

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING**
2 **APPEALS OF HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE**
3 **COUNTY ADMINISTRATION BUILDING IN THE HENRICO COUNTY**
4 **GOVERNMENT COMPLEX, ON THURSDAY, MAY 25, 2006, AT 9:00 A.M.,**
5 **NOTICE HAVING BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH**
6 **ON MAY 4 AND MAY 11, 2006.**

7
8
9 **Members Present:** **James W. Nunnally, Chairman**
10 **Richard Kirkland, CBZA, Vice-Chairman**
11 **Elizabeth G. Dwyer**
12 **Helen E. Harris**
13 **R. A. Wright**

14
15
16 **Also Present:** **David D. O’Kelly, Assistant Director of Planning**
17 **Benjamin Blankinship, Secretary**
18 **Paul M. Gidley, County Planner**
19 **Priscilla M. Parker, Recording Secretary**
20

21 Mr. Nunnally: Good morning, ladies and gentlemen. We welcome you to
22 our meeting for the month of May for the Board of Zoning Appeals and we ask
23 you to please stand and join us in the **Pledge of Allegiance to the Flag of Our**
24 **Country.**

25
26 Mr. Blankinship, would you please read the rules for the meeting, please?
27

28 Mr. Blankinship: Good morning, Mr. Chairman, members of the Board, ladies
29 and gentlemen. The rules for this meeting are as follows: Acting as secretary I
30 will call each case and while I am speaking, the applicants can come down to the
31 podium and then we will ask all of those who intend to speak on that case to
32 stand and be sworn in. Then the applicant will have their opportunity to speak
33 and then whoever else intends to speak will be given the opportunity, and after
34 everyone has had a chance to speak, the applicant and only the applicant will
35 have an opportunity for rebuttal. After the Board has heard all of the testimony
36 and asked all of their questions, they will take that case under advisement and
37 they will render all of their decisions at the end of the meeting. So, if you wish to
38 know the decision on a specific case, you can either stay until the end of the
39 meeting or you can check the Planning Office web site this afternoon. We
40 usually get it updated within about half an hour of the end of the meeting, or you
41 can call the Planning Department later this afternoon.
42

43 This meeting is being tape recorded, so I ask everyone who speaks to speak
44 directly into the microphone on the podium. State your name and please spell
45 your last name for us. Finally, out in the foyer there are two binders that contain
46 the staff report for each case, including the conditions that have been

47 recommended by the staff. If you are the applicant and you are not aware of the
48 conditions, you might want to slip out and check those before your case is called.

49
50 Mr. Nunnally: Mr. Blankinship, are there any withdrawals or deferrals on
51 this agenda?

52
53 Mr. Blankinship: No, sir.

54
55 Mr. Nunnally: Please call the first case.

56
57 **A-104-2005 Hickory Corner, LC** appeals a decision of the Director of
58 Planning pursuant to Section 24-116(a) regarding the
59 property at 5350 Twin Hickory Road (Hickory Corner Office
60 Condo) (Parcel 747-773-1506), zoned O-2C, Office District
61 (Conditional) (Three Chopt).

62
63 Mr. Nunnally: Is there anyone else here interested in this case, and if so,
64 will you please stand and raise your right hand and be sworn. All right.

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

68
69 Mr. Bill Sooy, Esq.: I do.

70
71 Mr. Nunnally: Please state your name for the record, sir, and tell us what
72 you are requesting.

73
74 Mr. Sooy: Good morning members. My name is Bill Sooy, the last
75 name is Sooy. I represent Hickory Corner, LC, the developer of this project.
76 This is one of their office condominiums. The project is located, I think the Board
77 (sic) has sufficient information related to the project. This is a little bit of
78 background. The property was purchased in June of 2004 and the developer
79 proceeded to develop the property as office condominiums under an approved
80 plan of development, which was initially issued. During the progress of the
81 construction, there were, as with probably every other construction project,
82 numerous delays and setbacks. With that being said, the project was continuing
83 in construction phase when this notice of zoning violation was issued on
84 September 1, 2005. The buildings are still under construction. There was one
85 building, I believe actually two buildings, but they had not had their final building
86 inspections. There were a number of other issues that were necessary to
87 complete the construction of the project. These were six separate buildings and
88 they were being sold off as office condominiums, so as one building was
89 completed, they were able to sell the units to purchasers and, at that point, the
90 purchasers were getting building permits for tenant setup and the County was
91 also granting temporary occupancy permits for the individual units as they were
92 developed under the Building Code, which required, obviously, that they meet the

93 requirements for a temporary occupancy permit. That really is the crux of the
94 issue, because the issue is, this as a continuing construction project has certain
95 elements that needed to be completed, one of which, obviously, was part of the
96 POD that the HVAC screens be erected, but the issue really comes down to the
97 question of when do those have to be done, and those clearly have to be done
98 before the project can be completed, before a final CO can be issued for the
99 entire project for each individual building, but the question about whether they
100 need to be done at some interim point, I think is an issue that I would raise as to
101 why on September 1, 2005, this became a zoning violation when the County had
102 obviously acknowledged earlier they were issuing temporary occupancy permits
103 for the structures. They were allowing people to come in to do this set up, to
104 occupy and use them in their commercial use, and there was no issue regarding
105 health or safety related to the HVAC screens.
106

107 Ms. Dwyer: I just want to let you know that I understand your argument.
108 Are you saying that the developer is free to develop this complex in violation of
109 the commitments in the zoning proffers and the POD until the project is
110 complete? And then they have to comply. So, are you saying that is not right? I
111 am not sure what your point is.
112

113 Mr. Sooy: I am not saying they are free to do that without any regard,
114 but if the issue is one of the POD requirements that it provide the HVAC
115 screening, and that is clearly intended to be done, at what point in the continuum
116 of the construction progress is it suddenly a zoning violation for those screens
117 not to be up.
118

119 Mr. Wright: It is not the matter of screening. It is where you locate them.
120 The POD says it had to be on the ground, and they are on the roof. I can attest
121 to that, because I have looked at them.
122

123 Mr. Sooy: And there is no contest to that.
124

125 Mr. Wright: Well, it is in violation. (Unintelligible) doesn't it?
126

127 Mr. Sooy: Well, but then an amended POD was issued and the
128 amended POD allowed the HVAC screening to be...
129

130 Mr. Nunnally: When was that done?
131

132 Mr. Sooy: That was done December 14, 2005.
133

134 Mr. Nunnally: We don't have any reference to that.
135

136 Ms. Dwyer: So, you have an amended POD, all we have...
137

138 Mr. Nunnally: I know nothing about an amended POD.

139
140 Ms. Dwyer: The only information we have is the proffer and we have the
141 conditions for the POD, but we don't have the POD in front of us that shows that
142 the HVAC equipment has to be on the ground.
143
144 Mr. Wright: If the POD was amended, why are we here?
145
146 Mr. Sooy: Well, I think that is a very valid question.
147
148 Mr. Wright: If they amended to permit you to put these on the roof.
149
150 Mr. Blankinship: Let me make that clear, though. The zoning violation was
151 cited September 1, 2005, and December 14, 2005, after meeting with the County
152 and after going through the issues. You have a letter from Mr. O'Kelly in your
153 packet that says "A requirement of the developer is to submit a revised plan
154 (POD) to allow for the HVAC units to be on the roof and for screening to be on
155 the roof. That was a requirement in the September 15 letter that Mr. O'Kelly
156 issued that that be done. Those revised POD plans were submitted to the
157 County Planning. They were approved.
158
159 Mr. Nunnally: Why don't we have copies of those?
160
161 Mr. Blankinship: Well, I have copies of the letter, and the POD letter has the
162 same requirement that the HVAC screening, location of all existing and proposed
163 facility and mechanical equipment, including HVAC units, electric meters,
164 junction and accessory boxes, transformers and generators will be identified in
165 the landscape plans. All equipment shall be screened by such measures
166 determined appropriate.
167
168 Mr. Wright: What is the date of that letter, sir?
169
170 Mr. Blankinship: This letter is dated September 14, 2005.
171
172 Mr. Wright: I don't have that.
173
174 Mr. Nunnally: But the County staff will be ready to respond to this, maybe
175 we ought to go on and get to the end. They are jumping ahead.
176
177 Mr. Wright: Mr. Sooy, our position is that the screening wasn't up.
178
179 Mr. Sooy: The screening, unfortunately, still is not up, and the issue in
180 my mind is at what point did that become such a point that it became a zoning
181 violation. Even now, with the revised POD, you are requiring screening. Is it a
182 zoning violation? If a developer is still on the project, if construction or punch list
183 items at this point are still not being done, and there has been no, the POD
184 required that the developer submit a letter from the engineer on the plan that

185 attested to everything was developed according to the POD, and that would
186 include, obviously, the HVAC screen, before a certificate of occupancy could be
187 issued for the project. That hasn't been done. The letter hasn't been issued.
188 The request has not been made. The screens are not there, and there is a lot of
189 back and forth about why they are not there. What I would suggest to you for the
190 Board is that as of September 1 the screens have not been proved an issue
191 related to anything regarding use or occupancy of the project. They were still an
192 ongoing condition of the construction of it. The developer had not left, had not
193 abandoned it. On September 23 the developer posted an Irrevocable Letter of
194 Credit with the County in the amount of \$195,000 plus, to insure that all of the
195 remaining items on the plan be completed and \$129,744 of that \$195,000 Letter
196 of Credit is specifically to insure that the screening be placed on the structure.
197 So, the developer has made every effort to assure the County that those screens
198 will be put up.

199

200 Mr. Wright: Every effort?

201

202 Mr. Sooy: I understood this not to be cross examination, but if we are
203 going to go cross examination, I will do that, too.

204

205 Mr. Wright: The question is "Why haven't the screens been put up?"

206

207 Mr. Sooy: Well, after...

208

209 Mr. Wright: It is completed. I walked it earlier. Everything is done.
210 There is no equipment there. There is no nothing. They may be working on the
211 inside.

212

213 Mr. Sooy: Again, they are all individual tenant issues, but one of the
214 principal problems is that these units be placed on the roof. As I indicated, the
215 project was ongoing. The last units were sold and closed in February of this
216 year. As these buildings are developed and built out, HVAC units are put on the
217 roof. The plans for the HVAC units were submitted to the County with their
218 revised POD clearly showing some of the units not there. Those units weren't
219 there because the owners of the individual condominium units had not yet built
220 them out to the point of putting the HVAC units on there. The developer's
221 position is that they would like to do this once, not twice, three times, going back
222 and back and back, and would like to get their contractor on the job and do the
223 entire HVAC unit in a single job. Until all of the units are there, that is not an
224 impossibility, but very difficult process, because obviously when you have placed
225 the units on there, you need to remove any existing screening structures in order
226 to do it.

227

228 Mr. Wright: Are there units on there now?

229

230 Mr. Sooy: No. They are still not all on there. They are still building at
231 the site of 5350, I may be wrong on the address, but the Building C that was cited
232 as the address of the zoning violation, that building still has three units that have
233 not been placed on the roof yet. The way the structures are designed for
234 screening, they are not individually screening. It is a long form screen and
235 because of that and because of the developer's desire for economy in
236 construction and for an answer to avoid interruption of a project at this point and
237 not have contractors constantly in and out and walking up and down on the roof.
238 They wanted to wait until all of the units, and that may be an issue that the
239 County is unwilling to put up with. They may say, "Forget about it. You have to
240 do it and go forward with the screening regardless of whether all of the HVAC
241 units are up there, but that has been a point made as to why the screen isn't
242 there now.

243

244 Mr. Wright: You said the air conditioning should be at ground level. Why
245 would they change without approval from the County? Why would you put them
246 on the roof?

247

248 Mr. Sooy: I think it ended up being a decision that the developer made
249 that, the way these units are structured, if they put them as most HVAC units,
250 you are putting them in some place that is not real visible if you can shield them
251 from public view. The public view along Twin Hickory is the back of two of the
252 buildings. The driveway off of Twin Hickory is the third building. So, the units are
253 back there. I don't care how elegantly you screen them with brick; you are going
254 to have these box structures all over the place. It is not going to look as
255 attractive to the passersby. It is not going to be as attractive, I think, to any of the
256 purchasers looking out the window and seeing not grass or trees or whatever
257 plantings are out there, but they are going to see these brick shields, brick
258 screening devices, that I would really suggest detract from it. On the roof, I think,
259 with proper screening, they will be much less visible, much less intrusive, and
260 provide a much more pleasant look to the project and that was the basis of the
261 developer doing it. Literally, I think the developer should have put the cart before
262 the horse and gone and asked for a revised POD before making that decision,
263 but effectively, they have been approved in their actions, because the County
264 has said as of December 14 the POD is acceptable that the HVAC units on the
265 roof are appropriate provided they provide the screening for them.

266

267 Ms. Dwyer: So you are claiming that the revised POD has been
268 approved that allows the HVAC unit to be on the roof?

269

270 Mr. Sooy: Yes, ma'am.

271

272 Ms. Dwyer: And we don't have any evidence of that, which we need to
273 have before this is concluded, and Mr. Blankinship said the County will give us a
274 copy of that POD. And your argument that you want to wait until all the units are
275 sold. What happens if you have trouble selling them and it is three years from

276 now, and you still have not sold the last unit, so nothing has been screened at
277 some indeterminate time?

278
279 Mr. Sooy: I may have been misunderstood. All of the units are sold.

280
281 Ms. Dwyer: Oh, they are all sold?

282
283 Mr. Sooy: Yes, but they haven't all been built out. Some people or
284 some purchasers have bought and they have just not started the build out.
285 There is only one building that remains and at this point I think the developer
286 would say if we have to go back a second time to reconfigure the Building C
287 screening, we would do that. We can do five of the buildings now, because all of
288 the units are, in fact, on the roof.

289
290 Ms. Dwyer: Has the staff approved the method of screening?

291
292 Mr. Sooy: That is another issue, and conflicting reports. After the
293 approval of the revised POD, there was an issue of bonds. As I said, \$195,000
294 Letter of Credit has been posted. There has been a \$20,000 or \$19,900 E&S
295 Bond posted with the County. The developer had been assured all along that as
296 things were deleted from the project, with the revised POD there were some
297 changes that deleted some of the requirements, \$55,000 of that \$195,000 was
298 related to brick pavers at the entry way. The developer proposed that if those
299 were placed in there, that would void the warranty for the asphalt and they would
300 refuse to come and correct any problems with the asphalt. The developer
301 submitted in the revised plan a deletion of those pavers. The developer was
302 under the impression that upon the revised POD being approved that that
303 \$55,000 would be dropped off of the Letter of Credit. Then, in addition to that,
304 there was an \$8,000 figure for some sidewalks that had not been completed, and
305 I think the reality is the County didn't want them built as of yet because one of the
306 sidewalks was facing a dual stub that went to nowhere, and because of that, the
307 County would rather have the money to build the sidewalks in the future when it
308 meant something, rather than have some little 40-foot strip of sidewalk built that
309 was effectively no good. So, the developer was told, "We will drop the bond and
310 you can have the bond back." Contrary to that, the developer was then told, "No,
311 now you have to place money in escrow for the sidewalk, additional money, and
312 there has been some switching related to that. I think the developer will say the
313 escrow money will be placed, but the Planning Department was, at that point, I
314 believe, until the escrow money was placed, they wouldn't review any of the
315 plans related to the screening, and the screening obviously, part of the condition
316 was that those plans be reviewed and approved prior to (unintelligible) of the
317 screening, so that was part of the reason that their plans were not submitted for
318 approval.

