

1 **MINUTES OF THE REGULAR MEETING OF THE BOARD OF ZONING APPEALS OF**  
2 **HENRICO COUNTY, HELD IN THE BOARD ROOM OF THE COUNTY**  
3 **ADMINISTRATION BUILDING IN THE HENRICO COUNTY GOVERNMENT**  
4 **COMPLEX, ON THURSDAY, NOVEMBER 17, 2005, AT 9:00 A.M., NOTICE HAVING**  
5 **BEEN PUBLISHED IN THE RICHMOND TIMES-DISPATCH ON OCTOBER 27 AND**  
6 **NOVEMBER 3, 2005.**  
7

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

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

8  
9 Mr. Nunnally - Good morning, Ladies and Gentlemen. I welcome you to the  
10 November meeting of the County of Henrico Board of Zoning Appeals. Would you  
11 stand for the **Pledge of Allegiance to the Flag of our Country.**  
12

13 Before we go any further, Mr. Blankinship, I’d like to present this plaque to Mr. Wright.  
14 It’s my pleasure to present this plaque to Mr. Al Wright, who’s been the Chairman of this  
15 Board for the last two years. He was a Vice Chairman the previous two years. I wish  
16 this auditorium were full of people this morning, because they’d learn what Mr. Wright  
17 has meant to this Board and to this County. Last month Mr. Wright started his 34<sup>th</sup>  
18 consecutive year on this Board. He doesn’t look that old. I believe that’s the longest  
19 term anybody’s ever spent on a Board in Henrico County. We appreciate your work, Al,  
20 and you’ve done a wonderful job. Thank you very much.

21  
22 Mr. Secretary, would you read the rules, please.  
23

24 Mr. Blankinship - Good morning, Mr. Chairman, Members of the Board, Ladies  
25 and Gentlemen. The rules for this meeting are as follows. As Secretary, I will call each  
26 case. Then at that time, the applicant should come to the podium. I will ask everyone  
27 who intends to speak on that case, in favor or in opposition, to stand and be sworn in.  
28 The applicants will then present their testimony. After the applicants have spoken, the  
29 Board will ask them questions, and then anyone else who wishes to speak will be given  
30 the opportunity. After everyone has spoken, the applicant, and only the applicant, will  
31 be given the opportunity for rebuttal. After hearing the case, and asking questions, the  
32 Board will take the matter under advisement. They will render all of their decisions at  
33 the end of the meeting. If you wish to know their decision on a specific case, you can  
34 either stay until the end of the meeting, or you can call the Planning Office later this

35 afternoon, or you can check the website. The vote on each case will be posted to our  
36 website within an hour of the end of the meeting. This meeting is being tape recorded,  
37 so we will ask everyone who speaks, to speak directly into the microphone on the  
38 podium, to state your name, and to spell your last name please. And finally, out in the  
39 foyer, there are two binders, containing the staff report for each case, including the  
40 conditions that have been recommended by the staff. Mr. Chairman, we have two  
41 requests for deferral this morning. The first is A-104-2005, Hickory Corner LC. They  
42 have requested a deferral until February, hoping that we can resolve the issue, rather  
43 than have it come before this Board at all.

44  
45 Mr. Nunnally - A-104 – do I hear a motion on that?

46  
47 Mr. Wright - Move we defer it.

48  
49 Mr. Kirkland - Second.

50  
51 Mr. Nunnally - Motion by Mr. Wright to defer it; second by Mr. Kirkland. All  
52 in favor, say aye. It's been deferred.

53  
54 Mr. Blankinship - The second deferral is UP-29-2005, which was listed on the  
55 Agenda as Richmond Waste Services, LLC. It was also advertised that way, and the  
56 notice letters were styled that way. However, they have created a new legal entity with  
57 a different name, that is actually going to operate that landfill after it's transferred. Since  
58 they are changing the name of the entity that's going to be the operator, the County  
59 Attorney's Office advised us that we would have to re-advertise and send new notices.  
60 That would be deferred to the December meeting.

61  
62 Mr. Nunnally - Do I have a motion that we defer it?

63  
64 Mr. Kirkland - So moved.

65  
66 Ms. Harris - Second.

67  
68 Mr. Nunnally - Motion by Mr. Kirkland; second by Ms. Harris, to defer it. All  
69 in favor, say aye. It's been deferred.

70  
71 **Beginning at 9:00**

72  
73 Mr. Blankinship - The first item on the Agenda is a request for a Rehearing of  
74 A-94-2005, Robert C. Irby III, requesting a variance regarding 1290 Chaffins Bluff Lane.  
75 The variance was denied on October 20, 2005, and Mr. Irby has requested rehearing. I  
76 also call to your attention a letter that was left at your place, applicable to this case. Mr.  
77 Irby, are you here? Mr. Irby appears before you by letter. He did submit a letter  
78 requesting rehearing, which is in your packet.

79  
80 Mr. Nunnally - Do I hear a motion? No motion?

81  
82 Ms. Dyer - Mr. Chairman, I was just looking at our rules, and I think the  
83 motion has to be made by someone who voted .....

84  
85 Mr. Blankinship - .....someone who voted in favor of the denial. The  
86 motion was to deny.

87  
88 Mr. Kirkland - I make a motion we deny the rehearing.

89  
90 Mr. Nunnally - Motion by Mr. Kirkland we deny the rehearing – do I have a  
91 second?

92  
93 Ms. Harris - Second.

94  
95 Mr. Nunnally - Second by Ms. Harris. All in favor say aye. Opposed, no.

