 of the group home at 8201 Yolanda Road, that is owned by the Virginia Society for  
2372 Mentally Retarded Children. I also have a sister, Suzanne Moore, who resides at this  
2373 group home. I would like to request a variance to the rear yard setback, to construct an  
2374 addition and a wheelchair ramp. This home is a group home, which presently has 6  
2375 mentally handicapped adults and 2 caregiver adults. Some of the adults in this home  
2376 have difficulty negotiating the steps in and out of the home, and therefore, we are  
2377 requesting a handicapped ramp that would make it easier access for them. In order to  
2378 construct the ramp with the proper slope, it needs to be configured in such a way that a  
2379 variance is needed within the 45-foot setback. In addition, we are also requesting a  
2380 variance to construct a room at the rear of the home, in which the handicapped ramp  
2381 would end and have access through the door to this addition. The room addition also  
2382 provides needed space in the kitchen and living area for the 8 adults in the home. This  
2383 request is consistent with the general character of the homes in the neighborhood.  
2384 There are other homes in the area that have room additions, such as Florida rooms in  
2385 the rear, similar to this request. The handicapped ramp would be located in such a  
2386 manner that it would have a minimal impact on the surrounding adjacent neighbors. It is  
2387 also our plan to provide landscaping along the outside of the handicapped ramp to  
2388 minimize appearance to adjacent neighbors. To my knowledge, there is no other way to  
2389 provide handicapped access into the home without constructing a ramp within the rear  
2390 setback that requires a variance. We did look at other options, as far as providing  
2391 handicapped ramps at possibly the front of the home, but we felt like that would have  
2392 more of an impact to the neighborhood, vs. putting it in the back. Since the original  
2393 application, we have made a slight modification to the handicapped ramp, which  
2394 actually reduces the requested variance from 17 feet to 10.6 feet. This change was  
2395 made in order to provide more rear yard area by moving the handicapped ramp closer  
2396 to the home, so that it's actually in line with the same plane of the rear room addition. I  
2397 have copies of this revised plat and plans which show this change, and I'd be happy to  
2398 submit those now.

2399  
2400 Mr. Kirkland - Is it different from that one up there on the screen, Mr.  
2401 Blankinship?

2402  
2403 Mr. Moore - You'll see with the drawing there, that it's essentially the  
2404 same, it looks the same from the rear elevation. All we did was pull the handicapped  
2405 ramp in closer to the home so that it's in line with the rear elevation. This gave more  
2406 room in the rear yard. It also looks better.

2407  
2408 Mr. Kirkland - Any other questions? We have some opposition; you'll have  
2409 time to rebut. Are you opposed sir?

2410  
2411 Mr. Bolling- That's rather strong.

2412  
2413 Mr. Kirkland - I mean, you're not coming up here to pat him on the back.  
2414

2415 Mr. Bolling - My name is Joey Bolling, and I live at 1916 Fordson Road.  
2416 The white fence you see in the picture there is to my yard, and my house faces east,  
2417 and so the side of our house with the windows, our kitchen, dining room and bedrooms  
2418 are against the back yard of this property. My concern was the proximity of the addition  
2419 and screening. If the addition is to increase residents in the dwelling, I would be  
2420 opposed to that. If it's to make the residents more comfortable, that's perfectly all right.  
2421 I would like .....

2422  
2423 Mr. Wright- Could we answer that question now. Mr. Blankinship, is the  
2424 number of people limited under the Code, I notice it says 6?

2425  
2426 Mr. Blankinship - The State Code limits them to 8; that is to say there is a  
2427 different licensing if you have more than 8, so I guess they're not up to that now, but the  
2428 proposed addition doesn't include any bedroom space.

2429  
2430 Mr. Wright- Does not include any bedroom space? So would not permit  
2431 any additional..... This hasn't come before us? The Board doesn't have to  
2432 approve this?

2433  
2434 Mr. Blankinship - No sir, a group home, as long as it's State licensed, and it's 8  
2435 or fewer residents, plus 1 or 2 caretakers, is treated as a single family. That's a State  
2436 Code provision that was put into place to protect mental health, social services  
2437 departments, when they go to place these homes, allows them to avoid a lot of  
2438 problems.

2439  
2440 Mr. Bolling - They're great neighbors. Since the case report states that  
2441 the design has been done to minimize impact on adjoining property, and since mine  
2442 would be the most impacted of the property, I would like to request that the trees, where  
2443 you see the Leyland cypress or something to that effect, be planted along the fence line,  
2444 seeing as that is going to come back right against my yard. Also, that side of my house  
2445 is where we anticipate putting an addition as well. I hope this isn't going to have impact  
2446 on that.

2447  
2448 Mr. Wright- So you would like some screening along that fence on their  
2449 side of the fence. What type of screening would you suggest?

2450  
2451 Mr. Bolling - Well, the Leyland cypress .....

2452  
2453 Mr. Wright- Just like you have there?

2454  
2455 Mr. Bolling - Yes, because where you see the cypress there, they screen,  
2456 and I assume the addition is going to replace the deck – it's that size? So that's there.  
2457 But the ramp coming out farther and coming this way is very visible. So anything that  
2458 could be done to minimize the aesthetic impact .....

2459  
2460 Mr. Wright- It looks like the revised plan would pull the deck closer to the

2461 – that will give more space.  
2462  
2463 Mr. Bolling - Yes, I like that a lot better. Also I was under the impression  
2464 that a church group owned the house, and when I got this, it was Virginia Society for  
2465 Retarded Citizens.  
2466  
2467 Mr. Kirkland - Any other questions? Do you have any comments sir?  
2468  
2469 Mr. Moore - We appreciate your concerns. There is no intent to add  
2470 additional adults to the home. There are only the 8 bedrooms that are in there now, so  
2471 it really wouldn't be feasible for that.  
2472  
2473 Mr. Blankinship- You said 8 bedrooms?  
2474  
2475 Mr. Moore - Well 6 for the people who are living there now.  
2476  
2477 Mr. McKinney- But you've got 2 caregivers.  
2478  
2479 Mr. Moore - As I mentioned, we do plan on landscaping in front of the  
2480 handicapped ramp, and we're not opposed to adding some additional Leyland cypress  
2481 along the fence there; I think that's a reasonable request.  
2482  
2483 Mr. Balfour- We could put that as a condition then?  
2484  
2485 Mr. Moore - That's fine.  
2486  
2487 Mr. Balfour- Was this home built with 6 bedrooms already when you  
2488 .....  
2489  
2490 Mr. Moore - No it wasn't. They actually added an addition to it. There  
2491 was a garage, and they added 2 bedrooms down and 2 bedrooms up as part of the  
2492 garage addition.  
2493  
2494 Mr. Kirkland - Any other questions? Anyone else wish to speak? That's  
2495 the case.  
2496  
2497 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
2498 McKinney, the Board **granted** your application **A-72-2001** for a variance build an  
2499 addition and a wheelchair ramp at 8201 Yolanda Road (Ketch Court) (Tax Parcel 80-27-  
2500 B-3). The Board granted the variance subject to the following conditions:  
2501  
2502 1. Only the improvements shown on the plan submitted at the hearing may be  
2503 constructed pursuant to this approval. Any additional improvements shall comply with  
2504 the applicable regulations of the County Code.  
2505

2506 2. The existing row of Leyland cypress shall be extended the length of the  
2507 existing rail fence on the rear property line.

2508  
2509 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2510 Negative: 0  
2511 Absent: 0

2512  
2513 The Board granted this request, as it found from the evidence presented that, due to the  
2514 unique circumstances of the subject property, strict application of the County Code  
2515 would produce undue hardship not generally shared by other properties in the area, and  
2516 authorizing this variance will neither cause a substantial detriment to adjacent property  
2517 nor materially impair the purpose of the zoning regulations.

2518  
2519 Mr. Kirkland - Next case sir.

2520  
2521 **A - 73-2001** **YONG H. PAK** requests a variance from Section 24-96(b) of  
2522 Chapter 24 f the County Code to allow retail businesses to remain  
2523 at 4309-4317 Nine Mile Road (Tax Parcel 146-5-A-31B), zoned B-3,  
2524 Business District (Varina). The required number of parking spaces  
2525 is not met. The applicant has 26 parking spaces, where the Code  
2526 requires 65 parking spaces. The applicant requests a variance of 39  
2527 parking spaces.

2528  
2529 Mr. Kirkland - Does anyone else wish to speak on this case? If you would  
2530 sir, raise your right hand and be sworn in.

2531  
2532 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2533 truth, the whole truth, and nothing but the truth, so help you God?

2534  
2535 Mr. Kirkland - State your name for the record.

2536  
2537 Mr. Burcin - Yes sir. My name is Stacey Burcin, and I'm with McKinney  
2538 and Company, and I'm here today on behalf of Mr. Yong Pak. The notices have been  
2539 delivered at an earlier date. They're in the file, and I do have the actual returns if you  
2540 want those too. I'm representing Mr. Yong Pak, who is the owner of the subject  
2541 property. He was here earlier this morning. He did, unfortunately, because of  
2542 scheduling, have to leave a little while ago. He is not only the owner of this building, he  
2543 is also the operator of John's Seafood. John's Seafood started in his operation here in  
2544 1991. After working this location for several years, he saved some money, and he  
2545 purchased the building in which his business was located. That was back in 1997 when  
2546 he purchased the building. I was first contacted to help Mr. Pak back in January of this  
2547 year. At that time he indicated to me that he'd tried to lease the vacant store front on  
2548 his building, and the building permits were then rejected because he did not have  
2549 sufficient parking on the site to meet the parking requirements as set forth in the Code.  
2550 In order to address that, he entered into a contract purchase agreement to buy the  
2551 property behind him, which is identified as 104 Koch Avenue. We were looking at doing



2552 a site plan to add about 12 parking spaces back there, to help alleviate some of the  
2553 parking concern. The more I looked into this, the more I found out it wasn't really as  
2554 much of a site planning issue as it was a zoning matter. The property behind it is zoned  
2555 R-4. It would have to be rezoned to a commercial use in order to expand the parking lot  
2556 in there, so we started filing a rezoning case for this property for him. As part of that,  
2557 we've met with the supervisor for the district, as well as the planning commissioner, and  
2558 we met on the site and looked at what was being proposed, just to get a feel for the  
2559 nature of the request. The first thing that came out, was suggested, is that why was this  
2560 even necessary. This is obviously a nonconforming building, built some time ago. As  
2561 far as I can ascertain, it was probably built around the mid-'40's. Why do they need to  
2562 come in and get a variance? We explained obviously, that the Code now does not allow  
2563 for you to consider the nonconforming status of the building when reevaluating the  
2564 tenant spaces. The second point was brought out to me, is that perhaps you should be  
2565 looking at a variance to have this property viewed in a manner that's consistent with the  
2566 nonconforming status of the building.