319

320 Mr. Nunnally: Mr. Blankinship, I have a question for you. Out of all of the
321 businesses that bought in there that are occupying the space, how many of them
322 have final permits, final building inspections?
323

324 Mr. Blankinship: I don't know the answer to that. Ms. Goggin might.
325

326 Mr. Nunnally: Are they all on temporary, Mr. Sooy?
327

328 Mr. Sooy: The County was reissuing temporary pending final clear up
329 of all punch list items regarding the HVAC screening, and that was part of the
330 issue when the zoning violation notice was issued. They were refusing, at that
331 point, to issue building permits, or issue the temporary CO's.
332

333 Mr. Nunnally: Have they renewed temporary CO's?
334

335 Mr. Sooy: They have renewed them and now they continue to issue the
336 temporary Cos and the building permits after the \$195,000 Letter of Credit was
337 posted to assure that the project would be completed as set out in the POD.
338

339 Mr. Nunnally: Mr. Blankinship, why don't we have this approved? Is that
340 going to be dealt with...
341

342 Mr. Sooy: I don't have any further issues to add and I thank you for
343 your time.
344

345 Mr. Nunnally: Opposition.
346

347 Mr. Tokarz: Good morning, Mr. Chairman, and members of the Board.
348 Tom Tokarz of the County Attorney's office. I'd like to address the County's
349 remarks in a few steps. First, just to address the actual issue before you, which
350 is whether the Director of Planning or Planning Department's notice of violation
351 was correct in September of 2005, and I think that is really the only issue before
352 you. On anything that has happened since that time I am certainly prepared to
353 address in just a moment. I think the only issue before you is/was the notice of
354 violation correct at the time it was issued, and I think there has been no dispute
355 from Mr. Sooy. He has been very good to work with and I have been talking to
356 him on the phone for the last six months off and on. There is no dispute that the
357 units are not screened. There is no dispute that the proffers that were placed on
358 the case in 1999 required that they be screened, that Condition #34 on the plan
359 of development that was approved in March of 2004 requires that they be
360 screened. There is no dispute that units have been in use by the people and that
361 the developer has received the benefit of the sale of the units and the
362 development of the units, and really, from our standpoint, there is no reason that
363 the screening is not in place other than the fact that the developer does not want
364 to do it until it is economically desirable for him. And I think Ms. Dwyer asked the
365 correct point, and the point that is really the only issue before you today is "Does

366 the developer get to decide to wait until the end of the project, whenever that
367 may be, to put in amenities that are required by the plan of development?" The
368 County's position is that they are not, that when the units began to be sold and
369 used that the screening should have been put into place, and, therefore, the
370 Department of Planning's notice of violation was correct on September 1, 2005,
371 and we think that is the only issue before you.

372
373 Mr. Wright: So what are you going to do? Send them to prison or fine
374 them or what?

375
376 Mr. Tokarz: No, sir.

377
378 Mr. Wright: We've got to get to the source of the thing and find out what
379 we are going to do.

380
381 Mr. Tokarz: Let me tell you where we are going from now, and this is the
382 second part of the presentation. I am only addressing the property before you.
383 That is not to say there isn't going to be a way to resolve this problem. Here is
384 what has been done. When the notice of appeal was filed, that is part of record, I
385 believe, and that is certainly what I've got and said that on page 2 of the notice of
386 appeal, and I don't know what the page is on yours, but in the middle of page 2 it
387 said "Hickory Corner, LC intends to file a revised plan of development and upon
388 approval of the proposed screening for the HVAC units, construction and
389 installation of the screening of the existing HVAC units will commence." Now,
390 that is what they represented to the County in the fall of 2005. Now there was an
391 approved – we agreed with Mr. Sooy – there was an approval of a revised plan of
392 development on December 14, 2005. They were allowed to put the units on the
393 top and, this is the important part, on page HVAC-1 of the revised plan of
394 development, which Ms. Goggin has here. She is from the Department of
395 Planning, if there are any questions. The screening details were approved. So,
396 on December 14, 2005, those screen details were approved.

397
398 Mr. Wright: For the roof.

399
400 Mr. Tokarz: For the roof, that is correct, Units on the roof and screening
401 details on the roof. Based on the representation to the County and based on
402 what we understood was going to occur, the screening work was going to
403 commence and be completed within 60 days. Now, the reason the 60 days is
404 important, you will remember that this case was originally scheduled for hearing
405 in the fall, and then was continued until February of 2006, and we suggested, I
406 frankly suggested that continuance to Mr. Soy because we don't have any desire
407 to go take somebody to court if they are trying to get the project resolved. And we
408 want to get the thing resolved without burdening the BZA or the court, preventing
409 court action regarding enforcement of the POD. Unfortunately, there has been
410 no effort to do the screening. We just got yesterday from the developer a hand-
411 delivered letter dated May 24, 2006 saying "We are only still talking to potential

412 bidders about coming out and looking at this, and then they have to come out
413 and look at it and then we have to select somebody, and then they have to craft
414 them, and then they have to install them.” So, we still have an indeterminate
415 time in the future that we have no idea when the screening is actually being
416 done.

417
418 Mr. Wright: What is the answer to this thing?

419
420 Mr. Tokarz: The answer is, we believe, that one or two things could
421 occur.

422
423 Mr. Wright: What can we do to get it done other than send them to jail?

424
425 Mr. Tokarz: Well, first of all, you all can't send them to jail. The only
426 thing you all can do is to rule on the notice of appeal before you. What I have
427 told Mr. Sooy is that the County will initiate enforcement action as a way of sort of
428 focusing the developer's attention on bringing them in compliance with the POD.
429 Now, I will tell you, having practiced in the General District Court for the last 14
430 years on zoning enforcement that if the developer is making an effort at
431 compliance, we either nol process the case or we or the court will dismiss the
432 case if there is effort towards compliance or continue it. But we need to get the
433 developer to the place. We need to get the developer moving on the project, and
434 that is what we are going to do, Mr. Wright, to answer your question. We are
435 going to initiate the enforcement action. If you find that the notice of violation
436 was correct, we will initiate enforcement action and then if the developer moves
437 forward expeditiously about this, we will nol process the action or the court will
438 give him a continuance to do it, but the key point is, we don't agree with the
439 developer that you get to wait until you decide it is best. You don't get to have
440 the benefit of sale of the units and then have all of the work done and just decide
441 six months to a year or two years to do it. So that is where we are. We do have
442 an approved plan for the screening. The developer can do this. The developer
443 has been able to do this for six months. We need to get the developer focused
444 and we think today is the first step to getting to that process. Ms. Goggin is here
445 to answer any questions that you may have.

446
447 Ms. Dwyer: I would like to see a copy of the approved POD plan that
448 shows the screening.

449
450 Mr. Tokarz: HVAC-1. I think the reason you don't have it is because,
451 and I can't speak for Mr. Blankinship, is because given the fact that this was an
452 appeal for notice of violation going back to September, 2005, subsequent events
453 really were not directly relevant to whether the violation was correct or not. That
454 is the only issue before you.

455
456 Ms. Dwyer: I tell you what was confusing. The staff report says that the
457 HVAC units are supposed to be on the ground. That was the first point of

458 confusion for us. It wasn't clear that it had been approved and that it could be on
459 the roof.

460
461 Mr. Tokarz: As of the time of the notice of violation, they were still on the
462 ground, but it's been...Mr. Gidley, do you have HVAC-1?

463
464 Mr. Wright: Whether we've got it or not, it is a fact, so what difference
465 does it make?

466
467 Mr. Tokarz: There is no contest from the Planning Office's standpoint
468 that the screening details have been approved, according to the plans they
469 submitted, and the Planning Commission has it.

470
471 Ms. Dwyer: I think those plans should be part of the record. What is
472 that? Is it lattice, a piece of metal?

473
474 Mr. Wright: Whatever it is, it has been approved by the County.

475
476 Ms. Dwyer: The reason I am asking is I am wondering, the developer is
477 saying he wants to wait until everything is sold and all of the HVAC units are,
478 well, they have been sold, but wait until all of the HVAC units are in before the
479 screen goes up, and I am wondering, does that have to be a practical matter?
480 Can't they just put up the screen and then later install the HVAC units? What is
481 the reason? I am trying to figure out if there is a rational reason for that delay. It
482 looks like maybe the screen can be installed before all of this...

483
484 Mr. Tokarz: Our understanding is the only reason for the delay is an
485 economic one, and the developer doesn't want to do it except that one time.

486
487 Mr. Wright: I think that is what it is.

488
489 Mr. Tokarz: I think that is all it is. That is what everyone has told us. I
490 think Mr. Sooy has testified to that. The reason is they want to wait until the end
491 and they will have to have the contractors come back more than once.

492
493 Mr. Nunnally: My question was couldn't the contractor do it more than once
494 and put the HVAC unit on later.

495
496 Ms. Dwyer: Exactly.

497
498 Mr. Blankinship: There is no reason you can't build the screen and then the
499 unit later, is there?

500
501 Ms. Dwyer: I guess we will have to ask the applicant? What we are
502 looking at is a December 14, 2005 approved plan?

503

504 Mr. Blankinship: Yes.

505

506 Mr. Nunnally: Any other questions?

507

508 Mr. Blankinship: I think it is important to note, and I don't remember if Mr.
509 Tokarz mentioned this or not, but bear in mind that as long as an appeal is
510 pending before this Board, all enforcement action is stayed by law. It is only after
511 you rule on this appeal that we can begin enforcement action.

512

513 Ms. Dwyer: I have a question for Mr. Sooy. Let me ask you directly.
514 Why can't the screen be installed now and the remaining HVAC units installed at
515 any time afterwards.

516

517 Mr. Sooy: Well, part of the way the screening is shown here, you are
518 seeing the front of the building. The screening is designed to have "nesting
519 screening" on some of the buildings because they are visible from both Twin
520 Hickory and Nuckols Road or other access points, and with nesting screening,
521 the screening is basically a box or a rectangle around all of the HVAC units.
522 They also designed the screening to attach to the HVAC units rather than to be
523 bolted through to the roof. If they are attached to the units, then in order to put in
524 new units, you have to detach them from the existing unit, put in the new unit,
525 and then reattach them to the new unit.

526

527 Ms. Dwyer: What you just said does not seem to fit what we are looking
528 at. What we are looking at appears to be a single wall, continuous wall, which
529 goes across the front of the building. It doesn't appear to be attached individually
530 or an individual box.

531

532 Mr. Sooy: I am not sure that shows quite the same detail, but you have
533 pictures and them. I have a group of pictures as well that shows these units, and
534 shows them from different vantage points, and I am happy to...I have five sets
535 and I am happy to pass these out to the Board to get a better perspective. The
536 backs of some units, as I said, see the backs of some units are, in fact, fronting
537 on streets, Units A and B, Hometown Realty is in entirety Unit B or Building B
538 that backs up to Twin Hickory Drive. Building A also backs up to Twin Hickory
539 Drive. So, in order for the screening to be effective, it has to screen out on the
540 Twin Hickory Drive but then it also screens out on the front into a parking area,
541 which is the interior of the development. As I said, they are described as "nesting
542 screening" meaning that it forms a nest and the HVAC units are set in there if it
543 can be done. I am not too happy but it can be done. They can set it up now, but
544 they would have to be disassembled in order to allow the moving of a three or
545 four ton HVAC unit up to the roof, setting it in place, attaching it, and then
546 reattaching the screening.

547

548 Ms. Dwyer: But the screening is going to be just around each HVAC unit.
549 It is not going to be a continuous wall?

550
551 Mr. Sooy: No, the picture you saw was right. It is a continuous screen.
552 It is not individually screened, and I guess that is the problem with that kind of
553 design is, it makes it more difficult to individually deal with HVAC as opposed to
554 dealing with it in a single fashion as one continuous screen. I think the
555 continuous screen was chosen because it was more harmonious with the façade
556 of the buildings rather than the problem of having the HVAC units in the back on
557 the ground. We've got a lot of little monuments out there and the idea is not to
558 highlight that same element on the roof.

559
560 Ms. Dwyer: I might be mishearing you, but it seems you have said that
561 you have a continuous screen and yet you have individually. You can't put it all
562 up now, because it is attached and boxed around these units.

563
564 Mr. Sooy: Well, there are two ways to attach these, to mount the
565 screen. You could mount the screen into the roof. This is a membrane roof.
566 You pierce the roof and you have to seal it. You have warranty issues with that.
567 That can be dealt with. Obviously, they do pierce the roof through the joist or
568 members below the roof. The other way, since the HVAC units are already
569 mounted and the metal curbing that the HVAC units curbing are mounted on, is
570 to attach them to those HVAC units curbing and mounting so that you don't
571 pierce the roof.

572
573 Mr. Blankinship: And that is the developer's idea that they do it that way.

574
575 Mr. Sooy: And again, they test each individual unit, but there is a single
576 continuous screen, and as I said, some of the buildings were theirs. The front
577 and back exposure for the unit is nested, it is screened on both sides, so that you
578 don't get a good side looking at it and a bad side, because the bad side would be
579 something that is probably more visible to the public, that being the road.

580
581 Ms. Harris: How many units don't have the HVAC screen?

582
583 Mr. Sooy: I believe at this point Building C is the only building that
584 doesn't and there are, at this point, to my knowledge, two units that haven't been
585 placed.

586
587 Ms. Dwyer: Only two HVAC units? So it is only two affecting it? In the
588 whole place?

589
590 Mr. Sooy: In the whole place, and part of this plan, (unintelligible) how
591 these screening devices are going to be put into place, and the location of the
592 units...

593
594 Mr. Nunnally: I think we have heard enough. As far as the screening is
595 concerned, I think we will hear more about that later.

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Mr. Sooy: I agree. Thank you.

Mr. Blankinship: Thank you for your time and coming.

DECISION:

Mr. Wright: I am going to move that we deny the appeal.

Mr. Kirkland: Second.

Mr. Nunnally: Motion by Mr. Wright and second by Mr. Kirkland that we deny the appeal. All in favor say aye. All opposed say no. The motion passes. The appeal is denied.

After an advertised public hearing and on a motion by Mr. Wright and a second by Mr. Kirkland, the Board **denied** case **A-104-2005**, an appeal of a decision of the Director of Planning pursuant to Section 24-116(a) regarding the property at 5350 Twin Hickory Road (Hickory Corner Office Condo) (Parcel 747-773-1506), zoned O-2C, Office District (Conditional) (Three Chopt). The Board found from the evidence presented that the Director of Planning was correct in determining that Hickory Corner, LC was in violation of the approved plans.

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

Ms. Dwyer: Should we give some reason for that?

Mr. Wright: The reason for it is because they didn't comply with the POD. It is a simple issue.

Mr. Nunnally: OK, A-104-2005 has been denied.

UP-21-2006 **Anne M. Clements** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to store contractor's equipment temporarily at 12120 West Broad Street (Parcel 733-765-4819), zoned A-1, Agricultural District and WBSO, West Broad Street Overlay District (Three Chopt).

Mr. Nunnally: Is anyone else here who desires to speak on this case? If so, please stand and raise your right hand and be sworn.

635 Mr. Blankinship: Please raise your right hand. Do you swear the testimony
636 you are about to give is the truth, the whole truth, and nothing but the truth, so
637 help you God?
638

639 Mr. Defoggi: I do.
640

641 Mr. Nunnally: Please state your name for the record, sir, and tell us what
642 you are requesting.
643

644 Mr. Defoggi: My name is Paul Defoggi. I rented the property from Ms.
645 Clements back in December and when we were discussing moving our trucks,
646 our construction trucks off the streets where we were storing them overnight
647 when we weren't using them, the realtor checked with the Planning Department
648 to make sure that there would be no issues with this being in an Agricultural area,
649 and we were told that it was because nobody could see the house from Broad
650 Street, and it is all wooded and it is just not visible anywhere. We received a
651 notice that that was not the case, that someone did see the trucks down there,
652 and so we have been working with Ms. Clements and represent her here to get a
653 temporary conditional use to store, really park our trucks overnight, basically.
654 One thing that I would like to amend is that while our work hours are from 7 to
655 3:30 or whatever, our drivers come to the yard about 6:30 to be able to get to the
656 quarries and begin work at 7:00, so we will sincerely state that technically our
657 drivers do show up around 6:30, and they are back around 3:30 or 4:00,
658 something like that. All of our dump trucks are gone during the day. We have
659 very little storage of equipment during the day that is there except for vehicles of
660 the drivers, their personal vehicles that are there, and we recognize that this is a
661 temporary basis. Ms. Clements has advertised that land for sale for development
662 out there, and we know that we will be moving whenever that sale happens and
663 so we view this as a temporary scenario, and we would ask for your
664 consideration for allowing us to just continue to rent there until there is a timeline
665 on the conditional use permit. We understand that, but it is probably not going to
666 last that long, due to the sale of the property.
667

668 Mr. Nunnally: So, you are asking us to change the times to 6:30 a.m. to
669 5:00 p.m.?
670

671 Mr. Defoggi: Yes.
672

673 Mr. Blankinship: From 7 in the morning until 6:30 a.m.
674

675 Mr. Wright: What is exactly put on this property? What do you put on it?
676 Give us a full description.
677

678 Mr. Defoggi: We have 28 foot box tractor trailer units that we typically
679 have on our construction sites. I have two of them there right now because they
680 are in between jobs, so they are just sitting there until I have another good

681 project to begin that I could move it to. In the evenings, I will have my dump
682 truck that will be there and there is, we have eight, we have six dump trucks on
683 that location in the evening. I have another location on the east side of Henrico
684 that I would keep the two additional trucks. During the day will be the pickup
685 trucks that you are seeing and right now there are two box units. We have two
686 trailers that we move our equipment around on that will be parked out there.
687 That kind of stuff, on our dump trucks, we push snow in the winter for the
688 Highway Department and so the cranes that sit on some of the trucks will be
689 sitting there waiting for snow next year, because they are not being used. That is
690 basically a summary of what it is.