96  
97 Ms. Dwyer - Could we have some discussion on that point? Was it clear,  
98 I guess this is a procedural matter that he's raised. Was it clear that he did not want to  
99 defer his case?

100  
101 Mr. Kirkland - Yes ma'am, it was clear. And he also left the room.

102  
103 Ms. Harris - We can review the minutes to see the exact wording,  
104 because I think some things in his letter were misstated. Mr. Blankinship has a  
105 standard script that he uses for cases like this, and I think he followed that script to the  
106 letter. We might need to review the minutes for clarification.

107  
108 Mr. Nunnally - So you'll let him know that, Mr. Blankinship, that it's been  
109 denied.

110  
111 Mr. Blankinship - I don't believe you called the question.

112  
113 Mr. Nunnally - Yes I did. Mr. Kirkland voted to deny, and Ms. Harris  
114 seconded.

115  
116 Mr. Kirkland - You wanted a second vote after she asked for discussion, is  
117 that what you're trying to say, Mr. Blankinship? Okay, I call the question; I still vote to  
118 deny it.

119  
120 Ms. Harris - Second.

121  
122 Mr. Nunnally - Mr. Kirkland voted to deny and Ms. Harris seconded it. It's  
123 been denied. All in favor?

124  
125 Mr. Blankinship - I guess that will be recorded as a 3-0, the two members who  
126 were not present at the hearing are not going to vote.

127  
128 On a motion by Mr. Kirkland, seconded by Ms. Harris, the Board **denied** application **A-**  
129 **94-2005, Robert C. Irby III**, request for rehearing on his request for a variance  
130 regarding 1290 Chaffins Bluff Lane.

131  
132 Affirmative: Harris, Kirkland, Nunnally 3  
133 Negative: 0  
134 Abstain: Dwyer, Wright 2

135  
136 **A-97-2005** **CHRISTOPHER S. BOWYER** requests a variance from Section 24-  
137 9 to build a one-family dwelling at 3914 Antioch Church Road  
138 (Parcel 847-712-2101 (part)), zoned A-1, Agricultural District  
139 (Varina). The public street frontage requirement is not met. The  
140 applicant has 0 feet public street frontage, where the Code requires  
141 50 feet public street frontage. The applicant requests a variance of  
142 50 feet public street frontage.

143  
144 Mr. Nunnally - Is anyone else here in reference to this case? If so, please  
145 stand and raise your right hand and be sworn.

146  
147 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
148 truth, the whole truth, and nothing but the truth, so help you God?

149  
150 Mr. Bowyer - I do. My name is Christopher Scott Bowyer. I'm requesting  
151 a variance for a single house dwelling.

152  
153 Mr. Nunnally - I think last month it was something about the flood plain. Did  
154 you get that all straight?

155  
156 Mr. Bowyer - Right. Yes, since then we had the property resized so it fits  
157 the criteria.

158  
159 Mr. Nunnally - Are you going to be hooked up to the public water?

160  
161 Mr. Bowyer - No, private water, well.

162  
163 Mr. Nunnally - I see where it says on here, "The Department of Public  
164 Utilities notes that public water service is available in Williamsburg Road." That's a right  
165 good distance from your house, though, isn't it?

166  
167 Mr. Bowyer - Oh yes.

168  
169 Ms. Dwyer - Do you own the property sir?  
170  
171 Mr. Bowyer - No, my aunt owns the property.  
172

173 Ms. Dwyer - Is this a family division?  
174  
175 Mr. Bowyer - Yes.  
176  
177 Ms. Dwyer - So it's being sold to a family member?  
178  
179 Mr. Bowyer - Correct.  
180  
181 Ms. Dwyer - Do you have plans to further subdivide this parcel?  
182  
183 Mr. Bowyer - No ma'am.  
184  
185 Ms. Dwyer - Is anyone living in the existing house right now?  
186  
187 Mr. Bowyer - The house that's there now? She lives there.  
188  
189 Ms. Dwyer - You live in the house now?  
190  
191 Ms. Chalkley - On my property, I live in my house, but where he's buying,  
192 there's no house there yet.  
193  
194 Ms. Dwyer - Right, but there's an existing house on this parcel. And you  
195 live there now?  
196  
197 Ms. Chalkley - Not that parcel that he's buying. Where I live now, that's  
198 down below that blue line.  
199  
200 Ms. Dwyer - Okay, where the blue line is, there's a house, and that's your  
201 home?  
202  
203 Ms. Chalkley - Yes.  
204  
205 Ms. Harris - Do you have a report on the flood plain? You do have that?  
206 May we see it? So you are able to build a house and still have one acre? In other  
207 words, you have your one acre for building the house that does not include the flood  
208 plain?  
209  
210 Mr. Bowyer - Right. We had the property resized. Actually, at the top,  
211 that's not what it looks like.  
212  
213 Ms. Dwyer - The survey that you just handed us looks different from the  
214 survey that we received in our package. Has there been some change to the property  
215 line?  
216  
217 Mr. Bowyer - Yes, to have one acre out of the flood zone, we had to  
218 reshape the property.

