

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**
4 **COMPLEX, ON THURSDAY, MAY 26, 2005, AT 9:00 A.M., NOTICE HAVING BEEN**
5 **PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON MAY 5 AND 12, 2005.**
6

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

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

7
8 Mr. Wright - I call the meeting of the County of Henrico Board of Zoning
9 Appeals to order. Would you stand for the **Pledge of Allegiance**. Mr. Secretary, would
10 you read the rules, please.
11

12 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, ladies
13 and gentlemen. The rules for this meeting are as follows. As Secretary, I will call each
14 case. While I am speaking, the applicant should come to the podium. I will ask
15 everyone who intends to speak on that case, in favor or in opposition, to stand and be
16 sworn in. The applicants will then present their testimony. After the applicant has
17 spoken, the Board will ask them questions, and then anyone else who wishes to speak
18 will be given the opportunity. After everyone has spoken, the applicant, and only the
19 applicant, will have an the opportunity for rebuttal. After hearing the case, and asking
20 questions, the Board will take the matter under advisement. They will render all of their
21 decisions at the end of the meeting. If you wish to know their decision on a specific
22 case, you can either stay until the end of the meeting, or you can call the Planning
23 Office later this afternoon, or you can check the website. The vote on each case will be
24 posted to our website within half an hour of the end of the meeting. This meeting is
25 being tape recorded, so we will ask everyone who speaks, to speak directly into the
26 microphone on the podium, to state your name, and everyone other than the applicant,
27 please spell your last name. And finally, out in the foyer, there are two binders,
28 containing the staff report for each case, including the conditions that have been
29 recommended by the staff. Mr. Chairman, we do not have any deferrals or withdrawals,
30 but we do have a request for a rehearing. It’s the request of Mr. and Mrs. F. Michael
31 Crowley; their request for variance A-40-2005 was denied last month, and there is a
32 petition for rehearing.
33

34 Mr. Redmond - Mr. Wright, Members of the Board of Zoning Appeals, my
35 name is David Redmond. I'm an attorney, and I'm here representing Mr. and Mrs. F.
36 Michael Crowley. After they received word of the denial of their zoning case from last
37 month, they contacted me. It was evident in talking to Mrs. Crowley, that she did not
38 fully understand the procedure and the need to present certain information as
39 evidenced by the opinion letter stating that the evidence presented wasn't sufficient to
40 show an unreasonable hardship for use of the property. I understand that while we
41 have no new evidence, we have evidence that could have been presented, had Mrs.
42 Crowley been aware or had she understood that there was more to be discussed here
43 than simply to present the application. She thought that just by presenting the
44 application as she had it, she didn't understand that there needed to be anything further.
45 You have a letter from me, which outlines a couple of points. I'm obviously not here to
46 argue the case, but I think if you look at it, there are some substantive matters that
47 could or should have been considered and presented to the Board, including safety
48 issues and the uniqueness of this case, based upon the configuration of the property,
49 location of the home, and proximity to the golf course, and use of the golf course, is all
50 valid and should be considered by the Board, and principally, that's why we're here to
51 request a rehearing of the matter, and frankly, to allow me a little time to look into it a
52 little further. I understand, for example, that the Country Club of Virginia owns a side
53 piece with some use restriction on it so that this whole parcel is encompassed by one
54 property owner, and they're in favor of the application. I understand I'm not here to
55 argue, and I can't say this is basically new information.

56
57 Ms. Dwyer - Mr. Redmond, I assume that you know that our rules state
58 that a rehearing will be held or offered if there's new evidence that couldn't possibly or
59 reasonably have been submitted last month when the hearing of the case was heard.
60 So your position is that your client thought that the appearance before the Board was a
61 mere formality and that her request would be rubber stamped and that she didn't really
62 have to present much evidence, and so she didn't present much evidence?

63
64 Mr. Redmond - Exactly. Obviously, they're long-term friends of mine; they
65 could have called me earlier, and I could have explained to them what we really needed
66 to do here, but she really was unaware, and that's not a case of who said what to
67 whom; she just really did not understand. I think the other evidence is valid evidence,
68 and that's why I'd like you to consider a rehearing on the matter.

69
70 Ms. Dwyer - I'm just reading with interest the bottom of the first page. It
71 said it was the Crowley's understanding that an appearance before the Board was a
72 mere formality in which they would receive the Board's stamp of approval. So you're
73 not going to be presenting any evidence that could have reasonably been presented
74 last month.

75
76 Mr. Redmond - No, obviously not; there's no change in circumstance, no
77 change in facts. It's just to be able to discuss in detail the configuration of the property
78 and the proposed use. And quite frankly, if the rear yard is used exclusively for the
79 swimming pool, why that's not safe. Golf balls fly into that yard all the time. This is the

80 type of evidence that we want to show, that the balls are not going into the side yard,
81 and further, they're only about 35 feet from a green, and they need to have screening,
82 and it's better for both property owners to work together on this.

83
84 Ms. Dwyer - So there's evidence that could be presented, but wasn't
85 presented because there was an assumption that a variance was easily obtained.
86 According to our rules, we're not supposed to grant a rehearing unless new evidence is
87 submitted which could not have reasonably been presented at the original hearing.
88 What they're saying is that the new evidence they have to present could reasonably
89 have been presented last month; it's just that it wasn't because the clients'
90 understanding was that their appearance before the BZA was a formality.

91
92 Mr. Wright - Reasonably presented by whom? She wasn't up to doing it,
93 understanding what she had to do. What's the feeling of the Board?

94
95 Ms. Dwyer - It seems it doesn't meet our rules. On the other hand, if we
96 want to go ahead and allow this person to present new evidence, I suppose we can do
97 that.

98
99 On a motion by Mr. Nunnally, seconded by Ms. Dwyer, the Board **granted** the
100 request of Mr. and Mrs. F. Michael Crowley for a rehearing of **A-40-2005**.

101
102 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
103 Negative: 0
104 Absent: 0

105
106 Mr. Redmond - Sir, I understand you have a heavy docket for June. If July
107 is a better time for you, we can do it in July as well. I'll leave that up to discussion with
108 Mr. Blankinship as to when you prefer to have it.

109
110 Mr. Wright - Notice will be forthcoming. Call the first case, please.

111
112 **Beginning at 9:00**

113
114 Mr. Blankinship - The first case is a rehearing.

115
116 **A - 34-2005** **BRADFORD J. BRADY** requests a variance from Section 24-
117 95(i)(2)a to build a detached garage at 2601 Causeway Drive
118 (Parcel 732-755-3210), zoned R-5, General Residence District
119 (Tuckahoe). The accessory structure size requirement is not met.
120 The applicant proposes an accessory structure of 2,000 square
121 feet, where the Code allows 525 square feet. The applicant
122 requests a variance of 1,475 square feet accessory structure size.

123
124 Mr. Blankinship - Mr. Brady was granted the variance. One of the conditions
125 on the variance required a 25-foot setback from Causeway Drive, and he has requested

126 a rehearing to amend that condition.

127

128 Mr. Wright - Does anyone else desire to speak with reference to this
129 case? Would you raise your right hand and be sworn please?

130

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

133

134 Mr. Brady - I do. Brad Brady. Good morning, Mr. Chairman, Members
135 of the Board. I presented this case originally two months ago to the Board, with a
136 request for a size variance for a detached garage. During the presentation, a question
137 was asked as to what the setback was. I believe Mr. Blankinship responded that it was
138 ten feet. I had offered that I would put approximately fifteen feet as the setback from the
139 right-of-way along Causeway Dr. to insure that the trees that were along the right-of-
140 way would not be harmed. That was the only discussion that we had at the time.
141 Subsequently, when I received the approval for the size variance, there were the
142 additional restrictions for the 25 feet. Unfortunately, there was no dialog or discussion
143 concerning a 25-foot setback at the time I was here, so my purpose today is to provide
144 an opportunity to answer any of those questions, to request removal of the additional
145 setback criteria that was put in, and to show you why the 25-foot setback creates
146 unintended ill consequences, a detrimental effect on the property value, and makes this
147 project, unfortunately, unworkable as it is. If I may, Mr. Blankinship, I have a diagram at
148 first to show. In anticipation of trying to determine what the Board's concern was to
149 place the additional ten-foot setback, beyond the fifteen feet that I had offered, one of
150 the thoughts I had, from a safety issue, if you'll notice the aerial view of the property line
151 here, when you turn from Lauderdale Drive onto Causeway, the garage is located on
152 the inside of the curve, so if someone was speeding or something like that, they would
153 not be turning into the garage, if there was a concern that it was too close to the setback
154 area, it would actually be going to the far side, the opposite away from the garage.
155 Obviously, since it's a straight-away, there's not a problem coming along Causeway
156 going towards Lauderdale Drive there. There is also a significant rise in elevation right
157 where the garage is going to be located, so even if a car did careen off, it would go into
158 a hillside. There is an approximate three-foot rise; the level of the garage would be
159 below the current grade.

160

161 I'm going to put two photographs up here first. This is looking across Causeway,
162 directly to the location where the garage would be located. This view was taken several
163 months ago during the winter without any of the leaves there. As you can see, from the
164 grade of Causeway, there is an approximate five-foot, and then increasing to about a
165 seven-foot rise in elevation there. Again, if the Board was concerned that someone
166 would careen off of Causeway Drive and crash into the garage, you can see that it
167 would not be physically possible to do that, since it's up higher, above a grade. There's
168 another picture that was just taken a few days ago. You can get a perspective from the
169 elevation of the speed limit sign there of the height of the grade.

170

171 On this next diagram, I had actually put some items in red writing, but I see the camera

172 does not pick up red on here. I'll have a photograph to show this too, for Mr.
173 Blankinship, if we move the garage the additional ten feet, the garage would be exactly
174 on the line of a large specimen male American holly tree that's probably at least fifty
175 years old there. When we designed the property and built the property, we took specific
176 pains to make sure we saved this one American holly. It's the one male pollinator for
177 over a dozen and a half of the female American holly trees there. I know this is a little
178 hard to see, but on the parking area, you can see on the far left side, there is a line; that
179 would show the approximate line of where the garage would be going. To the right of
180 that is exactly ten feet further, where the new line would be proposed. As you can see,
181 it runs right down the middle of where the large American holly tree is there. If we lose
182 that holly tree, then there is no male pollinator for all the female holly trees that are on
183 the property.

184
185 The second issue that I have here is between where the driveway comes up in the
186 garage at the very top of that picture, you'll see it reduces from two parking spaces
187 down to one parking space for guests coming into the property. The next concern we
188 have is from the front door of the house the view now, coming from the front door of the
189 house, would be looking straight into a garage. What that does is, it changes the entire
190 mass, or the balance of the property, so instead of being more offset and being able to
191 look at the woods and down the driveway, you're now looking across into a garage. I
192 believe this would severely, detrimentally impact upon the property values by having the
193 front entrance look into a garage. This is a photograph looking out the front door of the
194 house, and just to the right of the car, you can see the line where the existing garage
195 would be if we move it ten feet over, where it would take out the holly tree and where
196 the mass of that garage would be the predominant view out the front of the house.

197
198 The last item to show here is the distance between the tool shed at the bottom of the
199 diagram, and the garage now, would be approximately sixteen feet. The effect that we
200 are trying to accomplish here, and we have gone to great details with this house and
201 with the landscaping, is to create kind of an English manor type house, and as is the
202 custom in England with motor courts, we are trying to create a motor court feel there, by
203 shifting the balance of the garage. It takes away from that tight motor court feel, to
204 making it look like it's a detached structure, so it totally takes away from the entire view
205 of the house there. The County submitted some alternate plans for you that you should
206 have in your packets. There were two pages. On the top page it shows a diagram
207 submitted for variance, and below on that diagram, it shows one alternative, and that is
208 to move the garage to the north. Prior to building the house and the design process,
209 they say every property should have one good large specimen tree. We have a very old
210 large beech tree. As you can see on that photograph, it can even show the entire top of
211 the tree. We went to great pains to locate the house and the driveway to avoid any
212 potential damage to that beech tree, and also to great expense with arborists to make
213 sure it was protected during the entire construction process. The first alternative of
214 moving the garage to the north would put the garage too close to that beech tree and
215 present a hazard and potentially cause the loss of that beech tree there.

216
217 On your second page, the other alternatives that were offered, move the garage to the

218 northwest. Again, the same situation is encountered; we would end up losing that large
219 beech tree there. The final alternative, below, is utilize a step-back corner, is
220 unfortunately just not feasible with the designer of the garage. I am here to answer any
221 questions as to the need for that additional ten feet. The other thought I might have had
222 was just of the mass of the house, just not wanting it that close, but ten feet would not
223 make a significant difference in the feel of the mass of that house, as it is towards the
224 right-of-way. If there are any other questions or concerns, I am here to try and address
225 those for you.

226
227 Ms. Dwyer - So Mr. Brady, it's possible to build the garage in another
228 location; you would have to lose trees and it would not be your preference to put it in
229 another location, but you have a 1.6-acre site.

230
231 Mr. Brady - That's correct. It's possible – we spent a lot of time with the
232 architects looking at this. It's a very nice, expensive home, to try and make sure that
233 what is put there compliments the rest of the house and doesn't present a detriment to
234 the value. There really was only one good possible location for this. It exceeds the
235 existing setback requirements by 50%, and it goes fifteen feet instead of ten feet. It
236 maintains the look and the feel of the house; it doesn't present a safety hazard. The
237 additional ten feet doesn't change the mass of the house any whatsoever, and it
238 protects the existing large specimen trees that are on the property there.

239
240 Ms. Dwyer - When you say it exceeds the setback requirements, it
241 sounds as though you think we're imposing something in addition to what we should be
242 imposing, when in fact the zoning ordinance doesn't allow this garage at all. And you're
243 asking for a variance of 1,475 feet beyond what the zoning ordinance already allows.
244 The statute also allows this Board to impose any other restrictions that it deems
245 important or necessary to protect the public interest. One of the reasons, in my view,
246 that the 25 feet is important, is because it removes this very large, massive structure
247 that is not permitted by law, farther away from the roadway, so that it is farther away
248 from the traveling public visually and in case there are any other safety concerns.

249
250 Mr. Brady - I understand and agree with that. The additional ten-foot
251 setback would not make a significant difference in the appearance of the mass of the
252 garage there. As I mentioned, it already cuts into approximately three feet into the
253 existing grade, and that grade is already five to seven feet above grade of the roadway,
254 so when you come around that corner, what you're really looking at is the hillside there.
255 Also, by the location of the trees, the existing tree line is right along the right-of-way, the
256 property line. I went and walked that entire area. If we moved it ten feet back, there's
257 only small scrub in there, because of the large trees and the canopy overhead. The
258 only saving that would take place is there's one tree with the caliper of about an inch
259 and a half, a very small tree, the only tree that would be saved by moving it an extra ten
260 feet, so the moving it ten feet does not save any additional trees at all. In fact, it ends
261 up taking up more trees to the north part of the property.

262

263 Mr. Wright - Any further questions of the Board? Thank you very much,
264 Mr. Brady; we'll make a decision at the end of the docket.

265
266 Ms. Dwyer - We're here on a request to reconsider. Our reconsideration
267 is limited to the condition imposed by the Board to require this garage to be 25 feet from
268 Causeway Drive. My motion is that we deny the request to reduce that 25-foot distance
269 requirement and uphold the condition that we voted for in our March meeting.

270
271 Mr. Wright - Any further discussion?

272
273 Ms. Dwyer - I would like to discuss a point raised in the letter we got
274 concerning the Crowley case. I'm very concerned that there is the impression that the
275 appearance before the Board of Zoning Appeals to acquire a variance is a mere
276 formality in which requests are rubber stamped by this Board, and I'm shocked that an
277 attorney would actually put that in writing in a letter to the Board about a rehearing case.
278 Sometimes I get the feeling that maybe that's a prevalent point of view, when in fact the
279 Supreme Court has put some fairly severe restrictions on this Board and the extent to
280 which we can grant variances. As I look at the Brady case, and having reviewed the
281 Supreme Court case, Cochran vs. Fairfax, that we're going to discuss later today, if I
282 were hearing this case in its entirety today, I would probably have moved to deny the
283 case, because I don't see a hardship; I don't see the variance in limiting all beneficial
284 use and enjoyment of the property. However, we did grant the variance in March, and I
285 am loathe to take that away, and I think there are in fact some questions about whether
286 Mr. Brady has vested rights because of our earlier decision, so I want to limit my
287 comments in that way, but just to say that I think the 25-foot setback is reasonable,
288 considering the size of this garage. It's a very large structure; it is not permitted under
289 our ordinances. Having setbacks is a time-honored way in the Zoning Ordinance of
290 minimizing impacts of structures on the surrounding community, and I think a 25-foot
291 setback does go a long way towards minimizing the impact of this structure that is
292 otherwise not permitted by the Zoning Ordinance.

293
294 Mr. Wright - One thing he could do, is he could reduce the size of the
295 garage.

296
297 Ms. Dwyer - There are many options. Moving the garage, reducing it,
298 changing the shape of it. He has a 1.6-acre site, and I think that there are many, many
299 options available to this particular applicant.

300
301 Mr. Wright - Any further discussion? Hearing none, all in favor of denying
302 the request, say aye. Opposed say no. It's denied.

303
304 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
305 Harris, the Board **denied** application **A-34-2005** for a variance to build a detached
306 garage at 2601 Causeway Drive (Parcel 732-755-3210).

307
308 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

309 Negative: 0
310 Absent: 0

311
312 The Board denied your request as it found from the evidence presented that the
313 condition is necessary to protect the public welfare.

314
315 **A - 47-2005** **RODNEY AND KELLY PARRISH** request a variance from Section
316 24-94 to build an addition at 5814 Shady Hills Way (Shady Ridge)
317 (Parcel 744-777-4356), zoned R-3C, One-family Residence District
318 (Conditional) (Three Chopt). The minimum side yard setback is not
319 met. The applicants propose 10 feet minimum side yard setback,
320 where the Code requires 12 feet minimum side yard setback. The
321 applicants request a variance of 2 feet minimum side yard setback.