691
692 Ms. Dwyer: You are not just working on a temporary construction project.
693 This is a full-time business, isn't it?

694
695 Mr. Defoggi: Absolutely. We have been there since 1989.

696
697 Mr. Wright: Are these vehicles parked so that you cannot see them from
698 other houses or Broad Street?

699
700 Mr. Defoggi: Correct. The houses that are to the rear, you can go down
701 Old Three Chopt Road and you cannot see what we are doing here. From Broad
702 Street, you can barely see the top of the house, as you go down Broad Street. It
703 falls over 20 feet down from Broad Street going out to 288, and we keep all of our
704 trucks as close to the bottom as we can. We don't want vandalism and so we
705 don't want people to know and we do not want to put up gates or anything else
706 like that. There is a circular driveway that comes in and circles down around the
707 house and back out again. There is a crossover that VDOT put on Broad Street
708 for accessing this, and so it is three lanes going west. We don't see a safety
709 issue or any problems with this.

710
711 Ms. Dwyer: The first condition says "All of the area outlined on the plan
712 filed with the application may be used." Is that the semi-circle that we see on the
713 map?

714
715 Mr. Defoggi: The driveway that comes down.

716
717 Mr. Blankinship: It roughly follows the tree line I think.

718
719 Mr. Defoggi: Yes.

720
721 Ms. Dwyer: So, how are they screened from Broad Street?

722
723 Mr. Defoggi: They are not visible because of the fall of the property. It
724 goes down. Visually it is not seen. We are not looking to clear any trees. We
725 are not looking to expand any use beyond what is there right now.

726

727 Ms. Dwyer: What is the nature of the complaints that arise?
728
729 Mr. Defoggi: My understanding was Ms. Clements does not live there any
730 longer and had a running dispute with some neighbors, and just simply because
731 they saw that happening, they voiced a complaint is what I have had.
732
733 Ms. Harris: How long have you been using this facility?
734
735 Mr. Defoggi: Since December.
736
737 Ms. Harris: Before then, where did you house your trucks in the East
738 End?
739
740 Mr. Defoggi: I left them on the side of the street wherever I could, so we
741 tried to get away from that.
742
743 Ms. Dwyer: This is a full-time business; you don't have any approved M-
744 2 District that you can park your cars in.
745
746 Mr. Defoggi: We are in the process of trying to buy real estate to have a
747 permanent location. This is only a temporary step towards that.
748
749 Mr. Wright: Obviously, within two years you've got to do that.
750
751 Mr. Defoggi: Yes, absolutely, and I believe that property will sell before
752 the two years.
753
754 Mr. Nunnally: Any other questions? Any one in opposition? Seeing none,
755 that concludes the case. Thank you, sir.
756
757 **DECISION:**
758
759 Mr. Wright: I move we approve it.
760
761 Ms. Harris: Second.
762
763 Mr. Nunnally: Motion made by Mr. Wright and seconded by Ms. Harris. All
764 in favor say aye.
765
766 Ms. Dwyer: I think there was a request to change from 7:00 a.m. to 6:30
767 a.m.
768
769 Mr. Nunnally: You got that, didn't you, Mr. Blankinship?
770
771 Mr. Blankinship: Yes, sir.
772

773 Mr. Nunnally: All in favor say aye. The motion passes.
774

775 Mr. Wright: A simple use permit, I don't think it affects the traffic there. I
776 don't think it imposes any problem on surrounding properties right there and I
777 think that due to the fact that the equipment is not seen from Broad Street or the
778 other houses, it would not cause any difficulty with the surrounding property.
779

780 Ms. Harris: I would like to add that this stands until 2008, for two years.
781 If we have any problems, it can always be revisited or denied after the two-year
782 period.
783

784 After an advertised public hearing and on a motion by Mr. Wright and a second
785 by Ms. Harris, the Board **granted** application **UP-21-2006** a request for a
786 temporary conditional use permit pursuant to Section 24-116(c)(1) to store
787 contractor's equipment temporarily at 12120 West Broad Street (Parcel 733-765-
788 4819), zoned A-1, Agricultural District and WBSO, West Broad Street Overlay
789 District (Three Chopt). The Board granted the temporary conditional use permit
790 subject to the following conditions:
791

792 1. Only the area outlined on the plan filed with the application may be used
793 pursuant to this approval. All other uses on the property shall comply with the
794 applicable regulations of the County Code. Any substantial changes or additions
795 may require a new conditional use permit.
796

797 2. [AMENDED] The hours of operation for the storage yard and the existing
798 structure, shall be limited to 6:30 AM to 5:00 PM, Monday through Saturday.
799 There shall be no exterior lights on the property other than security lighting.
800

801 3. The applicant shall submit the necessary information to the Department of
802 Public Works to ensure compliance with the requirements of the Chesapeake
803 Bay Preservation Act and the water quality requirements for Watershed
804 Enhancement Areas.
805

806 4. Any process that could contaminate ground water or surface water,
807 including the washing or maintenance of trucks or equipment, shall be conducted
808 in accordance with plans approved by the Department of Public Works.
809

810 5. Any mud or debris tracked onto W Broad Street shall be cleaned daily,
811 and immediately upon the request of a county inspector.
812

813 6. The applicant shall satisfy the Department of Public Works that adequate
814 sight distance has been provided entering onto W Broad Street and adequate
815 parking has been provided on the site.
816

817 7. The applicant shall contact the Henrico County Department of Public
818 Works and the Virginia Department of Transportation to determine if road
819 improvements are required.

820

821 8. All contractor's vehicles, equipment and supplies shall be removed from
822 the property on or before May 25, 2008, at which time this permit will expire.
823 This permit shall not be renewed.

824

825

826 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5

827 Negative: 0

828 Absent: 0

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UP-22-2006 **D. O. Allen Homes, Inc.** requests a temporary conditional use permit pursuant to Section 24-116(c)(1) to place a temporary sales trailer at 12200 Church Road (Church Road Commons) (Parcel 736-755-5630 and 9422), zoned RTHC, Residential Townhouse District (Conditional) (Three Chopt).

831

832 Mr. Nunnally: Is there anyone else here who desires to speak on this
833 case? If so, please stand and raise your right hand and be sworn.

834

835 Mr. Blankinship: Do you swear the testimony you are about to give us is the
836 truth, the whole truth, and nothing but the truth so help you God?

837

838 Mr. Owens: I do.

839

840 Mr. Nunnally: Please state your name for the record, sir, and tell us what
841 your questions are.

842

843 Mr. Owens: My name is Jeff Owens. I work for Ryland Homes. I am here
844 today to request a special use permit to place this temporary sales trailer along
845 Church Road and between Pump and Lauderdale. Currently, we are in the
846 development phase of the project. We will be installing curb and gutter probably
847 tomorrow. All of our utilities are in. Sanitary sewer is in and water and we will be
848 doing the curb and gutter, and what we are trying to do is have a temporary sales
849 trailer, much like you see on other job sites, which we can sell our homes out of
850 until we can get the model home set and things like that. I have submitted in the
851 drawings. We plan on having an ADA compliance entrance, landscaping around
852 that entrance, flood lights on each end so when it gets darker during the evening,
853 people will be able to see. We will have a gravel parking lot. As soon as you pull
854 into the community, it will be right on your left, and we are going to build in a
855 counter-clockwise manner, so that that will be the last piece of property that
856 actually has a home to go up on it.

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Mr. Kirkland: Have you read the conditions proposed for this case?

Mr. Owens: Yes, sir, and they are all 100% fine. There is one thing that they stated in here. They said we had not decided on a manner of septic, but we have. It is just going to be a holding tank. I had to confirm with the trailer manufacturer there would be one held underneath the trailer that would be screened by the vinyl skirting that goes around it (unintelligible).

Mr. Blankinship: Does that mean you won't have a separate porta-john?

Mr. Owens: That is correct. And we've already got a contract with Virginia Way Services weekly for that.

Mr. Nunnally: You understand this would expire on April 30, 2007.

Mr. Owens: Yes, sir.

Mr. Nunnally: And you are in accord with that?

Mr. Owens: Yes, sir. Like I say, at that time we hope to be done. If not, we will have a spec home or a model home to be able to move into.

Mr. Nunnally: Any other questions? Hearing none, that completes the case. Thank you.

DECISION:

Mr. Wright: I move we approve.

Ms. Dwyer: Second.

Mr. Wright: They will comply with all of the conditions and, therefore, it will not be a detriment to the community and will not provide any problem or anything else.

Motion by Mr. Wright and seconded by Ms. Dwyer that we approve. All in favor say aye. The case is approved.

After an advertised public hearing and on a motion by Mr. Wright and a second by Ms. Dwyer, the Board **granted** application **UP-22-2006** a request for a temporary conditional use permit pursuant to Section 24-116(c)(1) to place a temporary sales trailer at 12200 Church Road (Church Road Commons) (Parcel 736-755-5630 and 9422), zoned RTHC, Residential Townhouse District (Conditional) (Three Chopt). The Board granted the temporary conditional use permit subject to the following conditions:

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1. Only the improvements shown on the plan filed with the application may be constructed pursuant to this approval. No substantial changes or additions to the layout may be made without the approval of the Board of Zoning Appeals. Any additional improvements shall comply with the applicable regulations of the County Code.
2. The trailer shall be skirted on all sides with a durable material as required by the building code for a permanent installation.
3. A detailed landscaping and lighting plan shall be submitted to the Planning Department with the building permit for review and approval. Approved landscaping shall be installed as soon as the weather permits. All landscaping shall be maintained in a healthy condition at all times. Dead plant materials shall be removed within a reasonable time and replaced during the normal planting season.
4. The trailer shall be removed from the property on or before April 30, 2007, at which time this permit shall expire.
5. Any portable toilet or holding tank placed on the site shall be located underneath or behind the sales trailer and shall be screened from view.
6. The applicant shall satisfy the Department of Public Works that adequate sight distance has been provided entering onto Church Road and adequate parking has been provided on the site.

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

UP-23-2006 **Andrew Edmunds** requests a conditional use permit pursuant to Section 24-95(i)(4) to build a barn and a shed in the front yard at 9510 Osborne Turnpike (Newstead Farms) (Parcel 806-672-0958) zoned A-1, Agricultural District (Varina).

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Mr. Nunnally: Is there anyone else here that is interested in this case? If so, please stand and raise your right hand and be sworn.

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

Mr. Edmunds: I do.

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Mr. Nunnally: Please state your name for the record, sir, and tell us what you are requesting.

Mr. Edmunds: My name is Andrew Edmunds. I live at 9510 Osborne Turnpike, and let me first say that I appreciate the role you all play in enforcing the zoning ordinances in the County. I head a community group out in the area called ROOT, which stands for Respect for Old Osborne Turnpike. We are very interested in the property development of Henrico's (unintelligible) Corridor. My property is 14 acres and I am fortunate enough to have lived there for 12 years. It is on the river and, first of all, there is one question, that one may argue is actually the front of the house faces the river, which is what many people used to think, but anyway I am requesting to build a barn and shed where it is located and the staff has very accurately depicted my topographical situation. The flood plain, of course, the river, there is nowhere to build a structure down there and they accurately depicted what that situation is. You can see that it goes down and you can't really build a structure down there. I totally agree with all of their points that they have made in their analysis of my situation. What I am trying to do though is, and it is a very legitimate question, "Why do I need the barn and why do I need something this size?" While we can't build a structure in the bottom, it is zoned agricultural and we do plan to farm down there, and what we plan to do is I am going to grow about seven acres of feed stock to produce bio-diesel fuel. For the past two years I have been very interested in alternative energy and I currently operate a car that runs on 100% bio-diesel. It is certainly suitable and produces no harmful emissions. In order to produce this with 67 acres, that is 3,000 gallons a year and I need the space to have my equipment to be able to perform the agricultural part of it, but also to process this as fuel. The fuel is also less toxic than table salt. It creates no problems with the environment whatsoever. Basically, vegetable oil is what it is, and I need the space inside to do this, because what my plan is in two years I will be able to use this fuel to not only operate my vehicle, but I will be able to operate a back-up diesel generator with this fuel, and also with this structure that I propose built into the metal panels on the roof, I want to have solar panels, because actually in two years not only will I be totally off the grid, I will be sending power back to Dominion Power. It will be self sufficient out there. That is my plan in two years. I am very concerned about the energy situation for my children and grandchildren. If I could, Mr. Blankinship, could I put this in. (Referring to rendering). Actually in the actual foot print where we want to build the structure, this is not exactly what we want to build, but proportionately is a perfect barn, and this is what, historically, existed on the site. Mr. Meade had owned all of this property and he had a huge dairy operation and this is what was on the actual site where I want to reconstruct a barn, and it won't be this big, but the proportional lines will be the same. I'd like to have a (unintelligible) on top and I want to build it out of very high quality materials with a brick foundation or stone foundation, Hardiplank, metal roof and actually have garage bays and the sides coming in. I think this is a very appropriate thing to do in the area, to build something that was historically there.

990 So, I agree with all of the points that staff has made. One thing that I will be
991 asking for, however, I don't understand all of the Code issues, but they have
992 suggested, and I am reading this part of the Code, 15 foot height restrictions,
993 which I thought I read somewhere in the Code that there was a way to get a
994 special exception for the height restriction, because, obviously, with the 15 foot
995 height restriction, I cannot get the scale with the dairy barn. With the 15-foot
996 height restriction, it just can't be done. Plus, I need the surface area on the roof
997 that a barn provides to solar collection to store in the batteries and heat the back
998 of my house. So, this is my whole effort over the next couple of years, is to
999 develop this, become energy self-sufficient.

1000
1001 Mr. Kirkland: What height do you need?
1002

1003 Mr. Edmunds: I think I am going to need 44 feet. Bob Seal is going to design
1004 this for me; He is a very qualified architect. It is going to be a pole barn basically,
1005 and I am zoned A-1, and as I was reading the Code then, I thought that it was A-
1006 1 and in agricultural you could build. You know, the height restrictions didn't
1007 apply, but I don't understand all of it. I would be willing to. You all were
1008 suggesting a 3-foot setback. I will actually put it 10-feet away from the property
1009 line if I can get a little more height out of it to get the right roof slope to collect
1010 what I need to do to have the room. You have to have a crest and you have to
1011 have a place to store the fuel. You have to be able to dispense the fuel, and it is
1012 kind of like a little drilling operation that requires a little bit of space to do so.
1013

1014 Mr. Blankinship: I am sorry we didn't discuss this point more in advance. I
1015 understood from my conversations that the use of this building was going to be
1016 essentially an accessory to the house, to store personal vehicles and the sort of
1017 thing that is a garage, really. Using the word barn to describe the structure of it,
1018 but the use being more of a garage. If the use is agricultural, the purpose behind
1019 the building is primarily agricultural in nature, then it is not subject to that 15 foot
1020 height.
1021

1022 Mr. Edmunds: Oh, good, because my application does reference the
1023 storage of agricultural equipment is what I was requesting. I may not have been
1024 clear in the conversation, but it will be kind of mixed use. I will have to factor
1025 other equipment, processing equipment, probably my boat, so we will be in a
1026 mixed use, but I need to get enough room to kind of do all of that at the same
1027 time.
1028

1029 Mr. Blankinship: That is not really before the Board, but perhaps we can work
1030 that out later. And the condition that has been suggested, we will just delete the
1031 condition and just allow the code, and we can put that suggested condition #5 in
1032 there just to make sure everyone is aware of the height restrictions, but it doesn't
1033 have to be there. The height restriction of the Code is going to operate, so
1034 perhaps, it would be better Mr. Chairman, to remove that condition from here and
1035 let us work that out.

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Mr. Edmunds: And I will also offer as a condition instead of a 3-foot setback, I am going to put 10 feet from the property line. I don't want it to be jammed up against the property line.

Mr. Nunnally: Is this the same location that the barn was in before?

Mr. Edmunds: Almost exactly, sir.

Mr. Nunnally: So it has been there how long?

Mr. Edmunds: It has been there – Mr. Meade, you know had his dairy operation there in the 1940s, 1950s. There were actually two barns, two huge dairy barns right there, one of them on the Park property and one of them on my property. They were parallel, and this site is exactly where that other barn used to be.

Ms. Dwyer: You are speaking of what is called 40 x 30 barns and you had really asked for two structures.