219  
220 Ms. Dwyer - We do have one plat that matches it, but the site map that's  
221 in our packet looks very different.  
222  
223 Mr. Kirkland - The last plat shows probably what he has, I guess.  
224  
225 Ms. Dwyer - So it's been redesigned in order to acquire property that's  
226 out of the flood plain.  
227  
228 Mr. Blankinship - And we have discussed that with the Department of Public  
229 Works, and they confirmed that this is acceptable to them. I don't seem to have that in  
230 writing; we may have just done that over the phone.  
231  
232 Ms. Dwyer - So the house is going to be located where it's indicated on  
233 this the survey that you handed to us? Because it's a very steep ravine. It's going to be  
234 very difficult to develop. That will all be taken care of in the Building Permit process.  
235  
236 Mr. Nunnally - Any further questions of the Board? Is anyone here in  
237 opposition to this request? Hearing none, that concludes the case. A-97-2005,  
238 Christopher S. Bowyer.  
239  
240 Ms. Harris - I move that we approve this.  
241  
242 Mr. Kirkland - Second.  
243  
244 Mr. Nunnally - Motion by Ms. Harris that we approve; seconded by Mr.  
245 Kirkland. All in favor, say aye.  
246  
247 Mr. Wright - I have to abstain, Mr. Chairman, since I wasn't here to hear  
248 the evidence on the case initially. That was a deferred case, I believe.  
249  
250 Ms. Dwyer - No.  
251  
252 Ms. Harris - No.  
253  
254 Mr. Blankinship - It was one of the deferred, yes, it was heard last month.  
255  
256 Mr. Wright - We didn't hear the evidence on it.  
257  
258 Ms. Dwyer - Didn't we hear it today?  
259  
260 Mr. Wright - I didn't hear a whole lot of evidence. I just thought it was just  
261 answering a couple of questions, but I abstain.  
262  
263 Mr. Nunnally - We've got three – did you vote yes, Ms. Dwyer?  
264

265 Ms. Dwyer - No, I voted to approve.

266  
267 Mr. Blankinship - Yes, she voted yes.

268  
269 Mr. Nunnally - Okay, it's been approved.

270  
271 After an advertised public hearing and on a motion by Ms. Harris, seconded by Mr.  
272 Kirkland, the Board **granted** application **A-97-2005** for a variance to build a one-family  
273 dwelling at 3914 Antioch Church Road (Parcel 847-712-2101 (part)). The Board  
274 granted the variance subject to the following conditions:

275  
276 1. This variance applies only to the public street frontage requirement. The  
277 minimum lot size shall be provided exclusive of the floodplain. All other applicable  
278 regulations of the County Code shall remain in force.

279  
280 2. Approval of this request does not imply that a building permit will be issued.  
281 Building permit approval is contingent on Health Department requirements, including,  
282 but not limited to, soil evaluation for a septic drainfield and reserve area, and approval  
283 of a well location.

284  
285 3. At the time of building permit application, the applicant shall submit the  
286 necessary information to the Department of Public Works to ensure compliance with the  
287 requirements of the Chesapeake Bay Preservation Act and the code requirements for  
288 water quality standards.

289  
290 4. The applicant shall present proof with the building permit application that an  
291 easement to the property for ingress, egress and utilities has been obtained.

292  
293 5. The owners of the property, and their heirs or assigns, shall accept responsibility  
294 for maintaining access to the property until such a time as the access is improved to  
295 County standards and accepted into the County road system for maintenance.

296  
297 Affirmative: Dwyer, Harris, Kirkland, Nunnally 4

298 Negative: 0

299 Abstain: Wright 1

300  
301 The Board granted this request, as it found from the evidence presented that, due to the  
302 unique circumstances of the subject property, strict application of the County Code  
303 would produce undue hardship not generally shared by other properties in the area, and  
304 authorizing this variance will neither cause a substantial detriment to adjacent property  
305 nor materially impair the purpose of the zoning regulations.

306  
307 Mr. Blankinship - Mr. Chairman, the next three all go together, and I'm going  
308 to call them together. All are from Willbrook LLC, request a variance from Section 24-  
309 94 to build a one-family dwelling. The first one is at 4804 Sadler Oaks Court; the  
310 second is at 4737 Denali Drive; the third is at 4812 Sadler Oaks Court. They're all

311 zoned R-3C, One-family Residence District (Conditional) in the Three Chopt magisterial  
312 district. In the first one the rear yard setback is not met, the second one also, and the  
313 third one the rear yard setback and the setback for a deck are not met.

314  
315 **A-100-2005** **WILLBROOK LLC** requests a variance from Section 24-94 to build  
316 a one-family dwelling at 4804 Sadler Oaks Court (Sadler Oaks)  
317 (Parcel 747-766-8083), zoned R-3C, One-family Residence District  
318 (Conditional) (Three Chopt). The rear yard setback is not met. The  
319 applicant proposes 37 feet rear yard setback, where the Code  
320 requires 40 feet rear yard setback. The applicant requests a  
321 variance of 3 feet rear yard setback.

322  
323 **A-101-2005** **WILLBROOK LLC** requests a variance from Section 24-94 to build  
324 a one-family dwelling at 4737 Denali Drive (Sadler Oaks) (Parcel  
325 748-766-6091), zoned R-3C, One-family Residence District  
326 (Conditional) (Three Chopt). The rear yard setback is not met. The  
327 applicant proposes 35 feet rear yard setback, where the Code  
328 requires 40 feet rear yard setback. The applicant requests a  
329 variance of 5 feet rear yard setback.