322
323 Mr. Wright - Does anyone else desire to speak with reference to this
324 case? Would you raise your right hand and be sworn please?

325
326 Mr. Blankinship - Do you swear that the testimony you are about to give is the
327 truth, the whole truth, and nothing but the truth, so help you God?

328
329 Mr. Parrish - Yes I do. My name's Rodney Parrish. What we're trying to
330 do is add an addition on to the back of our house to replace an existing structure, which
331 is a deck. What we're asking for is a two-foot variance setback. That goes to our
332 neighbors on the left, and we have a fence between our yards; they have no visual
333 windows on that side of their house to see our house, so we're asking for the two feet
334 over, and we feel that this will increase the value to our property, as well as the revenue
335 to Henrico County.

336
337 Mr. Wright - Would this replace the deck?

338
339 Mr. Parrish - Yes, it will.

340
341 Mr. Wright - Is it the same size as the deck or larger?

342
343 Mr. Parrish - It goes out a little bit larger. It goes two feet to the left?

344
345 Mr. Wright - What is the size of the proposed addition?

346
347 Mr. Parrish - The size of the proposed addition on the outside of the
348 house is twelve by sixteen.

349
350 Mr. Wright - What type of construction would it be?

351
352 Mr. Parrish - It's going to be an A-frame roof, high ceiling, and a family
353 room.

354

355 Mr. Wright - And it's going to be one story?
356
357 Mr. Parrish - One story.
358
359 Mr. Wright - Used for a family room?
360
361 Mr. Parrish - Yes.
362
363 Mr. Nunnally - What size is your deck right now, sir?
364
365 Mr. Parrish - I think it's about fourteen by ten.
366
367 Ms. Harris - Have you spoken with your neighbors about this addition
368 that would be so close to their property?
369
370 Mr. Parrish - Yes we have.
371
372 Ms. Harris - And they are in agreement with your doing this?
373
374 Mr. Parrish - Correct.
375
376 Ms. Harris - But you don't have any letters to substantiate that they are in
377 agreement with?
378
379 Mr. Parrish - No I don't.
380
381 Ms. Dwyer - Could you change the configuration of this addition so that
382 it's longer but not as wide, so that it doesn't encroach in the setback?
383
384 Mr. Parrish - We could, but financially it kind of hampers us, because we
385 have to move the electrical box, and that would cost us about \$3,000 to move that box.
386 We have been told by our contractor.
387
388 Mr. Blankinship - You asked a moment ago if it were larger than the existing
389 deck, the proposed addition. The existing deck actually complies with the setback, so
390 that if it were exactly the same size as the existing deck, the variance would not be
391 necessary.
392
393 Mr. Wright - That's what I'm understanding. And we don't know what the
394 exact size of the existing deck is or the materials, Mr. Blankinship?
395
396 Mr. Blankinship - It's not shown in the plans.
397
398 Ms. Dwyer - It looks like it's on the plat.
399
400 Mr. Blankinship - It's not dimensioned, but it shows.

401
402 Ms. Dwyer - It shows the existing deck as 12.5 feet from the property line,
403 so it's required to be 12, so clearly the deck in that dimension, complies with the
404 ordinance.

405
406 Mr. Wright - So the problem is created by extending this proposed
407 addition toward the rear property line, and at the beginning of it, it satisfies the
408 requirement; it just goes into the side yard as it's on an angle. The property line's on an
409 angle, not parallel with the house.

410
411 Mr. Wright - Any further questions of the Board? Is anyone here in
412 opposition to this request? Hearing none, that concludes the case.

413
414 Ms. Dwyer - I would also like to reiterate that I don't see a hardship; I
415 don't see the Zoning Ordinance as applied, interfering with reasonable beneficial use of
416 the property, so under Cochran, it seems to me that a denial is appropriate in this case.

417
418 Mr. Wright - All in favor, say aye. Opposed, no. It's approved.

419
420 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
421 Kirkland, the Board **granted** application **A-47-2005** for a variance to build an addition at
422 5814 Shady Hills Way (Shady Ridge) (Parcel 744-777-4356). The Board granted the
423 variance/use permit subject to the following conditions:

424
425 1. This variance applies only to the side yard setback requirement. All other
426 applicable regulations of the County Code shall remain in force.

427
428 2. The new construction shall match the existing dwelling as nearly as practical in
429 materials and color.

430
431 Affirmative: Harris, Kirkland, Nunnally, Wright 4
432 Negative: Dwyer 1
433 Absent: 0

434
435 The Board granted this request, as it found from the evidence presented that, due to the
436 unique circumstances of the subject property, strict application of the County Code
437 would produce undue hardship not generally shared by other properties in the area, and
438 authorizing this variance will neither cause a substantial detriment to adjacent property
439 nor materially impair the purpose of the zoning regulations.

440
441 **A - 48-2005** **LISA AND THOMAS STEIN** request a variance from Section 24-94
442 to build a screened porch at 4912 Old Millrace Place (Millrace)
443 (Parcel 743-772-1525), zoned R-2C, One-family Residence District
444 (Conditional) (Three Chopt). The rear yard setback is not met. The
445 applicants propose 41 feet rear yard setback, where the Code
446 requires 45 feet rear yard setback. The applicants request a

447 variance of 4 feet rear yard setback.
448
449 Mr. Wright - Does anyone else desire to speak with reference to this
450 case? Would you raise your right hand and be sworn please?
451
452 Mr. Blankinship - Do you swear that the testimony you are about to give is the
453 truth, the whole truth, and nothing but the truth, so help you God?
454
455 Ms. Stein - I do. It's Lisa Stein. What we would like to do is to put an
456 addition on the back of our home, which is a covered porch with windows. You should
457 have a picture of my plat. I currently have a pool in the back yard; basically, I need 3.8
458 feet from the rear setback, that I don't currently have. It's going to be 18 feet long, so
459 it's about 6 to 8 feet that I actually need. I have already spoken to all of the neighbors
460 who border my property; I've gotten their signatures; I've showed them the plans of the
461 drawing, my application for the variance, the plat, and they all are in agreement with our
462 getting the variance if you allow. This picture that you came out and took, you can see
463 where it's going to go behind the house. I just have woods on the side of me, and
464 there's about 40 feet, according to what you wrote, on the side.
465
466 Mr. Wright - What's located to the rear of your property?
467
468 Ms. Stein - Lot 16 in Bridlewood is my neighbor behind me in a different
469 subdivision. It's all really woods; their house is quite a distance away from me.
470
471 Mr. Wright - Is that house visible from the rear of your property?
472
473 Ms. Stein - On the right-hand side it is. The left-hand side behind where
474 the proposed porch would be, is all woods. They have about a five-acre lot. I also
475 asked for their approval, and they had given me that, and you should have a copy of
476 that.
477
478 Mr. Wright - We have a copy of something you presented; these are your
479 neighbors who signed, I take it.
480
481 Ms. Stein - Those are the four neighboring properties that touch my
482 property on all sides.
483
484 Mr. Nunnally - What is the name of the neighbor behind you?
485
486 Ms. Stein - The neighbor behind me is Bland and Ginger Motley; that's
487 the third one, Lot 16 Bridlewood.
488
489 Mr. Nunnally - They've signed this? They've seen the plans?
490
491 Ms. Stein - Every one of them has seen the plans, seen my plat, I've
492 shown them the application; they all got their letter in the mail.

493
494 Ms. Dwyer - Ms. Stein, you could build a ten-foot deep screened porch
495 and not need a variance at all, isn't that correct?
496
497 Ms. Stein - Yes, I could, but at ten feet, by the time I put a table in there,
498 I wouldn't be able to walk around the table and the chairs, so that is why I'm asking for
499 the additional 3.8 feet.
500
501 Ms. Dwyer - And you could also extend it from one end to the other,
502 extend it and make it longer. If you had a ten-foot deep porch, you could also make the
503 porch longer to accommodate more space.
504
505 Ms. Stein - I already have existing concrete there on one end, and
506 making it longer and thinner wouldn't really help me with the ten feet. Right now it's
507 proposed to be fourteen by eighteen feet, so I can make it ten by twenty-one feet, I
508 guess, but that won't give me the depth to walk around a table and chairs.
509
510 Ms. Harris - What is the effect on the in-ground pool of this screened
511 porch?
512
513 Ms. Stein - There should be no effect. When I put the pool in, I found
514 out from the County that any structure has to be ten feet from the water line, so I made
515 sure that I would be at least ten to eleven feet from the water line. I really wanted to
516 build this previously, and it was last year when I came to get the permit for this, that I
517 found out that I needed this variance, and at the time I was already having the concrete
518 poured, so they gave me approval to put piers in for a deck, which I did while the
519 concrete guy was there. The concrete man actually put that in. I was trying to watch all
520 my boundaries going by the County Code. At this point, I didn't have the opportunity
521 then, I couldn't get the variance fast enough even if I wanted to, because the concrete
522 guy was there. I waited till this year so I could actually finish the porch off, if I get the
523 variance.
524
525 Mr. Wright - Any further questions of the Board? Is anyone here in
526 opposition to this request? Hearing none, that concludes the case.
527
528 Mr. Wright - A-48-2005 – is there a motion?
529
530 Mr. Nunnally - Move we approve it.
531
532 Mr. Wright - Is there a second? Hearing no second, do I hear another
533 motion?
534
535 Mr. Kirkland - I move we deny it.
536
537 Mr. Wright - Is there a second?
538

539
 540 Ms. Dwyer - Second.
 541
 542 Mr. Blankinship - Motion by Mr. Kirkland to deny; second by Ms. Dwyer.
 543
 544 Mr. Wright - Any discussion? All in favor of denial, say aye. Opposed,
 545 no.
 546
 547 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
 548 Dwyer, the Board **denied** application **A-48-2005** for a variance to build a screened
 549 porch at 4912 Old Millrace Place (Millrace) (Parcel 743-772-1525).
 550

551	Affirmative:	Dwyer, Harris, Kirkland, Wright	4
552	Negative:	Nunnally	1
553	Absent:		0

554
 555 The Board denied your request as it found from the evidence presented that there was
 556 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
 557 Virginia to justify a variance.
 558

559 **A - 49-2005** **SYLVIA WRIGHT** requests a variance from Section 24-9 to build a
 560 one-family dwelling at 9420 Hoehns Road (Parcel 764-758-7891
 561 (part)), zoned R-2A, One-family Residence District (Brookland).
 562 The public street frontage requirement is not met. The applicant
 563 has 0 feet public street frontage, where the Code requires 50 feet
 564 public street frontage. The applicant requests a variance of 50 feet
 565 public street frontage.
 566

567 Mr. Wright - Does anyone else desire to speak with reference to this
 568 case? Would you raise your right hand and be sworn please?
 569

570 Mr. Blankinship - Do you swear that the testimony you are about to give is the
 571 truth, the whole truth, and nothing but the truth, so help you God?
 572

573 Ms. Wright - Yes sir. Sylvia Wright. This is actually a continuance of my
 574 family's subdivision. Back in 1939 my grandmother set up the first subdivision when
 575 she divided the property for my dad and his brothers and his sisters, and she
 576 established the first right-of-way that would come in off of Hungary Road back to our
 577 property. In 1970, and you have the last two exhibits I have in my packet, they are
 578 parcels that show a continuance of the road. In 2002 I filed a family subdivision. On the
 579 northern boundary of our property in 1970, my dad continued the road over to my
 580 property, which is on the southwest corner. If you look at the aerial shot, the land that's
 581 depicted as sort of a big triangle, is the area where I'm located. What I'm doing this
 582 time, is I'm taking a parcel which I call Lot 5 in my family subdivision, and I'm dividing it
 583 in half, and I'm taking half of it, which would be the northwest corner, and I intend to
 584 deed that to my youngest daughter Karen, and she's going to build her home there, and

585 this would be four of my five children on the property. I still have a child in Maryland,
586 who says that maybe when he retires, he might want to come too. The County sewer
587 runs parallel to the Lake, so on this side it's less restricted for the homes, and my
588 daughter's home would be hooked up to County sewer. We just don't have County
589 water.

590
591 Ms. Dwyer - Where is Lot 6?

592
593 Ms. Wright - Oh, the Lake. I have the Lake itself done in a lot, and then I
594 have the liability insurance on it, and I have so much footage around the Lake too.
595 Each one of the children, I let them use the Lake, but I just wanted one person to have
596 to carry the liability for it.

597
598 Ms. Dwyer - When was this property subdivided? Or has it been done
599 piecemeal over the years?

600
601 Ms. Wright - It was started in 1970 when my dad gave me a piece, and
602 then in 1993, I gave a piece to my middle son Donald, and then about 2000 I started to
603 divide more of it off, an older daughter, my oldest son, and now this is my youngest
604 daughter.

605
606 Ms. Dwyer - And this plat is dated 2001, showing the family subdivision?

607
608 Ms. Wright - I had that done and filed at the County, just to give the
609 County and the Tax Department and any future deeds something to work with. I filed it
610 by itself.

611
612 Ms. Dwyer - So this obviously, Mr. Blankinship, has not been through
613 subdivision plan.

614
615 Mr. Blankinship - Right, it's exempt as a family division.

616
617 Ms. Dwyer - It's exempt in what way?

618
619 Mr. Blankinship - It's exempt from subdivision regulations. It doesn't go
620 through the Planning Commission, and it's not subject to the subdivision requirements.
621 It is, of course, subject to the zoning requirements. Each lot is still subject to the zoning
622 requirements.

623
624 Ms. Wright - We meet all requirements. We're R-2A, except for the fact
625 that I have a fifteen-foot access road that takes me out to the County.

626
627 Ms. Dwyer - Mr. Blankinship, are there any safety issues in terms of fire
628 truck access or ambulance access to these lots that are so far off Hungary?

629
630 Mr. Blankinship - We have not received any comments from fire, either on this

631 application or on the previous ones. This is a rare case of a family division where they
632 have a paved road.

633
634 Ms. Wright - Part of it is. I'd say maybe half of it is paved. The road
635 actually extends completely around the Lake. The remainder of it is gravel. It has been
636 deeded to, we do this by lot, Lot 3, Lot 2, and Lot 1, but I also extended it between
637 myself, between Lot 7 and Lot 1, but it's not an official deed. I just opened it up
638 because I felt it was safer to have a road that goes completely around to provide access
639 like that, so it's not actually deeded.

640
641 Ms. Dwyer - So it's not paved all the way around?

642
643 Ms. Wright - No ma'am, only on this northern boundary that goes over to
644 the west, and the rest is gravel.

645
646 Ms. Dwyer - So Lot 5 and Lot 4 do not have paved road?

647
648 Ms. Wright - They do have that, yes.

649
650 Mr. Blankinship - Three, four, and five do.

651
652 Ms. Wright - Three, four, five, two, seven. It stops at seven.

653
654 Ms. Dwyer - So one and two do not have paved access.

655
656 Ms. Harris - These other lots – have they experienced flooding since
657 Hungary Creek is so close to it?

658
659 Ms. Wright - The highest water we have ever seen was when Gaston
660 came through, and what it basically does is, the lake kind of acts as a catching pool,
661 and it will rise, and then it will build up and basically go over the spillway on that corner
662 and the dam bridge area that I have there and cover that entire area when the water
663 comes through, and then I have another bridge up at my end, so we still have access at
664 both ends, even when it's high water.

665
666 Mr. Blankinship - So your spillway accommodated Gaston?

667
668 Ms. Wright - It was completely covered, but yes, it survived it. Hopefully
669 we'll never have anything like that again.

670
671 Mr. Wright - Have you read the conditions that are proposed if this is
672 approved?

673
674 Ms. Wright - No sir, I'm not aware of any conditions except for the few
675 comments that are at the top.

676

677 Mr. Blankinship - Page 3 of the staff report.
678
679 Mr. Wright - If this is approved, it would be subject to these conditions. I
680 just wanted to ensure that you had read these.
681
682 Ms. Wright - I don't particularly see anything that would be an issue.
683
684 Mr. Wright - Basically, you have to prove that you have legal access to
685 the property before your building permit will be issued, and these provide that you are
686 responsible for the maintenance of that road, not the County.
687
688 Ms. Wright - Yes sir. I do sort of a layered deed that honors all of the
689 previous easements, when I do the deed, and we have a road agreement already in
690 place that's signed by everybody.
691
692 Ms. Dwyer - Are the other houses hooked up to public sewer, or is this
693 going to be the only one?
694
695 Ms. Wright - My son, the one that built on the northeast corner in 1993,
696 because he is within a hundred feet of the County sewer, he is.
697
698 Ms. Dwyer - Lot 3?
699
700 Ms. Wright - Yes. Presently, he is the only one hooked up. Lot 5 will be
701 hooked up. The initial house that was there that my dad lived in was grandfathered,
702 and the rest of us are just too far away by County regulation to hook up.
703
704 Mr. Blankinship - The original house is on Lot 4?
705
706 Ms. Wright - Yes, and that still has a septic tank. It was grandfathered.
707
708 Mr. Wright - Any further questions of the Board? Is anyone here in
709 opposition to this request? Hearing none, that concludes the case.
710
711 Mr. Wright - A-49-2005.
712
713 Mr. Kirkland - Move we approve it.
714
715 Ms. Harris - Second the motion.
716
717 Mr. Blankinship - Motion to approve by Mr. Kirkland; seconded by Ms. Harris.
718
719 Mr. Wright - Any discussion. Hearing none, all in favor of approval, say
720 aye. Opposed, no. It's approved.
721

722 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
723 Harris, the Board **granted** application **A-49-2005** for a variance to build a one-family
724 dwelling at 9420 Hoehns Road (Parcel 764-758-7891 (part)). The Board granted the
725 variance/use permit subject to the following conditions:

726
727 1. This variance applies only to the public street frontage requirement. All other
728 applicable regulations of the County Code shall remain in force.