2567  
2568 Third point that was brought out was, that the area is being studied now as a special  
2569 strategy area. It is recognized as an area that's in economic distress. It is something  
2570 that was pointed out that perhaps we should do things to try to help these businesses  
2571 come along, rather than hinder them with the burdens of additional parking. We  
2572 proceeded with the zoning case, and we met later with the planning staff, and  
2573 suggested the rezoning, and it was brought out at that point, that for one, it was  
2574 somewhat of a spot zoning. It is changing the character of the neighborhood. It is  
2575 introducing commercial uses into a residential area, that was not thought as being  
2576 desirable. It was also brought out that it would also cause the house that exists on the  
2577 property adjacent to it, to be nonconforming. It would cause it to be in violation. It was  
2578 also pointed out that perhaps the parking back there really wouldn't serve any function,  
2579 because there doesn't appear to be a need for parking today. The parking that would  
2580 be constructed would be there just to meet Code requirements. Again, we were  
2581 persuaded that perhaps the variance was the best methodology to look at addressing  
2582 this property. We withdrew the zoning case approximately a week later. There are a  
2583 couple of points I'd like to point out as to why I think the variance would be a good idea.  
2584 First,. The owner is not seeking to expand his operation. He is only seeking the  
2585 opportunity to lease the spaces that have been in commercial use for probably as much  
2586 as 60 years. Secondly, there is no viable alternative. If you look at the site plan that  
2587 you've got before you, everything is building or paving. There is no opportunity to do  
2588 the expansion, no opportunity to create additional parking. The other alternatives would  
2589 be to buy the residential properties which are considered to be potentially detrimental to  
2590 the community. There doesn't appear to be any functional need for the additional  
2591 parking. If you go out at any point of the day, you'll probably find 6 cars out there. I've  
2592 been out on numerous occasions, and this picture that staff shot, I don't know at what  
2593 time of day, that's fairly indicative of the parking situation at any time of any day that I've  
2594 been there, probably 10 visits in the last few months. There's currently no mechanism  
2595 in your County Code to look at the actual functional space that is allocated within the  
2596 building. Parking is assessed on the gross building area and doesn't really take into  
2597 account the fact that there may not be a real parking demand based on the functional

2598 set-up on the inside of the building. For example, Mr. Pak's property is the middle  
2599 place, is John's Seafood. In his business, probably only 40% of that occupied space is  
2600 open to the public. The majority of the building area is actually coolers, fish cleaning  
2601 areas, and things like that. They're accessory to operating his business, but they don't  
2602 really have the public space that's available. The business next to that is something  
2603 called Connie's Foods. It only has about 10% public space. The Express Mart probably  
2604 has about the largest of any, and that's around 70% of its leasible area is public space.  
2605 Just for my own purposes last night, I wanted to sit down and take a look at the public  
2606 spaces that are there, versus the actual total square footages. I ran off a scenario  
2607 because I noticed a tremendous difference between what's required by Code and what  
2608 the applicant has on the site, and I wanted to just compare in my own mind. The  
2609 convenience store, by Code, requires 12 spaces, and when you look at its functional  
2610 area, it really requires more along the lines of 8. Connie's Food requires 7, and really  
2611 from a functional standpoint, it only requires 1. Mr. Pak's seafood business would  
2612 require 17 parking spaces, and then really from a functional standpoint, only requires  
2613 about 7. The second story portion that you can see over one of the retail components  
2614 there, that space, I looked at that, and by Code, would require 9 parking spaces. I went  
2615 into that spot yesterday afternoon, looked around, and evaluated how this could  
2616 potentially be used, and based on what I saw from a functional standpoint, I see it as  
2617 being primarily more of a storage space, maybe an accessory office to the business. I  
2618 say that because of a couple of reasons: one, it is not ADA accessible; two, there is no  
2619 provision for plumbing in there, so you cannot have restroom facilities on the second  
2620 floor. In addition, it doesn't have its own access. You have to go through one of the  
2621 other storefronts to get to the second story portion. So for that reason, I was looking at  
2622 that as really having a generation factor of 1 parking space or 0. The vacant  
2623 storefronts, on the very end of the building, I looked at those, and I just kind of guessed  
2624 and said, well if that was used for 60% retail, what would the numbers run. By Code it  
2625 would require approximately 21 spaces, but when you look at the functionality, it would  
2626 require more like 13. The totals that work out are roughly 65, 66 spaces, as required by  
2627 Code, 30 when you start looking at it from a functional standpoint. Obviously, at this  
2628 point, the applicant only has 26 anyway. Who's going to rent this space? We don't  
2629 know. Our guess is as good as anybody's. I work a lot with commercial retailers and  
2630 national retailers. I don't believe anybody that you're going to see like that is going to  
2631 come there that's going to have a high parking demand. Most of those people look at  
2632 the parking spaces, then will look and say "I don't have the parking." My guess is that  
2633 it's going to be more of a neighborhood start-up business, maybe something like an  
2634 appliance repair, maybe an upholstery shop that used to be in there, maybe that's going  
2635 to be in there. So I don't see a real high demand coming from this. What assurances  
2636 do you have that granting this variance will not create a problem in the future.

2637  
2638 Mr. Balfour- I think we've got a picture of what you're talking about.  
2639 When you look at that picture, are there any spots on the right hand side?

2640  
2641 Mr. Burcin - Excuse me, on the right hand side? On the other side of the  
2642 bronze color car, there's probably 3 or 4 more spaces over there. The bronze car looks  
2643 like to be parked right in front of John's Seafood.

2644  
2645 Mr. Balfour- That second story space is not rented right now, is that right?  
2646  
2647 Mr. Burcin - The second story space is not rented at all.  
2648  
2649 Mr. Balfour- The rest of the spaces are leased?  
2650  
2651 Mr. Burcin - No, there's 2 spaces underneath that says "vacant" and  
2652 "Dunkum Upholstery." Dunkum Upholstery has moved out of there. The space  
2653 underneath the second story portion is vacant, as well as the second story portion.  
2654  
2655 Mr. Nunnally- You talk about those spaces now – what is that, Marlin Street  
2656 on the side of that food place.  
2657  
2658 Mr. Burcin - There are a large number of spaces, approximately 12, on  
2659 the side on Koch Avenue.  
2660  
2661 Mr. Nunnally - There's 12 there, and there's also about 4 in the rear, right?  
2662  
2663 Mr. Burcin - There are some in the rear, there's 4 there, and there's 3  
2664 across the alley; however they do happen to occur in a residentially zoned district.  
2665 There is, as far as the assurances, one item that we have talked about, and we'd be  
2666 perfectly agreeable to, is a condition where if in the future, there should be a parking  
2667 congestion problem occurring on the site, a condition could be added onto this, that  
2668 would allow for the County to request this variance to be reconsidered, somewhat of a  
2669 show-cause type provision. I know that's unique, but we would be agreeable to some  
2670 condition along those lines. We simply don't believe the parking is going to be a  
2671 problem. The granting of this variance is going to allow the storefronts to become open  
2672 again, and become viable and be a part of the community, which we feel is important.  
2673 I'm sorry if I'm taking up too much of your time. There is a lot of history involved here,  
2674 and I'll try to speed it up. In time we feel that this area will become more economically  
2675 prosperous, and there may be a time when you consider taking down the building  
2676 behind it, taking down the building to the right of it, redeveloping the whole thing into a  
2677 newer commercial center that meets all Code requirements. For that reason we've  
2678 suggested a condition that this variance is only to allow this building in its existing state,  
2679 and should they wish to expand it, the variance should become null and void, and they  
2680 should be meeting all Code requirements at that time. I think in conclusion, that there is  
2681 a very clear hardship in this case, and this precludes the ability of the property to be  
2682 used for its intended purposes. The hardship is specific and unique to this property; it  
2683 does not set a precedent for other developments in this area. I believe that there are  
2684 adequate provisions available under the granting of this variance that will insure the  
2685 health, safety, and welfare of the community. We believe this variance will have  
2686 positive community benefits in the form of improved economic viability. For these  
2687 reasons, we would request that you eliminate this hardship and grant this variance for  
2688 Mr. Pak and his operation here.  
2689

2690 Mr. McKinney - Mr. Secretary, tell me about paragraph 3 in the evaluation, or  
2691 paragraph 4, just above "suggested conditions."  
2692  
2693 Mr. Kirkland - Mr. Blankinship, Mr. McKinney's asking you.....  
2694  
2695 Mr. Blankinship - Well what you see is my understanding of the Code when  
2696 you look at the definition of variance in the State Code. It's, I think, fairly narrow on  
2697 when it's appropriate to grant a variance, and I'm not at all sure that the number of  
2698 parking spaces required fits that bill.  
2699  
2700 Mr. McKinney- This Board has given them before. We've done it before, and  
2701 I've wondered why it just came up.  
2702  
2703 Mr. Blankinship - Has that not been raised?  
2704  
2705 Mr. McKinney- First time I've ever seen it.  
2706  
2707 Mr. Wright- First time I've ever seen it. We've granted variances on the  
2708 number of parking spaces in the last year.  
2709  
2710 Mr. Blankinship - I'm not aware of any that have been struck down by a court,  
2711 for example, which is why I say it's not clear.  
2712  
2713 Mr. Balfour- What do you think his remedy should be? What should he  
2714 be asking for if not a variance?  
2715  
2716 Mr. Blankinship - He could acquire additional property, which he says they  
2717 have tried to do, or they can adjust the uses of the property or the usability of the space.  
2718 Some of the storefront space could be converted to storage or something that would not  
2719 require additional parking. When the upholstery shop was there, because that's a  
2720 manufacturing use, the parking requirement is based on the number of employees,  
2721 rather than the number of square feet, so .....  
2722  
2723 Mr. Balfour- The landlord should come into compliance through the use of  
2724 his space, you're saying?  
2725  
2726 Mr. McKinney- So you're saying the upholstery shop, when it was operating,  
2727 was it still operating under a B-3, unconditional zoning?  
2728  
2729 Mr. Blankinship - Yes.  
2730  
2731 Mr. McKinney- Did the land require more parking spaces because it wasn't  
2732 considered retail, or what?  
2733  
2734 Mr. Blankinship - Right, if you have 2 employees on your major shift, then  
2735 you're required 1 parking space, 1 for 2 employees, so even though it's several hundred

2736 square feet of floor space, it's only 1 .....

2737

2738 Mr. McKinney- Well one of the remedies could be then, that you could have  
2739 that type of business in a B-3, or you could have a condition that it can only be rented to  
2740 people who wouldn't require over X number of parking spaces.

2741

2742 Mr. Blankinship - Right. And that's where they find themselves now.

2743

2744 Mr. Burcin - That's what we've attempted to do by using the blended retail  
2745 rate, but we did ask for the total, including the second floor, even though it's unrealistic  
2746 that the second floor would be a retail user. It's unrealistic that the second floor would  
2747 even be a separate user, for that matter.

2748

2749 Mr. McKinney- If the second floor were taken out, how many would they  
2750 require?

2751

2752 Mr. Burcin - It would reduce the parking requirement by 9. And how  
2753 many would that make you short?

2754

2755 Mr. Blankinship - 30.

2756

2757 Mr. Burcin - 30.

2758

2759 Mr. Kirkland - A little ways to go.

2760

2761 Mr. Nunnally- How many tenants do you have in there now sir?

2762

2763 Mr. Burcin - Right now Mr. Pak operates the central business, which is  
2764 John's Seafood. Connie's Foods, which from what I can see, is a walk-up place that's  
2765 only open during lunch, where you get a hot dog or something, and then there's a  
2766 convenience store, so there's 3 tenants in there. Now there are 2 vacant tenant spaces,  
2767 and I guess from a functional standpoint, I'd have to say the second floor would have to  
2768 end up with those 2 tenant spaces.

2769

2770 Mr. McKinney- Stacy, if you did the research on this, when was the last time  
2771 it was fully rented up?

2772

2773 Mr. Burcin - It appears that it was fully rented up when Mr. Pak purchased  
2774 the property ..... I take that back; I don't know when it was fully rented up last.

2775

2776 Mr. McKinney- You don't know who the tenants were at the time, do you?

2777

2778 Mr. Burcin - No, the latest one is what's there, where Dunkum Upholstery  
2779 was added, was working on that piece. There was still the vacant tenant space and the  
2780 vacant second floor above that at that point, so I don't know when it was ever fully  
2781 occupied. I did do a little bit of research from the real estate records, trying to figure out

2782 when this property came into commercial use. It appears from looking at all these real  
2783 estate records, they're somewhat sketchy, that as of 1944, it was assessed to a value  
2784 that would lead you to believe that there was something there other than vacant land.  
2785 The value in 1944 was \$13,200. The value of the land itself in 1965 was \$2,000.

2786  
2787 Mr. McKinney- (unintelligible) something came in 1960 on a comprehensive  
2788 rezoning. On the B-3.

2789  
2790 Mr. Burcin - I would assume that zoning was drawn around the existing  
2791 uses at that time.