330  
331 **A-102-2005** **WILLBROOK LLC** requests a variance from Sections 24-94 and  
332 24-95(i)(1) to build a one-family dwelling and a deck at 4812 Sadler  
333 Oaks Court (Sadler Oaks) (Parcel 747-766-9987), zoned R-3C,  
334 One-family Residence District (Conditional) (Three Chopt). The  
335 rear yard setback and rear yard setback for a deck are not met.  
336 The applicant has 26 feet rear yard setback for the dwelling and 25  
337 feet rear yard setback for the deck, where the Code requires 40  
338 feet rear yard setback for the dwelling and 30 feet rear yard setback  
339 for the deck. The applicant requests a variance of 14 feet rear yard  
340 setback for the dwelling and 5 feet rear yard setback for the deck.

341  
342 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
343 stand and raise your right hand.

344  
345 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
346 truth, the whole truth, and nothing but the truth, so help you God?

347  
348 Mr. Farmer - I do. Neil Farmer. I'm just requesting this variance, basically  
349 because the houses that have been built in this subdivision ended up being larger than  
350 we initially planned and more expensive. These three that we are doing now, if we're  
351 not allowed the variance, we'll have to build a little bit smaller houses, so we were trying  
352 to get the variance to make the houses conform with all the other houses in the  
353 neighborhood to maintain property values and have it conform with everything else in  
354 there. We're trying to make it nice to all the neighbors and the whole community so all  
355 the houses will be similar in size and shape and price, instead of having three smaller  
356 ones, by just a small amount. We just have to put a different house plan on there.



357  
358 Mr. Wright - It is clear, however, that you can build a house on this  
359 property, within the current zoning requirements?  
360  
361 Mr. Farmer - Yes sir, we could build a house; it would just have to be  
362 smaller. We've got a tree preservation area behind it and that encroached onto the  
363 buildable lot area also, for the setback.  
364  
365 Mr. Nunnally - Are all the other lots larger than these three?  
366  
367 Mr. Farmer - Yes sir.  
368  
369 Ms. Dwyer - Mr. Farmer, as I look at the staff report, it says the buildable  
370 area, in the first case, for example, varies in width from 55 to 75 feet, in depth from 38 to  
371 49, and as I do the math, it looks like you could have over a 2,000 square foot home,  
372 just with a single floor on that lot, just looking at the minimum buildable area, looking at  
373 the shortest width and depth. Now I appreciate that you can't build a house that will fill  
374 that whole space, because it's going to be an unusual space, given the shape of the lot.  
375 On the other hand, it does seem to me that if you build a two-story house, and I'm  
376 looking at the minimum lot width and depth, and you can get 2,000 square feet with a  
377 single story, you could certainly get a 4,000 square foot house with two stories. What  
378 square footage are you looking for?  
379  
380 Mr. Farmer - We do have a 2,000 square foot minimum house, which  
381 we've proffered in there, but most of the houses that have been built in there have been  
382 larger. Most have been 2,600 to 2,800 square feet. My builder's here if you've got any  
383 more specific questions, but basically, the houses have been built larger than 2,000  
384 square feet. Like Mr. Wright said, we can build a house in there, and we're just trying to  
385 conform with the other houses that have been built in there, and make it so that all the  
386 houses sell for \$400,000; that's what they're selling for right now. If we build a smaller  
387 house, that will end up being \$100,000 less, which I don't think is very nice, and I don't  
388 want to do that to the neighbors.  
389  
390 Ms. Dwyer - I guess my point is moot to a degree, because you have  
391 reasonable use of the land.  
392  
393 Mr. Farmer - We do.  
394  
395 Ms. Dwyer - To that extent, we don't have the authority to grant this  
396 variance anyway. But even beyond that, it seems to me that you have plenty of space  
397 to build a 2,600 square foot home. Looking at the numbers, you may not be able to use  
398 a standard model or plan that you have, but it seems to me that there's plenty of  
399 buildable area that would allow you to do that.  
400  
401 Mr. Farmer - Not that it won't look like it's conforming with the rest of the  
402 houses. We've been playing with this for about a year, and I guess you can engineer

403 anything, but from what my engineer has told me, that what we want to build, what  
404 everything else is in there is Colonial two-story, it would benefit everybody to have a  
405 little bit larger house with the same footprint of the other houses that we have in there.  
406 We've talked to the neighbors, and they're in support of this. They don't have a problem  
407 with this, so that's my opinion. I'm not a professional engineer; I'm not a P. E., but that's  
408 the advice that I was given.

409  
410 Mr. O'Kelly - Mr. Farmer, have the common areas been conveyed to the  
411 homeowners' association?

412  
413 Mr. Farmer - No, not yet.

414  
415 Mr. O'Kelly - So you still control those? You still own them?

416  
417 Mr. Farmer - Yes sir. We still have the common area, even though there's  
418 not a whole lot of common area, but we can't go back into the easements or the tree  
419 preservation area. We still do have the common area and probably will have it until  
420 June or July.

421  
422 Mr. O'Kelly - Would it be possible to reconfigure several of these lots to  
423 incorporate a portion of the common area, so you can meet the rear yard setback?

424  
425 Mr. Farmer - I don't know – wouldn't that require rezoning?

426  
427 Mr. O'Kelly - I don't think it would require rezoning, no.

428  
429 Mr. Farmer - I had not checked in that; I just was relying on the advice of  
430 our engineer, who told us that this was the only way we could go, was to put up houses  
431 that were similar to the other ones in the neighborhood. Their opinion was that we  
432 couldn't go back and encroach on the common area. That's common area, and we've  
433 got easements back there, and tree preservation area, and we have to stay off of those  
434 setbacks.

435  
436 Ms. Harris - When your plot plan was developed, did you foresee the  
437 problem you would have with these three lots, and are there more lots that will not meet  
438 the specifications?