729
730 2. Approval of this request does not imply that a building permit will be issued.
731 Building permit approval is contingent on Health Department requirements, including,
732 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
733 of a well location.

734
735 3. At the time of building permit application, the applicant shall submit the
736 necessary information to the Department of Public Works to ensure compliance with the
737 requirements of the Chesapeake Bay Preservation Act and the code requirements for
738 water quality standards.

739
740 4. At the time of building permit application the owner shall demonstrate that the
741 parcel created by this division has been conveyed to members of the immediate family,
742 and the subdivision ordinance has not been circumvented.

743
744 5. The applicant shall present proof with the building permit application that a legal
745 access to the property has been obtained.

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

750
751 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
752 Negative: 0
753 Absent: 0

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

760
761 **A - 50-2005** **MARTHA G. WILE** requests a variance from Section 24-95(i)(1) to
762 add stairs to the existing deck at 9409 Epsom Downs Drive (The
763 Derby) (Parcel 746-739-3544), zoned R-3, One-family Residence
764 District (Tuckahoe). The rear yard setback is not met. The
765 applicant proposes 17 feet rear yard setback, where the Code
766 requires 30 feet rear yard setback. The applicant requests a
767 variance of 13 feet rear yard setback.

768
769 Mr. Wright - Does anyone else desire to speak with reference to this
770 case? Would you raise your right hand and be sworn please?
771
772 Mr. Blankinship - Do you swear that the testimony you are about to give is the
773 truth, the whole truth, and nothing but the truth, so help you God?
774
775 Ms. Wile - So help me God. My name is Martha Wile. In the package
776 that was sent to me, you have some photographs of the way the deck appears on the
777 back of my house. The deck actually comes off of the main level of the house, but I
778 have a daylight basement, so there actually is a one-story drop. I'm requesting to add
779 some stairs to this deck. You also have an amended drawing of the exact dimensions
780 of the back of the house. It wasn't sent to me in the mail, but I brought copies to the
781 Planning Board about a week ago, and they made two copies of these drawings
782 because we went out and when I had initially made the request for the variance, I had
783 used the plot plan that was done at the time of the closing of my house. Also to correct
784 one item that was sent to me, I am not the original owner of the house. I'm actually, I
785 believe, the third owner. I had used the plan from the closing of my house and just
786 done relative measurements to put in the variance for the County, and it turned out that
787 that was not very accurate. So my landscape designer and I went to the back, and we
788 found the rods and we did all the measuring. At the time I brought this, I also brought
789 copies of the plans for the landscaping that is being planned for my back yard, and if
790 you don't have that either, I don't know if I have enough information with me to show
791 you all of the things that I would like to show you
792
793 Ms. Dwyer - The rule is that a deck can extend ten feet into the setback,
794 correct? How far do these stairs extend into the setback? It's hard for me to see the
795 dimensions on this.
796
797 Mr. Blankinship - Yes ma'am. Reference Section 24-95(i)(1) and said that the
798 requirement is thirty feet, so the actual setback requirement is forty feet. The setback
799 for the principal structure would be forty feet, so a deck would be allowed to be within
800 thirty feet. This new drawing is showing 24 feet 6 inches.
801
802 Ms. Wile - The variance that I am now – I have some adjustments to
803 what was sent to me.
804
805 Mr. Blankinship - What we had been dealing with was 17 feet; the original
806 drawing showed 17 feet, so that's what's in your report.
807
808 Ms. Wile - Correct. And when we actually went and found the rods and
809 did the exact drawing, I'm actually requesting a 24-foot rear setback with a variance of
810 six feet.
811
812 Mr. Wright - So it's reduced from 17 to 6, is that what you're saying?
813

814 Ms. Wile - The setback would increase to 24 feet, and the variance I'm
815 requesting is 6 feet.
816
817 Mr. Wright - Our information shows that you're requesting 13 feet.
818
819 Ms. Wile - Exactly. I am changing it from 13 to 6 feet, so it's 7 feet less.
820
821 Ms. Dwyer - Based on the drawing that we're looking at now on the
822 screen.
823
824 Ms. Wile - Correct.
825
826 Mr. Wright - That's to permit you to put stairs from the deck to the
827 ground?
828
829 Ms. Wile - Correct.
830
831 Ms. Dwyer - Is there any reason why you couldn't put the stairs on the
832 side?
833
834 Ms. Wile - I could put the stairs on the side. Again, apparently you also
835 don't have my landscaping plans, which I also brought at the same time as these, and
836 they had taken plans and reduced them down, and unfortunately, I also don't have them
837 with me. If that is something that you feel you need before we can make a legitimate
838 decision

839
840 Ms. Dwyer - I don't think the landscaping plan will have any bearing on
841 the variance request.
842
843 Ms. Wile - I am planning to landscape my entire back yard. This is part
844 of the landscaping plan. You're correct; I could put the stairs on the side.
845
846 Mr. Wright - There seems to be a concrete pad on one side that looks
847 like the stairway could come down to the concrete pad.
848
849 Ms. Wile - It would actually not be coming down, if you go back to the
850 photograph, the top photograph, the stairs would be coming off the back of the deck, so
851 the stairs would then be coming down into the grassy area.
852
853 Mr. Wright - If you changed it to the side, it would be coming down onto
854 that concrete path. And the question is, why wouldn't you do that, rather than need a
855 variance?
856
857 Ms. Wile - I have a bay window there, which is why I wouldn't put it on
858 that side. I guess it was aesthetics – it seemed to look better if it came off the back than
859 if it came off the side.

860
861 Mr. Wright - Any further questions of the Board? Is anyone here in
862 opposition to this request? Hearing none, that concludes the case. A-50-2005?
863
864 Ms. Dwyer - I move we deny A-50-2005.
865
866 Mr. Wright - Motion is made that we deny A-50-2005 – is there a second?
867
868 Ms. Harris - Second.
869
870 Mr. Blankinship - Motion to deny by Ms. Dwyer; seconded by Ms. Harris.
871
872 Mr. Wright - Any further discussion?
873
874 Ms. Dwyer - I would like to also give a reason for the motion for denial,
875 that again, the effect of the Zoning Ordinance is not to deprive this owner of reasonable
876 and beneficial use of the property. In fact, there are other options for locating the
877 stairway to either side of the deck rather than bumping it out to the rear, where it
878 interferes with the required setback.
879
880 Mr. Wright - All in favor of denial, say aye. Opposed, no. It's denied.
881
882 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
883 Harris, the Board **denied** application **A-50-2005** for a variance to add stairs to the
884 existing deck at 9409 Epson Downs Drive (The Derby) (Parcel 746-739-3544).
885
886 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
887 Negative: 0
888 Absent: 0
889
890 The Board denied your request as it found from the evidence presented that there was
891 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
892 Virginia to justify a variance.
893
894 **A - 51-2005** **JOHN PAGE TREVILLIAN** requests a variance from Section 24-94
895 to build a screened porch at 5608 Burberry Court (Kimberwicke)
896 (Parcel 735-775-3488), zoned R-3C, One-family Residence District
897 (Conditional) (Three Chopt). The minimum side yard setback and
898 total side yard setback are not met. The applicant proposes 10 feet
899 minimum side yard setback and 26 feet total side yard setback,
900 where the Code requires 12 feet minimum side yard setback and
901 30 feet total side yard setback. The applicant requests a variance
902 of 2 feet minimum side yard setback and 4 feet total side yard
903 setback.
904

905 Mr. Wright - Does anyone else desire to speak with reference to this
906 case? Would you raise your right hand and be sworn please?

907
908 Mr. Blankinship - Do you swear that the testimony you are about to give is the
909 truth, the whole truth, and nothing but the truth, so help you God?

910
911 Mr. Trevillian - I do. John Page Trevillian. I'm here to present a proposal to
912 build a partially screened porch, onto an existing variance structure, which was
913 completed last year. The original house has a door exiting from the utility room onto
914 what used to be a small landing and some steps. The variance structure partially
915 enclosed that, in that the first floor of the structure was cut in to accommodate the door.
916 The second floor extends over it, sort of creating an alcove in the back, and I believe
917 there were some pictures. The original plan also envisioned an open deck extending
918 from the alcove part that you can see there, out and coming behind the double doors
919 which are on the new structure; that's the back of a garage. What we're proposing to do
920 now is simply to cover over, with a screened porch, that part of the structure that would
921 extend out from the alcove approximately five feet and then over to the house, leaving
922 the decking that's envisioned to extend behind the double doors, open.

923
924 Mr. Blankinship - Did you say the original intention was to put a deck in this
925 space? The deck would not require a variance.

926
927 Mr. Trevillian - It seemed that covering over that part would add a little more
928 balance to the view of the structure.

929
930 Mr. Wright - Have you got the picture of the plat that we can put up on
931 the screen? The porch is that hatched area behind the garage?

932
933 Ms. Dwyer - And your garage is two feet from your neighbor's fence,
934 right?

935
936 Mr. Trevillian - The part that's already built is as shown, approximately 2 ½
937 feet.

938
939 Ms. Dwyer - Is it difficult to do maintenance on that side of the house with
940 only two feet between you and your neighbor's fence?

941
942 Mr. Trevillian - Apparently the fence is set back a few more inches. There's
943 plenty of room to get a lawn mower through there. You couldn't drive a car through
944 there.

945
946 Ms. Dwyer - So your neighbor's fence is actually a couple inches in on his
947 property?

948
949 Ms. Harris - Have you spoken with your neighbors about this?

950

951 Mr. Trevillian - I spoke with the neighbor directly to the side, and he
952 indicated no opposition at that time.
953

954 Mr. Wright - This would be no closer to the side yard than your garage
955 already is, would it?
956

957 Mr. Trevillian - No closer at all. In fact, it's about nine feet less.
958

959 Mr. Wright - Any further questions of the Board? Is anyone here in
960 opposition to this request? Do you wish to speak. Come down. You need to be sworn.
961 Please raise your right hand.
962

963 Mr. Blankinship - Do you swear that the testimony you are about to give is the
964 truth, the whole truth, and nothing but the truth, so help you God?
965

966 Ms. Li - Yes. My name is Ming Li. I live at 5604 Burberry Court, just
967 next door to John. The problem is my garage, family room and bedroom, just above the
968 garage, are all facing to that side. My husband and I talked about this, and we think that
969 this building a porch will impact our property values. It's in our space, both from ground
970 level and vertically, because the County Code requests 12 feet minimum side yard
971 setback and 30 feet total side yard setback, and building that porch just decreases the
972 distance to ten feet minimum side yard setback. The back is also close to that side of
973 our family. We just think that building the porch invades our privacy and also the space.
974 For the existing garage they built last year, we didn't actually agree to that, but we didn't
975 come here to speak our objections. At that time we were very busy, and my husband
976 may have been out of town. Today, he was prepared to be here, he got busy and
977 traveled yesterday, and that's why I came here. We didn't say our objections that time;
978 that was the first time; when we got this problem when the neighbor built something.
979 We didn't know the procedure, so we didn't think about the hearing or the appeal; we
980 didn't know that. Now we know that, for the first time we are here to say our objection
981 because it's really close to our house, and we think it will impact our property values.
982 Due to the immediate significant impact to our property, and the living condition, we
983 would like to request serious consideration for our position from the County officials.
984 We believe our rights are fully justified by the County Building Code. We would like to
985 ask our neighbor John's understanding of this matter. Thank you for your time.
986

987 Ms. Harris - You are saying basically that this negatively affects your
988 property value and your space, and when these variances occurred before, you were
989 not aware of the process; this is why you did not speak up before.
990

991 Ms. Li - We didn't know the procedure, and we didn't have time
992 before.
993

994 Mr. Wright - Mr. Trevillian, I thought you'd said earlier that you'd talked
995 with the neighbors on that side of your property, and they were in accord with this.
996

997 Mr. Trevillian - I did speak with Mr. Huang, and he did not indicate
998 opposition at that time. I was surprised.
999

1000 Mr. Wright - That concludes the case, unless you have something to add
1001 in the way of rebuttal.
1002

1003 Mr. Trevillian - I don't think it would negatively affect the value. As far as
1004 the view, that's up to everybody.
1005

1006 Mr. Wright - That concludes the case.
1007

1008 Mr. Blankinship - This is the one where the neighbor spoke in opposition.
1009

1010 Ms. Harris - I move that we deny this request.
1011

1012 Mr. Kirkland - Second.
1013

1014 Mr. Blankinship - Motion to deny by Ms. Harris; seconded by Mr. Kirkland.
1015

1016 Mr. Wright - Any further discussion? All in favor of denial, say aye;
1017 opposed say no. It's denied.
1018

1019 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.
1020 Kirkland, the Board **denied** application **A-51-2005** for a variance to build a screened
1021 porch at 5608 Burberry Court (Kimberwicke) (Parcel 735-775-3488).
1022

1023	Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
1024	Negative:		0
1025	Absent:		0

1026

1027 The Board denied your request as it found from the evidence presented that there was
1028 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
1029 Virginia to justify a variance.
1030

1031 **A - 52-2005** **WOLFGANG KELLER** requests a variance from Section 24-94 to
1032 build a sunroom on the existing deck at 10657 Cliffmore Drive
1033 (Olde Springfield) (Parcel 753-763-3938), zoned R-3A, One-family
1034 Residence District (Three Chopt). The rear yard setback is not
1035 met. The applicant has 28 feet rear yard setback, where the Code
1036 requires 35 feet rear yard setback. The applicant requests a
1037 variance of 7 feet rear yard setback.
1038

1039 Mr. Wright - Does anyone else desire to speak with reference to this
1040 case? Would you raise your right hand and be sworn please?
1041

1042 Mr. Blankinship - Do you swear that the testimony you are about to give is the

1043 truth, the whole truth, and nothing but the truth, so help you God?
1044
1045 Mr. Keller - I do. Wolfgang Keller. We would like to build a sunroom on
1046 top of our existing deck. It would not extend across the size of the current deck as it is.
1047 The problem is that the rear setback is not met, as the current deck is already
1048 encroaching it, so the only other option would be more or less that we don't have a
1049 sunroom at all.
1050
1051 Mr. Wright - This is a 10 by 12 sunroom? What is the size of the deck?
1052
1053 Mr. Keller - The whole porch is wrapped around the house; I don't know
1054 the exact size of the deck, so we will still have something on the left side of the deck
1055 after the proposed sunroom, and on the right side where we have a seating area.
1056
1057 Mr. Wright - Is the proposed sunroom the same size as the deck?
1058
1059 Mr. Keller - In the direction away from the house, yes. Go to the sketch
1060 of the drawing.
1061
1062 Mr. Wright - So the new sunroom would not extend any closer to the rear
1063 line; it would be to the side line.
1064
1065 Mr. Keller - That is correct, and as you can see, the property line at the
1066 back is kind of skewed, so if it would be straight starting from the left corner, it would be
1067 no problem at all. Technically, of course, it's possible to build the sunroom on the left
1068 side of our house, where there would be no setback requirement, but that's where the
1069 utility room is. We would need to build a foundation, but that's where the crawl space
1070 entrance is, and actually, then the entrance to the sunroom would be in the utility room,
1071 where we have the washer and dryer, so we definitely wouldn't build it there.
1072
1073 Ms. Dwyer - Is that all that's on the left side of your house? What of other
1074 rooms?
1075
1076 Mr. Keller - Do you see the small notch? That's the window where we
1077 have the kitchen, and right there, three feet on the left is where the utility room starts.
1078 The left side of the house is the garage. At the right side of it is the utility room.
1079
1080 Ms. Dwyer - Would you have room for a door into the sunroom to the left
1081 of that bay window?
1082
1083 Mr. Blankinship - You could continue the deck across.
1084
1085 Mr. Keller - The door to the utility room starts about less than a meter to
1086 the left of this bay window.
1087
1088 Ms. Dwyer - That's probably enough room for a door, a meter. Maybe.