2792  
2793 Mr. Balfour- I guess we need to decide and revert. Looks like to me it  
2794 puts us in a fairly precarious position to be asked to make a legal determination of the  
2795 statutory definition of a variance. We've operated in the past that it's okay, and now all  
2796 of a sudden, we say it's not. We're just inviting this man to sue us if we turn it down on  
2797 that basis..

2798  
2799 Mr. McKinney- We've been sued before.

2800  
2801 Mr. Blankinship - If you'd turn it down.....

2802  
2803 Mr. Nunnally- I drove by there the other day and checked it out, and I  
2804 figured there were about 3 cars on the entire piece of property, and I don't know  
2805 whether one of those was employees or not.

2806  
2807 Mr. McKinney- What time of day was it?

2808  
2809 Mr. Nunnally- 12:00 o'clock noon. Now I think John's Seafood might have  
2810 a little bit more in there on a Friday night or something like that, but I don't think he's  
2811 going to have any problems.

2812  
2813 Mr. Burcin - I personally couldn't envision that there could be a parking  
2814 problem from this use, looking at the area and neighborhood use, the type of use that's  
2815 going in there now, appears to be a lot of walk-up business to the convenience store  
2816 and things like that.

2817  
2818 Mr. McKinney- Mr. Burcin, let me ask you a question. If this request is  
2819 granted, and a year down the road the tenant comes up with a lot of problems on  
2820 parking, how do you propose to address that and alleviate these problems if they did  
2821 happen?

2822  
2823 Mr. Burcin - There are a couple of options. Right now he eliminated the  
2824 agreement to buy the property behind him, but they're still on a friendly relationship with  
2825 Mr. Moore. Mr. Moore could come in a buy it, could sell the property to him. Building  
2826 104 comes down, and you could put some parking back there. Functionally, it's going  
2827 to be behind the building, and it's really not going to be used; it's somewhat of an

2828 encroachment into the residential character of the houses behind there, but that is an  
2829 option that can be done.

2830  
2831 Mr. McKinney- You can't say that's an option, because you don't know if the  
2832 man would sell the property or the owner would buy it. You're speculating.

2833  
2834 Mr. Burcin - Yes, I am speculating a bit.

2835  
2836 Mr. McKinney- What I'm saying is, suppose he leases it, and all of a sudden  
2837 you've got a lot of cars there, you've got an accident that's coming out on Nine Mile  
2838 Road, the County's got a lot of problem with it.

2839  
2840 Mr. Burcin - That's why I was suggesting a condition on here that could  
2841 ask the applicant or compel the applicant to come back and have his variance  
2842 reconsidered if there becomes a parking congestion problem on the site.

2843  
2844 Mr. McKinney- Well that could be done by the County. The applicant would  
2845 bring it back; I think the County would say "we need to take another look at this

2846  
2847 Mr. Blankinship - And then do what? Break his leases and then .....

2848  
2849 Mr. Burcin - And then he would be forced to break his leases and move  
2850 that business out that has created the problem.

2851  
2852 Mr. McKinney- And he would have to state that in his leases.

2853  
2854 Mr. Burcin - Yes. I know that a somewhat unique way to do this, but it's  
2855 somewhat of a unique case here. The other thing that I think that helps here is that Mr.  
2856 Pak is the owner and operator of John's Seafood. He's there, probably as we speak  
2857 today, probably working. If he creates a parking problem, it's going to hurt his business.  
2858 He's going to make sure, as he has informed me, that he will try to make sure that the  
2859 people who go into that space, are not going to be people who need a tremendous  
2860 amount of parking.

2861  
2862 Mr. McKinney- I'd like to defer this to my learned colleagues, Mr. Wright and  
2863 Mr. Balfour, with their legal minds, and see what they have to say about this.

2864  
2865 Mr. Wright- What I want to find is additional variance ideas. If it was  
2866 determined that the parking is a problem, the variance could be revoked. I don't think  
2867 we've ever done that, but that's not saying we couldn't.

2868  
2869 Mr. McKinney- If you get into safety, health and welfare of the citizens of the  
2870 County.

2871  
2872 Mr. Wright- The question is, if we grant a variance, can we grant it on a  
2873 condition that if .....

2874  
2875 Mr. Balfour- Maybe could set a condition on an average number of  
2876 spaces to be used at a particular time.  
2877  
2878 Mr. Kirkland- We'll just say that we'll revoke it if, and that would take care  
2879 of blanket situations. The County would just come to us, say "hey guys, this is it."  
2880  
2881 Mr. McKinney- I don't know how the courts are going to look at it.  
2882  
2883 Mr. Kirkland - I don't know either.  
2884  
2885 Mr. McKinney- If we look upon that, if it's appealed to the circuit court, we  
2886 could revoke every one of them then. If it's in the lease, and the person who signs the  
2887 lease is aware of it.....  
2888  
2889 Mr. Balfour- Well it would be an impossibility performance.....  
2890  
2891 Mr. Kirkland- That's in the strategy area.....  
2892  
2893 Mr. Burcin - It's a special strategy area; it's recognized as economically  
2894 distressed area, for which there are some goals and objectives that go along to help the  
2895 businesses try to stay in business there. But they don't grant relief from the parking.  
2896  
2897 Mr. Kirkland - We have research going on down here at the end.  
2898  
2899 Mr. Wright- It does provide that we, the Board, in granting a variance, the  
2900 Board may attach thereto such conditions regarding the location, character, and other  
2901 features of the proposed structure or use as it may deem necessary to further the  
2902 purposes of this chapter and in the public interest.  
2903  
2904 Mr. Kirkland- So we can revoke it.  
2905  
2906 Mr. Wright- I don't see why we couldn't under that, put a condition on it.  
2907  
2908 Mr. Blankinship - I just wonder practically how that would bear out.  
2909  
2910 Mr. McKinney- If you had a complaint, you would investigate it, and then  
2911 you'd just bring it before the Board. And if you get a complaint from the police  
2912 department .....

2913  
2914 Mr. Wright- That's pretty broad.  
2915  
2916 Mr. Kirkland - Do you have any problem with that, Mr. Burcin?  
2917  
2918 Mr. Burcin - No, actually we would recommend that, because honestly we  
2919 don't believe you're going to ever see a parking congestion problem out there from the



2920 nature of this use.

2921  
2922 Mr. Kirkland - Any other questions? Anyone else wish to speak? Thank  
2923 you sir.

2924  
2925 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
2926 Balfour, the Board **granted** your application **A-73-2001** for a variance to allow retail  
2927 businesses to remain at 4309-4317 Nine Mile Road (Tax Parcel 146-5-A-31B). The  
2928 Board granted the variance subject to the following conditions:

2929  
2930 1. This variance applies only to the parking requirement. All other applicable  
2931 regulations of the County Code shall remain in force. Any new construction shall  
2932 comply with the applicable requirements of the County Code.

2933  
2934 2. In the event that the building, or any portion thereof, is demolished or the site is  
2935 redeveloped, this variance shall expire.

2936  
2937 3. If the parking proves to be inadequate, the Board of Zoning Appeals may revoke  
2938 this variance after a public hearing.

2939  
2940 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
2941 Negative: 0  
2942 Absent: 0

2943  
2944 The Board granted this request, as it found from the evidence presented that, due to the  
2945 unique circumstances of the subject property, strict application of the County Code  
2946 would produce undue hardship not generally shared by other properties in the area, and  
2947 authorizing this variance will neither cause a substantial detriment to adjacent property  
2948 nor materially impair the purpose of the zoning regulations.

2949  
2950 **A - 74-2001** **FRANK A. BLILEY IV** requests a variance from Section 24-94 of  
2951 Chapter 24 of the County Code to build a single-family dwelling at  
2952 8002 Hermitage Road (Tax Parcel 71-A-103), zoned R-3, One-  
2953 family Residence District (Brookland). The lot width requirement is  
2954 not met. The applicant has 50 feet of lot width, where the Code  
2955 requires 100 feet of lot width. The applicant requests a variance of  
2956 50 feet of lot width.

2957  
2958 Mr. Kirkland - Anyone else wish to speak on this case? If you would, sir,  
2959 raise your right hand and be sworn in.

2960  
2961 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
2962 truth, the whole truth, and nothing but the truth, so help you God?

2963  
2964 Mr. Kirkland - State your name for the record please. Have all your notices  
2965 been turned in according to the County Code? Yes, we've got them in the file. Okay,

2966 state your case.

2967

2968 Mr. Bliley - I do. My name is Frank A. Bliley, IV. Yes sir. It's a unique  
2969 case for a single-family dwelling. I own the piece of property now at 8004, which has  
2970 one house on it. It's a little bit over 2 acres; it's a little over 2 ½ acres of land. It's an  
2971 odd-shaped piece of property because of the property around it. It's an older house.  
2972 When we purchased this house years ago, my wife and I, we were going to have a  
2973 bigger family, it's a big house. That hasn't come about, we only have one child, the  
2974 house is too big. So we're downsizing. Now what I'm faced with is this – in the area  
2975 that that house is in, the size of the house, to make everything work, the real estate has  
2976 said that we need to split this, to do the back lot, because people don't want 2 ½ acres  
2977 of land in that area right now. That's what I was faced with. We came up with an idea a  
2978 while back about, well, okay, there's not enough road frontage to separate this, so let's  
2979 look at putting in a subdivision. That was brought before the Board, and it got  
2980 conditional approval on it, and it was all submitted. It's not really what we wanted to do  
2981 for this area. We want to keep it the way it is, the way it looks, which would actually just  
2982 ask to have a driveway put in along the side which way you're looking there, that would  
2983 be the driveway. As I'm looking at the picture, the house is to the left, the driveway  
2984 would run straight back. That's an existing gravel driveway up there now. Then it would  
2985 go to a heavily wooded area in the back, which is over an acre and a half there. You  
2986 would have plenty of area between any houses behind it, or the existing house to the  
2987 front of it, and to the church beside it. The lot itself is plenty big. As you can see, all I'm  
2988 asking for is because I don't have all of it coming to the road, we need a 50-foot  
2989 variance there, because we only have 50 feet at the road right there.

2990

2991 Mr. Wright- At the building line is the problem.

2992

2993 Mr. Bliley - Yes sir.

2994

2995 Mr. McKinney - Mr. Bliley, are you going to build this house, are you going to  
2996 sell this lot, or what?

2997

2998 Mr. Bliley - This lot right now would be sold.

2999

3000 Mr. McKinney - It would be for sale?

3001

3002 Mr. Bliley - Right. The existing house right now is for sale.

3003

3004 Mr. Kirkland- So you'd be moving to a new location?

3005

3006 Mr. Bliley - Yes sir. And the contract states now, we have a contract on  
3007 the existing house, and they want just a part of this. That's just how it went to this  
3008 stage, so that by the time the house is bought by the people who presented the contract  
3009 to us, and you've disbursed the money, this needs to be divided to satisfy the entire  
3010 debt.

3011

3012 Mr. Kirkland - Any other questions? Anyone else wish to speak? That  
3013 concludes the case.

3014  
3015 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
3016 Balfour, the Board **granted** your application **A-74-2001** for a variance to build a single-  
3017 family dwelling at 8002 Hermitage Road (Tax Parcel 71-A-103). The Board granted the  
3018 variance subject to the following condition:

3019  
3020 1. This approval is only for lot width. All improvements made on the property shall  
3021 comply with the applicable regulations of the County Code.

3022  
3023 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3024 Negative: 0  
3025 Absent: 0

3026  
3027 The Board granted this request, as it found from the evidence presented that, due to the  
3028 unique circumstances of the subject property, strict application of the County Code  
3029 would produce undue hardship not generally shared by other properties in the area, and  
3030 authorizing this variance will neither cause a substantial detriment to adjacent property  
3031 nor materially impair the purpose of the zoning regulations.