439  
440 Mr. Farmer - No ma'am, I did not foresee this as a problem, because  
441 2,000 square foot homes are pretty good size homes, and like Ms. Dwyer says, we can  
442 build on the lots, just the markets taking off, we've been in a very robust economy.  
443 People want bigger houses with bigger bells and whistles. When this was done,  
444 probably rezoned three to four years ago, this was envisioned as a certain price  
445 neighborhood, and it's jumped up in size, and people want larger homes. These are the  
446 only lots that we have left that would be under this situation; the other ones are all sold  
447 and are being built on right now. The subdivision was, I think, 35 lots; we have 14 that  
448 are being constructed and built. Every one of them is sold except for these. The only

449 reason these are not sold is because we were going through this process. We have  
450 people who want them if we are allowed this variance, so we have people who want to  
451 buy the houses if we can put the larger house, which is the same as everything else in  
452 the neighborhood, to conform with the neighborhood, so we have people who want to  
453 buy these three if it is granted. We don't have any other lots, and Dave knows this from  
454 looking at everything; we don't have any other lots that are left under this situation.  
455 These are the only three lots, to answer your question. The rest are already sold, and  
456 ten of the remaining 14 are under construction. The other four will start as soon as we  
457 get building permits. It's just really trying to conform with the rest of the neighborhood.  
458

459 Mr. Nunnally - Any further questions of the Board? Is anyone else here  
460 interested in this case, any opposition to this request? Hearing none, that concludes  
461 the case. A-100-2005, A-101, A-102 – you want to call them together?  
462

463 Mr. Blankinship - Call them separately if you would.  
464

465 Mr. Nunnally - A-100-2005 Willbrook LLC.  
466

467 Mr. Wright - Move we deny it.  
468

469 Mr. Kirkland - Second.  
470

471 Mr. Nunnally - Motion by Mr. Wright to deny it; second by Mr. Kirkland. All  
472 in favor, say aye.  
473

474 Ms. Dwyer - Mr. Chairman, if we could get on the record the reason for  
475 that, I think that would be helpful. I would just say that I agree with the motion to deny  
476 because the case does not meet the standard of the Cochran case; they have  
477 reasonable use of the .....

478  
479 Mr. Wright - .....yes, basis for the denial is that they have reasonable  
480 use of the property without the variance.  
481

482 Mr. O'Kelly - I think, too, that in situations too, that about the common area,  
483 that are still controlled by the developer, he can subdivide those lots and meet the  
484 setback requirements.  
485

486 Ms. Dwyer - And it appears that he can easily build a 2600 square –foot  
487 house on this property, maybe using his standard floor plans, but even beyond the  
488 reasonable use issue. He can certainly do what he wants to do, it seems to me, within  
489 the buildable area.  
490

491 Ms. Harris - Certainly there are other options, quite a few options.  
492

493 Mr. Nunnally - Okay, it's been denied.  
494

495 After an advertised public hearing and on a motion by Mr. Wright, seconded by Mr.  
496 Kirkland, the Board **denied** application **A-100-2005** for a variance to build a one-family  
497 dwelling at 4804 Sadler Oaks Court (Sadler Oaks) (Parcel 747-766-8083).

498  
499 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
500 Negative: 0  
501 Absent: 0  
502

503 The Supreme Court of Virginia has determined that a board of zoning appeals may  
504 grant a variance only after finding that the zoning ordinance “interferes with all  
505 reasonable beneficial uses of the property, taken as a whole” (Cochran v. Fairfax  
506 County BZA, 267 Va. 756 (2004)).

507  
508 Mr. Nunnally - A-101-2005.

509  
510 Mr. Wright - Move we deny it, for the same reasons that we just stated for  
511 the other case.

512  
513 Ms. Dwyer - Second.

514  
515 Mr. Nunnally - Moved by Mr. Wright to deny; seconded by Ms. Dwyer. All  
516 in favor, say aye. It’s been denied.

517  
518 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
519 Dwyer, the Board **denied** application **A-101-2005** for a variance to build a one-family  
520 dwelling at 4737 Denali Drive (Sadler Oaks) (Parcel 748-766-6091).

521  
522 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
523 Negative: 0  
524 Absent: 0  
525

526 The Supreme Court of Virginia has determined that a board of zoning appeals may  
527 grant a variance only after finding that the zoning ordinance “interferes with all  
528 reasonable beneficial uses of the property, taken as a whole” (Cochran v. Fairfax  
529 County BZA, 267 Va. 756 (2004)).

530  
531 Mr. Nunnally - A-102-2005.

532  
533 Mr. Wright - Move we deny it for the same reasons stated for the other  
534 two cases.

535  
536 Ms. Dwyer - Second.

537  
538 Mr. Nunnally - Mr. Wright moved to deny; seconded by Ms. Dwyer. It’s  
539 been denied.

540

541 **(Voice from audience)** A-101 is what you should have called, right?

542

543 Mr. Nunnally - We've already called A-101; now we're on A-102. We just  
544 voted on A-102. It's been denied.

545

546 Mr. Blankinship - Did you call the question there; I was distracted. And the  
547 vote was 5-0.

548

549 Mr. Nunnally - Yes, I did, 5-0.

550

551 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
552 Dwyer, the Board **denied** application **A-102-2005** for a variance to build a one-family  
553 dwelling and a deck at 4812 Sadler Oaks Court (Sadler Oaks) (Parcel 747-766-9987).