1089
1090 Mr. Keller - Not from my aesthetics to have a door right at the window,
1091 because basically there is no wall anyway between the door anymore. Technically, it is
1092 possible, I agree.
1093
1094 Mr. Kirkland - What is the sunroom going to look like? Is it going to be pre-
1095 fab?
1096
1097 Mr. Keller - It will be Champion studio style, basically a roof and all
1098 around is windows, and from the floor, I think two feet high, is light wood siding.
1099
1100 Ms. Dwyer - How long have you lived in this home?
1101
1102 Mr. Keller - Since 1996. Actually, December 1996.
1103
1104 Ms. Dwyer - So you've had use of the home without the sunroom before.
1105
1106 Mr. Keller - Yes, the reason why we want to build it now is I'm working
1107 for a traveling company. I had originally a timed contract. We decided to stay here, and
1108 the company is building a big extension right now, which extends the probability that we
1109 will stay for a really long time here. It was always in our plans that we may go back to
1110 Germany, and now we've changed our minds, so now we're thinking of adding more to
1111 our house.
1112
1113 Mr. Wright - What impact would this sunroom have on the property to the
1114 rear of your property? It is completely visible to the rear. There would be no space
1115 impact because it's not extending across the existing deck, but it's completely visible.
1116
1117 Mr. Wright - Seems like the property to the rear is on a cul-de-sac and is
1118 situated at an angle to your house. I'm just looking at the picture there. So there's a
1119 little open area behind that house, directly behind your house, to the rear.
1120
1121 Mr. Keller - That is correct. Also in the package there was a picture that
1122 you can see that was photographed so you can see how it looks.
1123
1124 Mr. Wright - Have you discussed this with that neighbor?
1125
1126 Mr. Keller - I have talked with them. They didn't indicate any concerns
1127 from their side.
1128
1129 Mr. Wright - Any further questions of the Board? Is anyone here in
1130 opposition to this request? Hearing none, that concludes the case.
1131
1132 Mr. Nunnally - I move we approve it, no closer to the back or rear than the
1133 deck is now.
1134

1135 Mr. Kirkland - Second.
1136
1137 Mr. Blankinship - Motion to approve by Mr. Nunnally; seconded by Mr.
1138 Kirkland.
1139
1140 Mr. Wright - Any discussion?
1141
1142 Ms. Harris - Is this the case where we're getting different readings on the
1143 various sides of the property? On one side it was so many feet. I have to find that out
1144 before I vote.
1145
1146 Mr. Blankinship - Let me find my plat. This one is the one with the wrap-
1147 around deck, that he wanted to build the sunroom.
1148
1149 Ms. Dwyer - I don't think it's a wrap-around deck.
1150
1151 Mr. Blankinship - A-52?
1152
1153 Mr. Wright - This is A-52.
1154
1155 Mr. Kirkland - It looks like a wrap-around deck on the plot plan.
1156
1157 Mr. Blankinship - It shows on the drawing. The deck surrounds, but he wants
1158 to enclose part of the deck as a sunroom.
1159
1160 Mr. Kirkland - It's got a little box on the back that says "deck."
1161
1162 Ms. Dwyer - I see; the side part is under a porch.
1163
1164 Mr. Kirkland - He's got a real heavy overhang that hides most of that
1165 around the side.
1166
1167 Mr. Blankinship - He was talking about the location of a door on the other side
1168 of the bay window, whether he could move the sunroom to the left side of the house and
1169 have a door coming in over there. He said it was narrower than he would like to have
1170 the door there.
1171
1172 Ms. Dwyer - Right, but he could move it to the left side of the house, and
1173 not be within the setback.
1174
1175 Mr. Wright - This is a 70-foot rear yard setback.
1176
1177 Ms. Dwyer - Because the rear yard is wider to the left, he would have
1178 more buildable area to the left side of the house as we are looking at it.
1179

1180 Mr. Wright - He said he couldn't do that because that's where his
1181 windows are. There's a motion that we approve it, seconded, I believe. Any further
1182 discussion? All in favor, say aye. Opposed, no. It's approved.

1183
1184 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1185 Kirkland, the Board **granted** application **A-52-2005** for a variance to build a sunroom on
1186 the existing deck at 10657 Cliffmore Drive (Olde Springfield) (Parcel 753-763-3938).
1187 The Board granted the variance subject to the following conditions:

1188
1189 1. This variance applies only to the rear yard setback requirement. All other
1190 applicable regulations of the County Code shall remain in force.

1191
1192 2. The new construction shall match the existing dwelling as nearly as practical in
1193 materials and color.

1194
1195 Affirmative: Harris, Kirkland, Nunnally, Wright 4
1196 Negative: Dwyer 1
1197 Absent: 0

1198
1199 The Board granted this request, as it found from the evidence presented that, due to the
1200 unique circumstances of the subject property, strict application of the County Code
1201 would produce undue hardship not generally shared by other properties in the area, and
1202 authorizing this variance will neither cause a substantial detriment to adjacent property
1203 nor materially impair the purpose of the zoning regulations.

1204
1205 **A - 53-2005** **ANTHONY J. OLEY** requests a variance from Section 24-94 to
1206 build an addition at 10710 Chipewyan Drive (Kingsley) (Parcel 740-
1207 746-1350), zoned R-2, One-family Residence District (Tuckahoe).
1208 The rear yard setback is not met. The applicant proposes 36 feet
1209 rear yard setback, where the Code requires 45 feet rear yard
1210 setback. The applicant requests a variance of 9 feet rear yard
1211 setback.

1212
1213 Mr. Wright - Does anyone else desire to speak with reference to this
1214 case? Would you raise your right hand and be sworn please?

1215
1216 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1217 truth, the whole truth, and nothing but the truth, so help you God?

1218
1219 Mr. Parker - I do. My name is Joe Parker; I represent Mr. and Mrs. Oley.
1220 Unfortunately, Mr. Oley couldn't be here this afternoon, due to some sickness with an
1221 employee. Mr. and Mrs. Oley have owned this property approximately twenty years.
1222 They put an addition on the house, shown on the plat, back in the late '90's. This was
1223 an addition for the mother, which consisted of a large bedroom, bath, etc. What he'd
1224 like to do is put an addition coming out of his dining room to have a little room for
1225 exercise, as well as a place where he could pretty much keep the kids to the far end of

1226 the house, away from disturbing the mother. In talking to Mr. Oley, he said he has
1227 heard no objections from anyone about what he wants to put out there, as far as an
1228 addition to the house. I think you have a set of the plans that we proposed. Basically,
1229 what he wants to do is put up something that is attractive and an asset to the
1230 neighborhood. We thought about trying to get it close enough to the house so that we
1231 didn't have to apply for this variance; however we were only going to have five feet
1232 between the walls, so that when you looked out the house, you'd be looking right into
1233 the wall. What he'd like to do is landscape it and have pretty much like a courtyard type
1234 of thing between the addition and the existing home.

1235
1236 Mr. Wright - What will this addition be used for?

1237
1238 Mr. Parker - He has it marked down as an exercise room and a game
1239 room. I think it's going to be a combination recreation room for the children.

1240
1241 Mr. Wright - How many rooms does he have in his present house?

1242
1243 Mr. Parker - He's got two boys, and the third one's in college right now.
1244 He and his wife and his mother.

1245
1246 Mr. Wright - How many rooms in the existing house?

1247
1248 Mr. Parker - That I don't know.

1249
1250 Mr. Wright - The initial house was two stories, right? The first addition
1251 was a single story?

1252
1253 Mr. Parker - That's my understanding, yes sir.

1254
1255 Ms. Dwyer - What is the distance between the existing house and the 45-
1256 foot rear setback line?

1257
1258 Mr. Parker - Thirty-six feet, I believe.

1259
1260 Mr. Blankinship - On the addition side, it would be 17 feet, subtracting the 8.8
1261 from the 26. It looks like it's about two feet farther out, over where you have that 38
1262 feet, so it would be about fifteen feet.

1263
1264 Ms. Dwyer - An addition could be built that would be 15 to 17 feet deep,
1265 without encroaching into the setback.

1266
1267 Mr. Parker - Yes ma'am. The only reason that we couldn't put the
1268 addition so close, because we've got to come in with two different roof lines. We'll use
1269 an "A" roof on the addition that we're proposing, and then make a right-hand turn with
1270 an "A" roof.

1271

1272 Ms. Dwyer - But you could use a different design and still be within the
1273 setback.
1274
1275 Mr. Parker - A different design? In the roofs?
1276
1277 Mr. Blankinship - You could put the recreation room on one side and the
1278 exercise room on the other side, for one thing.
1279
1280 Mr. Parker - Instead of an "L" shape, I assume you're referring to two
1281 protrusions coming out.
1282
1283 Ms. Dwyer - Or perhaps a longer addition.
1284
1285 Mr. Blankinship - There are other options.
1286
1287 Ms. Dwyer - You have 17 to 15 feet to play with, between the existing
1288 house and the setback line, so an addition could go within that area.
1289
1290 Mr. Parker - The whole purpose was we were trying to develop a
1291 courtyard approach, where, when you look out the windows, you're not looking right into
1292 the wall of the addition. We felt like that would be rather small; that would bring us
1293 down to about five feet between the two buildings.
1294
1295 Ms. Dwyer - That would not give you a courtyard? You said the Oleys
1296 had lived there and enjoyed the home for 20 years, is that right?
1297
1298 Mr. Parker - With the additions, yes ma'am.
1299
1300 Mr. Wright - Any further questions of the Board? Is anyone here in
1301 opposition to this request? Hearing none, that concludes the case. A-53-2005?
1302
1303 Ms. Dwyer - That's a Tuckahoe case, and I move that we deny. This
1304 owner has enjoyed reasonable and beneficial use of the property for some twenty years
1305 without this particular addition. This owner has fifteen to seventeen feet outside of the
1306 setback, within which he is able to build an addition, and in fact the Supreme Court says
1307 even if you have to abandon a project, if you still are able to enjoy reasonable use of
1308 your property, then you don't have a hardship and are not entitled to a variance. It's
1309 clear to me that there's no hardship here, that he has been and will continue to be able
1310 to not only use his house without the addition, but has some significant buildable area
1311 within which to work with a different design. That's the basis for my motion for denial.
1312
1313 Mr. Wright - Is there a second?
1314
1315 Ms. Harris - Second. Any further discussion. All in favor of denial, say
1316 aye; opposed, no. It's denied.
1317

1318 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.
1319 Harris, the Board **denied** application **A-53-2005** for a variance to an addition at 10710
1320 Chipewyan Drive (Kingsley) (Parcel 740-746-1350).

1321
1322 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1323 Negative: 0
1324 Absent: 0

1325
1326 The Board denied your request as it found from the evidence presented that there was
1327 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
1328 Virginia to justify a variance.

1329
1330 **A - 54-2005** **JAMES L. THOMAS** requests a variance from Section 24-94 to
1331 build a screened porch over the existing deck at 12356 Morning
1332 Creek Road (Morning Creek at Millstone) (Parcel 736-776-7971),
1333 zoned R-2C, One-family Residence District (Conditional) (Three
1334 Chopt). The rear yard setback is not met. The applicant proposes
1335 36 feet rear yard setback, where the Code requires 45 feet rear
1336 yard setback. The applicant requests a variance of 9 feet rear yard
1337 setback.

1338
1339 Mr. Wright - Does anyone else desire to speak with reference to this
1340 case? Would you raise your right hand and be sworn please?

1341
1342 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1343 truth, the whole truth, and nothing but the truth, so help you God?

1344
1345 Mr. Thomas - I do. James L. Thomas. My wife and I built this house in
1346 1999, and we are the original owners. I'm here today to request a variance to build a
1347 screened porch over an existing deck at the back of our home. This would require a 36-
1348 foot setback, vs. the Code requirement of a 45-foot setback, so my variance request is
1349 for nine feet. Primarily, our interest is to build a screened porch so that our family can
1350 enjoy our back yard and eating outside. Currently, the problems with the use of our
1351 deck are, it's exposed to direct sunlight, it's fairly intense sun, and bugs. We have,
1352 several years ago, planted a landscape buffer that you can see where the marker is.
1353 We installed that, and at this point, it has significantly matured and created a buffer. We
1354 feel that gives a good natural shield between our immediate neighbor to the rear at
1355 5504. We intend to have the porch match the existing house, so it looks as if it was part
1356 of the original construction.

1357
1358 Mr. Wright - It looks like, from the survey, that it would be the south
1359 corner of the property is in compliance with the Code, so that the line cuts diagonally
1360 through the proposed porch.

1361
1362 Mr. Thomas - Yes sir, the rear property line, and the angles and
1363 measurements there are at a slanted angle.

1364
1365 Mr. Wright - That's because the rear property line is not parallel to the
1366 rear of the house.
1367
1368 Mr. Thomas - That's correct. We are on a corner of a cul-de-sac.
1369
1370 Ms. Dwyer - This is your parents' house, did you say?
1371
1372 Mr. Thomas - No, my wife and I built this house in 1999.
1373
1374 Ms. Dwyer - Speaking of the south side of the house, you have a larger
1375 buildable area to the south of the house, that looks like you could possibly put the porch
1376 and not encroach on the setback – am I reading that correctly?
1377
1378 Mr. Thomas - The drawing doesn't reflect a four-paneled window. That's
1379 the family room to the left, fireplace on the corner, and the ability to move the proposed
1380 porch to the left would get in the way of all those windows. If we went all the way to the
1381 corner, those family room windows would all be obstructed by the porch.
1382
1383 Ms Dwyer - The windows would all look out onto the porch.
1384
1385 Mr. Thomas - Correct. And to the right, that drawing better reflects that
1386 you can see the kitchen sink. There's a window there; if we came left more, there are
1387 some structural issues, but we'd be right there in the window with the corner of the
1388 porch.
1389
1390 Mr. Wright - And it's your testimony that this porch would not be visible
1391 from your neighbor facing to the rear.
1392
1393 Mr. Thomas - If you look at the photographs taken by your staff, you get a
1394 sense of the shield. To the far right, that's one of three weeping willow trees, and there
1395 are evergreens planted that are currently about eight feet tall. I would think that they
1396 can certainly see through the trees and see it, but it has somewhat of a natural shield.
1397
1398 Ms. Dwyer - How long have you lived here?
1399
1400 Mr. Thomas - Since 1999 – we are the original owners.
1401
1402 Ms. Harris - Have you spoken to your neighbors to get their reaction?
1403
1404 Mr. Thomas - Yes ma'am – they have no opposition.
1405
1406 Mr. Wright - Any further questions of the Board? Is anyone here in
1407 opposition to this request? Hearing none, that concludes the case. A-54-2005?
1408
1409 Mr. Nunnally - I move we approve it.

1410
1411 Mr. Wright - Is there a second?
1412
1413 Mr. Kirkland - Mr. Blankinship, I'll make a second, just to discuss it. He
1414 said he was going to enclose the exact size of the deck, yet on my architectural plan, it
1415 looks like he drew a larger room than the deck. It looks like in the drawing that the room
1416 is going to be larger than the deck, yet he stated that it would be the same size as the
1417 deck, is that correct?
1418
1419 Mr. Blankinship - I don't recall what he stated. The drawing clearly shows the
1420 proposed screened porch larger than the existing deck.
1421
1422 Ms. Dwyer - The porch looks like it's a 14 by 26.
1423
1424 Mr. Wright - That's what it is, 14 by 26.
1425
1426 Mr. Kirkland - That's what it says.
1427
1428 Ms. Dwyer - We don't have dimensions for the deck.
1429
1430 Mr. Kirkland - I don't have the real dimensions of the deck, so I don't know
1431 what's right and what's wrong.
1432
1433 Mr. Blankinship - It's clear on the drawing that the proposed porch is larger
1434 than the existing deck.
1435
1436 Mr. Wright - It extends to the rear a little deeper than the deck.
1437
1438 Mr. Blankinship - Yes sir, and it squares off a corner that's now cut off at an
1439 angle.
1440
1441 Ms. Dwyer - This is another one in which the location could be moved
1442 along the rear of the house and
1443
1444 Mr. Wright - I don't think he could move it and still build it.
1445
1446 Mr. Kirkland - Not in this case.
1447
1448 Ms. Dwyer - I don't think that's what he wants to do, but I think that he
1449 could.
1450
1451 Mr. Wright - He'd still need a variance. If he moved it to the left, I still
1452 believe that the corner of that house would be violating the setback.
1453
1454 Ms. Dwyer - He has a fairly large buildable area to the south. He could
1455 leave the deck as is and build a smaller addition. There are options. But again, the

1456 Supreme Court said even if you have to abandon the project, as long as you still have
1457 use of the property as a residence, there is no hardship.

1458
1459 Mr. Wright - That's exactly what it says. There has been a motion that
1460 we approve it, and it's been seconded. Any further discussion?

1461
1462 Ms. Harris - If we look at the site plan, you see this little triangle edge to
1463 the right, where the property line comes across? When we stated he needs additional
1464 footage for a variance, we're just talking about this corner area.

1465
1466 Mr. Wright - A corner, less than half of it. Any further discussion? All in
1467 favor of approval, say aye; opposed, no. It's approved.

1468
1469 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1470 Kirkland, the Board **granted** application **A-54-2005** for a variance to build a screened
1471 porch over the existing deck at 12356 Morning Creek Road (Morning Creek at Millstone)
1472 (Parcel 736-776-7971). The Board granted the variance subject to the following
1473 conditions:

1474
1475 1. This variance applies only to the rear yard setback requirement. All other
1476 applicable regulations of the County Code shall remain in force.

1477
1478 2. The new construction shall match the existing dwelling as nearly as practical in
1479 materials and color.

1480
1481 Affirmative: Harris, Nunnally, Wright 3
1482 Negative: Dwyer, Kirkland 2
1483 Absent: 0

1484
1485 The Board granted this request, as it found from the evidence presented that, due to the
1486 unique circumstances of the subject property, strict application of the County Code
1487 would produce undue hardship not generally shared by other properties in the area, and
1488 authorizing this variance will neither cause a substantial detriment to adjacent property
1489 nor materially impair the purpose of the zoning regulations.

1490
1491 **The Board took a brief recess.**

1492
1493 **UP- 10-2005** **THREE CHOPT RECREATION CLUB** requests a conditional use
1494 permit pursuant to Section 24-12(b) to install pool deck lighting at
1495 2100 Skipwith Road (Parcel 761-749-1641 and 2808), zoned R-3,
1496 One-family Residence District (Three Chopt).

1497
1498 Mr. Blankinship - Mr. Chairman, the staff has distributed a revised staff report
1499 with an additional condition or two.