3032  
3033  
3034 **A - 75-2001** **ALFRED L. STRATTFORD, III** requests a variance from Section  
3035 24-94 of Chapter 24 of the County Code to build a breezeway  
3036 attaching a garage to the house at 8803 Norwick Road (Mooreland  
3037 Farms) (Tax Parcel 124-3-I-21), zoned R-1, One-family Residence  
3038 District (Tuckahoe). The minimum side yard setback, rear yard  
3039 setback, and total side yard setback are not met. The applicant has  
3040 8.2 feet minimum side yard setback, 33.2 feet total side yard  
3041 setback and 10.0 feet rear yard setback, where the Code requires  
3042 20.0 feet minimum side yard setback, 50.0 feet total side yard  
3043 setback and 50.0 feet rear yard setback. The applicant requests a  
3044 variance of 11.8 feet minimum side yard setback, 16.8 feet total  
3045 side yard setback and 40.0 feet rear yard setback.

3046  
3047 Mr. Kirkland - Anyone else wish to speak on this case? If you would sir,  
3048 raise your right hand and be sworn in.

3049  
3050 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3051 truth, the whole truth, and nothing but the truth, so help you God? Did you bring your  
3052 originals of your receipts with you?

3053  
3054 Mr. Kirkland - Would you state your name for the record?

3055  
3056 Mr. Stratford - I do. I do not have those. I spoke to a woman in the  
3057 Planning Office. I'm sorry, Al Stratford. The directions that I had were to bring receipts

3058 that the mailings had been done, and in fact the directions are going to be re-written  
3059 because they're a bit ambiguous. I brought the receipts; I didn't bring the white labels,  
3060 so I don't have proof that they were mailed, but I have proof that they were received.

3061  
3062 Mr. Kirkland - That's all we need. And we've got them in the file. State  
3063 your case.

3064  
3065 Mr. Stratford - All of them are there except that one; that one came late. As  
3066 you have before you, you can see that my wife and I are planning on building a detached  
3067 garage on the rear corner of our lot, which has trees to some degree screening the back  
3068 2 corners, as you can see, where the jungle gym is now. That's been moved. Although  
3069 I'm not sure, I am reasonably certain that the garage alone would comply with the  
3070 setback rules. However, because we plan to attach it with a covered walkway, it then  
3071 becomes part of the dwelling, or treated as such, and we do not comply with the setback  
3072 rules. We have no intention of putting anything above the garage, living space of any  
3073 kind. It's going to be unfinished, and the breezeway is merely to keep foul weather from  
3074 hitting you as you leave the house or garage. It's not going to be condition space either;  
3075 it's just a covered walkway.

3076  
3077 Mr. Kirkland - Any questions?

3078  
3079 Mr. McKinney- What's to the rear of you, Mr. Stratford? The rear of your  
3080 property? The rear of your home? What's behind your house?

3081  
3082 Mr. Stratford - The rear view. I don't understand the question. If you notice  
3083 on the diagram there, you can see the street that comes around is Butterfield, and those  
3084 houses back up across the back of our property, so there is no home behind us, merely  
3085 their yards.

3086  
3087 Mr. Balfour- Sort of like a circling of the wagons.

3088  
3089 Mr. Stratford - Sort of. All the neighbors are aware. Before we did the  
3090 mailing, we talked to them all. I'm actually president of the neighborhood association  
3091 and on good terms with everyone, and no one has a problem.

3092  
3093 Mr. Kirkland - Anyone else wish to speak? If not, that concludes the case.

3094  
3095 After an advertised public hearing and on a motion by Mr. Balfour, seconded by Mr.  
3096 McKinney, the Board **granted** your application **A-75-2001** for a variance to build a  
3097 breezeway attaching a garage to the house at 8803 Norwick Road (Mooreland Farms)  
3098 (Tax Parcel 124-3-I-21). The Board granted the variance subject to the following  
3099 condition:

3100  
3101 1. Only the improvements shown on the plan filed with the application may be  
3102 constructed pursuant to this approval. No substantial changes or additions to the layout

3103 may be made without the approval of the Board of Zoning Appeals. Any additional  
3104 improvements shall comply with the applicable regulations of the County Code.

3105  
3106 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3107 Negative: 0  
3108 Absent: 0

3109  
3110 The Board granted this request, as it found from the evidence presented that, due to the  
3111 unique circumstances of the subject property, strict application of the County Code  
3112 would produce undue hardship not generally shared by other properties in the area, and  
3113 authorizing this variance will neither cause a substantial detriment to adjacent property  
3114 nor materially impair the purpose of the zoning regulations.

3115  
3116  
3117 **A - 76-2001**                    **JOHN SHERWOOD** requests a variance from Section 24-95(i)(2)(f)  
3118 of Chapter 24 of the County Code to build an in-ground pool at  
3119 12630 Lizfield Way (Westfield Estates) (Tax Parcel 17-2-B-3),  
3120 zoned A-1, Agricultural District (Three Chopt). The accessory  
3121 structure location requirement is not met. The applicant proposes  
3122 an accessory structure in the side yard, where the Code allows  
3123 accessory structures only in the rear yard.

3124  
3125 Mr. Kirkland -                    Anyone else wish to speak on this case? If you would, raise  
3126 your right hand and be sworn in.

3127  
3128 Mr. Blankinship -                Do you swear that the testimony you are about to give is the  
3129 truth, the whole truth, and nothing but the truth, so help you God?

3130  
3131 Mr. Kirkland -                    State your name for the record.

3132  
3133 Mr. White -                        I do. Luther White. Hope to be the pool contractor on this  
3134 particular case. If I look familiar, it's because I was here with you last month for a  
3135 variance request, which you granted, and I appreciate that.

3136  
3137 Mr. Kirkland -                    Have all your notices been turned in according to the Code?  
3138 We have them in the file. Okay, state your case.

3139  
3140 Mr. White -                        Yes they have. This is a similar case to the one we had last  
3141 month, in that we wish to build the pool in the side yard. This in face, is the real side  
3142 yard. It is to the side of the house, so it's a little different from last month. The problem  
3143 here is that the house, which was recently constructed, is on a severe sloping lot,  
3144 sloping down from the back of the property to the front, and that the only place on the  
3145 property that would perk is the rear yard. This made it difficult for them because they  
3146 had to have a pump system, for one, to pump sewage and stuff up the hill. It also  
3147 became a difficulty in that it took up the back yard where a pool would have to be per  
3148 Code. So what they did was actually build a retaining wall during construction of the

3149 house and flatten out the side yard, which you see there in the picture. Why no one  
3150 thought to check into it beforehand as to the location of a pool in the side yard, I don't  
3151 know. I was called to come out for a sales meeting. The first thing I noted, and told the  
3152 gentleman, was that this was potentially a problem, but I would look into it for him, which  
3153 is what we're doing now of course. What we propose to do is build the pool in the side  
3154 yard, not infringing of course, at all into the front yard and maintain all proper setbacks  
3155 from the side yard. This is the situation where he really has no choice if he wants a  
3156 pool, and I realize that having a pool is not a hardship, but if in fact he wants a pool, this  
3157 is the only place on the property that can accommodate one. As far as we know, there  
3158 will be no (as you see, it's an irregularly shaped lot) near neighbors that would have any  
3159 problems with having it there, as opposed to being in a rear yard, because of splashing  
3160 and noise and so forth. We think it's a reasonable request, and there's been some time  
3161 and effort spent by the homeowner, the contractor, and some by myself, which is no big  
3162 deal, but we hope that you'll act favorably on this request.

3163  
3164 Mr. Wright- What's located on the side of the property where the pool  
3165 would be located?

3166  
3167 Mr. White - You know, I've been out there a couple of times, and it's so  
3168 heavily wooded, there's actually a creek that runs through there, down below, that I  
3169 think there's a house over there eventually, but it's not right on top of them at all.

3170  
3171 Mr. Wright- Can you see it?

3172  
3173 Mr. White - I don't remember seeing it, to tell the truth. I mean if you  
3174 peered through there real hard, you could see some semblance of a house.

3175  
3176 Mr. Blankinship - Maybe in February, but not this time of year.

3177  
3178 Mr. White - Not during pool season.

3179  
3180 Mr. Wright- In-ground pool?

3181  
3182 Mr. White - Yes sir. The reason I didn't put in an actual shape like I did  
3183 last time, is because it'll be very custom free-formed, and we'll design it to fit the area,  
3184 but once again, it will not infringe into any of the front yard. As a matter of fact, where I  
3185 show the dotted line separating the side yard and the front yard, per definition, will  
3186 actually be the fence line. We of course, will actually box in the area and then design a  
3187 specialty shape. We may actually paint it on the ground. The other thing we take note  
3188 of, is that we'll have to, maybe this doesn't concern this Board, but there's an overhang,  
3189 you can see from the front porch, with actual brick pilings, that you can overview the  
3190 pool, and we know we have to stay 6 feet off of that per Code. Everything's been  
3191 looked into; there's not a problem building the pool there and maintaining all the other  
3192 setbacks from the house and the side property line and so forth, so from that standpoint,  
3193 it shouldn't be a problem.

3194

3195 Mr. Balfour- Are you related to the fellow who was President of Randolph-  
3196 Macon College?  
3197  
3198 Mr. White - That's my dad!  
3199  
3200 Mr. McKinney - Does this property have well and septic?  
3201  
3202 Mr. White - I believe it's on County water and just its own private drain  
3203 field.  
3204  
3205 Mr. McKinney - Our report says utilities, public water and sewer.  
3206  
3207 Mr. Blankinship - That would be an error in the report; I apologize, Mr.  
3208 McKinney. It's public water and private septic.  
3209  
3210 Mr. Wright-- That's not public sewer then?  
3211  
3212 Mr. White - I'm sure that if he had his druthers, he would not like to have  
3213 that drain field above his pool.  
3214  
3215 Mr. Wright- To have the pool back there with the septic.  
3216  
3217 Mr. White - That would be difficult. We've done pools that were well  
3218 above the house. You can't really see the water line, and that's not good either, but it's  
3219 a better alternative than putting the pool somewhere else. In this case, he has no  
3220 alternative if he desires to have the pool.  
3221  
3222 Mr. Kirkland - Any other questions? Anyone else wish to speak? If not,  
3223 that concludes the case.  
3224  
3225 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
3226 Nunnally, the Board **granted** your application **A-76-2001** for a variance to build an in-  
3227 ground pool at 12630 Lizfield Way (Westfield Estates) (Tax Parcel 17-2-B-3). The  
3228 Board granted the variance subject to the following condition:  
3229  
3230 1. This variance applies only to the location of the swimming pool in the side yard.  
3231 All other applicable regulations of the County Code shall remain in force.  
3232  
3233 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3234 Negative: 0  
3235 Absent: 0  
3236  
3237 The Board granted this request, as it found from the evidence presented that, due to the  
3238 unique circumstances of the subject property, strict application of the County Code  
3239 would produce undue hardship not generally shared by other properties in the area, and  
3240 authorizing this variance will neither cause a substantial detriment to adjacent property

3241 nor materially impair the purpose of the zoning regulations.

3242

3243

3244 Mr. Blankinship - **A-77-2001** has been **deferred** to June 28, 2001.

3245

3246 **A - 78-2001** **LAWRENCE AND SUSAN DUNN** request a variance from Section  
3247 24-94 of Chapter 24 of the County Code to build an addition at 1111  
3248 West Durwood Crescent (Sunset Hills) (Tax Parcel 102-1-D-56),  
3249 zoned R-3, One-family Residence District (Three Chopt). The total  
3250 side yard setback is not met. The applicants propose 25.55 feet  
3251 total side yard setback, where the Code requires 30.00 feet total  
3252 side yard setback. The applicants request a variance of 4.45 feet  
3253 total side yard setback.

3254

3255 Mr. Kirkland - Anyone else wish to speak on this case? If you would, sir,  
3256 raise your right hand and be sworn in.

3257

3258 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3259 truth, the whole truth, and nothing but the truth, so help you God?

3260

3261 Mr. Kirkland - State your name. Have all your notices been turned in  
3262 according to Code. We've got it. Okay, proceed.