Mr. Edmunds: I had. That is correct. I would like to put. First of all, these structures cannot be seen from the road. There are so many trees and everything, but I would like to have. This is a perfect spot when you come down my driveway to the left that I could put, and it matches the same metal roof, and I don't need the height restriction. Fifteen feet is fine for the height on this other structure. I just need a longer structure. I would like to put my boat actually in that structure. I can't get it anywhere else.

Ms. Dwyer: I guess I don't have a concern so much about the barn that is closer to the house, but the one that is closer to the road, I do have some concerns about, because I know one of the first times I was on this Board I did have an issue with someone who had put a shed in the front of the yard, I think one of your neighbors and the other neighbors were concerned about it because they could see it.

Mr. Edmunds: I know exactly what you are talking about and my neighbor on this side, Mr. Price, he doesn't have a problem with it because he can't see it at all, but, obviously, he was concerned about the other one because I feel that whole constructed project was done inappropriately without proper permission and it was totally inappropriate for the area, and I wish it would have never been built. So, I have been trying to go through the process appropriately and get all the conditions and do exactly what I think is very appropriate for the area.

Ms. Dwyer: What will the pole shed look like? I am talking about the structure closer to the road.

1082 Mr. Edmunds: It would be a metal roof and it would probably have the same
1083 Hardiplank siding on it. It may have matching metal siding, but it would basically
1084 be something I could back up into that would be screened by trees. And it will
1085 probably have swinging doors like a barn.
1086
1087 Ms. Dwyer: Would it be enclosed?
1088
1089 Mr. Edmunds: Yes, ma'am.
1090
1091 Ms. Dwyer: And you need a 24 x 30 for a boat?
1092
1093 Mr. Edmunds: I need 30. The boat is 48 feet long. I don't really need 24. I
1094 could probably get by with 15 or so, you know. That would be fine. I was just
1095 trying to get, while I am building, get as much as I possibly could to
1096 accommodate it.
1097
1098 Mr. Blankinship: And you said you would abide by the 15-foot height limit for
1099 that structure?
1100
1101 Mr. Edmunds: Yes, sir.
1102
1103 Mr. Kirkland: If you could put the other photo, that rectangular shaped
1104 structure on the property adjacent to you, what is that? It would be right...right
1105 next to your, that building?
1106
1107 Mr. Edmunds: That right there is actually the footprint, sir, of where the old
1108 barn used to be.
1109
1110 Mr. Nunnally: So there is nothing there? Right.
1111
1112 Mr. Edmunds: But now what they have built is behind that, that I can now
1113 see from my house is a utility structure that I believe runs the pumps and well
1114 system for the park over there. It is like some kind of utility building that I can
1115 actually hear and the light is kind of annoying coming from it, but it is so dark in
1116 my house, but yes. That is kind of a service structure there now. This other
1117 thing, my barn would block that view and that is good for me, because I won't be
1118 able to see it.
1119
1120 Mr. Nunnally: Now you say that neither one of these structures would be
1121 able to be seen from Osborne Turnpike?
1122
1123 Mr. Edmunds: That is correct, sir. Well, when you are driving down
1124 Osborne coming from the south here, looking up, you will probably see maybe
1125 across that loop there behind these other trees. That is where I think it would be
1126 an added feature, really, if you are driving down Osborne. You can see the top
1127 of the barn and it will look like a rural part of the community, and to the right is

1128 this other field. There is a barn there. So it really is kind of an added feature, I
1129 think, for the drive along Osborne.

1130
1131 Ms. Dwyer: In the winter won't you be able to see the pole shed that is
1132 close to the road?

1133
1134 Mr. Edmunds: Well, there are two layers of trees. The trees right up to the
1135 entrance of my driveway, and then there is another layer of trees, two layers of
1136 trees beside that creek there, but you may be able to see something there, dead
1137 leaves. But there are some evergreens in there, too.

1138
1139 Ms. Dwyer: How far is the pole shed from Osborne?

1140
1141 Mr. Edmunds: It is about, I think it is about 125 feet. It actually may be
1142 more than that.

1143
1144 Mr. Nunnally: Any other questions of Mr. Edmunds?

1145
1146 Ms. Harris: Yes. This here, the bottom part. Do you have that in your
1147 packet?

1148
1149 Mr. Edmunds: I do. Yes, ma'am. That is where I am actually working on my
1150 driveway there. I had a drainage problem from my garage where the skirt is
1151 going into my garage connected to my house. Can you see the reverse of that?
1152 The skirt is going toward the garage. When rain would come off of the house, it
1153 would actually take water into my garage, so while I was replacing that, while I
1154 was doing that work there I have tried to do some work on my road down to the
1155 river there, so this turns around by the river. So that is the site where I would like
1156 to put the barn, right there.

1157
1158 Mr. O'Kelly: Mr. Edmunds, you did indicate you would adjust your plans
1159 for Mr. Price?

1160
1161 Mr. Edmunds: Oh, yes, sir. He is there in support of this effort and has no
1162 problem with it at all.

1163
1164 Mr. Nunnally: That is #5 and we have talked about that.

1165
1166 Mr. Edmunds: Yes, that is the only one I had a problem with and I will
1167 closely work with you guys on the materials as we develop, because the metal
1168 roof, the solar panels I want to put in. They are not panels that stick out from the
1169 roof. Actually, they are flush with the roof, but there are other materials that are
1170 actually like shingles that you roll out in solar panels that collect more energy.
1171 So, as we move toward the development of this building, we may discuss it and
1172 say, "Guys, what do you think about this? These shingles entirely cover the
1173 structure and they all collect energy." We would be able to discuss that.

1174
1175 Mr. Blankinship: If the Board approves that condition, then that condition
1176 stands.
1177
1178 Mr. Edmunds: Well, could I put then a metal roof or other material approved
1179 by Planning staff?
1180
1181 Ms. Harris: Do both buildings, the garage and the shed have the same
1182 materials?
1183
1184 Mr. Edmunds: Yes, ma'am. Whatever I put on the barn, I will put the same
1185 material on the shed.
1186
1187 Ms. Harris: Are you saying now that it may not be metal?
1188
1189 Mr. Edmunds: I am just saying if I could put in there "Metal roof or materials
1190 approved by the Planning staff," because as we develop it, we may determine
1191 that shingles that roll out are connected to the grid. It might be a better solution
1192 to do some more (unintelligible).
1193
1194 Mr. Nunnally: Any other questions for Mr. Edmunds?
1195
1196 Ms. Dwyer: On condition 3 you said you would agree to change the three
1197 foot setback to 10 foot for both buildings? Does that apply to both buildings?
1198
1199 Mr. Edmunds: Well, it depends if I am able to get the, if I have 15 feet from
1200 the property line there going back 30 feet. I might need the 3 foot setback to the
1201 property line for that front building because of where it is. I may need the 3 foot
1202 requirements, but I could the 10 foot on the barn. That wouldn't be a problem.
1203
1204 Ms. Dwyer: And you have agreed to height limits for what is labeled the
1205 shed?
1206
1207 Mr. Nunnally: Any other questions? Hearing none, that concludes the
1208 case. Thank you, sir.
1209
1210 Mr. Edmunds: Thank you for your time and consideration. I appreciate it.
1211
1212 Ms. Dwyer: Mr. Chairman, I just wanted to clarify one thing. Since we
1213 can't impose conditions unless the applicant agrees, would you agree to a metal
1214 roof, or would you only agree to any material approved by Planning staff?
1215
1216 Mr. Edmunds: I will agree to any materials. A metal roof, I think would be
1217 the ultimate situation to have as far as value and looks, but I mean, I don't think
1218 Planning staff would object to a metal roof, but whatever the Planning staff
1219 agrees to. I may propose to them, "Can we use this?" and if they say no, I will

1220 have to do the metal roof, but integrated into the metal roof there needs to be
1221 solar connection in flux with the metal roof. You know? Is that clear? I am sorry.
1222
1223 Ms. Dwyer: If we decide that it needs to be metal, then you would agree
1224 to that?
1225
1226 Mr. Edmunds: Yes, ma'am.
1227
1228 Ms. Dwyer: That is not how I understood that.
1229
1230 Mr. Edmunds: Thank you very much.
1231
1232 Mr. Nunnally: Thank you, sir. Next case, Mr. Blankinship
1233
1234 **DECISION:**
1235
1236 Ms. Harris: I move we approve with standard conditions Nos. 3. We
1237 want to have a minimum of 10 feet for the barn or garage and 3 feet for the shed.
1238 Condition No. 5 we want to omit that altogether and Condition No. 6, all material
1239 approved by the Planning staff. That is my motion.
1240
1241 Ms. Dwyer: I think they also agreed to the condition about the 15 foot
1242 height limitations for the tool shed, but not the barn.
1243
1244 Ms. Harris: I think Mr. Blankinship said we would delete #5 altogether
1245
1246 Ms. Dwyer: It wouldn't apply on the pole shed either.
1247
1248 Mr. Blankinship: Yes, it is a requirement of the Code.
1249
1250 Mr. Nunnally: So you would leave it in. How about the other...
1251
1252 Mr. Blankinship: If he is going to actually use it as an agricultural building,
1253 then the 15 feet would not apply, but the other he is going to store his boat in.
1254
1255 Mr. Nunnally: I thought 15 feet would apply for that with respect to the
1256 shed.
1257
1258 Mr. Blankinship: It is better to leave it in...
1259
1260 Ms. Dwyer: Because he agreed to that, too.
1261
1262 Mr. Blankinship: Not the barn, but the shed.
1263
1264 Mr. Nunnally: Motion by Ms. Harris with the conditions she just stated. Do
1265 I have a second?

1266
1267 Mr. Kirkland: Second.
1268
1269 Mr. Nunnally: Second by Mr. Kirkland. All in favor...
1270
1271 Ms. Dwyer: Can we have some discussion before we vote? Does
1272 anyone have a concern about location of the pole barn being close to Osborne
1273 Turnpike? The barn is closer to the house and quite far back and, particularly, in
1274 light of the other cases we have had that have the shed so close to Osborne
1275 Turnpike and the neighbors had some issues. This is quite a bit closer to
1276 Osborne.
1277
1278 Mr. Nunnally: Well, the barn has been there for years.
1279
1280 Ms. Dwyer: The barn is not a problem. I agree. But the shed is closer to
1281 Osborne Turnpike and I think it would be visible in the winter time.
1282
1283 Mr. Nunnally: The shed is 15 feet tall, right?
1284
1285 Ms. Dwyer: It is 15 feet tall, and...
1286
1287 Ms. Harris: It has to be 100 feet from Osborne.
1288
1289 Mr. Nunnally: It will be and he said it is visible at times, but it is not clearly
1290 visible. There are evidently trees aligned around it.
1291
1292 Ms. Dwyer: I just raised that as a concern.
1293
1294 Mr. Nunnally: Is there any other discussion? Motion made by Ms. Harris
1295 and seconded by Mr. Kirkland to approve. All in favor say aye. Opposed say no.
1296 The case was approved.
1297
1298 After an advertised public hearing and on a motion by Ms. Harris and a second
1299 by Mr. Kirkland, the Board **granted** application **UP-23-2006** a request for a
1300 conditional use permit pursuant to Section 24-95(i)(4) to build a barn and a shed
1301 in the front yard at 9510 Osborne Turnpike (Newstead Farms) (Parcel 806-672-
1302 0958) zoned A-1, Agricultural District (Varina). The Board granted the
1303 conditional use permit subject to the following conditions:
1304
1305 1. This approval is only for the location of two accessory buildings in the front
1306 and side yard. All other applicable regulations of the County Code shall remain
1307 in force.
1308
1309 2. Only the improvements shown on the plan filed with the application may
1310 be constructed pursuant to this approval. Any additional improvements shall

1311 comply with the applicable regulations of the County Code. Any substantial
1312 changes or additions may require a new conditional use permit.

1313
1314 3. [AMENDED] The structures shall be set back at least 100 feet from the
1315 right-of-way of Osborne Turnpike. The 30' X 40' barn will be set back at least 10
1316 feet from all other property lines. The 24' X 30' pole shed will be set back at least
1317 3 feet from all other property lines.

1318
1319 4. With the exception of dead, dying or diseased trees, the existing trees
1320 shielding the proposed structures from Osborne Turnpike shall be preserved.

1321
1322 5. [AMENDED] The 24' X 30' pole shed shall not exceed 15 feet in height as
1323 defined by Code.

1324
1325 6. [AMENDED] The accessory buildings shall have exterior walls of
1326 hardiplank or stone and a metal roof, or other materials as approved by the
1327 Director of Planning.

1328
1329
1330 Affirmative: Harris, Kirkland, Nunnally, Wright 4
1331 Negative: Dwyer 1
1332 Absent: 0

1333
1334

UP-24-2006 **Mike and Peggy Crowley** request a conditional use permit pursuant to Section 24-95(i)(4) to build a pool in the side yard at 901 South Gaskins Road (West Knoll) (Parcel 739-733-2504), zoned R-0, One-family Residence District (Tuckahoe)

1335
1336 Mr. Nunnally: Is there anyone here who desires to speak on this case? If
1337 so, will you please stand and raise your right hand and be sworn?
1338

1339 Mr. Blankinship: Do you swear the testimony you are about to give is the
1340 truth, the whole truth, and nothing but the truth, so help you God?
1341

1342 Mr. Crowley: I do.
1343

1344 Mr. Nunnally: Please state your name for the record and tell us what you
1345 are requesting.
1346

1347 Mr. Crowley: Mike Crowley and Peggy Crowley are requesting a
1348 conditional use permit to build a pool in the side yard at 901 South Gaskins
1349 Road. I would like to point out in requesting that where we are requesting the
1350 pool that we stated in the staff report plus the support from some letters that you
1351 have a record of. The Club owns the property to the north and that property will

1352 never be developed and with the extra green space, you will not be able to see
1353 the pool from their property, but they are supportive. I also own the property in
1354 the front. You say 1-1/2 acres. My property is 2-1/4 on the lot in front, the pool
1355 cannot be seen anywhere from Gaskins Road and a good friend of mine owns
1356 the property to the south, which is totally undeveloped and you cannot see the
1357 pool from his property. So, the only place you can see the pool is from the golf
1358 course. I can see a screen and the Club is still supportive of this. As a matter of
1359 fact, they were over there again the other day, hoping that we would get
1360 approved and asking if they should come, and we told them no, because you all
1361 got a letter from them.

1362
1363 Mr. Kirkland: Is this the exact same plan we have heard before?

1364
1365 Mr. Crowley: Yes.

1366
1367 Mr. Blankinship: Is there a building proposed with this, like a little pool house?

1368
1369 Mr. Crowley: We would intend to probably build a pool house, but the pool
1370 house would be behind the setback of the back line of the house. It would not be
1371 in violation and we would not need a variance for that.

1372
1373 Ms. Dwyer: The rear yard, in other words.

1374
1375 Mr. Crowley: It would be between where the pool is actually shown and
1376 the pool would run diagonally beside the house, and it would be a small pool
1377 house if we decide to do one. It would be behind the rear of our house, but
1378 would not be in violation of any ordinance.

1379
1380 Ms. Dwyer: Well, we have a plan in our packet from Dalrymple.

1381
1382 Mr. Crowley: Yes, that plan right there would be consistent with what we
1383 plan to do.

1384
1385 Ms. Harris: I remember this case very vividly, but I just don't remember
1386 the answer to it. Who will provide the screen between the golf course and the
1387 pool?

1388
1389 Mr. Crowley: There is already a screen there. It is 20 foot trees and
1390 shrubs...(unintelligible) and the house that you have in there has been there for
1391 years.

1392
1393 Ms. Crowley: Then out front we have about 20 boxwoods that are planned
1394 to be moved around. If you look at the other side of my house, I have a perennial
1395 garden surrounded by English boxwoods and from the golf course you can't even
1396 tell there are any flowers in there. The first map that you had shows the house
1397 too far I think from the north side, but anyway, it will be totally screened with

1398 boxwood all around the pool. There will be, obviously, fencing, but there will be
1399 enough boxwoods that you will hardly even see the back.

1400
1401 Mr. Crowley: And there is already a brick wall in existence to the north end
1402 to...