1500

1501 Mr. Wright - Does anyone else desire to speak with reference to this
1502 case? Would all who desire to speak, please stand, so we can swear everybody at one
1503 time. Would you raise your right hand and be sworn please?
1504

1505 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1506 truth, the whole truth, and nothing but the truth, so help you God?
1507

1508 Mr. Balgie - I do. I'm Tom Balgie. We're revising this pool, and what we
1509 want to do is put five new deck lights on the pool. These are the type of lights that just
1510 reflect down; I call them box lights.
1511

1512 Mr. Wright - Would they be above the pool?
1513

1514 Mr. Balgie - Yes. They'll be on twenty-foot poles, shining down.
1515

1516 Ms. Harris - How do they compare, the new lights to the old lights that
1517 you've had in the past?
1518

1519 Mr. Balgie - What we had is the old quartz lights, on ten-foot conduits,
1520 pointing down.
1521

1522 Ms. Dwyer - Were they the shoebox-style fixture?
1523

1524 Mr. Balgie - The old lights were just the quartz lights.
1525

1526 Mr. Kirkland - Like something you'd put on the side of your home, is that
1527 correct?
1528

1529 Mr. Balgie - Yes.
1530

1531 Ms. Dwyer - So this is an improvement in that the shoebox fixtures are
1532 designed to focus all the light down on the ground where you want the light and not to
1533 spread it to the side, so that it will spill over to neighbors and people outside the
1534 property.
1535

1536 Mr. Balgie - Yes. We've actually opened the upper pool already. This
1537 would be five lights.
1538

1539 Ms. Harris - In the drawing that's here, where is the wading pool?
1540

1541 Mr. Balgie - This drawing that's on the screen right now is our old pool
1542 design.
1543

1544 Mr. Wright - Have you read the suggested conditions that are proposed?
1545

1546 Mr. Balgie - Yes sir.

1547
1548 Mr. Blankinship - Have you read the new ones?
1549
1550 Mr. Wright - I want to make sure that you understand these conditions.
1551
1552 Ms. Dwyer - Are the only new conditions #'s 10 and 11? Everything else
1553 is the same?
1554
1555 Mr. Wright - Numbers 10 and 11 are added?
1556
1557 Mr. Blankinship - Some of the neighbors brought to our attention that when
1558 this use permit was first approved in '64 and then revised in '65 and '67 (I might be off
1559 by a year or two); then when it was revised in '78, some of the conditions from the
1560 earlier use permits were dropped, these two conditions regarding a buffer and some
1561 landscaping. When this was advertised, some of the neighbors were aware that those
1562 conditions had been on the permit previously and asked that they be reinstated. That's
1563 why that was done kind of at the last minute. That's why you also have the petition from
1564 the neighbors attached to your revised staff report.
1565
1566 Ms. Dwyer - So what # 10. says is that the area within 100 feet of
1567 Gunston Road in effect, and 50 feet of the eastern property line, which I assume is
1568 Skipwith Road

1569
1570 Mr. Blankinship - Part of it is along Skipwith, and then it jogs over and runs
1571 behind the houses there.
1572
1573 Ms. Dwyer - The houses that are on Skipwith?
1574
1575 Mr. Blankinship - You'll see it better on the plan, probably, if you unfold it and
1576 fold it back. See the jog in the eastern property line there.
1577
1578 Ms. Dwyer - I see. So there are houses between the pool and Skipwith.
1579
1580 Mr. Blankinship - Right.
1581
1582 Ms. Dwyer - So 100 feet along the north and 50 feet along the east.
1583
1584 Mr. Blankinship - And the existing parking sort of interrupts that 50 feet, but
1585 that's just the way it's always been; it's been that way since the '60's.
1586
1587 Mr. Wright - Mr. Blankinship, in this letter from the neighbors, you
1588 incorporated most of what they request as pertaining to the lighting, except they want it
1589 controlled by timer devices. Is that something that is or should not be?
1590
1591 Mr. Blankinship - I guess we can let them address that since they're here.
1592

1593 Mr. Wright - I take it they want to insure that the lights are turned off at
1594 the appropriate time. But I think you've included everything else that they've requested.
1595

1596 Mr. Nunnally - Are you okay with the two added conditions, sir?
1597

1598 Mr. Balgie - Yes.
1599

1600 Mr. Wright - Those added conditions are satisfactory? I think they were
1601 in there originally, and just got left out somehow.
1602

1603 Mr. Blankinship - They've never disturbed those areas. The fence is there,
1604 and the landscaping is there, and nothing's been disturbed.
1605

1606 Mr. Wright - They just want to be sure that they remain undisturbed.
1607

1608 Ms. Dwyer - There's a reference in the neighbors' letters to a 1968 letter
1609 from Mr. LaVecchia notifying the recreation club of their non-compliance to the
1610 conditions. Do you know what that's about?
1611

1612 Mr. Blankinship - There was a letter written at that point, but then they did
1613 come into compliance; there's further correspondence to that effect.
1614

1615 Ms. Dwyer - So some of these neighbors have probably lived here for a
1616 long time.
1617

1618 Mr. Wright - Is there anything further that you wish to address at this
1619 point?
1620

1621 Ms. Dwyer - Did you address the timer device?
1622

1623 Mr. Balgie - We could put a timer device on there, but right now we'd just
1624 planned to turn them off as we leave in the evening.
1625

1626 Mr. Wright - Let's hear from these folks, and then you'll have an
1627 opportunity to rebut.
1628

1629 Mr. Bruner - My name is George Bruner, and I live on 2307 Bogan Road,
1630 and that is within 500 feet of the property in question here. First I will explain that we
1631 are not in opposition with the lighting as was proposed in the publication, but we were
1632 concerned as the letter presented to you, of conditions that were established back in the
1633 '60's, and many of these neighbors were there then, and these conditions somehow got
1634 left out as future grants were made.
1635

1636 Mr. Wright - Have you seen the new proposed conditions?
1637

1638 Mr. Bruner - Yes sir.

1639
1640 Mr. Wright - Is that in accord with what you had in mind?
1641
1642 Mr. Bruner - The buffer zone and all is fine. There was one condition in
1643 there that did not – it's item # 5. We have requested that the current time limits be
1644 maintained. The question of the timer on the lights, that was in previous approvals for
1645 lighting for that pool area.
1646
1647 Mr. Wright - They say they have no objection to putting that back in there.
1648
1649 Mr. Bruner - Item # 5 – it says “Up to four times per year, the hours may
1650 be extended to 12:00 midnight for swimming meets. Public address systems, starter
1651 guns and similar equipment may be used at swimming meets, but at no other time
1652 except for emergency purposes.” The current requirement is for only two meets per
1653 year and vacate the premises by 11:00. This is extending it, and we think that the case
1654 of midnight is a little bit too long. This is nestled in a residential area that has been
1655 there for a long time. Many of the homes are within less than 200 feet of the area. One
1656 of the folks who signed the petition, Mrs. Blankenship, lives on Skipwith Road in that
1657 corner, and she's a 91-year-old lady, been living there for 50 years, and her house is
1658 well within 100 feet of the activity area. She doesn't want the extension of time to go
1659 any more. It started off as a little neighborhood pool, one swimming pool, a nice little
1660 recreation area. It developed a second pool and tennis courts and swim meets.
1661 Actually, they have outgrown our neighborhood. They have just rebuilt the pool, making
1662 it larger, and they plan on having more of these regional swim meets, not neighborhood.
1663 It's people coming from all around who would be coming here. When these meets
1664 occur, there's not ample parking. Cars are lined all up and down Skipwith Road; they're
1665 on private property; they're around in the Oak subdivision; they're in the church parking
1666 lot; they're in the school parking lot. You can imagine from a noise standpoint,
1667 hundreds of people cheering a swim meet, with the PA system that can be heard from
1668 several blocks away. This is up till midnight, and is really not acceptable to us as
1669 neighbors, and we think it will greatly deteriorate the property value of our homes in the
1670 area. Are there any questions?
1671
1672 Mr. Blankinship - Let me explain for Mr. Bruner's benefit, that this is a
1673 standard condition that has been drafted in response to other situations in other places
1674 in the County. This was not a request of the Rec Club; this is just one of our standard
1675 conditions, and the Board certainly does modify that as necessary.
1676
1677 Mr. Bruner - Am I not correct in saying that the noise ordinance in the
1678 neighborhood says you can't make noise after 11:00 o'clock, which means my
1679 neighbors, if I ran my lawn mower, could call the police on me.
1680
1681 Mr. Wright - If we were to reduce it to 11:00, would you go along with four
1682 meets a year?
1683
1684 Mr. Bruner - We're not anxious about the four a year, because

1685
1686 Mr. Wright - I think all these pools have four a year; that's my
1687 understanding; that's pretty standard.
1688
1689 Mr. Bruner - I would just ask my neighbors, would they concede to that?
1690
1691 Ms. Dwyer - I guess my concern is if you limit it to 11:00 o'clock, or if you
1692 limit it to the four meets per year. I live near the Kanawha Pool, so I know exactly what
1693 you're talking about, with the noise and the guns and the parking, but it doesn't happen
1694 but four times a year, and you do live near a recreation association. I know that the
1695 swim teams are a part of, not so much regional area, but a neighborhood. I know
1696 Kanawha swims against Three Chopt, and we're just down the road, and there are
1697 neighborhood pools that they swim against. I guess my concern is that they would not
1698 be able to have a swim team because the meets do involve lots of children, and they do
1699 go late at night.
1700
1701 Mr. Blankinship - The challenge is, if there's thunder, they have to clear the
1702 pool for 20 or 30 minutes, and that makes the meet run long. In a normal case, the
1703 meet is over by 11:00.
1704
1705 Mr. Bruner - We also have a lot of neighbors there who are affected by
1706 this later hour, and I think you would not approve any commercial type operation in a
1707 neighborhood to be open and operating with loud noise till midnight.
1708
1709 Mr. Blankinship - My point is, you might go five years and never have a swim
1710 meet go past 11:00, and then one year there will be thunder, and they will extend one.
1711
1712 Mr. Bruner - If they got permission to go to 12, there's nothing to stop
1713 them.
1714
1715 Mr. Blankinship - They could; that's right.
1716
1717 Mr. Wright - If you say they're normally over by 11:00, and I think they
1718 are, we could say, "except due to weather delays" or something like that? An
1719 exceptional situation might happen once every three or four years.
1720
1721 Mr. Bruner - My kids belonged to that pool when they were young. We as
1722 neighbors don't believe that the activity should be going on loud, late at night, and
1723 second, the fact that it takes till 12:00 o'clock is not the problem of the neighbors; it's the
1724 problem of the scheduling of the swimming people. They could start earlier if they liked.
1725 It's really not our problem; it's their problem.
1726
1727 M. Wright - Thank you very much for appearing. Anyone else desire to
1728 speak?
1729
1730 Mr. Bruner - Those folks were just going to verify anything you had from

1731 me.
1732
1733 Mr. Wright - Now you have a short time to rebut.
1734
1735 Mr. Balgie - I would just like to say that one of the reasons that we're
1736 expanding the pool is so that we can get done quicker. We're going from five lanes to
1737 eight lanes, so we should be able to finish up sooner.
1738
1739 Mr. Wright - Do you have any objection to our changing that to 11:00
1740 o'clock?
1741
1742 Mr. Balgie - Providing your suggestion where weather or some other
1743 unusual condition where we could go to 12:00, that would be wonderful.
1744
1745 Mr. Wright - In other words, we wouldn't want that to be a normal thing,
1746 so you'd plan a swim meet that goes to midnight, that's what we're trying to eliminate.
1747
1748 Ms. Dwyer - What about the parking issue? Do you have an agreement
1749 with the church or the schools to allow overflow parking in those lots. Parking along
1750 Skipwith is not desirable for the safety of anybody involved. So you do have an
1751 agreement, and do you have signs that direct people.
1752
1753 Mr. Balgie - Yes we do. We have signs that tell them there is extra
1754 parking at the church.
1755
1756 Ms. Dwyer - How about the school?
1757
1758 Mr. Balgie - We don't have an agreement with the school.
1759
1760 Ms. Dwyer - But you do have an agreement with the church, which is very
1761 close. Do you have any fields or any other way to accommodate extra parking on your
1762 own property?
1763
1764 Mr. Balgie - We would, but they just put in that restriction that we can't
1765 cut down the trees.
1766
1767 Ms. Dwyer - The buffer, right. So there's no other place on your property
1768 to go. Folks are going to need to cross the street and go to the church.
1769
1770 Mr. Wright - How about putting a timer on your lights – does that cause
1771 you any problem?
1772
1773 Mr. Balgie - No.
1774
1775 Mr. Wright - I'd forgotten, Mr. Blankinship, that we had that in there.
1776

1777 Mr. Blankinship - On the pool lights only.
1778
1779 Ms. Harris - Do you have any provision whereby you meet with the
1780 neighborhood periodically? I know that you've been neighbors for a mighty long time,
1781 and there are growing pains, but if you somehow had meetings periodically.
1782
1783 Mr. Balgie - Right – we don't have any provisions like that. That would
1784 be a good suggestion though.
1785
1786 Mr. Wright - Anything further? Thank you very much for appearing. UP-
1787 10, Three Chopt Recreation Club.
1788
1789 Mr. Nunnally - I move we approve it, but put that time limit of 11:00 pm
1790 instead of 12:00 midnight, except for weather conditions.
1791
1792 Mr. Wright - And we could put a weather condition exception in there, it
1793 would probably only come into play for a very few times.
1794
1795 Ms. Harris - And a timer for the lights.
1796
1797 Mr. Kirkland - Mr. Blankinship, when the weather's bad at night and they're
1798 having a swim meet, you better document the weather was bad, in case the neighbors
1799 complain.
1800
1801 Mr. Blankinship - If they're anything like my league, nobody wants that meet to
1802 go a minute later than it needs to go.
1803
1804 Ms. Dwyer - What if you have a relay, and you've got two more events
1805 after 11:00 o'clock? I live near a pool, and I understand, but it's only four times a year,
1806 and it's a very helpful, constructive thing for many children to do, and I just hesitate to
1807 put that in there. I think that nobody wants it to go beyond 11:00, and in fact it's very
1808 difficult for the children to be there beyond 11:00, but if it is, it seems to me that it's
1809 appropriate as few times as this is going to be applicable, to let them go beyond 11:00
1810 and not have to
1811
1812 Mr. Wright - Well, suppose it went five or ten minutes over, nobody's
1813 going to argue the point. What we've been talking about is to plan a swim meet that
1814 goes to 12:00 o'clock. If they're in good faith, and they get caught, I don't think there
1815 could be anybody who would be reasonable to say we would revoke it for that.
1816 Normally, if the weathers bad, it's going to wipe the meet out anyhow.
1817
1818 Ms. Dwyer - Mr. Blankinship, did you say this is a condition that's on
1819 other pools in the County?
1820
1821 Mr. Blankinship - Yes, it's fairly standard. Not every case; there have been
1822 some cases where the Board has modified.

1823
1824 Mr. Wright - You have to take these where the pool is, in relationship to
1825 the neighborhood.
1826
1827 Ms. Dwyer - Most all of them are in neighborhoods.
1828
1829 Mr. Wright - I know, but some of them have a greater impact than others.
1830
1831 Mr. Kirkland - Some are a lot larger than this one too.
1832
1833 Mr. Wright - So your proposal is, you move to approve it, amending the
1834 conditions by putting in a timer requirement on the pool lights, and that we reduce the
1835 time from midnight to 11:00, except when the weather conditions are such that would
1836 force them to exceed that.
1837
1838 Mr. Blankinship - But in no case later than midnight. They must shut down at
1839 midnight. Was there a second to the motion?
1840
1841 Mr. Nunnally - If it's later than midnight, can't you put that on the four meets
1842 that they have during the year?
1843
1844 Ms. Dwyer - Where does the timing provision go?
1845
1846 Mr. Blankinship - Condition # 7 – it would just say that the lights would be
1847 controlled by a timer.
1848
1849 Mr. Wright - That was in a prior condition. I think it got left out.
1850
1851 Ms. Dwyer - But what would be the time?
1852
1853 Mr. Blankinship - That was not in the prior condition.
1854
1855 Ms. Dwyer - They could have a timer that cuts it off at 3:00 o'clock in the
1856 morning?
1857
1858 Mr. Wright - The timer would have to be consistent with the hours of
1859 operation.
1860
1861 Mr. Kirkland - So that at 11:00 o'clock the lights go out, even though there
1862 are people there, those lights go out.
1863
1864 Mr. Wright - They have other lights.
1865
1866 Mr. Kirkland - Yes, there are other lights there, just those shadow-box pool
1867 lights go out.
1868

1869 Ms. Dwyer - What about for security reasons? Do any of these lights
1870 need to be on for security reasons? Our pool keeps some lights on, not a lot, but
1871 because there are neighbors that are directly across the street from the pool, but they
1872 do have some lights on for security reasons.
1873
1874 Mr. Kirkland - This is a fenced-in pool with a locked gate.
1875
1876 Ms. Dwyer - At Kanawha is what I'm talking about, that's the one I know
1877 because I live across the street from it. I think you do need some security lighting.
1878
1879 Mr. Wright - They have that, I'm sure.
1880
1881 Ms. Dwyer - But I guess we need to be clear about it.
1882
1883 Mr. Kirkland - The timer is only referring to these five lights, is that correct,
1884 Mr. Blankinship?
1885
1886 Mr. Blankinship - However you want to write it.
1887
1888 Ms. Dwyer - It's ambiguous if we don't specify what has to be on. So the
1889 pool lights do not need to be on for security purposes?
1890
1891 Mr. Kirkland - No, I don't think so. There are other lights on around the club
1892 buildings and everything else that stay on probably all night, the little ones that are on
1893 the side of the buildings. I assume they stay on all night.
1894
1895 Mr. Blankinship - The prior condition was not clear on the point.
1896
1897 Ms. Dwyer - I would like to make an exception for the timers for any
1898 lighting that's deemed necessary for security purposes, and maybe that will take care of
1899 it.
1900
1901 Mr. Blankinship - The motion by Mr. Nunnally has not been seconded.
1902
1903 Mr. Kirkland - I'll second it, with all those changes.
1904
1905 Mr. Wright - Does everybody understand the conditions now as
1906 changed? All in favor of approval of this conditional use permit with the conditions as
1907 changed, say aye. Opposed, no.
1908
1909 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Mr.
1910 Kirkland, the Board **granted** application **UP-10-2005** for a conditional use permit to
1911 install pool deck lighting at 2100 Skipwith Road (Parcels 761-749-1641 and 2808). The
1912 Board granted the variance/use permit subject to the following conditions:
1913