3263

3264 Mr. Dunn - I do. My name is Lawrence Dunn. Good morning Mr.  
3265 Chairman and Board members. I mailed them in; hopefully they've been received. My  
3266 wife and I would like to add an addition to our home, and it is to add a bathroom and  
3267 some closet space. We request a total side yard setback variance. Because of the odd  
3268 shaped lot that requires a little more, the side yard setback goes a little closer to the  
3269 neighbor there. One thing I do want to point out to the Board on this, is the application  
3270 when I turned it in, had "applicant has 25.55 feet total side yard setback with the  
3271 proposed addition, and the Code requires 34.35 feet," and looking through the case  
3272 report, I believe that the case reporter put in Code requires 30 feet total side yard  
3273 setback. I don't think it makes any difference in this case whether it's 9 feet or 4.  
3274 Whatever feet, it's a minimal impact aesthetically. You probably won't even see it from  
3275 the street, and it blends in with the house. As far as what the Code requires, I can go  
3276 through with how the setback was figured out, but I don't think it makes any difference  
3277 on 9 or 4.4 in this case.

3278

3279 Mr. Wright- This is not a question of being too close to the sideline, it's a  
3280 question of total side yard.

3281

3282 Mr. Dunn - That's correct. Bear with me; I'm not familiar with this  
3283 procedure, but that's correct; that's the proper way to phrase it. I think you can see from  
3284 the survey that it's a really strange, oddly shaped lot, in that when you get close to the  
3285 rear, it converges, which I think is what's causing the problem.

3286



3287 Mr. Wright- It appears from this picture that it's well screened from the  
3288 other properties too?

3289  
3290 Mr. Dunn - Yes, in fact the property that's next to it there, if you see from  
3291 this photograph, there are Leyland cypress planted there that makes a very nice green.

3292  
3293 Mr. Wright- It also appears from this picture that this addition would be to  
3294 the rear of the property on the side of the addition. At least that's the way it looks.

3295  
3296 Mr. Dunn - Yes. It's not on the side of the house; it's going on the rear  
3297 of the house.

3298  
3299 Mr. Wright- The curbed area, Durwood Crescent is on a curve there.

3300  
3301 Mr. Dunn - Yes.

3302  
3303 Mr. Kirkland - Any other questions? Anyone else wish to speak? If not sir,  
3304 that concludes your case.

3305  
3306 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
3307 McKinney, the Board **granted** application **A-78-2001** for a variance to build an addition  
3308 at 1111 West Durwood Crescent (Sunset Hills) (Tax Parcel 102-1-D-56). The Board  
3309 granted the variance subject to the following condition:

3310  
3311 1. Only the addition shown on the plan filed with the application may be constructed  
3312 pursuant to this approval. No substantial changes or additions to the layout may be  
3313 made without the approval of the Board of Zoning Appeals. Any additional  
3314 improvements shall comply with the applicable regulations of the County Code.

3315  
3316 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3317 Negative: 0  
3318 Absent: 0

3319  
3320 The Board granted this request, as it found from the evidence presented that, due to the  
3321 unique circumstances of the subject property, strict application of the County Code  
3322 would produce undue hardship not generally shared by other properties in the area, and  
3323 authorizing this variance will neither cause a substantial detriment to adjacent property  
3324 nor materially impair the purpose of the zoning regulations.

3325  
3326  
3327 **A - 79-2001 DANIEL E. WATSON** requests a variance from Section 24-9 of  
3328 Chapter 24 of the County Code to build a single-family dwelling at  
3329 8041 Upper Western Run Lane (Tax Parcel 243-A-10A (part)),  
3330 zoned A-1, Agricultural District (Varina). The public street frontage  
3331 requirement is not met. The applicant proposes 0 feet public street  
3332 frontage, where the Code requires 50 feet public street frontage.

3333                                   The applicant requests a variance of 50 feet public street frontage.  
3334  
3335 Mr. Kirkland -                    Anyone else wish to speak on this case? Okay sir, if you will  
3336 raise your right hand and be sworn in.  
3337  
3338 Mr. Blankinship -                Do you swear that the testimony you are about to give is the  
3339 truth, the whole truth, and nothing but the truth, so help you God?  
3340  
3341 Mr. Kirkland -                    State your name for the record. Have all your notices been  
3342 turned in according to the County Code? We have them in the file. Okay, if you would,  
3343 state your case.  
3344  
3345 Mr. Watson -                     I do. Daniel Watson. Yes sir. I received 1 acre of land, out  
3346 of a 22.2-acre parcel, from my grandfather. The Code requires 50 feet of public street  
3347 frontage, which I do not have. According to the map you see here, the closest public  
3348 road is Charles City Road. Upper Western Run Lane comes in as a private drive. I  
3349 request 50-foot variance from the Code, to construct a single-family dwelling. I do not  
3350 believe it will be any substantial impact to anybody else who lives on the road. Those  
3351 persons are my grandfather, who has the closest house, my uncle Charles Cochrone  
3352 Jr., whose property is just out of the picture here, and my uncle Kenneth Cochrone,  
3353 whose property is just over to the left, out of the picture.  
3354  
3355 Mr. Nunnally-                    Have you read the conditions on this case?  
3356  
3357 Mr. Watson -                     Yes sir, I am in agreement with the conditions as suggested  
3358 by the Board. The Board has been gracious in granting 4 other variances for the family  
3359 property. I would appreciate it if they would extend the graciousness.  
3360  
3361 Mr. Wright-                     Do you have legal access? Is that a feed or easement or  
3362 something, right-of-way?  
3363  
3364 Mr. Watson -                     On the deed I have legal access over to Upper Western Run  
3365 Lane by 20-foot easement, and my grandfather has legal access for the lane, coming in,  
3366 which will be put on my deed.  
3367  
3368 Mr. Wright-                     Out to the Charles City Road?  
3369  
3370 Mr. Watson -                     Yes sir.  
3371  
3372 Mr. Kirkland -                    Any other questions of the Board members? Yes sir, are you  
3373 for the case, sitting down. Do you want to speak? What's your name sir?  
3374  
3375 Mr. Cochrone -                    Kenneth Cochrone. No more than what he's brought up that  
3376 it has been passed for 4 other family members, including myself, and I wish to see it be  
3377 approved for him. There is no impact on anyone.  
3378

3379 Mr. Kirkland - Okay. Any questions? If not, that concludes the case.

3380  
3381 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.  
3382 Wright, the Board **granted** application **A-79-2001** for a variance to build a single-family  
3383 dwelling at 8041 Upper Western Run Lane (Tax Parcel 243-A-10A (part)). The Board  
3384 granted the variance subject to the following conditions:

3385  
3386 1. This variance applies only to the public street frontage requirement. All other  
3387 applicable regulations of the County Code shall remain in force.

3388  
3389 2. At the time of building permit application, the applicant shall submit the  
3390 necessary information to the Department of Public Works to ensure compliance with the  
3391 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
3392 water quality standards.

3393  
3394 3. At the time of building permit application the owner shall demonstrate that the  
3395 parcel created by this division has been conveyed to members of the immediate family,  
3396 and the subdivision ordinance has not been circumvented.

3397  
3398 4. The applicant shall present proof with the building permit application that a legal  
3399 access to the property has been obtained.

3400  
3401 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
3402 for maintaining access to the property until such a time as the access is improved to  
3403 County standards and accepted into the County road system for maintenance.

3404  
3405 6. Approval of this request does not imply that a building permit will be issued.  
3406 Building permit approval is contingent on Health Department requirements, including,  
3407 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
3408 of a well location.

3409  
3410 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3411 Negative: 0  
3412 Absent: 0

3413  
3414 The Board granted this request, as it found from the evidence presented that, due to the  
3415 unique circumstances of the subject property, strict application of the County Code  
3416 would produce undue hardship not generally shared by other properties in the area, and  
3417 authorizing this variance will neither cause a substantial detriment to adjacent property  
3418 nor materially impair the purpose of the zoning regulations.

3419  
3420  
3421 Mr. Blankinship - The next 2 are companion cases, Mr. Chairman.

3422  
3423 Mr. Kirkland - We'll hear them together.

3424

3425 **A - 80-2001** **VERIZON VIRGINIA, INC.** requests a variance from Sections 24-  
3426 106.2(4), 24-94 and 24-96(c) of Chapter 24 of the County Code to  
3427 expand an existing switching station at 1110 New York Avenue  
3428 (Biltmore) (Tax Parcels 43-2-9-1 and -3), zoned R-4, One-family  
3429 Residence District (Fairfield). The landscape strip width, minimum  
3430 side yard setback, parking lot location requirement, and rear yard  
3431 setback are not met. The applicant proposes 5.00 feet landscape  
3432 strip width, 6.07 feet minimum side yard setback, 23.90 feet rear  
3433 yard setback, and a parking lot in the front yard, where the Code  
3434 requires 20.00 feet minimum side yard setback, 40.00 feet minimum  
3435 rear yard setback, and 10.00 feet landscape strip width, and allows  
3436 a parking lot in the rear yard. The applicant requests variances of  
3437 13.93 feet minimum side yard setback, 16.10 feet rear yard  
3438 setback, 5.00 feet landscape strip width, and to allow a parking lot  
3439 in the front yard.

3440  
3441 **UP- 16-2001** **VERIZON VIRGINIA, INC.** requests a conditional use permit  
3442 pursuant to Section 24-12(c) of Chapter 24 of the County Code to  
3443 expand an existing telephone switching station at 9609 Brook Road  
3444 (Biltmore) (Tax Parcels 43-2-9-1 and -3), zoned R-4, One-family  
3445 Residence District (Fairfield).

3446  
3447 Mr. Kirkland - If you would, raise your right hand and be sworn in.

3448  
3449 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3450 truth, the whole truth, and nothing but the truth, so help you God?

3451  
3452 Mr. Kirkland - Would you state your name for the record. We have all your  
3453 notices, of course.

3454  
3455 Ms. Freye - I do. Yes sir. Good morning. My name is Gloria Frye. I'm  
3456 an attorney here on behalf of Verizon Virginia, Inc. Yes sir you do. Also here on behalf  
3457 of Verizon is Jane Harris and their engineer from Teng Associates Wendell Edwards, in  
3458 case we have questions of them. Verizon is asking to expand its telephone switching  
3459 equipment building at the northeast corner of Brook Road and New York Avenue. The  
3460 existing building has been there since 1990. This BZA did approve a special conditional  
3461 use permit for the building back in 1986, and it was build in 1990. Verizon is a public  
3462 utility company. They do need to expand this building to house more equipment, so that  
3463 they can meet the increased public demand for additional telephone lines and additional  
3464 telephone service. Verizon wants to add 2,349 square feet to the building and increase  
3465 the parking from 4 spaces to 6 spaces. The expansion will be constructed with brick in  
3466 a color to match the existing color brick as closely as possible. This is considered an  
3467 unmanned facility; people do go there to install equipment, to maintain and repair  
3468 equipment, but it doesn't have office space or workstations there. Because the  
3469 expansion is occurring primarily to the rear of the property, which at the north side, it will  
3470 have very little visual impact on the homes on New York Avenue. It will stay one-story

3471 and maintain its residential design and character and still be compatible with the  
3472 neighborhood. The use has been there for over 10 years, and as far as we know, we  
3473 don't believe the County's ever received any complaints or concerns from the  
3474 neighborhood about any adverse impact. By adding the 2 parking spaces, we help to  
3475 insure that there won't be congestion or traffic problems at this site. Verizon is in  
3476 agreement with the conditions that have been recommended by the staff, and as far as  
3477 we know, there is no public opposition to this. For these reasons, Verizon believes that  
3478 the expansion will not have a negative impact. It will meet a public need, and it does  
3479 meet the jurisdictional requirements for you to grant the conditional use permit. We'll be  
3480 glad to answer any questions about the use, before we go on to talk about the  
3481 variances.