554

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

556 Negative: 0

557 Absent: 0

558

559 The Supreme Court of Virginia has determined that a board of zoning appeals may  
560 grant a variance only after finding that the zoning ordinance "interferes with all  
561 reasonable beneficial uses of the property, taken as a whole" (Cochran v. Fairfax  
562 County BZA, 267 Va. 756 (2004)).

563

564 **UP-28-2005 RESOURCE DEVELOPMENT ASSOCIATES** requests a  
565 conditional use permit pursuant to Sections 24-52(d) and 24-103 to  
566 extract materials from the earth at 1801 Kingsland Road (Parcel  
567 818-676-5915), zoned A-1, Agricultural District (Varina).

568

569 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
570 stand and raise your right hand and be sworn in.

571

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

574

575 Ms. Fisher - I do. I'm Courtney Fisher. My request here today is simply a  
576 continuance of a previously issued conditional use permit. The County first issued this  
577 permit in 1990, and it's been renewed every two years since. The request is simply to  
578 continue this conditional use permit. The staff evaluation notes that there's been little, if  
579 any, activity at the site in the past two years. It also notes the reclamation plan shows a  
580 pond surrounded by slopes no steeper than 3 to 1, and notes that the Department of  
581 Public Works is satisfied with the erosion control in place. I would like you to take notice  
582 that sheet 2 of 4 of our EDA drawings shows that rather than a pond, as previously  
583 shown, the owners would like to mound the dirt, to continue to reclaim, but also to  
584 mound the dirt at the end of the permit cycle, which the owners will have many more  
585 years yet to come of excavating, but at the very end they do want to mound the dirt,  
586 import some material, rather than have a pond, as was previously the plan.

587  
588 Ms. Dwyer - What's the rationale for mounding the dirt as opposed to  
589 having the pond?  
590  
591 Ms. Fisher - S. B. Cox is one of the largest, if not the largest, demo  
592 contractors in the area. They have a lot of material that they need to dispose of.  
593 Previously they thought that the pond would be an amenity to a future subdivision, but  
594 at this point in their business operations, they feel that importing fill may be better suited  
595 to their business operations.  
596  
597 Ms. Dwyer - What kind of fill would they use?  
598  
599 Ms. Fisher - Inert material – earth, concrete, brick – nothing that is  
600 hazardous, nothing biodegradable, all inert materials.  
601  
602 Mr. Blankinship - If you refer to condition # 25, you'll see the restrictions on  
603 off-site generated material.  
604  
605 Ms. Fisher - That was the other thing I did want to mention. Staff did  
606 bring in # 25, it seemed to me that was directing that the owners should ask permission  
607 each time a load is proposed to be brought into the site, and I would like to suggest to  
608 the Board that it might be a cumbersome burden, both to the County and to the owner,  
609 to ask permission each time. That may be several times a day.  
610  
611 Mr. Blankinship - We don't need it for each truck, but if you have an idea of a  
612 job that's coming in, that you're going to be filling for so many days or so many weeks,  
613 the specifics of where the materials are coming from, and what's going to be put in  
614 there, and how many truckloads or yards or whatever you think are going to be brought  
615 in. That's how it's usually handled, not day-by-day or truck-by-truck, but normally when  
616 these requests come in, it's for a substantial amount of material and may take weeks to  
617 bring it all in, and we would approve that all at once.  
618  
619 Ms. Fisher - What I'd like to try to suggest is that rather than a request  
620 each time, even for a load, should it take a couple of weeks, is that the applicant keep  
621 detailed records of what he's bringing in for each job, and that's required for a number  
622 of different entities, is that they continue to keep those monthly logs and records, and  
623 that they be available to the County Director of Planning, at any time upon request.  
624  
625 Ms. Dwyer - It sounds like you've made a number of changes to the  
626 request since the last time this was approved, with this being a fairly major one. So  
627 you're suggesting that we amend # 25. Since this is a new proposal that you're making,  
628 I need to be clear about what specific conditions that you want to change, and what the  
629 specific differences are between this request and the one that was previously approved.  
630  
631 Ms. Fisher - The major difference is that previously on your sheet 1 of 4,  
632 of the site plan, you can see where that's showing a pond to be excavated. This new

633 sheet, 2 of 4, you can see an October 12, 2005, revision date on it. This proposal  
634 shows that instead of a valley resulting in a lake, sort of amenity, the applicant would  
635 like to be able to, at the end of the mining period, be able to mound the dirt. Again, this  
636 permit was first issued in 1990; the owners have indicated to me that they may have  
637 another 15 more years of mining, but the current thinking is, rather than to leave the site  
638 as a pond, that they'd like to have the ability to mound material from various other jobs.  
639 This may not happen until the end of the 15 years, but since this thought's occurring to  
640 them now, they wanted to let the Board of Zoning Appeals know, rather than bring it up  
641 10 years down the road.

642  
643 Ms. Dwyer - So page 1 represents what the previous Board approved  
644 what is represented on drawing 1 of 4. And drawing 2 of 4 represents the new  
645 proposal, which would be mounding the hole in the ground, rather than turning it into a  
646 pond.

647  
648 Ms. Fisher - Yes ma'am.

649  
650 Mr. Blankinship - Another way to say that would be that page 1 is the existing  
651 conditions, and showing the mining activity, and page 2 is the reclamation plan, showing  
652 how it will be when completed.

653  
654 Mr. Wright - Is this a major departure from what had been considered  
655 before?

656  
657 Mr. Blankinship - Yes sir, I would say so.