1403
1404 Mr. Nunnally: Any other questions of Mr. and Mrs. Crowley?
1405

1406 Mr. Crowley: You can see part of the brick wall right there in that picture.
1407 That was screened. And the Club's property, the side property, is to the north of
1408 that and it must be maintained according to regulations and agreements with the
1409 property years ago when Gaskins Road was cut that has to be maintained
1410 between the space because there will never be another structure on that
1411 property.
1412

1413 Ms. Dwyer: Do we have letters from the neighbors besides what was in
1414 there and your attorney?
1415

1416 Mr. Crowley: All of the neighbors are in support of this. There has been
1417 no resistance to it whatsoever, and nobody can see the pool except us.
1418

1419 Mr. Nunnally: You had these letters twice before, didn't you?
1420

1421 Mr. Crowley: Yes, twice before.
1422

1423 Mr. Nunnally: Any other questions? Hearing none, that concludes the
1424 case. Thank you very much.
1425

1426 **DECISION:**
1427

1428 Ms. Dwyer: I move that this request for conditional use permit be
1429 approved. It is a required consideration to look at the condition of this structure
1430 and adjacent property and how this structure would affect the property, and it
1431 seems clear that the adjacent property of the Country Club of Virginia would
1432 bound this property on two sides, and if we approve this we'd prefer to have it on
1433 the side or set it in the rear yard as they stated in their letter that is part of the
1434 record. So, that is a particularly compelling argument. It is a pool. It is not going
1435 to be visible from the road because the house is some 300 feet from the road
1436 and any residence that would be built on the other side of the house would be
1437 unaffected, because the house would block their view of the pool. It seems to be
1438 a side yard setback of 71 feet, which is considerable from the adjacent property.
1439 So, for all of those reasons, I believe it would not have a negative impact on the
1440 surrounding properties and would actually have a positive effect on health, safety
1441 and welfare of surrounding properties.
1442

1443 Mr. Nunnally: Do I have a second?

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Mr. Kirkland: Second.

Ms. Harris: I do feel this couple needs to be commended because they did, they started a long journey. I believe it was last year and they followed the necessary route by going through the various boards to get various things accomplished, and it is good to meet people who are like that, taxpayers who follow the code of law. I think they are a prime example.

Mr. Nunnally: On UP-24-2006 there was a motion by Ms. Dwyer and a second by Mr. Kirkland to approve. All in favor say aye. The case is approved.

After an advertised public hearing and on a motion by Ms. Dwyer and a second by Mr. Kirkland, the Board **granted** application **UP-24-2006** a request for a conditional use permit pursuant to Section 24-95(i)(4) to build a pool in the side yard at 901 South Gaskins Road (West Knoll) (Parcel 739-733-2504), zoned R-0, One-family Residence District (Tuckahoe). The Board granted the conditional use permit subject to the following conditions:

1. This approval is only for the location of a swimming pool in the side yard. All other applicable regulations of the County Code shall remain in force.
2. Only the improvements shown on the plan filed with the application may be constructed pursuant to this approval. Any additional improvements shall comply with the applicable regulations of the County Code. Any substantial changes or additions may require a new conditional use permit.

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

A-21-2006 **Andrew P. Radvany** requests a variance from Section 24-95(b)(8) to build a one-family dwelling at 7896 Battlefield Park Road (Parcel 808-689-0421), zoned A-1, Agricultural District (Varina). The lot width requirement is not met. The applicant has 90 feet lot width, where the Code requires 150 feet lot width. The applicant requests a variance of 60 feet lot width.

1477 Mr. Nunnally: Is there anyone else here who desires to speak on this case.
1478 If so, will you please stand and raise your right hand and be sworn.
1479

1480 Mr. Blankinship: Raise your right hand please. Do you swear the testimony
1481 you are about to give us is the truth, the whole truth, and nothing but the truth so
1482 help you God?
1483
1484 Mr. Radvany I do.
1485
1486 Mr. Nunnally: Please state your name for the record, sir, and tell us what
1487 you are requesting.
1488
1489 Mr. Radvany: My name is Andrew P. Radvany and I am requesting a
1490 variance of 60 feet lot width. My lot has 90 feet lot width now and the Code
1491 requires 150 feet lot width. That is the only thing I am requesting.
1492
1493 Ms. Dwyer: Mr. Radvany, this property is owned by someone else. Is
1494 that right?
1495
1496 Mr. Radvany: That is correct.
1497
1498 Ms. Dwyer: Mrs. Pridgen.
1499
1500 Mr. Radvany: Yes.
1501
1502 Ms. Dwyer: And do you know when these lots were created, to be too
1503 small to be developed under the current Code?
1504
1505 Mr. Radvany: I would say, I live at 7884 Battlefield Park, and I would say
1506 back in maybe the 1950s, 1960s, somewhere around there. I am not too sure.
1507
1508 Ms. Dwyer: Does Ms. Pridgen own all of these lots?
1509
1510 Mr. Radvany: No. She just owns that one.
1511
1512 Ms. Dwyer: Just 7896, because 7884, I think is the one you developed
1513 earlier, and you received a variance on that. Did she own that at that time?
1514
1515 Mr. Radvany: No, she didn't.
1516
1517 Mr. Wright: Have you tried to buy any property from the owner at 7900 to
1518 meet the requirement or to buy that lot?
1519
1520 Mr. Radvany: Yes, I have. They did not want to sell at this time, and I also
1521 tried 7902, also. I wanted to get those two lots along with this one, to make one
1522 complete lot, and Ms. Pridgen was the only person who wanted to sell at this
1523 time.
1524
1525 Mr. Kirkland: Did you develop the one at 7884?

1526
1527 Mr. Radvany: Yes, sir.
1528
1529 Mr. Kirkland: That you had a variance on?
1530
1531 Mr. Radvany: Yes, sir.
1532
1533 Mr. Kirkland: You put a home on that?
1534
1535 Mr. Radvany: Yes, sir.
1536
1537 Ms. Dwyer: What is the square footage of that home?
1538
1539 Mr. Radvany: It is 1,040 square feet.
1540
1541 Mr. Kirkland: What was the variance that you gave on that particular lot,
1542 7884?
1543
1544 Mr. Blankinship: I remember it was lot width. I don't remember if there was
1545 anything in addition.
1546
1547 Mr. Kirkland: It was a lot more than this one.
1548
1549 Mr. Radvany: The lot width on 7884 was 70 foot, which was the actual lot
1550 width compared to that one.
1551
1552 Ms. Harris: Do you have a copy of a letter from the land owners?
1553
1554 Mr. Blankinship: I just faxed it to him. He hasn't had a chance to read it.
1555
1556 Ms. Harris: We don't have addresses for these. Are you familiar with
1557 these persons who signed this letter?
1558
1559 Mr. Radvany: Yes, ma'am, I am.
1560
1561 Ms. Harris: They are your neighbors?
1562
1563 Mr. Radvany: Yes, ma'am.
1564
1565 Ms. Harris: Do you know why they are so unequivocally opposed to your
1566 receiving a variance?
1567
1568 Mr. Radvany: This is the first I have seen this.
1569
1570 Ms. Harris: They did not like the house you built when you received the
1571 other variance?

1572
1573 Mr. Radvany: Ms. Fields, Ms. Walker, I am going to be renting the house to
1574 her niece. It is all family that lives in there. I don't understand.
1575
1576 Ms. Dwyer: I am sorry none of them are here, because they don't say
1577 why.
1578
1579 Mr. Radvany: They didn't understand what was going on.
1580
1581 Mr. Blankinship: They don't give any reasons for their...
1582
1583 Mr. Radvany: (Unintelligible) that I know of. I don't know.
1584
1585 Mr. Nunnally: We don't know even where they live.
1586
1587 Mr. Radvany: All of these are right next to me.
1588
1589 Mr. Nunnally: All of these people.
1590
1591 Mr. Radvany: Yes.
1592
1593 Ms. Dwyer: Each is owner of abutting property and property immediately
1594 across the road from this, adjacent to across the street, but we don't know their
1595 addresses.
1596
1597 Mr. Radvany: I am very familiar with Ms. Walker at 7892 and I have met
1598 the other neighbors at 7874, and I have never had any complaints or anything.
1599 Ms. Walker has been very helpful with me as far as construction of my house.
1600
1601 Mr. Nunnally: Where do you propose to locate the house on this property?
1602
1603 Mr. Radvany: I am going to have that house back...
1604
1605 Mr. Nunnally: Is it going to be 250 feet from the road?
1606
1607 Mr. Radvany: Yes, sir.
1608
1609 Mr. Nunnally: I asked before if we had any opposition on this case. We
1610 have several, I think, that are against it. Did any one of you sign this letter, in the
1611 audience today? OK, go ahead. Any other questions?
1612
1613 Mr. O'Kelly: Sir, could you tell us the process for applying for the National
1614 Park Service for driveway entrances to this property?
1615
1616 Mr. Radvany: Yes, I went to the National Park Service before I came to the
1617 Board for the variance, and he said they require access every 500 feet, and if I

1618 can get access through 7892, then I would be fine, and I talked with Mr. Ken Marr
1619 with the Park Service and he said that would be fine with him, and I can get
1620 something on paper.

1621
1622 Mr. Wright: So, 7892 is going to give you access to the property or is he
1623 opposed to you doing the project.

1624
1625 Mr. Radvany: This is the first I have heard of that.

1626
1627 Mr. Wright: I just want to make sure it is in the record.

1628
1629 Mr. Radvany: Yes.

1630
1631 Mr. Blankinship: Four of these names appear to match people that received
1632 notices of the case, for whatever that is worth.

1633
1634 Mr. Wright: What was that?

1635
1636 Mr. Blankinship: Four of the names on the list appear to match the names to
1637 which we sent notice letters. We have a different first name, but we did send a
1638 notice to a Field, so I am assuming that is related to the two that signed here. Of
1639 course, again it is a different first name and Walker.

1640
1641 Ms. Dwyer: Mrs. Walker lives at 7892?

1642
1643 Mr. Radvany: Yes, I am more familiar with her than any of the other ones.
1644 I know the names, but I don't know the other names from the other side.

1645
1646 Ms. Dwyer: That would be Edith B. Walker?

1647
1648 Mr. Radvany: Yes.

1649
1650 Ms. Dwyer: You haven't made any agreements to get access from her
1651 property to your property. Anything in writing?

1652
1653 Mr. Radvany: I can get something in writing. I have already spoken to her.
1654 She said it wasn't any problem at all.

1655
1656 Ms. Dwyer: She has changed her mind.

1657
1658 Mr. Nunnally: It seems if she doesn't give you access, then it is all a no
1659 deal because the Park Service won't allow you to use the property. Is that
1660 correct?

1661
1662 Mr. Radvany: That is correct.

1663

1664 Mr. Nunnally: And you have read the other condition, all of the conditions
1665 of this case proposed by the staff?

1666
1667 Mr. Radvany: What are the other conditions?

1668
1669 Mr. Nunnally: Well, there are four of them. I didn't know if you had read all
1670 of them.

1671
1672 Mr. Radvany: Oh, yes.

1673
1674 Mr. Nunnally: Any other questions? Hearing none, that completes the
1675 case.

1676
1677 **DECISION:**

1678
1679 Mr. Nunnally: Do I have a motion on A-21-2006, Andrew P. Radvany?

1680
1681 Ms. Dwyer: I move we deny it.

1682
1683 Mr. Nunnally: Motion by Ms. Dwyer to deny. Is there a second to that or
1684 discussion?

1685
1686 Ms. Dwyer: Did we have a second?

1687
1688 Mr. Nunnally: No. Do we have a motion to be approved?

1689
1690 Mr. Wright: I move we approve it.

1691
1692 Mr. Kirkland: Second.

1693
1694 Mr. Nunnally: A motion by Mr. Wright to approve and a second by Mr.
1695 Kirkland.

1696
1697 The grounds of approval under the Cochran case is this property cannot be used
1698 unless we specify they could not acquire property on either side. Therefore, the
1699 lot is unbuildable and I think that creates a hardship and is a reason under the
1700 Cochran decision for us to approve it.

1701
1702 Ms. Dwyer: I think this creates an interesting dilemma for us because
1703 anybody can divide their property anyway they want to and create a lot. That
1704 was done in this case and the lot that was created did not meet the required lot
1705 width for road frontage, and just because someone creates a lot, doesn't mean
1706 that they can sort of do the backdoor or to hoodwink us into having to approve it,
1707 because they can't use it otherwise. It just seems to me that is a way of getting
1708 around the requirement of the ordinance, creating a lot that is too small, and then

1709 you come back and say, "Well, I can't use it because it is too small and I need a
1710 variance."

1711

1712 Mr. Nunnally: He doesn't do that.

1713

1714 Ms. Dwyer: He didn't individually do that, because he is the contract
1715 purchaser who wants to build a house on it, and I think he could probably acquire
1716 property. It is not impossible because lot 7900 is not developed. It may just be a
1717 disagreement about how much the cost would be, so it is not like the other case
1718 in which the person couldn't acquire property for legitimate reasons. We don't
1719 know what the reasons are here. I just think that there are two reasons that we
1720 could deny this under Cochran and one would be that we could consider the
1721 property as a whole, as the property before it was divided, and the second is a
1722 self-imposed hardship that these lots were created too small under the
1723 ordinance. That would be another way of looking at it.

1724

1725 Mr. Nunnally: Motion by Mr. Wright to be approved and seconded by Mr.
1726 Kirkland. All in favor say aye. All opposed say no. The case is approved.

1727

1728 After an advertised public hearing and on a motion by Mr. Wright and a second
1729 by Mr. Kirkland, the Board **granted** application **A-21-2006** a request for a
1730 variance from Section 24-95(b)(8) to build a one-family dwelling at 7896
1731 Battlefield Park Road (Parcel 808-689-0421), zoned A-1, Agricultural District
1732 (Varina). The Board granted the variance subject to the following conditions:

1733

1734 1. This variance applies only to the lot width requirement. All other
1735 applicable regulations of the County Code shall remain in force.

1736

1737 2. Approval of this request does not imply that a building permit will be
1738 issued. Building permit approval is contingent on Health Department
1739 requirements, including, but not limited to, soil evaluation for a septic drainfield
1740 and reserve area, and approval of a well location.

1741

1742 3. At the time of building permit application, the applicant shall submit the
1743 necessary information to the Department of Public Works to ensure compliance
1744 with the requirements of the Chesapeake Bay Preservation Act and the code
1745 requirements for water quality standards.

1746

1747 4. At the time of building permit application, the applicant must submit a copy
1748 of an entrance permit from the National Park Service, granting permission for the
1749 lot's driveway to access Battlefield Park Road.

1750

1751

1752 Affirmative: Harris, Kirkland, Nunnally, Wright 4

1753 Negative: Dwyer 1

1754 Absent: 0

1755

A-22-2006

Sandra Davis requests a variance from Section 24-95(b)(8) to build a one-family dwelling at 6969 Strath Road (Parcels 817-698-2010, 1628 and 0449), zoned A-1, Agricultural District (Varina). The lot width requirement is not met. The applicant has 142 feet lot width, where the Code requires 150 feet lot width. The applicant requests a variance of 8 feet lot width.

1756

1757 Mr. Nunnally: Is there anyone here interested in this case? If so, raise
1758 your hand and be sworn in.

1759

1760 Mr. Blankinship: Do you swear that the testimony you are about to give us is
1761 the truth, the whole truth, and nothing but the truth so help you God?

1762

1763 Mr. Hopper: I do.

1764

1765 Mr. Nunnally: Please state your name for the record, sir, and tell us what
1766 you are requesting.

1767

1768 Mr. Hopper: My name is Cameron Hopper and we are also requesting a
1769 lot width variance. We have actually have to have 150 foot setback and it is
1770 142.752, so we are requesting a 7.25 foot variance. Basically what we did was
1771 Mr. George Davis has died and Ms. Sandra Davis is the executor of the estate
1772 and at this point she is trying to settle the estate, so what we have done is we
1773 have combined three pieces of property, that little shoe kind of thing up there is
1774 three pieces of property. We have combined all three pieces of property to make
1775 it 2.42 acres, and we are going to build one building which you see up here. That
1776 is the accurate size house, and there are some wet areas on that first piece, but
1777 we will be able to set the driveway up along the right-hand side of that road and
1778 make a cut of one piece. We are not sure if that stream is here or not, but it
1779 would be in compliance with all of the ordinances for getting driveways through
1780 there and we would not touch the wetlands, if they do deem them wetlands, in a
1781 very limited fashion. I did look into the right-hand side of the property, but, of
1782 course, it is a piece of property over there would kind of infringe on a couple of
1783 the outbuildings that they have, and there was a piece of property on the left-
1784 hand side that doesn't have enough road frontage as it is, so I think the property,
1785 just because it is at a time when 150 foot setback was different. I think they have
1786 owned the property for 45 years, so it was a different setback. And we can
1787 purchase property on either side, so we are left with that particular setup.