- 1914 1. The swimming pool and recreation facilities shall be operated on a non-profit
1915 basis.
1916
1917 2. The property shall be maintained in a park-like manner.
1918
1919 3. The hours of operation shall be limited to 8:00 AM to 10:30 PM, and the premises
1920 shall be vacated by 11:00 PM.
1921
1922 4. The recreation facilities shall be operated under proper supervision and in a quiet
1923 and orderly manner without creating a nuisance to the surrounding neighborhood.
1924
1925 5. [Amended] Up to four times per year, the hours may be extended to 11:00 pm
1926 for swimming meets. Public address systems, starter guns and similar equipment may
1927 be used at swimming meets, but at no other time except for emergency purposes. If a
1928 swimming meet is delayed due to inclement weather, it may continue past 11:00 but in
1929 no case later than 12:00 midnight.
1930
1931 6. Only the improvements shown on the plan filed with the application may be
1932 constructed pursuant to this approval. Any substantial changes or additions may
1933 require a new conditional use permit.
1934
1935 7. [Amended] The only areas to be lighted are the swimming pools and tennis
1936 courts. Safety lights may be installed along walkways. All exterior lighting shall be
1937 shielded to direct light away from adjacent residential property and streets. Lights shall
1938 be operated by a timer, except those lights needed for security.
1939
1940 8. The entrance gate shall be locked when the property is not in use by club
1941 members.
1942
1943 9. The swimming pool area shall be enclosed by a fence in accordance with the
1944 Uniform Statewide Building Code.
1945
1946 10. The area within 100 feet of the northern property line and the area within 50 feet
1947 of the eastern property line (except for the existing parking lot), shall be maintained as a
1948 wooded buffer. Dead trees may be removed and the property maintained, but live trees
1949 exceeding 6 inches dbh. shall not be removed without written approval from the Director
1950 of Planning. The green chain link fence along the property line shall be maintained in
1951 good repair.
1952
1953 11. The landscaped buffer between the parking lot and the right-of-way of Skipwith
1954 Road shall be maintained. All landscaping shall be maintained in a healthy condition at
1955 all times. Dead plant materials shall be removed within a reasonable time and replaced
1956 during the normal planting season.
1957
1958 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1959 Negative: 0

1960 Absent: 0
1961
1962 The Board granted the request because it found the proposed use will be in substantial
1963 accordance with the general purpose and objectives of Chapter 24 of the County Code.
1964
1965 **A - 55-2005** **LUKE AND SHELLEY CURRY** request a variance from Sections
1966 24-94 and 24-9 to build a one-family dwelling at 4258 Charles City
1967 Road (Parcel 832-700-7140 (part)), zoned A-1, Agricultural District
1968 (Varina). The lot width requirement and public street frontage
1969 requirement are not met. The applicants have 45 feet lot width and
1970 0 feet public street frontage, where the Code requires 150 feet lot
1971 width and 50 feet public street frontage. The applicants request a
1972 variance of 105 feet lot width and 50 feet public street frontage.
1973
1974 Mr. Wright - Does anyone else desire to speak with reference to this
1975 case? Please stand, and everybody be sworn at one time.
1976
1977 Mr. Blankinship - Do you swear that the testimony you are about to give is the
1978 truth, the whole truth, and nothing but the truth, so help you God?
1979
1980 Mr. Chairman, let me also call your attention to the revised plat that was left on the
1981 table.
1982
1983 Ms. Curry - I do. Yes sir, my name is Shelley L. B. Curry. It's my
1984 understanding that there are two variances that I am in need of. One would be public
1985 street frontage, and the other is, I do not meet the lot width requirement. When I
1986 originally went to the County to apply for this, in sitting down with the two gentlemen, we
1987 had to get a calculator out to figure these up, if you go on the property line, the point on
1988 the left side of the property line to the right angle, as far as addressing the lot width
1989 variance, it was explained to me that they went 50 feet back from that setback and then
1990 calculated exactly how far I was off for the lot width. Apparently I only have 45 feet, and
1991 the County requires 150. This was originally my grandmother, Emily May Payne
1992 Baker's land, and prior to her departing us, she divided the land among my dad, Charlie
1993 and his wife Carol Baker, and Uncle Pete, Gerald Edward Baker. His land is to the left if
1994 you are standing on Charles City Road looking at it. Mom and Dad have prepared a
1995 Deed of Gift and given an acre to my husband Luke and I, which brings us here,
1996 because it doesn't meet the requirements. There is a fifteen-foot easement, which
1997 would be considered part of the driveway, running up parallel with the land, and I tried to
1998 see if there was some way to utilize that, adding it to the lot width, because across the
1999 back was 145, and if you add the 15, it gave me 160, but they said I couldn't do that
2000 because it was only for usage; it wasn't deeded to me, just the acre. Therefore, as far
2001 as the lot width goes, we're at or around 105 feet off on the front part of the acreage.
2002 On the back property line of that one acre, it's 145.28, so it's only a little off.
2003
2004 Mr. Wright - They say you've got 45 feet lot width, or you've got 145;
2005 we're talking about the building line from the road, which is 50 feet from the road, so 50

2006 feet from the road, you have 45 feet because that's what your entrance road is. That's
2007 what we're talking about. You have plenty of width back where your property is. The
2008 ordinance requires you to have 150 feet at the building line, which is 50 feet from the
2009 road, also a 50-foot frontage on the road, neither of which you have.

2010
2011 Mr. Nunnally - How far back from Charles City Road are you planning on
2012 building?

2013
2014 Mr. Baker - I'm Charles F. Baker. This is my daughter. The piece of
2015 property that we're talking about – I was born and raised there 62 years ago. My mom
2016 just recently passed away, and she divided the remaining between my brother and I. As
2017 my daughter stated, we gave her the acre behind us, simply so that I can watch her,
2018 because she's been in a bad automobile accident, and she's had a hip replacement
2019 twice, four or five surgeries. I keep their children while she works, so it was convenient
2020 for her, and money saving for her, and I would love to have her there. It's approximately
2021 500-600 feet from Charles City Road back. I acquired the additional fifteen feet, the
2022 driveway, which runs right up by the front of my mother's porch.

2023
2024 Mr. Blankinship - It's 500 feet from Charles City to where this property begins?

2025
2026 Ms. Curry - What mom was saying was, their house is approximately
2027 350 feet from off the road, so that where the acre is that they've gifted to my husband
2028 and I, you're looking at approximately 500 feet off Charles City Road.

2029
2030 Ms. Dwyer - What is the distance between Charles City Road and your
2031 rear property line, the whole slice here?

2032
2033 Mr. Baker - It's a mile.

2034
2035 Ms. Dwyer - So you have a mile-long piece of property that's roughly 145
2036 feet wide. Mr. Blankinship, how many more lots could we be looking at on this mile-long
2037 narrow piece of property?

2038
2039 Mr. Baker - There will be no more lots.

2040
2041 Mr. Blankinship - The total acreage in the remainder shows as 9.42, so the
2042 theoretical maximum would be nine. You can see there's a stream back there, so it's
2043 difficult to say what the possible yield would be, certainly no more than nine total,
2044 including the two that are already there.

2045
2046 Ms. Dwyer - So theoretically we could have a total of eleven

2047
2048 Mr. Blankinship - A total of nine, seven more in addition to this one and the
2049 front one.

2050
2051 Mr. Nunnally - You say there will not be any more?

2052
2053 Mr. Baker - I'm saying I will not sell it out to anything to build on. I have
2054 two other children, but they're not interested in it at this point.
2055
2056 Ms. Harris - If you constructed a public road, where would it be
2057 constructed on your property – have you considered that?
2058
2059 Mr. Baker - No ma'am. Not really, and if there was one put through
2060 there, it would be on that fifteen-foot. It's family property. I was born and raised there
2061 62 years ago in an old house that was torn down, and I have no idea of leaving. I want
2062 her there, and I see no problem, and none of our neighbors have said anything,
2063 because it's all woods, and there's actually a house that's way, way farther back, with
2064 the same narrow drive. They've got seventeen acres in front of them that they're trying
2065 to sell that belong to Light and Vanasendall, the real estate company, so they're having
2066 the same problem that she has.
2067
2068 Ms. Dwyer - It looks like you're setting your house at an angle.
2069
2070 Mr. Wright - Not on the revised plat.
2071
2072 Ms. Curry - Not on the revised one. On the original one I submitted I just
2073 sketched it out. It's not going to be on an angle. On your screen, on the original it was,
2074 because I was very confused when I submitted it, in talking with the contractor and my
2075 husband, I apparently didn't understand what they were telling me on how to draw it on
2076 there. So I drew it incorrectly, and that's the reason Mr. Hooper, the contractor, came
2077 out and had his good laugh at me. We revised and submitted it to Mr. Blankinship.
2078
2079 Ms. Dwyer - Did you say you acquired that extra fifteen feet that will be
2080 the easement to get to this property?
2081
2082 Mr. Baker - Yes. Originally, we only had an acre and three quarters that
2083 we purchased from my mother many years ago so that I could take care of her. When
2084 the property was divided, she divided between my brother and I. We each got 12 acres.
2085 I already had an acre and three quarters, so I picked up the remainder plus the fifteen-
2086 foot drive.
2087
2088 Ms. Dwyer - And you have a really good survey?
2089
2090 Mr. Baker - Three times it's been.
2091
2092 Ms. Dwyer - We've just had some problems with this kind of division.
2093
2094 Mr. Baker - The gentleman who surveyed it was having a hard time
2095 finding the start. So I told him to go down to where the driveway that we inherited; there
2096 is the start; there is the pink ribbon still there; there is a yellow ribbon above it. He went
2097 down and charged us again for something that we really didn't need to be charged for.

2098
2099 Mr. Wright - Anything further? That concludes the case. A-55-2005.
2100
2101 Mr. Nunnally - Move we approve it.
2102
2103 Ms. Harris - Second the motion.
2104
2105 Mr. Blankinship - Motion by Mr. Nunnally to approve; seconded by Ms. Harris.
2106
2107 Mr. Wright - Any further discussion?
2108
2109 Ms. Dwyer - I have a concern that we have nine acres and a potential
2110 nine lots that would be along a one-mile narrow strip.
2111
2112 Mr. Wright - We have to consider the cases that come before us. That
2113 would have to come before us for our approval.
2114
2115 Ms. Dwyer - But we have opened the door to having additional lots along
2116 this one-mile narrow strip of land.
2117
2118 Mr. Wright - I don't look at it that way. I think each case stands on its
2119 own, and if we decide that that's all we're going to permit, that's all we're going to
2120 permit.
2121
2122 Mr. Kirkland - Next case might be a different story.
2123
2124 Ms. Dwyer - Another way to look at it is that we've set a precedent.
2125 Sometimes we feel bound by that too, once we start this.
2126
2127 Mr. Wright - Is there a motion on A-55-2005?
2128
2129 Mr. Blankinship - There has been a motion to approve.
2130
2131 Mr. Kirkland - I'll make a second.
2132
2133 Ms. Harris - I had already seconded it.
2134
2135 Mr. Wright - Any further discussion? All in favor say aye; opposed, no.
2136 It's approved.
2137
2138 After an advertised public hearing and on a motion by Mr. Nunnally, seconded by Ms.
2139 Harris, the Board **granted** application **A-55-2005** for a variance to build a one-family
2140 dwelling at 4258 Charles City Road (Parcel 832-700-7140 (part)). The Board granted
2141 the variance subject to the following conditions:
2142

2143 1. This variance applies only to the public road frontage and minimum lot width
2144 requirements. All other applicable regulations of the County Code shall remain in force.

2145
2146 2. Approval of this request does not imply that a building permit will be issued.
2147 Building permit approval is contingent on Health Department requirements, including,
2148 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval
2149 of a well location.

2150
2151 3. At the time of building permit application, the applicant shall submit the
2152 necessary information to the Department of Public Works to ensure compliance with the
2153 requirements of the Chesapeake Bay Preservation Act and the code requirements for
2154 water quality standards.

2155
2156 4. At the time of building permit application the owner shall demonstrate that the
2157 parcel created by this division has been conveyed to members of the immediate family,
2158 and the subdivision ordinance has not been circumvented.

2159
2160 5. The applicant shall present proof with the building permit application that a legal
2161 access to the property has been obtained.

2162
2163 6. The owners of the property, and their heirs or assigns, shall accept responsibility
2164 for maintaining access to the property until such a time as the access is improved to
2165 County standards and accepted into the County road system for maintenance.

2166
2167 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2168 Negative: 0
2169 Absent: 0

2170
2171 The Board granted this request, as it found from the evidence presented that, due to the
2172 unique circumstances of the subject property, strict application of the County Code
2173 would produce undue hardship not generally shared by other properties in the area, and
2174 authorizing this variance will neither cause a substantial detriment to adjacent property
2175 nor materially impair the purpose of the zoning regulations.

2176
2177 **A - 56-2005** **ALPHONSO R. JORDAN** requests a variance from Sections 24-
2178 95(b)(6), 24-95(k) and 24-9 to build a one-family dwelling at 3500
2179 Waverly Boulevard (East Highland Park) (Parcel 798-735-5827),
2180 zoned R-4, One-family Residence District (Fairfield). The lot width
2181 requirement, minimum side yard setback, public street frontage
2182 requirement, and total lot area requirement are not met. The
2183 applicant has 5,670 square feet lot area, 45 feet lot width, 17 feet
2184 minimum side yard setback, and 45 feet public street frontage,
2185 where the Code requires 6,000 square feet lot area, 50 feet lot
2186 width, 25 feet minimum side yard setback, and 50 feet public street
2187 frontage. The applicant requests a variance of 330 square feet lot
2188 area, 5 feet lot width, 8 feet minimum side yard setback, and 5 feet

2189 public street frontage.

2190
2191 Mr. Wright - Does anyone else desire to speak with reference to this
2192 case, please stand and be sworn at the same time? Raise your right hand and be
2193 sworn please?

2194
2195 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2196 truth, the whole truth, and nothing but the truth, so help you God?

2197
2198 Mr. Jordan - I do. Alphonso Jordan. I purchased a piece of land at 3500
2199 Waverly Boulevard, approximately March 1. As Mr. Blankinship stated, it's five feet
2200 short with the road frontage, lot width 8 feet short minimum yard setback on the side,
2201 and 330 feet on total lot area. The plans are to build a single family dwelling, consistent
2202 with what is already in the neighborhood. Before I purchased the lot back in late
2203 January, I went to the East End Zoning and Planning, spoke with Mr. Kevin Franco
2204 concerning the lot to see if the lot was a buildable lot before I invested in the lot. Mr.
2205 Washington and I spoke with Mr. Franco to see what needed to be done, to build a
2206 single family dwelling on the lot. Mr. Franco did some research and gave us an okay to
2207 build a house under 22 feet wide on the lot, because of the size of the lot. At that time I
2208 had no idea that any variances would be needed to build on the property. I actually
2209 went and purchased the property, applied for my permits, they gave me everything I
2210 needed for my permits, I went back a month later, put my application in for my permits,
2211 paid for them, they told me it would probably take about three weeks. My contractor
2212 and I went back. When three weeks passed, I called to check on the status, and at that
2213 time I was notified that the lot wasn't buildable, and that it would be needing some
2214 variances to be able to be built on. I went back to Henrico County, spoke with Mike Hill
2215 and Mr. Franco, and at that time, I was told I would need to apply for a variance to build
2216 on the lot, which I had already cleared the trees off of the lot. In doing some checking,
2217 after I found out I needed a variance, I checked in the neighborhood to see, because of
2218 the lot size, and I saw that there were several houses built on 45-foot lots; there were
2219 actually about four houses built in the neighborhood on 35-foot lots, that were built prior
2220 years to now. I guess my hardship is that basically I have already purchased the lot,
2221 cleared the trees, with the intention of building a single-family home, thinking that I
2222 would not need a variance, so I guess my hardship would be that I was kind of too far in
2223 it to turn back. I'd invested my money, had done work on the lot, so my only route was
2224 to try to purchase a variance to try to continue to build a single-family dwelling, which
2225 would be consistent with everything that was already in the neighborhood, as far as the
2226 setbacks from the street, and the building of the property, which I felt would be an asset
2227 to the community, because the lot is just there, had rotten trees on it fifty feet tall, which
2228 I had cleared off. I wasn't aware, I spoke to some of the neighbors. I wasn't aware of
2229 any who had a problem with what I was doing. A gentleman next door; I talked to him,
2230 and he had told me that had he knew he had really wanted to purchase the lot for
2231 himself. He knew the gentleman who owned it has passed away, and the lot went to his
2232 daughter, who in turn sold the lot. Basically, I wanted to build single-family dwelling,
2233 less than 22 feet wide, which I had originally been told I could do, and I finally found a
2234 house that was narrow enough to fit into that 22 feet; it's 21 ½ feet wide. I was trying to

2235 proceed forward with these variances to build on the lot. Like I said, there's four houses
2236 built on 35-foot lots within the neighborhood; there's one on a 45-foot lot.

2237
2238 Mr. Nunnally - How long have you owned this land?

2239
2240 Mr. Jordan - Since March 1.

2241
2242 Ms. Dwyer - I think your hardship needs to be related to the property, but
2243 it looks to me like you have one, because the Code requires 900 square feet and you
2244 can't achieve that with the current setbacks, so in effect, you cannot use this property
2245 for anything unless you have a variance. That to me does establish a hardship relating
2246 to the property, and then you're saying that it wouldn't be incompatible with the existing
2247 neighborhood because there are some houses built on these smaller lots already.
2248 When was this subdivision platted – 1917? That's why we're kind of left with these
2249 smaller lots that we would not allow in a subdivision today.

2250
2251 Ms. Harris - Can we look at the plat for the property? Those lines that we
2252 see running through the property, those hyphenated lines, do we know what this is, Mr.
2253 Blankinship?

2254
2255 Mr. Blankinship - That's the topography, the contour lines. You see the one to
2256 the left where it says Lot 8, there's a "102"; that would be under two feet above mean
2257 sea level.

2258
2259 Ms. Harris - Do you have a moisture problem on this lot?