658  
659 Ms. Dwyer - Our staff report talks about the reclamation plan shows a  
660 pond surrounded by slopes, so it seems to me that we do not have a staff report that  
661 considers the new proposal. It says to me that the County hasn't looked at it.

662  
663 Mr. Wright - That's my concern. Mr. Blankinship, has this been  
664 considered by the staff?

665  
666 Mr. Blankinship - Apparently, as we prepared this report, we overlooked that.

667  
668 Mr. Wright - Doesn't the Board need the input of the staff as to major  
669 changes of this nature? This would be a major change in what has been done before.

670  
671 Ms. Dwyer - What materials are being extracted? Is this gravel or sand,  
672 or both?

673  
674 Ms. Fisher - I believe it's sand and gravel.

675  
676 Mr. Wright - My concern in your request to change # 25 is that you'd  
677 have all the materials, but that wouldn't indicate that they were approved by the County,  
678 and with material of this nature, I think that we would want to have some input and

679 control as to what was going in there, not wait till after you submit all these records and  
680 everything, and then we find something in there that we didn't think was proper, and it  
681 just doesn't seem to me to be practical to do it that way.

682  
683 Ms. Fisher - The State does manage this type of activity as well.

684  
685 Mr. Wright - This is the County of Henrico, and it's our responsibility to  
686 control it.

687  
688 Ms. Fisher - I understand, but just wanted to point out that not only is the  
689 applicant interested in meeting the County regulations, but they as well are answering to  
690 State regulations as well. They have several entities that are overlooking the wellbeing  
691 of the environment.

692  
693 Ms. Dwyer - That's good, and we do require that in our conditions. My  
694 thought is that we have a subdivision that's adjacent to this, that's been approved, that  
695 shows on our plat. This could very well be prime property for future subdivision, and I  
696 would like the assurance that the County officials have had a chance to look at your  
697 proposal and make sure that the change in reclamation plan will not diminish the value  
698 or the use of this land for future purposes such as a subdivision.

699  
700 Mr. Wright - I don't think we have enough information to consider this  
701 today before us.

702  
703 Mr. Blankinship - I don't see the written comments from Public Works in the  
704 file. I don't know what the situation is with that. I will point out that Ms. Fisher is well  
705 ahead of the game here. Their current permit runs through April, so I'm sure she'd like  
706 to have a decision today, but I think there is some room for the Board to defer the case.

707  
708 Mr. Wright - On that matter, I'm not in a position to vote favorably unless I  
709 have something from the County that indicates that that has been considered and you  
710 can give us some input on it.

711  
712 Ms. Harris - Would there be any blasting in your operations at all?

713  
714 Ms. Fisher - I don't believe there are any blasting operations.

715  
716 Ms. Harris - You said you've been rather inactive over the last two years?

717  
718 Ms. Fisher - That was the staff comment, yes ma'am.

719  
720 Ms. Harris - I would have to get a little more input from the owner if you  
721 would allow.

722  
723 Ms. Dwyer - That's fine, but he might need to be sworn.

724



725 Mr. Wright - My recommendation is that we defer this matter, and all  
726 these questions, they can get information on, rather than take up a lot of time today. I  
727 think we ought to defer it until we get all the facts.  
728

729 Ms. Harris - I have two more questions, because when you come back,  
730 I'm going to still have the same questions.  
731

732 Mr. Blankinship - At least get them on the table.  
733

734 Ms. Harris - At least get the answers if you don't have them now.  
735

736 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
737 truth, the whole truth, and nothing but the truth, so help you God?  
738

739 Mr. Cox - Yes. My name is S. Barbee Cox III; I'm the President of S.  
740 B. Cox, Inc.  
741

742 Ms. Harris - Our report said that your operations have been rather  
743 inactive for the last two years. My question is why?  
744

745 Mr. Cox - We purchased this piece of property to use as a borrow pit to  
746 extract dirt for our operations. In the past two years, we have not had any operations  
747 that required us to mine dirt off of this piece of property.  
748

749 Ms. Harris - What boundaries are we considering for this application, that  
750 you will receive construction materials?  
751

752 Mr. Cox - Our plans show the boundaries that we are cutting on that  
753 we will extract soil from, that we would like to eventually replace those soils with  
754 materials brought from off site – broken concrete, brick, or dirt.  
755

756 Ms. Harris - You said off site?  
757

758 Mr. Cox - Yes ma'am.  
759

760 Ms. Harris - My question is the boundaries of the off-site deposits. Are  
761 we dealing strictly with Virginia?  
762

763 Mr. Cox - Yes ma'am, you're dealing strictly with Richmond and the  
764 surrounding localities?  
765

766 Mr. Nunnally - And you're the only one who brings stuff in there? No other  
767 commercial trucks supposed to come in there?  
768