1788

1789 Mr. Nunnally: What size home are you planning on putting here?

1790

1791 Mr. Hopper: I think I applied for a 1,300 square foot ranch-style home.

1792

1793 Mr. Nunnally: And this is the only home that is going to be built on that
1794 piece of land, 2.42 acres?
1795

1796 Mr. Hopper: That is all they are going to allow me to build.
1797

1798 Ms. Dwyer: Is that because of septic?
1799

1800 Mr. Hopper: It is because of septic and also road frontage, and that first
1801 lot is coming in quite wet and I talked to the Planning staff and they said they are
1802 not going to really allow for anything in there, but then we don't have another 150
1803 feet to allow for another house. The only thing we could do, we could potentially
1804 propose a development, which would not be economically feasible. And that
1805 1,300 square foot house is in keeping with the houses that are right in that
1806 general area.
1807

1808 Mr. Nunnally: Any other questions of Mr. Hopper?
1809

1810 Ms. Dwyer: You are asking for an 8 foot variance. Is that right?
1811

1812 Mr. Radvany: Yes, 7.25, but 8 feet is what we wanted.
1813

1814 Mr. Blankinship: Yes, we round it up just in case of survey error.
1815

1816 Ms. Dwyer: This says 7 feet here...
1817

1818 Mr. Blankinship: It looks like we changed the width, but we didn't change the
1819 request. For us to get 141 (unintelligible). Sorry about that.
1820

1821 Mr. Nunnally: Any other questions? All right. You have a seat sir and we
1822 will hear from the opposition and you will have time for rebuttal. Oh, OK. That
1823 concludes the case. Do you have anything to add?
1824

1825 **DECISION:**
1826

1827 Ms. Dwyer: I move we approve.
1828

1829 Mr. Wright: Second.
1830

1831 Mr. Nunnally: Motion by Ms. Dwyer and second by Mr. Wright. All in favor
1832 say aye. The case is approved.
1833

1834 Ms. Dwyer: I am going to retract my motion. We need to change the
1835 application from a 7 foot variance to an 8 foot variance. That would be part of my
1836 motion if everyone agrees.
1837

1838 Mr. Nunnally: That is fine.

1839
1840 Ms. Dwyer: This is different to me in my mind from the other case,
1841 because instead of dividing a piece of property so the lots are too small, this
1842 person is consolidating three lots, two of which have no road frontage, and the
1843 other lot has so many wetlands that it couldn't be developed on its own, so it
1844 appears to me that it is opposite of the case we just heard. We are creating a
1845 larger parcel through undevelopable parcels and one parcel that may be short
1846 road frontage, but it couldn't be developed otherwise.

1847
1848 Mr. Nunnally: This you would say is the true meaning of the Cochran
1849 decision.

1850
1851 Ms. Dwyer: I think this is a good example of Cochran that was intended
1852 to allow us to approve a variance.

1853
1854 After an advertised public hearing and on a motion by Ms. Dwyer and on a
1855 second by Mr. Wright, the Board **granted** application **A-22-2006** a request for a
1856 variance from Section 24-95(b)(8) to build a one-family dwelling at 6969 Strath
1857 Road (Parcels 817-698-2010, 1628 and 0449), zoned A-1, Agricultural District
1858 (Varina). The Board granted the variance subject to the following conditions:

1859
1860 1. This variance applies only to the minimum lot width requirement. All other
1861 applicable regulations of the County Code shall remain in force.

1862
1863 2. Approval of this request does not imply that a building permit will be
1864 issued. Building permit approval is contingent on Health Department
1865 requirements, including, but not limited to, soil evaluation for a septic drainfield
1866 and reserve area, and approval of a well location.

1867
1868 3. At the time of building permit application, the applicant shall submit the
1869 necessary information to the Department of Public Works to ensure compliance
1870 with the requirements of the Chesapeake Bay Preservation Act and the code
1871 requirements for water quality standards.

1872
1873 4. The three parcels shall be combined into one prior to the issuance of a
1874 building permit.

1875
1876
1877 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5
1878 Negative: 0
1879 Absent: 0

1880
1881
1882 **A-23-2006** **Prospect Homes** requests a variance from Section 24-94 to
1883 allow a one-family dwelling to remain at 4201 Palomill Circle
1884 in Hillcrest Farms, zoned R-2C, One-Family Residence

1885 District, Conditional (Fairfield). The front yard setback is not
1886 met. The applicant has 36 feet front yard setback, where the
1887 Code requires 45 feet front yard setback. The applicant
1888 requests a variance of 9 feet front yard setback.
1889

1890 Mr. Nunnally: Is there anyone here interested in this case. If so, please stand
1891 and raise your right hand and be sworn.
1892

1893 Mr. Blankinship: Do you swear the testimony you are about to give is the
1894 truth, the whole truth, and nothing but the truth, so help you God?
1895

1896 Mr. Evan Paner: I do.
1897

1898 Mr. Nunnally: Please state your name for the record, sir, and tell us what you are
1899 requesting.
1900

1901 Mr. Paner: Mr. Chairman and members of the Board, my name is Evan
1902 Paner and I am representing Prospect Homes. As the staff report indicates, we
1903 are requesting a variance of 8.5 feet from the front yard setback on the subject
1904 parcel. I want to quickly summarize how we got here today and maybe see what
1905 we can figure out here.
1906

1907 On this lot, Prospect Homes is constructing, in order to be given to St. Jude's
1908 Children's Hospital, where they would sell raffle tickets and give this house away
1909 the first week in August of this year. This is our second year that we have
1910 worked with St. Jude's. Our first one was in Chesterfield County last year. It has
1911 been a very good success for St. Jude's and for the community and we wanted
1912 to do everything we could to stay a part of that. With that, in order for scheduling
1913 and being able to deliver a lot on time, this was an opportunity for us to continue
1914 that relationship, so Prospect Homes applied for a building permit back on
1915 December 29, 2005. Now this was prior to recordation of the subdivision and
1916 Prospect Homes employees worked with the County on agreeing to review the
1917 permit and try to get us to the point where upon recordation of the subdivision
1918 that permit would be ready and we could, as quickly as possible, look towards
1919 completion of that house.
1920

1921 With the help and support of the County staff, we did receive a building permit on
1922 April 5, 2006, and we did, as the staff report indicates, we did pour the footings
1923 one week prior to final approval of that building permit, and that was with the
1924 understanding and knowledge of Greg Revels, the Building Official, that should
1925 any setbacks have to be changed, once the final building permit was approved,
1926 that we would relocate those footings. We had all of the proper inspections and
1927 the County officials were aware of that.
1928

1929 Regarding the setbacks that they were shown, the setbacks that we poured
1930 these footings on we received an approved building permit on April 5, 2006 and

1931 were incorrect. They were 36-1/2 feet narrow. There was no revised plot plan
1932 that we ever submitted that did show a 45 foot front yard. I believe the staff
1933 report was indicating that there was, that they didn't find, but we never did
1934 prepare any plat, and we certainly would have had we been aware of the front
1935 yard setbacks. I am quick to acknowledge that there is room on this lot to put
1936 that house, but we were working in good faith and did receive an approved
1937 building permit for the setbacks that did not meet the minimum requirements.
1938 We discovered this issue on April 13 when we were preparing (unintelligible). By
1939 that time the subdivision plat had been recorded and we were preparing our
1940 other building permits for the subdivision, and that is when we realized that while
1941 the 45 is the front yard setback, how did we get a 37 foot front yard on the first
1942 permit. So, we notified the County, and the County issued a stop work order.
1943 We met with the County and I think the mutual recommendation at that point was
1944 to come and present our case to you guys here at this hearing.

1945
1946 Now regarding your three threshold questions on the Board, I do acknowledge
1947 again that the lot is large enough to accommodate this dwelling with the correct
1948 setback, but I have to disagree that the hardship was self-imposed. We were not
1949 hiding anything from the staff. We received approval of the building permit and
1950 began construction on the house based on that approved building permit.
1951 Pouring the footings in prior to approval of the permit was agreed to by County
1952 officials. I think based on this unique situation, I believe that the BZA is well
1953 within its rights to approve the requested variance. This house is on a cul-de-sac
1954 lot. There won't be any break or invisible line nor appear to be any major
1955 discrepancies on front-yard setbacks between this lot and the other lots we have
1956 in the neighborhood. With that, I do have today two representatives from
1957 Prospect Homes who were involved in the day to day permit review work with the
1958 County staff, where they both tried to do everything. The staff was very helpful
1959 with us throughout the process, and I think, unfortunately, that an error occurred
1960 prior to (unintelligible), but I think that denying this variance is unreasonably
1961 restricting and does create a hardship that again was not self imposed by us, so
1962 thank you for that, and I will be available to answer any questions, and I think
1963 some other people want to talk. I don't know if you want to.

1964
1965 Mr. Nunnally: I want to get clear on one thing. What does the fact that the
1966 footings were poured a week before have to do with it. That shouldn't have been
1967 done, but you stated that the house was built pursuant to a building permit issued
1968 by the County. Is that right?

1969
1970 Mr. Paner: Yes, sir. With the setbacks 8-1/2 feet below the minimum
1971 setback.

1972
1973 Mr. Nunnally: How does that happen, Mr. Blankinship? Do we have any
1974 explanation of how the building permit was issued with a front yard setback eight
1975 (8) feet too close to the road?
1976

1977 Mr. Blankinship: Mr. Overmann, in the Permit Center, is here. He was sworn
1978 and he probably is the best person to answer that.
1979
1980 Mr. Nunnally: OK. But he has an answer to that.
1981
1982 Ms. Dwyer: Mr. Paner, you stated that when the footings were poured a
1983 week before you actually got the building permit, that someone agreed to that
1984 from the County?
1985
1986 Mr. Paner: The Building Official, Mr. Revels.
1987
1988 Ms. Dwyer: And then you also said that if there were a problem with the
1989 footings, you would move them?
1990
1991 Mr. Paner: Right, based on the approved permit, which we then
1992 received one week later.
1993
1994 Ms. Dwyer: And the approved permit...
1995
1996 Mr. Paner: The approved permit matched...
1997
1998 Ms. Dwyer: Appeared to match where you had already poured the
1999 footings?
2000
2001 Mr. Paner: Yes.
2002
2003 Ms. Harris: I do have a question. We have in our staff report that the
2004 applicant was asked to submit the necessary revisions, so you were aware that
2005 you had submitted revisions.
2006
2007 Mr. Paner: We worked, and again, I think something that (unintelligible)
2008 and Gregory can answer as far as the interaction in the month. If you look, I do
2009 have a copy of the comments from the internet from the building permit. There
2010 was no mention from anyone here regarding the front yard setbacks.
2011
2012 Ms. Dwyer: So we don't know where the idea came from that there was
2013 a revised plan?
2014
2015 Mr. Paner: That was something that when we met on April 17 with the
2016 County staff, they indicated that they knew they had seen a revised plot plan that
2017 we had submitted but they could not locate their copy. And I can tell you and
2018 everybody that we did not do one, and had that been the case, believe me, I
2019 don't want to be here anymore than you want me to. I would have loved to have
2020 been correct.
2021
2022 Mr. Nunnally: When was the error detected?

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2068

Mr. Paner: It was detected on April 13.

Mr. Nunnally: When was the house construction begun?

Mr. Paner: Well, we did the footings...

Mr. Nunnally: I am talking about the house.

Mr. Paner: The house we started framing it on or about April 5.

Mr. Nunnally: How much was done by April 13? That is just a week, eight days later.

Mr. Paner: Yes, sir, and again, I think Rob and Helen can answer some of that better than I can. We had an extremely tight schedule on that and we had multiple shifts...

Mr. Nunnally: But when there was an error detected, why didn't you stop construction?

Mr. Paner: We did. We notified the County and they issued a stop work order that day.

Mr. Nunnally: Well, isn't the house completed now?

Mr. Paner: No, sir. It has been in the same position.

Mr. Nunnally: I thought it was completed.

Mr. Paner: That is the way it has been since April 13 or thereabouts.

Mr. Nunnally: You stopped when they told you.

Mr. Paner: Yes, sir.

Mr. O'Kelly: Mr. Chairman, may I make a comment, please. I am the person that approved the building permit application for zoning for this dwelling. Based on the circumstances and the charitable nature of the proposal and the fact that the subdivision plat had not been recorded, I was working with Mr. Paner to expedite the permit, and I wasn't sure that the permit did meet the zoning requirements of the Permit Center. I didn't actually look at it personally, but I did approve the plat, or did approve the application.

Mr. Paner: I did talk to Mr. O'Kelly because I was trying to rush the recordation of the subdivision plat through so we could get that permit, and Mr.

2069 O'Kelly and I kind of had an agreement that if everything was good on the permit,
2070 he would go ahead and approve the permit prior to recordation, and absolutely
2071 no good deed goes unpunished.
2072

2073 Ms. Harris: Do we have a copy in our records of the revised information
2074 or revisions, because I can see that was received before the permit was issued
2075 on April 6, according to this report. Once the revisions and additional information
2076 was received, the permit was issued. So, there is a report of revisions with some
2077 information on revisions, is there not, that the staff should be aware of and the
2078 developer should be aware of. Do we have anything in our records for that?
2079

2080 Mr. Blankinship: I think that is a point of contention here. I think Mr.
2081 Overmann would be the best one to address that.
2082

2083 Mr. Nunnally: Are there any other questions for Mr. Paner? Is anyone else here
2084 to speak for this case? You have to come down to the microphone and be sworn
2085 in.
2086

2087 Mr. Blankinship: Do you swear the testimony is the truth, the whole truth, and
2088 nothing but the truth, so help you God.
2089

2090 Mr. Coney: I do.
2091

2092 Mr. Blankinship: State your name please.
2093

2094 Mr. Coney: Charles A. Coney. I am a professional engineer and the firm
2095 that inspected the footings for the County on the 31st before the permit was
2096 issued. Then, I was the one, if you saw the letter that was submitted, that came
2097 back out on the 10th and re-inspected it to make sure that it applied with the
2098 approved set of County prints.
2099

2100 Mr. Nunnally: The 10th of April?
2101

2102 Mr. Coney: Yes. I believe that was the date. Yes. It was the 31st of
2103 March when they started excavation and the concerns that the Building Permit
2104 Department had at the time was whether or not there was any fill, because we
2105 had some swells on site that weren't recorded that needed to be recorded in
2106 order to get the plat approved by the 4th and when the approved set of prints
2107 were sent out on the 4th, I went out a week later on the 10th and did a – the
2108 reason why they were at such a fast past is because this is a St. Jude's house
2109 and they are trying to expedite this. I went out on the 10th and noticed that
2110 everything was done by the approved set of prints, the footer, the foundation was
2111 all done by the approved set of prints, even the setbacks that were on the set of
2112 prints.
2113

2114 Mr. Nunnally: So you pulled a line for the case to make sure...

2115
2116 Mr. Coney: No. I am not required in this County to pull a tape. I am
2117 required to, in this County, to just make observations, but they don't require us to
2118 say it meets the setbacks or anything like that, because they send independent
2119 people out, which came out three days later and actually pulled the tape and
2120 found the 8 foot difference than what you all had.
2121
2122 Ms. Dwyer: Was that a County person who discovered that on the 13th?
2123
2124 Mr. Coney: Yes, it was.
2125
2126 Ms. Dwyer: Was it an inspector or...
2127
2128 Mr. Coney: I believe it was. Your question was it at such a fast pace,
2129 and it was because they had people who were trying to move in somewhere, I
2130 think, along in June, so they had asked all of the subcontractors and everybody
2131 that was involved, including the County, if they could put it on a fast track to help
2132 them expedite it along.
2133
2134 Ms. Dwyer: So the plans you were looking at, well you didn't measure
2135 actually the setback in the front?
2136
2137 Mr. Coney: No, ma'am. I did not.
2138
2139 Ms. Harris: Were you aware that there were revisions? Were you aware
2140 that there was a revised report?
2141
2142 Mr. Coney: No. I was not aware. I was aware in talking with Greg
2143 Revels, I was aware that there were some issues in the Utility Department, and
2144 there were some issues with the swells and the drainage. That is where the
2145 issues were. As far as the building setback itself, there has never been any
2146 comment that hasn't already been answered.
2147
2148 Mr. Nunnally: Any other questions for Mr. Coney? Does anyone else want to
2149 speak for the case?
2150
2151 Mr. Helland: My name is Robert Helland, Prospect Homes. The revision
2152 that is being talked about was actually a revision to the plan itself, not the plan,
2153 although we did have to get another plat. We received the plat back and we
2154 went back in for a revised plat because it had an incorrect front, so it was about
2155 four inches difference. That is what the revision was. We used the same
2156 setback as the first plat. We looked up on the County records and there was no
2157 record of saying you didn't meet the setbacks, so what we did was, we went
2158 ahead and got with our engineer, revised the plat for the four inches of brick,
2159 asked what the revision was. We took it in and moved it. The comment that is
2160 on the print out as far as we can't change making the revisions themselves, the

2161 permit was accepted because of the brick front, so when they told us it was
2162 recorded, we got a new plat. We brought it in to Permitting for review. They
2163 reviewed it that day and we thought we were going to get the permit back that
2164 day and I had two of my staff sitting in there ready to pick up the permit, which
2165 didn't happen because it was in Planning at that particular point. Mr. Coney was
2166 there on a different matter. I talked to Greg Revels. He then went to get, I
2167 believe, Harold, and then they went back to Planning and they signed off on that,
2168 and that is how we got the permit. When we got back to the job site, the plat that
2169 we had with the approved set of permit prints was exactly the same as what we
2170 had out in the field and built that house accordingly. As stated by Evan, we
2171 discovered the error by, when we were going in with our engineer putting in new
2172 permits that the permits had a 45 foot setback, and he said, "Wait a second. Why
2173 is this 38 and this is 45?" That is when we contacted the County and within the
2174 next day or so met with Laurie and Charles Coney out on the site with two staff,
2175 one from Review and one from Planning, and that is when the stop work order
2176 came and we have not done anything to that house since.