3482  
3483 Mr. McKinney - Ms. Freye, you say it's because of the increased usage?  
3484

3485 Ms. Freye - There is an increased demand for additional telephone  
3486 service, and additional lines, from the residences and the businesses in the area. To  
3487 meet that demand, they have to put more equipment in this building.  
3488

3489 Mr. McKinney - I understand that. Where did that come from?  
3490

3491 Ms. Freye - Where did the demand come from?  
3492

3493 Mr. McKinney - Where did you get your information from that they needed,  
3494 that they have more demand? The reason I ask that, because I hear these  
3495 advertisements, and I see in print, that Cavalier Telephone Company, which is the  
3496 person on the block, has over 30,000 users, and those users came from Verizon. I'm  
3497 wondering where the expansion .....

3498  
3499 Ms. Freye - One of the demands that's placed on Verizon, is that by law  
3500 they are required to make space available for competitors' equipment in their building.  
3501 So part of the space and the new equipment, the racks of equipment that are going to  
3502 be added to this, will actually have to be made available to competitors. They do need  
3503 variances as well, and Mr. Blankinship, if you would show the aerial or the site that  
3504 shows this. Primarily the reason that they need these 4 variances is because of what  
3505 VDOT did in 1994. There was a huge drainage ditch and take of the property on the  
3506 Brook Road side. The front, what that take did, is it ended up changing the whole  
3507 orientation of the lot. The front was moved from Brook Road to New York Avenue, and  
3508 the parking was on the New York Avenue side, which before the take would have been  
3509 the side yard and permitted, but now the front is on the New York Avenue side, and the  
3510 parking lot is there. So we need a variance for that. Also, when the take occurred, it  
3511 created a setback violation for the Brook Road side of the property, so they need a  
3512 13.93-foot variance on that west side of the building. With the expansion being placed  
3513 in the rear, or the north side of the building, and the purpose of doing that is to keep the  
3514 expansion as far away from the neighbors and the residential property lines, they need  
3515 a 16.1-foot variance for the new rear yard. The last variance that Verizon needs, relates  
3516 to the 10-foot requirement for a landscape strip between the parking lot and New York

3517 Avenue. There is a portion of that where they exceed the 10 feet, but it narrows down  
3518 to the driveway, where they only have 5 feet, so we're asking for a 5-foot variance there,  
3519 but that landscape strip doesn't even exist today, so that we'll be creating a landscape  
3520 strip for the first time and planting evergreens in there. We submit that Verizon does  
3521 meet the jurisdictional requirements for the variances, because of the exceptional  
3522 situation that was created when VDOT took the frontage for the drainage ditch. It is an  
3523 unusual situation that's unique to this property and not one that's generally shared by  
3524 other properties. The variances are necessary to bring this property into compliance  
3525 and to allow the expansion to occur on the north side of the building, where it would  
3526 have the least impact on the neighborhood. We don't think the variances will be  
3527 detrimental to the adjacent properties, as this situation has existed since 1994 and  
3528 hasn't seemed to be a problem. For these reasons, we think the jurisdictional  
3529 requirements have been met, and we ask that you approve the variances as well as the  
3530 new conditional use permit.

3531  
3532 Mr. McKinney - Ms. Freye, are you going to require a supplementary power  
3533 generator?

3534  
3535 Ms. Freye - Yes sir, we will have a generator inside the building.

3536  
3537 Mr. McKinney - In other words, you're going to add another generator?

3538  
3539 Ms. Freye - There is a generator there now, that's inside. The new  
3540 generator will be inside as well.

3541  
3542 Mr. McKinney - There will be no noise impact on the neighborhood?

3543  
3544 Ms. Freye - We don't believe so. We anticipated that question and did a  
3545 noise study, and found that just the ambient background noise there is at 72 DBA from  
3546 the highway, and in looking at even a very large generator, the decibel level at the  
3547 property line would be about 69, and we wouldn't even have a generator that large.

3548  
3549 Mr. McKinney - Is 72 DBA from the highway was measured where?

3550  
3551 Ms. Freye - Was measured during the day .....

3552  
3553 Mr. McKinney - To what point? You get 72 on your lot; if you go further  
3554 down, it gets less and less.

3555  
3556 Ms. Freye - That's true, we measured it from the Brook Side of the  
3557 building.

3558  
3559 Mr. McKinney - The Brook Road side? How about the adjacent property  
3560 owner where there's a residence – was it measured there?

3561  
3562 Ms. Freye - We didn't measure it from there because of just what you

3563 said; it would be less back there.  
3564  
3565 Mr. McKinney - But you measured noise from Brook Road, not noise from  
3566 your generator, exhaust.  
3567  
3568 Ms. Freye - No, because the generator there now is only like 50  
3569 kilowatts.  
3570  
3571 Mr. McKinney - But you're going to put a larger one in?  
3572  
3573 Ms. Freye - We would put a larger one in, so that's why we estimated  
3574 what the largest generator would be, which would be like a 750 generator, and we got  
3575 the manufacturer's standards for that and calculated the distance, and it was at 69  
3576 decibels.  
3577  
3578 Mr. McKinney - 69? What's the policy, Mr. Blankinship, isn't it 50?  
3579  
3580 Mr. Blankinship - I believe we started with 65 and reduced it. I think 65 was  
3581 the standard though; it was changed in that one specific circumstance because of the  
3582 complaints, but really even 65 is a very low level of sound.  
3583  
3584 Mr. McKinney - We did reduce it. With MCI we changed it. So what is the  
3585 policy or level now – is it 65 at the lot line?  
3586  
3587 Mr. Blankinship - I don't know that we really have a policy. We had one case  
3588 where there were a lot of complaints, and we tried to address those specific complaints,  
3589 but I don't know that there's really a policy.  
3590  
3591 Ms. Freye - Mr. McKinney, one thing about the generator, it's going to be  
3592 fitted with acoustic levers, and it will be inside a brick building.  
3593  
3594 Mr. McKinney - But the exhaust goes out. Is that muffled?  
3595  
3596 Ms. Freye - Yes sir.  
3597  
3598 Mr. McKinney - Okay. So it's just the tractor-trailers going up and down the  
3599 road?  
3600  
3601 Ms. Freye - Another concern that sometimes gets raised about the  
3602 generator is that you have to test it, and the testing is done once a month for about 30  
3603 to 60 minutes, and that's done during the day, so that would be the highest potential for  
3604 noise level, but even then, we don't think it's going to be a problem. We've never had a  
3605 complaint from the neighbors  
3606  
3607 Mr. Kirkland - Any other questions by Board members? Ms. Freye? Does  
3608 anyone else wish to speak on this case? If not, that concludes it.

3609  
3610 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
3611 Wright, the Board **granted** application **A-80-2001** for a variance to to expand an existing  
3612 switching station at 1110 New York Avenue (Biltmore) (Tax Parcels 43-2-9-1 and -3).  
3613 The Board granted the variance subject to the following condition:

3614  
3615 1. The property shall be developed in substantial conformance with the plan filed  
3616 with the application. No substantial changes or additions to the layout may be made  
3617 without the approval of the Board of Zoning Appeals.

3618  
3619 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3620 Negative: 0  
3621 Absent: 0

3622  
3623 The Board granted this request, as it found from the evidence presented that, due to the  
3624 unique circumstances of the subject property, strict application of the County Code  
3625 would produce undue hardship not generally shared by other properties in the area, and  
3626 authorizing this variance will neither cause a substantial detriment to adjacent property  
3627 nor materially impair the purpose of the zoning regulations.

3628  
3629 After an advertised public hearing and on a motion by Mr. McKinney, seconded by Mr.  
3630 Wright, the Board **granted** application **UP-16-2001** for a conditional use permit to  
3631 expand an existing telephone switching station at 1110 New York Avenue (Biltmore)  
3632 (Tax Parcels 43-2-9-1 and -3). The Board granted the use permit subject to the  
3633 following conditions:

3634  
3635 1. The property shall be developed in substantial conformance with the plan filed  
3636 with the application. No substantial changes or additions to the layout may be made  
3637 without the approval of the Board of Zoning Appeals.

3638  
3639 2. The applicant must present a complete grading, drainage, and erosion control  
3640 plan prepared by a Professional Engineer certified in the state of Virginia to the  
3641 Department of Public Works for approval. This plan must include the necessary  
3642 floodplain information if applicable

3643  
3644 3. A detailed site lighting and landscape plan shall be submitted with the building  
3645 permit for Planning Office review and approval.

3646  
3647 4. The activities at this site shall be limited to those which are required to properly  
3648 operate this facility and shall not be used as a sales office, a parts or supplies storage  
3649 area, or offices for Verizon operations not being conducted on this site.

3650  
3651 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5  
3652 Negative: 0  
3653 Absent: 0

3654



3655 The Board granted the request because it found the proposed use will be in substantial  
3656 accordance with the general purpose and objectives of Chapter 24 of the County Code.

3657  
3658 Mr. Kirkland - Okay, last but not least.

3659  
3660 **UP- 17-2001 JEWISH COMMUNITY CENTER, INC.** requests a conditional use  
3661 permit pursuant to Section 24-52(a) of Chapter 24 of the County Code to expand an  
3662 existing community center at 5403 Monument Avenue (Tax Parcel 115-A-2), zoned A-1,  
3663 Agricultural District (Three Chopt).

3664  
3665 Mr. Kirkland - Anyone else wish to speak on this case? If you will all raise  
3666 your right hand and be sworn in.

3667  
3668 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
3669 truth, the whole truth, and nothing but the truth, so help you God?

3670  
3671 Mr. Kirkland - State your name for the record. Notices? We have them.

3672  
3673 Mr. Mistr - I'm Spud Mistr, of Foster and Miller, representing the Jewish  
3674 Community Center. The notices have been turned in and should be in the file. We're  
3675 requesting a use permit to expand the Jewish Community Center by 33,600 square feet,  
3676 and this is for a combination of office space, fitness facilities, meeting rooms, and space  
3677 for after-school care. A large portion of it is a pool expansion. This will be on the  
3678 existing site. We intend to expand the parking from the current 167 spaces, to 305  
3679 spaces. We're in agreement with your conditions of approval, to submit the landscaping  
3680 plan to the planning office. The one we had a concern about is number 7, for the  
3681 transitional buffer 25-D, which this property is zoned A-1, and there is no requirement  
3682 for a transitional buffer. Since we submitted the plans, we have redrawn the parking  
3683 configuration, because on the eastern property line, there are several large mature oak  
3684 trees. The existing parking comes 40 feet from that property line. We're going to limit  
3685 the new parking to that 40-foot line along the eastern property line. We would like to be  
3686 10 feet off of the southern property line, and the little piece at the end of Wythe Avenue.  
3687 I can show you a layout. What we wanted to do on the south property line was to put a  
3688 berm, with landscaping along the top of that berm, which would be evergreens  
3689 supplemented by some smaller plantings. These trees would probably be 3 to 5 feet  
3690 when planted.

3691  
3692 Mr. Balfour - Don't they grow to about 12 to 15 feet?

3693  
3694 Mr. Mistr - When they mature. We intend to do some additional  
3695 landscaping within that buffer on the eastern property line. I don't have multiple copies  
3696 of the new layout, and we've not reached a final agreement with the Center to use this  
3697 layout, but you can see where we've shaded it in green. That's the eastern property  
3698 line. We are staying 40 feet off, and where the jog is, we're 40 feet off on those woods.  
3699 As you come further toward the south, at the end of Wythe Avenue, we have a drive  
3700 aisle, not parking spaces, but we are within 10 feet of the property line there, and along

3701 the south. This berm detail I gave you, would be for the end of Wythe Avenue and then  
3702 along the southern property line.

3703  
3704 Mr. Wright- What's located at the end of Wythe Avenue? It's just open?

3705  
3706 Mr. Mistr - It's just an open, vacant lot. I think cars turn around in it, and  
3707 it's gravel, but it's not a public street.

3708  
3709 Mr. Wright - Not wooded or anything?