2260
2261 Mr. Jordan - No, I've had it surveyed for drainage and topo and
2262 everything they told me I needed, and the lot sort of slopes off on an angle for drainage.
2263 There's no flooding area. After rain, everything slopes off, and the next thing I have the
2264 drainage ditch running all around the lot.

2265
2266 Ms. Harris - Did you have any plans to do anything with that ravine. I
2267 was by there yesterday, and I noticed the erosion there. It seems like it's widening right
2268 there, right on the corner of Whately and Waverly, right there at the apex, where the
2269 peak is. It's not even a peak, because it's rounded, created by the erosion and I guess
2270 the drainage problem. Do you have any plans to do something with that when you
2271 construct?

2272
2273 Mr. Jordan - Once a dwelling is built on the land, it has to be graded at
2274 the completion of the dwelling anyway, to grade everything off to a slope in any area
2275 that wasn't as corroded off. When they grade, they would have to grade the dirt to that
2276 side to make it compatible in order to even pass for a final CO. They would have to
2277 grade the whole front side anyway. Yes, if there is a problem with that ditch, the dirt
2278 would be graded to that side to make it consistent with the rest.

2279
2280 Mr. Harris - You said that in the same block there was a 45-foot lot with a

2281 house on it. Do you have any idea of the width of that house?
2282

2283 Mr. Jordan - No, all the houses on that block are more than 22 feet wide,
2284 because of the age that they were built, there probably wasn't a requirement, but they
2285 were all over 22 feet wide, so that house is wider than the one that I propose to build.
2286

2287 Ms. Harris - You would not propose changing the width to a larger
2288 dimension?
2289

2290 Mr. Jordan - No, that's what they wanted. It actually was a real ordeal to
2291 find a house 21 ½ feet wide. I actually found one, so that limited my selection of
2292 houses, but if I was about to put a wider house on there, surely there would be no
2293 problem; that would be a plus for me, but I was staying within the Code, which Mr.
2294 Franklin had originally given me, which was 22 feet wide, when I selected that house.
2295 Really, it wasn't a major house of preference. It was just a house trying to be within the
2296 Code.
2297

2298 Ms. Harris - And your setbacks would be the same as the house next to
2299 it?
2300

2301 Mr. Jordan - Yes, and consistent with all the houses on that block.
2302

2303 Mr. Wright - Any further questions of the Board? Is anyone here in
2304 opposition to this request? Please have a seat, and we'll listen to the opposition, and
2305 then you'll have an opportunity to rebut.
2306

2307 Ms. Adams - Good morning. My name is Katrina Adams, and I live at
2308 1405 Whately, directly at a 45-degree angle from the gentleman for that property. That
2309 property is not wide enough to put a house right there.
2310

2311 Mr. Wright - It's 45 feet, and there are other lots in the area that have
2312 that; as a matter of fact there's a 35-foot lot with a house on it.
2313

2314 Mr. Blankinship - The two houses directly across the street from you are 35
2315 feet wide.
2316

2317 Ms. Adams - If you do it facing Whately Street, where is the driveway
2318 going to be?
2319

2320 Mr. Wright - It doesn't have to have a driveway. He can park on the
2321 street.
2322

2323 Ms. Adams - I don't know why the neighbors at 3414 and the one
2324 adjoining to him, 3506 are not here today, but I've talked to them, and they disapprove
2325 of him putting the house on the lot. I don't know why they're not here.
2326

2327 Ms. Dwyer - The house will face Waverly, is that correct? I just want to
2328 be clear; it's not going to face Whately.

2329
2330 Ms. Adams - Yes ma'am. The value of the house should be what – the
2331 house that they built on 3513 – my property value went up in less than two years. My
2332 taxes went up in two years. Every time they build a house within that neighborhood,
2333 two houses go for sale right down the street. Each time they build a house that the
2334 value is more than \$71,000, three houses go for sale. If you drive along Byron, there
2335 are exactly ten houses for sale along that block. They built seven new houses in the
2336 last three years within the distance of that house. Everybody can't afford their houses,
2337 because each time a new house is built, someone sells their house, for sale, foreclose,
2338 or whatever; they can't afford it. I can't afford it.

2339
2340 Ms. Dwyer - Are you saying that because new houses are being built,
2341 your property value is increased?

2342
2343 Ms. Adams - It's increased, but the taxes have increased, and each time
2344 you see it, there's no room for a house to be built there. If you look at it from the
2345 standpoint of where my house is, I have a clear view of the next street over. That's a
2346 bus stop. I watch my son go to school in the morning. We can see the neighbors at
2347 3506; we look out for each other on that block. That block is dark. Everybody from
2348 1403, 1410, 3506, 3414, we look out for each other. That's a dark corner. Everybody
2349 has a clear access to each house within a five-house radius. Everybody looks out for
2350 himself.

2351
2352 Mr. Blankinship - What would you suggest this land should be used for?

2353
2354 Ms. Adams - Right now the neighbor in 3506 has cleared that land so his
2355 grandchildren could play in that yard. He put a fence around it. So he's been using that
2356 land for his grandchildren to play in that yard.

2357
2358 Ms. Dwyer - Does he own the property?

2359
2360 Ms. Adams - No ma'am. He was under the assumption that between him
2361 and the last owner, they were working it out, more or less. That was my understanding
2362 from talking to him. When the property got sold, there was nothing for him to do. 3414
2363 has been there for twenty years; they're not in agreement with that either. They work a
2364 job; everybody works. I'm here because I'm a bus driver, so I work two jobs.

2365
2366 Ms. Harris - What's your name again?

2367
2368 Ms. Adams - Katrina Adams.

2369
2370 Ms. Harris - Ms. Adams, I think the problem that you cited is all of our
2371 problems because we find in every neighborhood where new property is sold, our
2372 assessments go up.

2373
2374 Ms. Adams - Yes ma'am, and in the last three years, it has gone up three
2375 times.
2376
2377 Ms. Harris - And we find that where there is vacant land, developers want
2378 the vacant land, and they are going to build. The only way to stop it is by buying the
2379 land yourself. We can't deprive a landowner of the use of their lot because the children
2380 are playing on it, when they don't own the land. I understand your sentiments, but as
2381 far as the space is concerned, if we look behind the property, you can see on the map
2382 here that those lots are as small, so that's the nature of this area. As far as the Code is
2383 concerned, we do have some guidelines, and we have to prove a hardship or something
2384 similar, so we have to follow the Code.
2385
2386 Ms. Adams - All right. Let's talk about drainage. You can't see it from the
2387 aerial view, but along Whately, there is no drainage on my side of the street, and the
2388 water does flood off into 1403, 1405, and 3414. There is no drainage there at all. They
2389 are in the works of fixing that sewage problem.
2390
2391 Ms. Harris - To me, Ms. Adams, you have some problems like lighting
2392 and drainage that you will have to address with the proper authorities in Henrico
2393 County. That is not the jurisdiction of this Board. I think that you will find the County
2394 very sympathetic, and they will actually act on what you ask, and so I think you need to
2395 go forth with your concern about lighting, and if you have drainage problems, just talk to
2396 the proper authority.
2397
2398 Mr. Wright - Thank you for appearing Ms. Adams. Anyone else in
2399 opposition? All right, Mr. Jordan, you have a brief time to rebut.
2400
2401 Mr. Jordan - When I purchased the land, I spoke to the gentleman next
2402 door, and I tried to be respectful of all the business and things that I do. I knocked on
2403 his door, spoke to him, explained what I was trying to do. The only recourse I got from
2404 him was that he wished he had purchased the land himself. The land was on the
2405 market. I didn't know anything about it; I don't live in that neighborhood, and if they
2406 wanted it for different reasons, my position would have been, I would have thought one
2407 of them would have purchased it, and then they would have been able to do what they
2408 wanted on their land. As far as the lighting, it's not going to make it any lighter in the
2409 neighborhood if I don't build a house there. As far as the drainage on her side of the
2410 street, which is 1403, 1405, 3414, a house there is not going to make it drain better over
2411 on that side of the street. If anything, I feel that a house on that corner; she's saying it
2412 will raise taxes, which is true, but I have houses where taxes went up and there was
2413 nothing built in the neighborhood. The land being there with trees on it 35 feet tall,
2414 rotten, that depreciates the value of homes. Had I not purchased it and taken those
2415 trees down, to me that's a hazard for the children playing. I understand her problems
2416 and I'm sympathetic with them, but when I purchased the land, it was with the intent to
2417 build a single-family home, and I didn't know if anyone had any problems. It was on the
2418 market; it was available, and at that time, I thought it was a buildable lot. I don't think a

2419 house there is going to help any of the problems that she's saying. None of the other
2420 neighbors expressed anything to me. I'm over there all the time, trying to keep the lot
2421 cleared, clean, since I purchased it. If they had a problem with it, I would assume that
2422 they would have had the same opportunity she had, to come and state their problems.

2423
2424 Mr. Wright - All right sir, thank you very much for appearing. A-56-2005.

2425
2426 Ms. Harris - I move that we approve.

2427
2428 Ms. Dwyer - Second.

2429
2430 Mr. Wright - Any discussion?

2431
2432 Ms. Dwyer - I think this is a case of hardship; not only is it a hardship, but
2433 it is also compatible with the neighborhood. There are other lots that are this small or
2434 smaller within this subdivision that was platted in 1917. He's not building a house that's
2435 enormous; he's building one that's appropriate for the lot size.

2436
2437 Mr. Wright - Any further discussion? Hearing none, all in favor of
2438 approval, say aye; opposed, no. It's approved.

2439
2440 After an advertised public hearing and on a motion by Ms. Harris, seconded by Ms.
2441 Dwyer, the Board **granted** application **A-56-2005** for a variance to build a one-family
2442 dwelling at 3500 Waverly Boulevard (East Highland Park) (Parcel 798-735-5827). The
2443 Board granted the variance subject to the following condition:

2444
2445 1. Only the improvements shown on the plan filed with the application may be
2446 constructed pursuant to this approval. Any additional improvements shall comply with
2447 the applicable regulations of the County Code.

2448
2449 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2450 Negative: 0
2451 Absent: 0

2452
2453 The Board granted this request, as it found from the evidence presented that, due to the
2454 unique circumstances of the subject property, strict application of the County Code
2455 would produce undue hardship not generally shared by other properties in the area, and
2456 authorizing this variance will neither cause a substantial detriment to adjacent property
2457 nor materially impair the purpose of the zoning regulations.

2458
2459 **A - 57-2005** **MILES H. LYNN** requests a variance from Section 24-94 to build a
2460 screened porch at 2828 Waterford Way West (Waterford) (Parcel
2461 735-756-9943), zoned R-4, One-family Residence District (Three
2462 Chopt). The rear yard setback is not met. The applicant proposes
2463 22 feet rear yard setback, where the Code requires 35 feet rear
2464 yard setback. The applicant requests a variance of 13 feet rear

2465 yard setback.

2466

2467 Mr. Wright - Does anyone else desire to speak with reference to this
2468 case? Would you raise your right hand and be sworn please?

2469

2470 Mr. Blankinship - Do you swear that the testimony you are about to give is the
2471 truth, the whole truth, and nothing but the truth, so help you God?

2472

2473 Mr. Lynn - I do. Miles Lynn. My wife and I have lived on this property
2474 for twenty years. We are the original builders of this home, and the original occupants
2475 thereof. This piece of property is located in the Waterford Subdivision, which is Section
2476 2. These properties were then zoned under R-4, which I believe is probably one of the
2477 biggest parts of my difficulty with this whole procedure. We do not use R-4 in the
2478 County any more for zoning, and I think that probably some of the issues with lot size
2479 are the problem. I also have a plat that I pulled from the County that kind of shows
2480 Section 2, and I'd like to distribute it to show each of the Board that plat in relation to my
2481 lot and the other lots, and then I'll proceed. If you will kindly look, I've starred my
2482 property as B-14, towards the left upper, and I've highlighted that. My lot's 110 feet on
2483 the sides. I actually highlighted many other properties in the area on the big sheet.
2484 Notice the unequal proportions to these properties. Some are 150, 160, 180, some are
2485 over 200 feet, and if I were in that situation, I would not even be here this morning. If
2486 you look at my lot, it's 110 feet. I realize that half of my back yard is probably in my
2487 neighbor's yard. Look at the aerial that shows the property directly behind mine, the
2488 one that's on Beaver Creek, which it actually doesn't show on the big plat, but it shows
2489 on the aerial. The back of my lot, the back of my neighbor's lot at 2830 – we were as
2490 surprised as can be to see that it was even a buildable lot in there. They shoved the
2491 house all the way over to the other side, and they put this little piece of pie in, when if it
2492 was divided with some equality, we would have probably gone back and taken that
2493 whole area. Look at the property at 2826 – they actually cut the back of the property off
2494 to actually accommodate this particular house in there. That put me extremely close to
2495 the back of the lot. I have the minimum of setback there, which is extremely small.

2496

2497 Ms. Dwyer - On a visual inspection, going down Waterford Way West and
2498 looking down your driveway, it appears that 12203 is very close to your rear property
2499 line, so the impact of any addition on your house, or any encroachment on the existing
2500 setback, would have a profound effect.

2501

2502 Mr. Lynn - I asked that same question, and actually when we bought
2503 this particular property, we went in and stripped every tree on the lot except the
2504 perimeter. Then if you do go back across the back of my lot, it is completely tree lined,
2505 because it's so small you need the privacy. So it's tree-lined on the left side; it's tree
2506 lined across the back, and even on the right side of my driveway, it's tree lined on that
2507 side, so we've really done everything we can do to try to maintain privacy in such close
2508 living quarters. It is extremely close back there. My lot is the proverbial postage stamp
2509 lot of the County. What we're trying to do here is to use as much of it as we can. My
2510 request is to actually take my existing deck, which is approximately 12 by 14 feet, add

2511 another eight feet onto the back of it, and then enclose the whole thing. As regulated
2512 now by the County, I think I'm allowed, as is, seven feet, to enclose on the deck. If I put
2513 a seven-foot enclosure on the deck now, I think it would be a fire hazard to put a table
2514 and chairs out there and then close that in, and probably a big waste of money. I've
2515 made a patio living space down below this deck, to try to stay outside. With this West
2516 Nile threat, it's pretty impossible, because of course you don't know which ones do and
2517 which ones don't. Sitting outside in the spring and summer months has gotten to be a
2518 real problem. We can't sit on the deck to enjoy it; we can't sit outside to enjoy it, so the
2519 thought was that we go ahead and build a screened porch that we can enclose, not to
2520 become a room. We've got enough room in the house. We do not need another room,
2521 so this is not my step process to try to take this from a screened porch to a Florida
2522 Room. I don't need another room for that. I just want to enjoy the outside, and for my
2523 wife to enjoy the outside. We really do need the outside area to enjoy the house to its
2524 fullest. I did check with my neighbors and all the ones that this would directly affect.
2525 Nobody opposed any of this sort of thing that I'm referring to today. As a matter of fact,
2526 it's so bordered and tree-lined, as you can see, that I don't think it would bother anybody
2527 in this area. Everybody asks if there is anything they can do to help with this. I read the
2528 County's report about the eight feet – why would I do the extra eight feet. Just to
2529 accommodate everything that we want to do on that screened porch, we're narrow.
2530 This is looking at the deck from my driveway side, where the steps come out, if I bring
2531 the deck forward towards us, there's a jaunted picture window in that area, a bay
2532 window, if I enclose that to go a different way to not encumber the setback requirement,
2533 I'm going to enclose and darken my whole kitchen and dining area to try to do that, and
2534 that's not something that I'm willing to give up, plus I'd have the roof structure above it,
2535 and it would be a big mess. On the other side of this property, on the other back corner
2536 of the deck itself, is the back corner of the house, so I do not want to go out past the
2537 plain of the actual building itself. My only way out is to go is to go forward into the back
2538 yard. That's what I'm trying to ask for this morning, a variance to allow myself the extra
2539 thirteen feet of rear yard setback to try and achieve this.

2540
2541 Ms. Dwyer - You say you've lived in this house for twenty years, and
2542 used and enjoyed it without this addition for that period of time?

2543
2544 Mr. Lynn - The house part. The back yard part, I have made a promise
2545 to my wife 28 years ago that I would build her a screened porch, and the problem is,
2546 we're getting older, and I haven't fulfilled my promise. The answer is yes, we've
2547 enjoyed the house; it's a wonderful neighborhood; we just want to enjoy it to the fullest
2548 outside, and we can't with these mosquitoes. There were 5.55 acres behind us that
2549 they are now developing into 13 homes called Belle's Landing, at a glance behind us.
2550 With all the construction and dirt, the mosquitoes have found a new home, called 2828,
2551 and it's really not great from that respect. My wife's mother is getting older, and I've got
2552 the feeling we're going to be seeing a lot more of her, so we really do need this. It's not
2553 just a "want"; it's a need. We're trying to really stay in this house.

2554
2555 Mr. Wright - Mr. Blankinship, I think your report says a sunroom – is that
2556 an error?