2177
2178 Mr. Wright: How did this happen? A house is laid out. Usually it is
2179 checked by a surveyor who checks the distance from the roads to the house. An
2180 error, how did it happen? The County didn't lay it out.

2181
2182 Mr. Nunnally: They were relying on somebody's statement that there was
2183 adequate frontage on the building permit.

2184
2185 Mr. Coney: The building permit was submitted without the approved set.
2186 We tried to get it in while we were working at the County. We got the permit in
2187 along with a preliminary plat that would be before the subdivision was recorded.
2188 When the subdivision is recorded, which had it at roughly 38 feet, 37 feet, they
2189 then went through the review process. The subdivision got recorded. We
2190 checked on line if there was anything that we needed to do since we put the
2191 original permit in. It wasn't there. Nothing was there. Everything was ready to
2192 go. That is when Evan got involved and said we need your help. Everything
2193 appears to be OK, ready to go. We got the permits back. It matched what we
2194 had. That is how we started building a house.

2195
2196 Mr. Nunnally: Who laid it out?

2197
2198 Mr. Coney: The engineer laid it out according to the approved plat at that
2199 time.

2200
2201 Mr. Nunnally: And the distance was 45 feet.

2202
2203 Mr. Coney: No. It is exactly what the permit says.

2204
2205 Mr. Nunnally: Why wasn't it 45 feet when he laid it out?
2206

2207 Mr. Coney: Because that is what he had on the permit.
2208
2209 Mr. Helland: Because the subdivision plan had not been approved.
2210
2211 Mr. Coney: That is correct.
2212
2213 Mr. Nunnally: So you didn't know where the street was?
2214
2215 Mr. Coney: The streets were in. We had a plat that showed 37 feet.
2216 That is what the engineer laid out.
2217
2218 Mr. Nunnally: Didn't the engineer know he needed 45 feet frontage?
2219
2220 Mr. Coney: Not at that particular time. He had it at 37 feet. It had been
2221 approved by the County. That is what he went in for. He did not discover 45 feet
2222 until he went, until we were getting ready to go in with new permits that it was 45
2223 feet. He was the one that threw up the red flag.
2224
2225 Ms. Dwyer: The engineer didn't know what the setback was for that
2226 zoning classification?
2227
2228 Mr. Coney: At that particular time, yes, there was not an approved set...
2229
2230 Ms. Dwyer: You don't have to have an approved set to say what the law
2231 was. Whatever zoning classification it is, you have a primary setback, so the
2232 engineer didn't know that apparently.
2233
2234 Mr. Coney: Apparently not.
2235
2236 Ms. Dwyer: Were there any other errors anywhere else in the
2237 subdivision?
2238
2239 Mr. Coney: No. There was, when we had it "as built" the quarter of the
2240 house, the left-hand corner, I believe, is roughly 2-1/2 feet from making the 45
2241 feet. The right-hand corner of the home is roughly 4-1/2 feet short of making the
2242 grade and, which doesn't show here. We do have one that is "as built" basically.
2243 What throws it off is the covered stoop and bay window.
2244
2245 Ms. Dwyer: So every other lot in this whole subdivision has a 45 foot
2246 setback except this one?
2247
2248 Mr. Coney: That is correct.
2249
2250 Ms. Dwyer: And we really don't know why this one does not.
2251
2252 Mr. Coney: Right.

2253
2254 Ms. Dwyer: The engineer not knowing that this zoning classification calls
2255 for a 45 foot setback does not really make sense, especially when every other lot
2256 has that.
2257
2258 Mr. Coney: Correct.
2259
2260 Mr. Nunnally: Well, when the building permit was issued, did it show 38 feet?
2261
2262 Mr. Coney: It showed this right here (referring to rendering).
2263
2264 Mr. Nunnally: The County issued a building permit based on that survey?
2265
2266 Mr. Coney: That is correct, and those are their writing. The finished first
2267 floor elevations had to be graveled...that is not our...
2268
2269 Mr. Nunnally: Who is going to tell us from the County why the County approved a
2270 building permit that was in error?
2271
2272 Mr. Coney: Mr. Helland.
2273
2274 Ms. Harris: Mr. Helland, are you the contractor?
2275
2276 Mr. Helland: I am the Director of Productions for Prospect Homes.
2277
2278 Mr. Nunnally: All right. Any other questions for Mr. Helland? Is there anyone to
2279 speak for it? All right, now we will hear from the opposition.
2280
2281 Mr. Blankinship: Mr. Chairman, I would like to hear from Mr. Overmann from
2282 the Permit Center.
2283
2284 Mr. Nunnally: Good morning, sir. I am sure he can shed some light on that.
2285
2286 Mr. Overmann: Good morning Mr. Chairman, Vice Chairman, members of
2287 the Board, my name is Fred Overmann, Director of Community Development and
2288 I oversee the Permit Center. There are a few pieces of information that was left
2289 out of statements that you have heard earlier, and is part of the package that Ben
2290 Blankinship got, stating that they never received information pertaining to the
2291 setback issues. They received a fax on January 3, 2006 with the original building
2292 permit stating those statements that it did not meet it. When they sent in the
2293 revised house plans with the brick front, that was done on March 28 and they
2294 received another rejection stating they did not meet the setbacks. I just want the
2295 records to be straight that they did receive that information. We have copies of
2296 that as part of Mr. Blankinship's information.
2297
2298 Mr. Nunnally: Mr. Wright, do you have that?

2299

2300 Mr. Overmann: Another statement that has not been addressed. To correct
2301 it on the 4/17/2006, we did have a meeting with Prospect Homes to go over the
2302 issues with them and concerns about the existing house and the setback issues.
2303 We looked for alternatives for them to help the situation, since they were doing
2304 this for the hospital and there was going to be a raffle. We were real concerned
2305 about it. I came up with the suggestion about looking for another lot that would
2306 help them through this situation until things got ironed out. They stated that it
2307 would probably take a couple of weeks for that to get reviewed. I said no, it
2308 wouldn't. We could turn it around, just bring the building permit in the next day
2309 before lunch time we will have that permit approved for you. We did such and
2310 from my understanding and where that stands now in completion, I've got
2311 Bowman Bowles, the Deputy Building Official that will respond to the statement
2312 of the house that is almost ready to be occupied.

2313

2314 Ms. Dwyer: If the County sent two faxes on January 3 and March 28
2315 saying that the setback was in violation of the zoning ordinance, why then was
2316 the building permit approved?

2317

2318 Mr. Overmann: The copy that says VOID on it, we normally do not put a void
2319 on it unless we have copies of a revised plot plan that satisfies the setback. We
2320 would not have approved it. I can state that from the information that was
2321 required, not only the revised plot plan, but they also needed statements about
2322 the grading that needed to be done on there, that the storm sewer was put in on
2323 the site, the information was sent over to Building Inspections and how that
2324 information did not get attached to the building permit, I cannot answer to that
2325 statement.

2326

2327 Ms. Dwyer: Do you have documentation of a revised permit that shows
2328 the 45 foot setback?

2329

2330 Mr. Overmann: The only thing that we have in our statements is that
2331 everything was satisfied.

2332

2333 Ms. Dwyer: So, we don't have any...

2334

2335 Mr. Overmann: No, ma'am. We do not have those records, but I was
2336 involved personally with this process since they came to me with it, and I was
2337 comfortable with it, so I would not have gone through this process with my staff
2338 who is here in the audience unless that would have satisfied our concerns that
2339 they had met the setbacks.

2340

2341 Mr. Blankinship: So you are saying what happened is that they submitted the
2342 plat showing 38 feet. You told them it needed to show 45 feet. They submitted a
2343 plat that showed 45 feet, but when the house was checked out, they staked it out
2344 according to the earlier plat.

2345
2346 Mr. Overmann: They staked it out prior to us issuing a building permit.
2347
2348 Mr. Blankinship: Right. Because they staked it out and then they went on...
2349
2350 Mr. Overmann: Whatever information by their surveyor.
2351
2352 Mr. Blankinship: And then submitted a revised plot.
2353
2354 Mr. Overmann: And we received a notice from the surveyor by phone call
2355 that alerted us the day before we actually did an inspection that they had found
2356 an error.
2357
2358 Ms. Dwyer: But again, we don't have a...
2359
2360 Mr. Overmann: I cannot document having it in my hand and it is just one of
2361 those things that just was misplaced and didn't get put with it. The individual
2362 from Building Inspections, Carl Jones, remembered he had paper separated but
2363 when the separated papers got with the person who was going to review it,
2364 somehow this information did not get attached.
2365
2366 Ms. Dwyer: So the revised plan had to show the revision of 4 inches of
2367 the brick front?
2368
2369 Mr. Overmann: Ms. Dwyer, I am very confident in my staff and I know that
2370 we have made mistakes in the past and we have to live with those, and we
2371 understand that human error is involved with a lot of these reviews, because we
2372 review quite a few plans in a given day, in a given month, but I am very confident
2373 my staff would not have missed part of the procedure. We do not put VOID on it
2374 until we are satisfied with the information.
2375
2376 Mr. Nunnally: I still can't understand, what survey was used for the County to
2377 issue the building permit? Was it the one showing 37 feet?
2378
2379 Mr. Overmann: Sir, my staff would not have approved the building permit
2380 and put void on this unless we had another copy that satisfied the setbacks.
2381 What happened to the setbacks, the plot plans, when they went over to Building
2382 Inspections I can't answer.
2383
2384 Mr. Nunnally: But you don't have the survey with the building permit showing
2385 how...
2386
2387 Mr. Overmann: All was with our copy sir was marked VOID.
2388
2389 Mr. Nunnally: When was VOID put on it?
2390

2391 Mr. Overmann: VOID was put on it when a new survey comes in and
2392 satisfies it.
2393
2394 Mr. Nunnally: Yes, but at the time the building permit was issued wasn't this the
2395 survey that was issued showing the 37 feet? You are not answering the
2396 question.
2397
2398 Mr. Blankinship: He is saying the building permit would not have been
2399 approved based on this plat, but that he does not have a copy of the plat on
2400 which the building permit was approved.
2401
2402 Mr. Nunnally: When was the revised plat done?
2403
2404 Mr. Blankinship: The applicant is suggesting that there never was a revised
2405 plat.
2406
2407 Mr. Nunnally: That is not a point of fact. Isn't it usual to have the plat in the file
2408 when you issue the building permit?
2409
2410 Mr. Overmann: That is correct, sir, but somehow that information, when it
2411 got over to Building Inspections, did not get attached to it. When it left my hands,
2412 I can't attest to the information.
2413
2414 Ms. Dwyer: So this review in this report shows setbacks not met as of
2415 January 3, 2006.
2416
2417 Mr. Overmann: That is correct.
2418
2419 Ms. Dwyer: And that was the result of...
2420
2421 Mr. Overmann: This plat that you see VOID.
2422
2423 Ms. Dwyer: So they had staked that as early as January?
2424
2425 Mr. Overmann: No, ma'am. I don't know when they staked it, but when we
2426 received the original plat back in December, we reviewed it in January and we
2427 sent them comments. This plan did not get really on the fast track until just
2428 before the 5th when it was approved.
2429
2430 Ms. Dwyer: OK, and then on March 28 he says resubmittal cannot be
2431 approved until the original permit is approved. What does that mean? Does that
2432 mean they submitted a revised plan?
2433
2434 Mr. Overmann: I am sorry. Where are you?
2435

2436 Ms. Dwyer: I am looking at information from the review report for this site
2437 from the Permit Center.
2438
2439 Mr. Overmann: What page?
2440
2441 Ms. Dwyer: One of two is what it says.
2442
2443 Mr. Overmann: Can I look at the copy of what you've got, ma'am. I am
2444 sorry. OK. Is this the one submitted with the application?
2445
2446 Ms. Dwyer: Mr. Blankinship gave that to me. The first entry says that
2447 this front setback had not been met and that was in January, and what exactly is
2448 that that we are looking at? Is that something you e-mailed to Prospect Homes?
2449
2450 Mr. Overmann: Yes, this is part of our records and it shows on the fax that it
2451 was acknowledged on a particular date that they received those comments.
2452
2453 Ms. Dwyer: What was acknowledged? That they simply received that
2454 comment?
2455
2456 Mr. Overmann: At their office.
2457
2458 Ms. Dwyer: OK. So they were made aware by the County in January
2459 that the front yard setbacks...
2460
2461 Mr. Overmann: That is correct. And then the second time was when they
2462 resubmitted for the brick front. We reiterated the same original comments that
2463 were made on January 3.
2464
2465 Ms. Dwyer: And where did you submit those comments?
2466
2467 Mr. Overmann: It was the same attachment to Tidemark. They were sent
2468 the same information that was originally sent.
2469
2470 Ms. Dwyer: That was another e-mail or...
2471
2472 Mr. Overmann: Another e-mail.
2473
2474 Ms. Dwyer: They got both an e-mail and an electronic record of your
2475 inspections...
2476
2477 Mr. Overmann: All this is, is staff comments related to before they actually
2478 get into the direct building part of it. But you can go on line and get copies of it.
2479 This is just a method of us, of staff having the capabilities when they review and
2480 have comments, it is where they could be because they can see the process that
2481 we have fax capabilities at our desk tops that they can electronically send them.

2482 We also have a tracking system built into it that acknowledges that they received
2483 it and the date, and then at anytime we can go back and retrieve that information.

2484
2485 Ms. Dwyer: So as part of Planning review in January, you put these
2486 comments on the computer...

2487
2488 Mr. Overmann: On the Tidemark System. Yes, ma'am.

2489
2490 Ms. Dwyer: Tidemark System, and then you simultaneously e-mail that
2491 to Prospect.

2492
2493 Mr. Overmann: Yes, ma'am. It gives you a date and time it was sent.

2494
2495 Ms. Harris: I have a question. We do have two building permits here,
2496 one with VOID on it and the other one, there is a slight revision. I am just
2497 wondering, but both of them have 35 foot frontage.

2498
2499 Mr. Overmann: Yes, ma'am, and this was our staff copy. That is all we had
2500 in the files when we found out the issue. I personally went and pulled the plans
2501 to see what was attached to it, because that was my first time that we were
2502 aware that there was an issue with it, when the surveyor called one of our staff
2503 concerned about the setbacks, and I was kind of shocked when I only saw this
2504 was our copy, because there were several other important documents that had
2505 been put with it.

2506
2507 Mr. Blankinship: Ms. Harris, do you see on the one that says VOID, it says on
2508 the house itself, it says proposed. That was before anything was built, and then
2509 on the other one it says 25% complete, so that is an actual field survey after the
2510 foundation had been poured and I guess they had started laying the floors. One
2511 is where they meant to put the house and the other is where they did, in fact, put
2512 it.

2513
2514 Ms. Harris: So this is a revised, according to their standards, this is a
2515 revised?

2516
2517 Mr. Blankinship: No, it is not a revised submission. This is an "as built". They
2518 went out after the house was ¼ of the way finished and surveyed where the
2519 house actually is.

2520
2521 Ms. Harris: Right, and I notice a difference in the dimensions.

2522
2523 Mr. Blankinship: Right, because it is not in exactly the location where it was
2524 intended to be.