3710  
3711 Mr. Mistr - No it's not wooded. It's completely open. You can see  
3712 where we've shown the woods on this plan, and the one up on the screen has them  
3713 colored in. This is an expansion of an existing community service. We know of no  
3714 negative impacts on the surrounding properties. The hardship for this expansion –  
3715 there were several other sites that were investigated for moving the Center entirely, and  
3716 none of them were feasible, so the Center needs to expand to accommodate their  
3717 existing membership, and they would like to do it on the property that they currently  
3718 own.

3719  
3720 Mr. Wright - Why wouldn't you extend that buffer all the way down along  
3721 that east property line? You've got something in the corner, what is that in the corner of  
3722 the green? That's a little buffer down there.

3723  
3724 Mr. Mistr - Well, I mean, we want that drive aisle to go within 10 feet of  
3725 the parking. What we're trying to do is, we have 167 spaces existing. The parking  
3726 layout you see now will give 305, which is an additional 138 parking spaces for  
3727 employees and the members to park. If we're further off of that one property line, then  
3728 we'll lose more parking spaces, or we'll not be able to gain as many parking spaces.

3729  
3730 Mr. Wright - It appears to be some sort of little area there that you could  
3731 put some planting in – it extends from where you stop your, right there, over to the east.

3732  
3733 Mr. Mistr - That's a drive aisle just past there.

3734  
3735 Mr. Wright - No, I'm talking about right on the property line. That little,  
3736 right there.

3737  
3738 Mr. Mistr - We will put the berm, and the detail I gave you will include  
3739 that, into that area.

3740  
3741 Mr. Wright - That's where the berm is going to be?

3742  
3743 Mr. Mistr - No, push this up a little bit. We had intended it to be right  
3744 there. Anywhere the parking is within 10 feet of the property line, we'll put the berm and  
3745 landscaping.

3746

3747 Mr. Wright - So that's going to extend along the east line on up there too,  
3748 is that what you're saying?  
3749  
3750 Mr. Mistr - A portion of the east line for, it looks like 160 feet.  
3751  
3752 Mr. Kirkland - Mr. Mistr, did you inquire about buying that lot?  
3753  
3754 Mr. Mistr - I believe it's been talked about in the past, but I don't know  
3755 the status of any negotiations for that lot.  
3756  
3757 Mr. Wright - It appears to me we ought to protect that lot though, and I  
3758 don't see, I'm not clear as to what you're saying.  
3759  
3760 Mr. Blankinship - What exactly does the green signify?  
3761  
3762 Mr. Mistr - The green is existing trees that we intend to save.  
3763  
3764 Mr. Wright - But there will be no screening from the end of the green,  
3765 down the south, all the way up the east line there?  
3766  
3767 Mr. Mistr - No, that's the detail I just handed you is what would go in that  
3768 area. There is nothing there now.  
3769  
3770 Mr. Wright - You are going to put that in there. That is what I didn't  
3771 understand, as well as across the back?  
3772  
3773 Mr. Mistr - Yes. It will go across the south line for as far as the parking  
3774 extends.  
3775  
3776 Mr. Wright - That would be a 2-foot berm with plantings on top of it.  
3777  
3778 Mr. Mistr - Yes, with plantings on top of it. They will get about 12-15  
3779 feet in height.  
3780  
3781 Mr. Wright - What are you going to do with the other end of the property  
3782 where you don't show parking?  
3783  
3784 Mr. Mistr - They have a recreation field and a softball field planned for  
3785 there.  
3786  
3787 Mr. Wright - No lights?  
3788  
3789 Mr. Mistr - There are no lights planned for that ball field, there are lights  
3790 planned for the parking lot but they will be screened and shielded away from any  
3791 adjoining properties. Directed so that there will be no direct light shining into any  
3792 neighbor's property.

3793  
3794 Mr. McKinney - Well, the Planning Commission will address that won't they?  
3795  
3796 Mr. Mistr - This will be staff, a use permit does not go to the Planning  
3797 Commission. With the conditions that have been recommended suggested, we are in  
3798 agreement with that. We have to submit a plan to the planning office and public works  
3799 for approval. We will address it there.  
3800  
3801 Mr. Wright - If they ever decide to put lights on that field, I think they will  
3802 have to come back to us. We are not approving any lights on that playing field.  
3803  
3804 Mr. Mistr - That is correct.  
3805  
3806 Mr. Kirkland - Any other questions of Mr. Mistr? Yes ma'am, do you want  
3807 to speak? Are you opposed or for the case? Neither.. What is your name Sir?.  
3808  
3809 Mr. Rudenko - Mike Rudenko. My property adjoins right there on Franklin  
3810 Street, where the fence is. I put up the fence  
3811  
3812 Mr. Wright - Wait a minute now, lets find out just where you are located  
3813 relative to the site.  
3814  
3815 Mr. Rudenko - I am all the way at the end of the green, right there. What I  
3816 would like to ask them to do is put up a privacy fence all the way from that end, across  
3817 Franklin Street to the other side. The reason for it is employees of their's park right in  
3818 front of my building, and I have tenants there that have a couple cars. They come home  
3819 from work and they have nowhere to park, even though I have parking spaces, one for  
3820 each as required by Code. Also, they put the trash, right now if you look over there  
3821 where Franklin Street ends, it's a pile of garbage that no one cleans up. I complain and  
3822 complain. Right on my property, I put up a 10-foot fence because the kids ride back  
3823 and forth. One of my tenants could hit a child. I would like for them to put a privacy  
3824 fence all the way. They have a privacy fence from Monument Ave, from that corner,  
3825 across my property all the way across Franklin Street.  
3826  
3827 Mr. Wright - You say they already have a privacy fence from Monument?  
3828 How far back from Monument south does it go? Can you see that on that other plat?  
3829  
3830 Mr. Rudenko - it comes into our land, then I put up chain link fence over  
3831 there, 10 feet tall. I want privacy fence where the chain link fence is across Franklin  
3832 Street to the other side. There is a 6-foot fence on the other side. There is a fence  
3833 across Franklin Street with a gate, they used to use that for vehicles for repairs trucks  
3834 and so forth. Now it abandoned and it's a pile of trash sitting over there that no one  
3835 cleans up.  
3836  
3837 Mr. Balfour - I am not sure I understand, are you saying the present fence  
3838 is attached to your fence? How to they get in there if they park on your property?

3839  
3840 Mr. Rudenko - There is a driveway right next to it.  
3841  
3842 Mr. Balfour - So they park on your side and walk through the driveway?  
3843  
3844 Mr. Rudenko - There is a walkway over here as you can see, Franklin Street  
3845 there is a little walkway right across there, between my chain link fence and other one,  
3846 there is a gate provided for it.  
3847  
3848 Mr. Balfour - How is this fence you want them to put up going to solve  
3849 that? You want to close off the entrance, I gather. Is that what you are saying?  
3850  
3851 Mr. Rudenko - That is correct.  
3852  
3853 Mr. Kirkland - You want to close it up good,  
3854  
3855 Mr. Rudenko - Close up completely so I won't have no employees there,  
3856 members park on the street, Other wise everyday I am going over to pick up the cups  
3857 and the trash, because they come out and throw it right in my yard.  
3858  
3859 Mr. Wright - So there is an access through that fence right there. .  
3860  
3861 Mr. Rudenko - Right,  
3862  
3863 Mr. Wright - I don't know why we would permit that.  
3864  
3865 Mr. Rudenko - It was permitted before.  
3866  
3867 Mr. Kirkland - Can we seal that up?  
3868  
3869 Mr. Wright - I don't see why we can't, to protect the neighbors. Let them  
3870 come around the other way.  
3871  
3872 Mr. Blankinship - I don't see him here today, but we had one other property  
3873 owner on that street, an owner of rental property who had substantially the same  
3874 request.  
3875  
3876 Mr. Rudenko - He lives across the street from us.  
3877  
3878 Mr. Kirkland - When you say privacy fence, what kind of privacy fence are  
3879 you talking about?  
3880  
3881 Mr. Rudenko - An 8 –10 foot wooden fence.  
3882  
3883 Mr. Kirkland - OK, shadow box design, 7 foot tall in residential.  
3884

3885 Mr. Rudenko - Right now I put up a 10-foot fence on account of the children  
3886 used to play there. To protect the children.  
3887  
3888 Mr. McKinney - You say you have a 10-foot fence?  
3889  
3890 Mr. Rudenko - I have an 8-foot fence.  
3891  
3892 Mr. McKinney - Did you get a variance for that fence? Because you can't put  
3893 one up over 7 feet.  
3894  
3895 Mr. Rudenko - The fence is there, I was making sure the children don't run  
3896 into the driveway.  
3897  
3898 Mr. McKinney - You might have to cut it off.  
3899  
3900 Mr. Rudenko - If they put up a privacy fence they cut that one off, take that  
3901 one off and put the privacy up. So long as I have a privacy fence across my property,  
3902 Franklin Street towards Mr. Tate.  
3903  
3904 Mr. Kirkland - Ok  
3905  
3906 Mr. Rudenko - So there won't be any entrance or anyone walking over  
3907 there, and I won't have to pick up trash everyday.  
3908  
3909 Mr. Balfour - You paid for the fence that is up there now?  
3910  
3911 Mr. Rudenko - Yes.  
3912  
3913 Mr. Balfour - What if they come to you and say "split the cost of the nice  
3914 looking fence"  
3915  
3916 Mr. Rudenko - No. I have been there longer than they have.  
3917  
3918 Mr. Wright - There is no reason why they shouldn't protect the other  
3919 properties.  
3920  
3921 Mr. Rudenko - Because they put up. . . there is a building over here and  
3922 over here. . . There is a fence here and here. I also have another question. I see on this  
3923 map there is a sewer line running under the building to be constructed. I had  
3924 previously. . . when they extended the last parking lot they drained all the water from the  
3925 parking lot right into my front yard. Which I had to come to the County and had a big  
3926 battle. So they diverted it to Monument Avenue. I have no objection to what they want  
3927 to do, but I have to protect my property.  
3928  
3929 Mr. Wright - Where is this drainage coming from?  
3930

3931 Mr. Rudenko - It's coming from the parking lot.  
3932  
3933 Mr. Kirkland - Mr. Blankinship, is there one of those big ponds on this site  
3934 already? One of those BMPs?  
3935  
3936 Mr. Blankinship - Not that I am aware of. They are showing one on their layout  
3937 plan, to go in the Northwest corner.  
3938  
3939 Mr. Kirkland - That would direct the water that way I would assume.  
3940  
3941 Mr. Wright - How would that do that from the parking lot?  
3942  
3943 Mr. Blankinship - This does not really include a drainage or grading plan.  
3944  
3945 Mr. Kirkland - Maybe Mr. Mistr can answer that question.  
3946  
3947 Mr. Rudenko - I can see on this one here where the drain. . . I wonder are  
3948 they going to build the building on top of it which way they going to drain the water from  
3949 the parking lot back into my front yard. Like they did before.  
3950  
3951 Mr. Blankinship - We have recommended a condition that they have to present  
3952 complete plans to Public Works .  
3953  
3954 Mr. Wright - That would be taken care of when they submit the plans to  
3955 Public Works.  
3956  
3957 Mr. Rudenko - How did they do that before? They actually did not have a  
3958 curb, they paved the parking lot and right into my front yard, right across Franklin Street  
3959 into my front yard.  
3960  
3961 Mr. Kirkland - Things have changed drastically since then.  
3962  
3963 Mr. Rudenko - I hope for the better.  
3964  
3965 Mr. Kirkland - Yes sir, they have.  
3966  
3967 Mr. Rudenko - That is the only thing I have is that they close up . . .  
3968  
3969 Mr. Kirkland - We will have Mr. Mistr address those for you. Ma'am do you  
3970 anything to say?  
3971  
3972 Ms. Zachary - My name is Nina Zachary, and I own, share it with him, 5310  
3973 West Franklin and I reside at 5308 West Franklin. So I have a double problem.  
3974 Because 5310 is a rental property, Mr. Rudenko goes home and I have to live with all  
3975 the noise, the pool with everything else with that little sidewalk. I have addressed the  
3976 problem many that times. People come in, park in my driveway, call Henrico County,

3977 they come and tow cars away The drainage that Mr. Rudenko talked about it covered  
3978 5310 property and it came into 5308 property and underneath the house and  
3979 necessitated that I put a sump pump underneath it in order to keep the water out of it.  
3980 So of course Henrico came to the rescue but that took 5, 6 years before that was  
3981 corrected. Now when we had, when the Jewish Community Center had a meeting in  
3982 the evening and they said that that sidewalk that Mr. Rudenko pointed out would be  
3983 closed off I see on the current map that it has not been closed off. How that was  
3984 permitted, we don't know.