2557
2558 Mr. Blankinship - It does say sunroom.
2559
2560 Mr. Lynn - I read that, and it does say sunroom; it's a screened porch.
2561 A sunroom was not my request.
2562
2563 Ms. Dwyer - The standards are the same setbacks.
2564
2565 Ms. Harris - You said, Mr. Lynn, that it was very crowded the way it is
2566 now. Wouldn't that make it even more so?
2567
2568 Mr. Lynn - The answer to that is, with the tree-lined area that is around
2569 us, the only crowding may be to myself, but not to anybody else in that area. It just
2570 goes into my back yard and doesn't encroach upon anybody else's property. From the
2571 left, it doesn't. From the back, they're up towards the street, as you can see, so I don't
2572 encroach on them. From the other side, there's my driveway and a tall set of trees
2573 there, so I don't think it's going to crowd the property like talking about it. The actual
2574 structure itself will be built out of brick columns and the actual structure will look like a
2575 seamless inclusion, like it was always an original part of the house, though probably
2576 built better. One of the problems I'm having, and I'm a contractor, so I probably
2577 shouldn't, but my doors have leaked since day one, since the original builder built them.
2578 This is another way that I can keep the inside dry, by putting the structure over top.
2579 There are two sets of doors that lead out onto this deck that you will enter into the
2580 screened porch from the house, and that will be able to keep this all dry too.
2581
2582 Mr. Wright - Any further questions of the Board? Is anyone here in
2583 opposition to this request? Hearing none, that concludes the case. A-57-2005.
2584
2585 Mr. Kirkland - I make a motion we deny it.
2586
2587 Mr. Wright - Motion's made we deny it.
2588
2589 Ms. Harris - Second.
2590
2591 Mr. Blankinship - The motion's to deny it by Mr. Kirkland; seconded by Ms.
2592 Harris.
2593
2594 Mr. Wright - Any discussion? All in favor of denial, say aye. Opposed,
2595 no. Motion's denied.
2596
2597 After an advertised public hearing and on a motion by Mr. Kirkland, seconded by Ms.
2598 Harris, the Board **denied** application **A-57-2005** for a variance to build a screened porch
2599 at 2828 Waterford Way West (Waterford) (Parcel 735-756-9943).
2600
2601 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2602 Negative: 0

2603 Absent: 0
2604
2605 The Board denied the request as it found from the evidence presented that there was
2606 no "hardship approaching confiscation" as required by § 15.2-2309 of the Code of
2607 Virginia to justify a variance.
2608
2609 Mr. Wright - Minutes of March.
2610
2611 Ms. Dwyer - I had one change on page 45, line 2009; it looks like the
2612 person, the applicant, Mr. Deplessis, answered my question, and it was included as part
2613 of my question. I said, "What are the dimensions of the garage going to be," and then
2614 he says "it's going to be 16 by 25," so that's his answer, and not part of my question, so
2615 you just need to add his name in there as the speaker.
2616
2617 Mr. Wright - Any further corrections?
2618
2619 Ms. Harris - I move that the minutes be accepted as corrected.
2620
2621 Ms. Dwyer - Second.
2622
2623 Mr. Wright - There's a motion made and seconded that we approve the
2624 minutes as corrected. Any further discussion? Hearing none, all in favor say aye;
2625 opposed no. The minutes are approved as corrected.
2626
2627 On a motion by Ms. Harris, seconded by Ms. Dwyer, the Board **approved as**
2628 **corrected**, the Minutes of the **March 24, 2005**, Henrico County Board of Zoning
2629 Appeals meeting.
2630
2631 Mr. Wright - We have decided that we would discuss this Supreme Court
2632 Opinion, Cochran vs. Fairfax County, and I'm sure all of you have read it. I have poured
2633 over it. I'd like to make a comment, and then we can have other comments. I've read
2634 practically all the cases over the years, but I think this case more clearly defines what
2635 the Supreme Court thinks interpretation of the statute is relative to variances in any
2636 other case that I've read. I think it goes further than any other case that I've read, in the
2637 way the case defines what hardship is, on page 13. I don't think this is exactly in the
2638 statute, but the Supreme Court has interpreted it this way, that this Board would have
2639 no authority to grant a variance unless the effect of the zoning ordinance as applied to
2640 the property under consideration, would, in the absence of the variance, interfere with
2641 all reasonable, beneficial uses of the property, taken as a whole. Those last four words
2642 are really something that's a step further, in my opinion, from what we've been doing. If
2643 you read the facts of these cases, the Court has said if the applicant has had enjoyment
2644 of the property, beneficial use, overall for the period of time, and requests a variance for
2645 a small side yard, rear yard, whatever, then if the applicant can't live with that, then they
2646 can just abandon the plan. It said that very clearly, that they can abandon the plan or
2647 do something else.
2648

2649 Ms. Dwyer - In each of the three cases, it said the project could simply
2650 have been abandoned, and if the project is abandoned, and the person still has use and
2651 enjoyment of their property, then we have no jurisdiction, basically, to grant the
2652 variance. That's how I read it. BZA doesn't have the authority.
2653

2654 Mr. Wright - This puts things in a different perspective in my view from
2655 what we've been doing over the years. It appears to me that if there is some relief to be
2656 granted, it would have to be done by the legislature, and the statute would have to be
2657 amended if in truth, the legislature wanted to give some of these homeowners some
2658 additional opportunity to do something along that line that would not be unconstitutional.
2659 This case says that, that the legislature could do that.
2660

2661 Ms. Dwyer - That we are a creature of the statute, limited by that statute.
2662

2663 Mr. Wright - That's right; insofar as variances are concerned, we are
2664 acting in an administrative capacity. What I would propose is, I think this is serious
2665 enough that we need the input from our legal counsel, our County Attorney, and we
2666 need to sit down and have a very deep discussion on the application of this, as it will
2667 affect what we do in the future on this Board. I would recommend that we seek to have
2668 a session conference with the County Attorney to discuss this case, and I just wondered
2669 how the Board feels about that.
2670

2671 Mr. Kirkland - I think it's a good idea.
2672

2673 Ms. Dwyer - Agreeable.
2674

2675 Mr. Nunnally - I'll go with it.
2676

2677 Mr. Wright - I understand from a legal viewpoint, but I think to bring it into
2678 focus, our legal counsel can spell out these things and give us some guidance for our
2679 actions in the future, which would put us in better stead in dealing with these cases.
2680 Ben, could you arrange such a meeting?
2681

2682 Mr. Blankinship - Yes sir, I'd be happy to.
2683

2684 Mr. Wright - Since it's been suggested, we're going to be here on the 16th
2685 for the special meeting on the Tidewater Quarries. I don't know how long that will take; I
2686 wouldn't think that would take more than an hour or so. We're not going to listen to
2687 repetition; we're going to listen to opposition, not if everybody gets up and says the
2688 same thing over and over again, but if it's something different.
2689

2690 Mr. Blankinship - I'd be more comfortable scheduling before that than after it.
2691

2692 Mr. Wright - I would too. I guess a good discussion on this case is going
2693 to take an hour or so.
2694

2695 Ms. Dwyer - We could have dinner and a 6:00 o'clock meeting? And the
2696 County can provide us with something to eat?
2697
2698 Mr. Wright - Could that be arranged. I think we'd better start at 5:30.
2699
2700 Mr. O'Kelly - I think we can do that.
2701
2702 Mr. Kirkland - I think 5:30 to eat, and start the actual discussion at 6:00.
2703 We've done that before.
2704
2705 Mr. Wright - We've got to be out of there and be here by 7:00 o'clock.
2706 Now where would this take place, and how would it take place? It's considered a
2707 meeting of the Board -- would this be something that's proper to be held in Executive
2708 Session?
2709
2710 Mr. Blankinship - It could be done that way. I would not recommend it, since
2711 you're not going to be discussing any specific cases.
2712
2713 Mr. Wright - It's your recommendation that we just have a special
2714 meeting at large. Would you have to change the notice?
2715
2716 Mr. Blankinship - Yes sir, we'd have to do notice of a special meeting. It won't
2717 be a public hearing, so it won't be advertised.
2718
2719 Mr. O'Kelly - We'll have an agenda for the public hearing, so we could
2720 add the dinner meeting and the work session to that.
2721
2722 Mr. Wright - We're not looking for any input from the public on this.
2723
2724 Mr. Kirkland - Will we meet right here?
2725
2726 Mr. O'Kelly - We could have dinner in our large conference room if it's
2727 available.
2728
2729 Mr. Wright - We probably need to do that.
2730
2731 Mr. Kirkland - A work session's a good idea.
2732
2733 Mr. O'Kelly - Planning Department, Large Conference Room, 5:30 on
2734 June 16th.
2735
2736 Mr. Blankinship - Could we go ahead and do a motion and a second, to set
2737 that whole thing. I'm not sure if that's really necessary.
2738
2739 Mr. Wright - Do I hear a motion?
2740

2741 Ms. Harris - I so move.
2742
2743 Mr. Kirkland - Second.
2744
2745 Mr. Wright - At 5:30 for conference with legal counsel to discuss this
2746 case, and a 7:00 o'clock public hearing on Tidewater. Any discussion? All in favor, say
2747 aye. Opposed, no. That's carried.
2748
2749 On a motion by Ms. Harris, seconded by Mr. Kirkland, the Board **scheduled** a Special
2750 Work Session in the Planning Department Large Conference Room on June 16, 2005,
2751 at 5:30, to discuss the Virginia Supreme Court opinion, "Donald H. Cochran et al. V.
2752 Fairfax County Board of Zoning Appeals, et al," to be followed by a Public Hearing in the
2753 Board Room of the County Administration Building, at 7:00 pm, to allow Tidewater
2754 Quarries to show cause why UP-9-2004 should not be revoked.
2755
2756 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
2757 Negative: 0
2758 Absent: 0
2759
2760 Mr. Wright - Now the only other thing I would like to mention, Mr.
2761 Blankinship, is that this Show Cause Hearing – do we need legal counsel here for that?
2762
2763 Mr. Blankinship - They will be here.
2764
2765 Mr. Wright - If you could get us the minutes for that meeting and the
2766 special use permit that was granted, so that we could have that, at least by the next
2767 couple of days, so that we could study those.
2768
2769 Ms. Dwyer - The other thing that we might add to that is, what are the
2770 boundaries, are there any boundaries about our decision-making process for this
2771 reconsideration? I guess the issue is whether the use permit has been violated and if
2772 so, we can either reject that permit or modify it.
2773
2774 Mr. Wright - Are we given that authority by the Ordinance?
2775
2776 Ms. Dwyer - That's all we need, is the extent of the limitations as to what
2777 we can do.
2778
2779 Mr. Kirkland - Mr. Blankinship, one thing I would like to have, and I guess
2780 some of the Board members, is that we have the engineer here from the County in case
2781 we have questions about the soil in the area of these buildings that have supposedly
2782 been affected. I know there are some things out in that area when they were being
2783 built, and whether or not there is anything underground that people need to know about.
2784
2785 Mr. Blankinship - Who would be the best person?
2786

2787 Mr. Kirkland - I don't know, but you know what's out there. I don't know if
2788 you were here when they built all this; there are coalmines under a lot of the homes in
2789 that area.
2790
2791 Mr. O'Kelly - I think perhaps just Winterberry may have been affected by
2792 the coal mining activity in the past. We don't have any evidence that Summerberry or
2793 Hartley Plantation was anywhere near coal mining.
2794
2795 Mr. Kirkland - I'd just like to know that on paper so that I know in my mind
2796 that's correct.
2797
2798 Mr. O'Kelly - With Winterberry I think that's absolutely correct.
2799
2800 Mr. Blankinship - Our coalmine expert will be there. Is there somebody else
2801 who should be?
2802
2803 Mr. Kirkland - VDOT needs to be there too, because we'd like to know if I-
2804 295 has been upheaved through all this also.
2805
2806 Ms. Dwyer - Will there be a staff presentation?
2807
2808 Mr. Blankinship - Not really. It's the neighbors out there who have made the
2809 allegation that they have violated the conditions of the use permit, and the staff is really
2810 going to leave it in the neighbors' hands to support that. The other thing we will provide
2811 you in advance are copies of about 30 complaints that have been received.
2812
2813 Mr. Wright - That's what I want to get to, is how this will be proper
2814 procedure. We have issued a Show Cause Order against Tidewater Quarries, to show
2815 cause as to why their permit should not be revoked, and I guess it would be up to us or
2816 whomever, to come in first and state what those violations are.
2817
2818 Ms. Dwyer - Why have we issued the Show Cause? I think we need to
2819 start off with that.
2820
2821 Mr. Wright - Rather than them. Then they would be in a position of
2822 having to defend.
2823
2824 Mr. O'Kelly - The staff will have prepared an extensive staff report for the
2825 Board, and I think we could start with that to open up the meeting.
2826
2827 Mr. Nunnally - You say you've had about 30 complaints? Did we just get
2828 them all at one time, or have they been going on for a while?
2829
2830 Mr. Blankinship - There was a neighborhood meeting that was convened for
2831 that purpose.
2832

2833 Mr. Wright - What surprises me is, when did we approve that permit last
2834 year?
2835

2836 Mr. Blankinship - The last time was April of 2004.
2837

2838 Mr. Wright - It's been a year ago. Where were all these people at that
2839 hearing?
2840

2841 Mr. Blankinship - Apparently several of them were in the room.
2842

2843 Mr. Wright - Why didn't they object at that time? We had one person who
2844 spoke in favor of this. They hung us out to dry. If the concerns had been there then, we
2845 should have heard them. How can there be such a drastic change in a year? They've
2846 been doing the same thing for years.
2847

2848 Mr. Blankinship - Since 1965.
2849

2850 Ms. Dwyer - Unless they've changed their blasting schedule or
2851 something.
2852

2853 Mr. Wright - I would be very much surprised if they've changed anything.
2854

2855 Mr. Blankinship - We don't know of anything.
2856

2857 Mr. Wright - Years ago we used to go out there and listen to these things,
2858 and stand by when we had objections. This has been going on for years, and these
2859 people are too smart to do something that would jeopardize their permit.
2860

2861 Mr. Kirkland - That's their livelihood. They don't want to lose that.
2862

2863 Mr. Wright - They've been trying very hard to satisfy neighbors over the
2864 years. I'm just surprised that all of a sudden, we've got pictures falling off the wall and
2865 walls cracked and stairwells. It's just amazing, but we've got to deal with it. What we'll
2866 do is hear from the complaints first, the neighbors.
2867

2868 Mr. Blankinship - The staff will have a report that's basically going to consist of
2869 those complaints.
2870

2871 Mr. Nunnally - They might come up with a complaint about the contract.
2872

2873 Mr. Kirkland - Is the staff going to say what's wrong? Are they going to see
2874 what's wrong?
2875

2876 Mr. Blankinship - Are you going to present the staff report?
2877

2878 Mr. Kirkland - I need to know in my mind what they've violated before I
2879 start listening to everything.
2880
2881 Mr. Blankinship - We will explain the allegations that have been made by the
2882 neighbors.
2883
2884 Mr. Wright - So you will actually begin, and then I guess we ought to
2885 permit some of the neighbors, without repetition, to speak.
2886
2887 Mr. Blankinship - It might be a good idea, as you frequently do, to ask if
2888 there's one person here who can speak on behalf of the neighbors. I think I know who
2889 that would be, so we can prepare that person.
2890
2891 Ms. Dwyer - I think your point about why we are having the Show Cause
2892 Order is an important one. I think we need to not only have a review of the complaints,
2893 but we need to have a legal explanation as to why we have issued the Show Cause
2894 Order.
2895
2896 Mr. Wright - I think our County Attorney will address that.
2897
2898 Ms. Dwyer - Whoever does that, but I think you're right; that needs to be
2899 up front. We have issued a Show Cause Order because
2900
2901 Mr. Wright - We're looking at something here that could end up in court.
2902
2903 Ms. Dwyer - We want to make sure that there's a justification for show
2904 cause.
2905
2906 Mr. Wright - We need to ask the County Attorney to be prepared to state
2907 what the basis for the legal calling of this hearing and the legal basis for our proceeding.
2908
2909 Ms. Dwyer - Does he need to be here, or could he advise staff members
2910 to do that?
2911
2912 Mr. Blankinship - They're planning on being here.
2913
2914 Mr. Wright - I think he should be here; he usually is on anything of this
2915 nature. Is it Mr. Tokarz?
2916
2917 Mr. Blankinship - I got the impression that Mr. Rapisarda would be here, but
2918 whether I got the correct impression I'm not sure.
2919
2920 Mr. Wright - Are we clear on it now? I just wanted to make sure we all
2921 understood. If we could get the minutes of that meeting and a copy of the use permit,
2922 we could be very familiar with all of the points of concern. I'd appreciate it.
2923

2924 Mr. Nunnally - I noticed in the paper where it said that we issued a use
2925 permit until 2009, and we never issued a permit over two years that I know.
2926

2927 Mr. Blankinship - That is the one case where you do, and you started in 1989.
2928 They asked specifically that it be approved for five years, rather than two, and that was
2929 done in 1989, 1994, 1999, and 2004. That's the only exception to the rule.
2930

2931 Mr. Wright - We might next time reconsider that, although if we'd had a
2932 two-year deal on it, we'd have been prevented.
2933

2934 Mr. Nunnally - We can still pull the permit.
2935

2936 Mr. Blankinship - Or they are in violation of the condition, you have the
2937 authority to revoke.
2938

2939 Mr. Nunnally - How come I haven't gotten an answer on that LoanMax
2940 thing. You were going to find out and said you'd come back in two weeks, about three
2941 months ago. I think you turned it over to someone else.
2942

2943 Mr. Blankinship - Would you remind me of the question?
2944

2945 Mr. Nunnally - I wondered why BB&T and Bank of America can have three
2946 and four signs on a building.
2947

2948 Mr. Blankinship - We have done the research on each one of those. One of
2949 them was lawful; one or two more were in excess, and they've been notified that they
2950 need to remove them.
2951

2952 Mr. O'Kelly - We turned the complaint over to Community Maintenance,
2953 who enforces that part of the zoning regulations, and Bob Kinsey was doing an
2954 investigation. We need to follow up with them to find out what the status is.
2955

2956 Mr. Blankinship - I'll have a status report at the meeting for Tidewater
2957 Quarries.
2958

2959 Mr. Wright - Do I hear a motion that we adjourn?
2960

2961 Mr. Kirkland - So moved.
2962

2963 Mr. Nunnally - Second.
2964

2965 Mr. Wright - Any discussion on that motion? All in favor, say aye.
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There being no further business, and on a motion by Mr. Kirkland, seconded by Mr. Nunnally, the Board adjourned until **June 16, 2005**, at 5:30 pm.

Russell A. Wright, Esq.
Chairman

Benjamin Blankinship, AICP
Secretary