2525

2526 Mr. Kirkland: The normal process in the Building Department, they had an
2527 engineer, design, go out and inspect the footings. Do you have an inspector that
2528 goes out a couple of days later and makes sure that everything is just right?
2529

2530 Mr. Overmann: I can't answer that question. Bolman Bowles, Deputy
2531 Building Official, could certainly respond to those particular questions.
2532

2533 Mr. Kirkland: I just wonder how it got so far.
2534

2535 Mr. Overmann: He is involved in that process and he could give you more
2536 detailed information.
2537

2538 Mr. Kirkland: I'd like to hear from him.
2539

2540 Ms. Dwyer: Mr. Overmann, what do you think should happen at this
2541 meeting?
2542

2543 Mr. Overmann: Well, my statement would be that we, all in good faith, were
2544 trying to help individuals with cases when we found out about it. We also work
2545 with good faith and when we found out about it to come up with a solution for the
2546 new house to help him get on track, and we actually made sure that when he
2547 called in for inspection that they would get a little bit of extra treatment to make
2548 sure they would meet their goal, and my feeling is that there was some things
2549 that occurred on both sides of the coin. Somehow, our information that we
2550 needed to fulfill our obligations just did not get attached to the building permit and
2551 I cannot justify not coming up with those records, and that is not public process.
2552 We have corrected that for the future to secure that, because it should not have
2553 happened and that information should have gotten to the Building Inspection's
2554 office and should have been attached, and this...I voided one of the documents
2555 we had the original one and we had something to replace it. This would not be
2556 unless we had something to replace it to satisfy the setbacks. I am just going to
2557 leave it at that.
2558

2559 Mr. Nunnally: Did you say they used another house for St. Jude's?
2560

2561 Mr. Overmann: An identical house on another lot and we put it on the fast
2562 track to keep it getting back on time. Mr. Bolman Bowles is here and he can
2563 attest to what stage that house is in.
2564

2565 Mr. Blankinship: Do you swear the testimony you are about to give is the
2566 truth, the whole truth, and nothing but the truth so help you God?
2567

2568 Mr. Nunnally: Would you state your name for the record?
2569

2570 Mr. Bowles: My name is Bolman Bowles and I am the Assistant Building
2571 Official for Henrico County.

2572

2573 Mr. Kirkland: Mr. Bowles, the question I put before Mr. Overmann was
2574 once the footings are poured, and engineers inspect them, when does the
2575 County go check over that same process?

2576

2577 Mr. Bowles: We don't go back. We rely on the engineer. We have a
2578 footing inspection policy whereby we allow independent engineers who have
2579 been through our certification process, we have a class that we require them to
2580 attend before they are allowed to conduct footing inspections. We don't go back
2581 and check as you say on that footing. The next time we would be on the site
2582 would be either for rejection or foundation inspection.

2583

2584 Mr. Kirkland: And at that time do you measure from the property line or do
2585 you just sight to make sure the foundation has been built correctly?

2586

2587 Mr. Bowles: We do not check the setbacks at that time. No, sir.

2588

2589 Ms. Dwyer: He doesn't know the setbacks for the houses.

2590

2591 Mr. Nunnally: So no one checks until the house is finished.

2592

2593 Mr. Bowles: At this point I think at the time of the CO, the zoning
2594 inspectors require a plot plan, and that is the time the location of the house on
2595 the lot is verified. Yes, sir.

2596

2597 Mr. Nunnally: A little late in my understanding.

2598

2599 Mr. Bowles: It does place responsibility on the permanent applicant and
2600 the builder. It does.

2601

2602 Mr. Blankinship: Some builders require what they call a brick point survey,
2603 too. When they are ready to start putting brick up, the lenders will sometime
2604 require our service.

2605

2606 Mr. Bowles: And the other thing I would say, I can't speak for Mr. Revels,
2607 but the other thing I would say, there is some exposure whenever we try to do it,
2608 residential we don't typically do it in fast track, where you get the cart before the
2609 horse, so to speak, you start construction prior to the permit. There is a risk.
2610 Typically, that understanding I had is the builder accepted that risk that if
2611 something comes up, they are agreeable to address it by whatever means,
2612 whether it be this process or whether it be by correcting it in the field when it
2613 should arise. Otherwise, we are all taking a risk when we initiate construction
2614 projects prior to the permit being clear.

2615

2616 Mr. Nunnally: Thank you, sir.

2617

2618 Mr. Bowles: Thank you.
2619
2620 Ms. Harris: Question. Where is the alternative for the St. Jude's house?
2621
2622 Mr. Bowles: The secondary, yes, ma'am. I visited the day before
2623 yesterday I think.
2624
2625 Ms. Harris: Where is it located?
2626
2627 Mr. Bowles: It is three or four lots down from this house.
2628
2629 Ms. Harris: That would still be with Prospect Homes?
2630
2631 Mr. Bowles: Yes, ma'am. It is the same subdivision. And it is fairly close
2632 to being ready for final inspection for (unintelligible), walls, trim, had been
2633 painted. Carpet had not been installed but it looks fairly close to completion.
2634
2635 Mr. Nunnally: All right. Thank you. Is there anybody else who has anything to add
2636 to this case? Anyone in opposition now must get up and speak, please.
2637
2638 Ms. Tucker: Good morning. My name is Linda Tucker and I live at 4150
2639 Creighton Road. I hand delivered a letter out to you Monday. I hope that you
2640 have had a chance to look at that, and I faxed a letter to Chris Archer, even
2641 though the Planning Commission is no longer involved in this, because I felt that
2642 they should be well aware and you should be well aware of what Prospect
2643 Homes is like to the existing homeowners there. While this may not have a
2644 bearing on the fact that they screwed up and that they are asking for a variance,
2645 in fact it shows what type of people they are. I am not going to go into the details
2646 of the letter. You have that in front of you. I do want to say that I have been a
2647 long time supporter of St. Jude's Hospital. This is not about St. Jude's Research.
2648 It would be like me coming into here, I have cancer, and would you help me and
2649 forgive me because (unintelligible). I am not here for that. I am here as a
2650 homeowner who has followed this process. I had appeared before the Board of
2651 Zoning Appeals. It is very important to listen to any of the homeowners that
2652 came out here that every one of us has been lied to by Prospect and every one
2653 of us has issues with them. We didn't have a problem with the development of
2654 this property, but we had problems with Prospect Homes. I am not going to go
2655 into some of those issues, and this is really not the place. A lot of that is going to
2656 be brought out in court when they go for the easement that runs by our property.
2657 I do have photographs, though. I have photographs of where they have
2658 trespassed on my property, photographs of where they have driven their heavy
2659 equipment on my property. They have absolutely no respect for us and I have
2660 absolutely nothing but contempt for Prospect Homes. They are not the kind of
2661 neighbors that we want. We want to see them build this subdivision and get out,
2662 and what we do want, and hope that you will require them to do is build every

2663 one of these homes, including this home, by Code. That is really all I have to
2664 say.

2665
2666 Mr. Nunnally: All right. Thank you, ma'am.

2667
2668 Ms. Dwyer: Ms. Tucker, where do you live on Creighton Road?

2669
2670 Ms. Tucker: I am actually down by the second, so they are not even
2671 working near me. I have already run into these problems. My home is over by
2672 the (unintelligible) is not improved yet, but we are all watching them very closely.

2673
2674 Ms. Dwyer: The problems you have had have been in another section of
2675 this development?

2676
2677 Ms. Tucker: Yes, and it has not been approved yet, so I can only imagine
2678 what will occur when they get down to our area, but I do think you should take
2679 those into consideration and understand how we feel about Prospect Homes.

2680
2681 Ms. Dwyer: Thank you.

2682
2683 Mr. Nunnally: Thank you, ma'am. Anyone else in opposition? It is time to rebut,
2684 please.

2685
2686 Mr. Paner: Yes, sir. About Ms. Tucker, there are issues that we have
2687 with Ms. Tucker and some others that I do believe are a separate issue right
2688 now, but I am aware of that.

2689
2690 One thing I wanted to discuss and Ms. Dwyer, you were looking at it, is the
2691 comments from the different departments on the internet. Yes, on January 3
2692 there was a comment on the front yard setback and I acknowledge that it should
2693 have been caught there. It was not caught there and then it was not on any
2694 further comments that we saw on this sheet. In addition, the plat that has the
2695 VOID on there, that was the original plat that was submitted in December, and
2696 the plat that is on the, this one, was a revised plat that we submitted, I believe
2697 that date there is 3/15/06. I think 3/17/06 is the date there. That was our revised
2698 plat and that was the plat that was attached to our building permit. That revision
2699 has some very minor modifications over the one that says VOID on it, because
2700 again, as Mr. Helland brought up, it was adding the brick front on that property
2701 rather than the siding. We staked that the last day of March, 3/31/06, and we are
2702 not using this as a St. Jude's House. As you know, with having to get a variance
2703 and everything, we didn't have time, and the County worked very well with us in
2704 respect to that second house. It took just one day for us to route it throughout, all
2705 of the different departments, and we can't thank them enough for that.
2706

2707 Mr. O'Kelly: Mr. Paner, what does the surveyor, Mr. David Kreps, say
2708 about the mistake that was made with the wrong setbacks on the plat he
2709 submitted in December?
2710

2711 Mr. Paner: I can't speak for him. I tried to get him here today. I would
2712 imagine that he made an assumption at first and then didn't follow it up or, I can't
2713 answer what or how he came up with that original setback. I don't think he
2714 knows how that came about either.
2715

2716 Ms. Harris: Mr. Paner, you said that you showed us on the revised plat
2717 that we have in our packet of information, but it still seems you or your company
2718 is not aware of the 45 foot setback requirement. Is that true?
2719

2720 Mr. Paner: Well, I think I knew that the R-2A setback is 45 feet. I don't
2721 check the plats when they go out and, to be honest with you, I think we rely on
2722 the County to kind of get those comments and when they said that "it is not
2723 approved because of the front yard setbacks," then we change it and meet the
2724 front yard setback.
2725

2726 Ms. Dwyer: It is also your responsibility to submit plats, plot plans that
2727 comply with the ordinance.
2728

2729 Mr. Paner: And to ensure that is correct and in this case it was not done
2730 correctly. I will acknowledge that.
2731

2732 Ms. Dwyer: You don't just build a house on a plan and think the County
2733 is going to catch all of your errors. You, obviously, acknowledge that it is your
2734 responsibility to know what setback requirements are and to design plans to build
2735 your houses accordingly.
2736

2737 Mr. Paner: Yes.
2738

2739 Mr. Nunnally: Any other questions?
2740

2741 Mr. Wright: If this is a variance request and it is denied, that means that
2742 you have got to move your house.
2743

2744 Mr. Paner: I looked into trying to rezone this lot to something else that
2745 would work, but even that...
2746

2747 Mr. Wright: The only alternative would be to move it.
2748

2749 Mr. Paner: The only alternative would be to dismantle or relocate the
2750 house.
2751

2752 Mr. Blankinship: Have you talked to anybody about the cost or the practicality
2753 of moving?

2754
2755 Mr. Paner: We have.

2756
2757 Ms. Dwyer: I assume it would be expensive.

2758
2759 Mr. Paner: Very much so.

2760
2761 Mr. Nunnally: More than \$300.

2762
2763 Mr. Paner: You are exactly right.

2764
2765 Mr. Nunnally: Any other questions? Being none, that concludes the case. Thank
2766 you for coming, sir.

2767
2768 **DECISION:**

2769
2770 Ms. Harris: I am going to move that we approve. This has been a very
2771 difficult case for me to hear and I did ride by the property and there is a very
2772 attractive building or improvement on the land. I do have some concerns about it
2773 being very close to the property line, however, I would normally make a motion to
2774 deny this, but the reason I am voting that we approve it is because we had some
2775 professionals who fumbled the ball. Some were County employees and some
2776 were professionals from Prospect Homes. So, as someone said, there is enough
2777 blame to go around, and I think that not only should Prospect Homes eat this
2778 mistake, but I think this County is going to have to chew up and swallow a little of
2779 this mistake, too. So, my motion is to approve it.

2780
2781 Mr. Wright: I second it.

2782
2783 Mr. Nunnally: Motion by Ms. Harris and second by Mr. Wright. All in favor
2784 say aye. The motion was approved.

2785
2786 After an advertised public hearing and on a motion by Ms. Harris and a second
2787 by Mr. Wright, the Board **granted** application **A-23-2006** a request for a variance
2788 from Section 24-95(b)(8) to build a one-family dwelling at 6969 Strath Road
2789 (Parcels 817-698-2010, 1628 and 0449), zoned A-1, Agricultural District (Varina).
2790 The Board granted the variance subject to the following condition:

2791
2792 1. This variance applies only to the front yard setback requirement for the
2793 existing dwelling. All other applicable regulations of the County Code shall
2794 remain in force.

2795
2796
2797 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright

5

2798 Negative: 0
2799 Absent: 0

2800
2801 Mr. Nunnally: We have the approval of the **February 23, 2006 minutes**.

2802
2803 Ms. Dwyer: Is there something wrong with the tape?

2804
2805 Mr. Blankinship: That was when we first went to the new system. Do you
2806 remember we had to stop the meeting a couple of times because the recording
2807 system was malfunctioning. We have got a new recording system, so...

2808
2809 Mr. Wright: I wondered if I mumbled the whole time.

2810
2811 Mr. Blankinship: Let that be a reminder to please speak directly into your
2812 mikes.

2813
2814 Mr. Nunnally: Do I have a motion for approval of the February 23, 2006
2815 minutes?

2816
2817 Mr. Wright: I move we approve the minutes.

2818
2819 Mr. Nunnally: We have a motion by Mr. Wright that we approve the
2820 minutes of February 23, 2006. Do I have a second?

2821
2822 Mr. Kirkland: Second.

2823
2824 On a motion by Mr. Wright and a second by Mr. Kirkland, the Board **approved**
2825 the Minutes of the **February 23, 2006**, Henrico County Board of Zoning Appeals
2826 Meeting.

2827
2828 Mr. Nunnally: We have a motion to approve by Mr. Wright and a second by
2829 Mr. Kirkland. All in favor say aye. The minutes are approved.

2830
2831 Do I have a motion for adjournment?

2832
2833 Ms. Dwyer: Mr. Blankinship was going to talk to us about reclamation...

2834
2835 Mr. Blankinship: I was supposed to bring this draft today to pass out and I
2836 failed to do that and I apologize. We do have a draft nearly complete and I was
2837 hoping that you would set a work session for the next meeting, and that would be
2838 June 22, 2006.

2839
2840 Mr. Nunnally: How many cases have we got for that meeting?

2841
2842 Mr. Blankinship: Not very many. Paul, do you know the count?

2843

2844 Mr. Gidley: I want to say it is 10.
2845
2846 Mr. Blankinship: I didn't realize it was that many.
2847
2848 Mr. Gidley: It was 11, but one dropped off.
2849
2850 Mr. Wright: Was that before or after the meeting?
2851
2852 Mr. Nunnally: I think after the meeting would be better.
2853
2854 Ms. Dwyer: What about lunch?
2855
2856 Mr. Blankinship: Do you want to do a lunch meeting? We have done that for
2857 work sessions.
2858
2859 Mr. Nunnally: Yes. In other words, we will go to lunch right after the
2860 meeting and have lunch and discussion.
2861
2862 Ms. Dwyer: Work session during lunch?
2863
2864 Mr. Blankinship: I will see if I can get all of that arranged for you.
2865
2866 Ms. Dwyer: Do you want to mail us the draft?
2867
2868 Mr. Blankinship: Yes.
2869
2870 Mr. Nunnally: I want to ask a question. When I read the minutes, it jogged
2871 something in my memory. How did the Soul Circus come out? Did you go, Ms.
2872 Harris?
2873
2874 Ms. Harris: I did not go. Ms.(unintelligible) asked and I could have gone.
2875
2876 Mr. Nunnally: I was wondering if we had any complaints.
2877
2878 Mr. O'Kelly: Mr. Nunnally, I contacted the Chief of Police after the event
2879 and he indicated that he was only aware of one complaint, so it went very well in
2880 my opinion.
2881
2882 Mr. Nunnally: Did anybody happen to check the noise, any staff?
2883
2884 Ms. Dwyer: I was out of town, but I was going to drive by and see how
2885 the noise level was, but I didn't get to.
2886
2887 Mr. Nunnally: That was the main complaint.
2888
2889 Ms. Dwyer: Yes, that was the main complaint.

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Mr. Nunnally: I was just wondering how he did it with the conditions we put on it. They must have helped the noise.

Mr. O'Kelly: The event promoters did an excellent job working that out. They did not receive any complaints. The police only had one.

Mr. Nunnally: I am hoping that they can work it out. Has anybody complained about the races which you can hear for miles?

At this time the meeting adjourned.

James W. Nunnally, Chairman

Benjamin Blankinship, Secretary