3985  
3986 Mr. Kirkland - We can handle that.

3987  
3988 Ms. Zachary - That would be wonderful. The 25, I couldn't understand this  
3989 gentlemen, because he did not agree with the 25-foot boundary. I do agree with that,  
3990 10 foot is not enough. Because if they expand, the pool expansion building will be  
3991 farther out which generates a lot of noise at night. Further more, I don't know how their  
3992 air conditioning-heating system will be, if it is up on the roof I can hear it and I have to  
3993 go inside. I cannot even enjoy my porch in the back because of all the noise. I can tell  
3994 you when it comes off and when it goes on. So that has to be addressed, the noise  
3995 factor.

3996  
3997 Maybe to address all of these problems, maybe if there was some kind of a fence not  
3998 just a wooden fence maybe a silent fence of some kind. Because when they are  
3999 planning to expand all of that area that means many more people will be, even though  
4000 they say it doesn't necessarily mean that there will be more members, but there will be  
4001 more activities for the swimming club, swimming meets, because it is an Olympic size  
4002 pool. So they have different activities there. So maybe something a little stronger and a  
4003 silent barrier of some kind to come across from the alley right down Franklin Street to  
4004 Mr. Tate's area as well. Cover that entire area. Because we do have a problem with  
4005 that corner, no body picks up, I even have bills that I plan to send to the gentlemen, in  
4006 my front yard people that come in to work out, mind you, they parked right in my yard  
4007 and run through that little gate to work out because they cannot drive to their parking lot  
4008 and walk a little bit. So I walk from the end of a parking lot when I go shopping so to  
4009 eliminate. . . so this is the problem that we are faced with.

4010  
4011 Mr. Wright - That can be rectified that is no problem.

4012  
4013 Ms. Zachary - Provided that it is rectified and notified because somehow  
4014 things happen where it is too late. Like that little gate was never suppose to have been  
4015 there. And my parents did not speak English, so it just happened.

4016  
4017 Mr. Wright - Well, if we say its not going to be there we will see that.

4018  
4019 Ms. Zachary - I appreciate that, and you are Mr. Wright. I will be sure to  
4020 remember your name. Thank you very much.

4021  
4022 Mr. Kirkland - Anyone else wish to speak in apportion? Mr. Mistr, want to



4023 hit the drainage problem first?

4024

4025 Mr. Mistr - yes, the drainage problem, there is curb and gutter on the  
4026 existing parking lot and there is an inlet in the corner right at the end of Franklin Street.  
4027 I am not aware of water running off of this site. The green area, the landscape area,  
4028 there could be a little bit of water going out, it doesn't appear to be just from the eye.  
4029 We will have the drainage going around both sides of the building and pretty much the  
4030 routing it takes now. A small part of it goes to the east side of the building, the majority  
4031 will go to the west. We did show a BMP on the front, we are trying to look at  
4032 alternatives and hopefully we will be able to put that underground so that will be in the  
4033 back with sand filters or with other methods depending on the cost of it. We will look at  
4034 all the drainage problems, and as you know it is illegal to divert drainage from your  
4035 property onto someone else's. If that is happening we will have to correct it. If it is  
4036 coming off of other properties on Franklin, that is a different issue as you are aware of.

4037

4038 The issue about access. . . Franklin Street is a public street that abuts out property, that  
4039 the Center should have access to. Now, that we are going to have 138 more parking  
4040 spaces assuming the conditional use permit is approved, there will not be a need for the  
4041 people to park on Franklin Street. Now the Center can obviously control their  
4042 employees as to where they park. They can request that their members park in other  
4043 areas; forcing them to is a little bit difficult.

4044

4045 Mr. Wright - If you have a fence there and they have to climb over the  
4046 fence to get over there, it will probably inhibit. . .

4047

4048 Mr. Mistr - There are reasons we prefer to have that gate. There are  
4049 several members of the Center here that can verify this, there are members of the  
4050 center that live in Keswick Apartments which is farther down Monument, west of Willow  
4051 Lawn Drive, and I understand that a good number of them walk to the Center and walk  
4052 up Franklin Street and do use that sidewalk on Franklin Street to get in. Which is  
4053 certainly safer than walking on Monument Ave.

4054

4055 Mr. Wright - That is too bad.

4056

4057 Mr. Kirkland - Isn't there a sidewalk along Monument Ave that leads to this  
4058 Center?

4059

4060 Mr. Mistr - I don't know.

4061

4062 Ms. Zachary - Yes there is, because the Franklin Street sidewalk and these  
4063 old people who come in, if they fall in front of my property I am sued.

4064

4065 Mr. Mistr - The one on Franklin Street is broken up, I do know that. But  
4066 it is a county sidewalk; it is in the right of way. The reason we would like to have the  
4067 access from Franklin Street is for the people who walk up, not those who drive up, and  
4068 we can control the employees from doing that.

4069  
4070 Mr. Kirkland - How about a condition on the privacy fence, do you have any  
4071 problems with that?  
4072  
4073 Mr. Mistr - Do we want a wooden privacy fence or is the existing chain  
4074 link fence satisfactory if it was closed off?  
4075  
4076 Mr. Kirkland - I think we need a privacy fence, that is up to the Board  
4077 members.  
4078  
4079 Mr. Mistr - Could we make the privacy fence just from the most eastern  
4080 most portion of that property line where the chain link, not in the front yard but from the  
4081 back of the apartments across Franklin and across the alley up to Wythe Street. If we  
4082 start putting in, when you get to Wythe Street, that is a single family residence, and  
4083 even though it's our rear yard, its their side yard and we may by zoning be limited to 42  
4084 inches instead of 7 feet.  
4085  
4086 You're going to have a berm along there anyway.  
4087  
4088 Mr. Mistr - No the berm is going to be further to the south.  
4089  
4090 More down towards Wythe.  
4091  
4092 Mr. Mistr - Where we're talking about is where we're going to have the  
4093 40 feet for the existing trees.  
4094  
4095 All those people can walk through there and go in there.  
4096  
4097 Mr. Mistr - Or would you prefer some type of hedge that you couldn't  
4098 walk through, that would provide screening? Yes, we'd agree to a condition on a  
4099 privacy fence.  
4100  
4101 Mr. Kirkland - Susan, could you mark above that plan up again and show  
4102 me exactly where Mr. Mistr said he would like the privacy fence to start and end.  
4103  
4104 Mr. Blankinship - We'd probably better switch to the new plan.  
4105  
4106 Mr. Kirkland - I need to look at this.  
4107  
4108 Mr. Blankinship - Is that zoomed enough, or do you want it farther in.  
4109  
4110 Mr. Kirkland - That's fine.  
4111  
4112 Mr. Mistr - I was thinking like in this area.  
4113  
4114 That's it. Perfect. (Audience discussion)

4115  
4116 Mr. Blankinship - Could you pull up the existing privacy fence.  
4117  
4118 Right there by your pencil, where your pencil is. But that  
4119 property .....  
4120  
4121 Mr. Balfour - If you're going to talk, you're going to have to come to the  
4122 mike.  
4123  
4124 Mr. Mistr.  
4125  
4126 Mr. Mistr - I think what they're asking for, is a privacy fence, from this  
4127 existing 16-foot alley behind the apartments, across Franklin Street and across Mr.  
4128 Tate's property and this next 16-foot alley and up to just before you get to Wythe Street.  
4129 This is a private residence, the Johnson's, and we might have to stop at the front of their  
4130 house.  
4131  
4132 Mr. Blankinship - Is the existing privacy fence there and all the way up?  
4133  
4134 (Woman's voice) - That's correct. For that reason it's the .....  
4135  
4136 Mr. Kirkland - Ma'am, ma'am, come on up here and speak in the mike.  
4137 This is all being recorded.  
4138  
4139 You listed the opposition, Mr. Campbell.....  
4140  
4141 The reason that that privacy fence is there is because JCC  
4142 owned that property at one time, and their maintenance staff lived there; therefore it was  
4143 too much noise, so they put up a privacy fence, but they did not continue with that  
4144 privacy fence to protect us.  
4145  
4146 We understand that. Thank you.  
4147  
4148 Mr. Kirkland - Okay, Mr. Mistr, is that it? That's it. That concludes the  
4149 case.  
4150  
4151 Recess  
4152  
4153 Mr. Kirkland - Okay, we're going to start with UP-17-2001, which was the  
4154 last case.  
4155  
4156 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
4157 McKinney, the Board **granted** application **UP-17-2001** for a variance expand an existing  
4158 community center at 5403 Monument Avenue (Tax Parcel 115-A-2). The Board granted  
4159 the variance subject to the following condition:  
4160

- 4161 1. The property shall be developed in substantial conformance with the plan  
4162 submitted at the hearing, including the landscaped berm and the preservation of  
4163 existing trees. No substantial changes or additions to the layout may be made without  
4164 the approval of the Board of Zoning Appeals.  
4165
- 4166 2. The applicant shall submit a schedule of required and provided parking spaces  
4167 consistent with Section 24-96 of the County Code. The parking lot, driveways, and  
4168 loading areas shall be subject to the requirements of Section 24-98 of Chapter 24 of the  
4169 County Code.  
4170
- 4171 3. The applicant shall present a complete grading, drainage, and erosion control  
4172 plan prepared by a Professional Engineer certified in the state of Virginia to the  
4173 Department of Public Works for approval. This plan must include the necessary  
4174 floodplain information if applicable.  
4175
- 4176 4. A detailed landscaping and lighting plan shall be submitted to the Planning Office  
4177 with the building permit for review and approval.  
4178
- 4179 5. All exterior lighting shall be shielded to direct light away from adjacent property  
4180 and streets.  
4181
- 4182 6. All landscaping shall be maintained in a healthy condition at all times. Dead  
4183 plant materials shall be removed within a reasonable time and replaced during the  
4184 normal planting season.  
4185
- 4186 7. An opaque wood privacy fence 7 feet tall shall be constructed and maintained  
4187 along the eastern property line from the end of the existing fence near Monument  
4188 Avenue to the property corner near Wythe Avenue. There shall be no gates or other  
4189 openings in the fence.  
4190
- 4191 8. Fire lanes shall be marked and maintained in accordance with the Fire  
4192 Prevention Code in effect.  
4193
- 4194 9. Parking spaces shall be marked on the pavement surface with four inch wide  
4195 painted lines. All lane lines shall be white in color with the exception that those dividing  
4196 traffic shall be yellow.  
4197
- 4198 10. All traffic control signs shall be fabricated as shown in the Virginia Manual of  
4199 Uniform Traffic Control Devices for Streets and Highways.  
4200
- 4201 11. All trash shall be in closed containers with regular pickups. The area shall be  
4202 kept clean, and the containers shall be properly screened.  
4203
- 4204 12. Noise at the property line shall not exceed 60 decibels.  
4205
- 4206 Affirmative: Balfour, Kirkland, McKinney, Nunnally, Wright 5

4207 Negative: 0  
4208 Absent: 0

4209  
4210 The Board granted the request because it found the proposed use will be in substantial  
4211 accordance with the general purpose and objectives of Chapter 24 of the County Code.  
4212

4213 There being no further business, and on a motion by Mr. Balfour, seconded by  
4214 Mr. McKinney, the Board adjourned until June 28, 2001, at 9:00 am.

4215  
4216  
4217

4218 Richard Kirkland,  
4219 Chairman

4220

4221 Benjamin Blankinship, AICP

4222 Secretary

4223