769 Mr. Cox - Yes, it would basically be S. B. Cox materials coming back  
770 in.

771  
772 Ms. Harris - And my last question, were the neighbors notified?  
773  
774 Mr. Blankinship - Yes ma'am.  
775  
776 Ms. Harris - The neighbors from the subdivision?  
777  
778 Mr. Blankinship - Everybody who owns property that abuts this was notified.  
779  
780 Ms. Harris - I said that was my last question, but it wasn't. The entrance  
781 to your site, could you show us. I'm just concerned about the entrance or the point of  
782 exits in comparison to the neighborhood residential area.  
783  
784 Mr. Cox - The entrance to this property is at the intersection of  
785 Kingsland and Strath Roads, which, if you're looking at the plot, would be kind of at the  
786 top toward the left corner. When Strath Road comes into Kingsland, our driveway is  
787 directly across Kingsland from that.  
788  
789 Ms. Harris - This is the same entrance you've used all these years?  
790  
791 Mr. Cox - Yes ma'am. One other thing I would like to add, that has  
792 changed since we originally developed it, if you notice from the plot, Dominion Power  
793 has power line easements over this property, which is going to cause us some pains at  
794 the end; we would end up with two ponds instead of one lake.  
795  
796 Ms. Dwyer - Does that show on drawing # 1?  
797  
798 Ms. Fisher - I don't think that was reflected on drawing # 1. That was part  
799 of the previously submitted site plan, and what Mr. Cox is referring to, you can better  
800 maybe see it on the aerial screen, the Virginia Power swath. Virginia Power needs to  
801 be able to travel their right-of-way.  
802  
803 Ms. Dwyer - The Virginia Power easement does show on drawing # 1.  
804  
805 Mr. Cox - We are not going to be able to mine the material that is  
806 underneath of their right-of-way.  
807  
808 Ms. Dwyer - So you'll have two ponds, one in the sort of triangular  
809 section?  
810  
811 Mr. Cox - Under our present conditions, that's the way it would be.  
812  
813 Ms. Dwyer - Can you fill under their power lines?  
814  
815 Mr. Cox - We will not be able to fill under their power lines, nor will we  
816 be able to extract materials underneath their power lines.

817  
818 Mr. Wright - We don't have enough information to make a decision, and  
819 my recommendation is that we defer this to the next meeting. That wouldn't put you in  
820 any difficulty, would it?

821  
822 Mr. Cox - I don't have any objection to that. No sir.

823  
824 Mr. Wright - Mr. Chairman, I move we defer this case to the December  
825 meeting.

826  
827 Ms. Dwyer - Second.

828  
829 Mr. Nunnally - Motion by Mr. Wright, seconded by Ms. Dwyer, that we  
830 postpone to the December meeting. All in favor say aye. Opposed? It's been deferred.

831  
832 Upon a motion by Mr. Wright, seconded by Ms. Dwyer, the Board **deferred** application  
833 **UP-28-2005** for a conditional use permit to extract materials from the earth at 1801  
834 Kingsland Road (Parcel 818-676-5915).

835  
836 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
837 Negative: 0  
838 Absent: 0

839  
840 The Board deferred the request, from the November 17, 2005, until the December 15,  
841 2005, meeting, to allow the staff additional time to review the application.

842  
843 **A-103-2005** **PAUL AND PEGGY CHRISTOFAKIS** request a variance from  
844 Section 24-9 to build a one-family dwelling at 9906 Drouin Drive  
845 (Parcel 739-737-9872), zoned R-0, One-family Residence District  
846 (Tuckahoe). The public street frontage requirement is not met.  
847 The applicants have 0 public street frontage, where the Code  
848 requires 50 feet public street frontage. The applicants request a  
849 variance of 50 feet public street frontage.

850  
851 Mr. Blankinship - Does anyone else here intend to speak on this case? Would  
852 you raise your right hand and be sworn, please. Do you swear that the testimony you  
853 are about to give is the truth, the whole truth, and nothing but the truth, so help you  
854 God?

855  
856 Mr. Christofakis - Yes I do. My name is Paul Christofakis, and my wife and I  
857 own a parcel of land, known as Parcel B that's attached to our existing property. We  
858 purchased the parcel with our current property in 1987. The parcel was recorded in the  
859 Henrico land records in 1974. All parcels within the area of parcel B are similarly zoned  
860 and are used for single-family residences. What's unique about this parcel is that there  
861 was no easement or right-of-way to either Drouin Drive or River Road provided for it  
862 when it was subdivided. We respectfully request a variance to the Section 24-9 of the

863 Code of Henrico County that requires a 50-foot frontage to the public street. Without  
864 the variance from this section, utilizing this parcel that is presently landlocked for a  
865 single-family home in the same manner and character as the other parcels and lots in  
866 the area will not be permitted. We propose to grant a 25-foot legal access and utility  
867 easement along the eastern portion of the current property along Drouin Drive. Since  
868 this easement will be across our property, it will not impact neighboring properties. Our  
869 current plans are to build a smaller home than what we have presently, and occupy it  
870 ourselves, and the current residence either give to our two sons, who are adults now, or  
871 sell. The access driveway will be of the same quality and character as the other  
872 driveways of the neighborhood. The property is wooded, and even though some trees  
873 will have to be removed to be able to build the new home, it will be partially screened  
874 from the surrounding homes. Parcel B is 1.03 acres, and it is outside the floodplain that  
875 extends south of Drouin Drive, as shown on the County and FEMA floodplain  
876 topography maps, and I do have copies of those.

877  
878 Ms. Dwyer - You live at 9904 Drouin Drive, and how long ago did you  
879 purchase your property?

880  
881 Mr. Christofakis - Correct. Eighteen years ago, 1987.

882  
883 Ms. Dwyer - When you purchased your house in 1987, you also  
884 purchased this lot .....

885  
886 Mr. Christofakis - .....it's adjacent, from the same owner. Correct.

887  
888 Ms. Dwyer - So you don't know how this lot came to be?

889  
890 Mr. Christofakis - I honestly do not. And at the time, I did not give it any  
891 thought. We got it as a package deal, so to speak.

892  
893 Mr. Wright - Was it a separate parcel, or was it all one parcel at the time.

894  
895 Mr. Christofakis - It was a separate parcel; we pay taxes separately on it.

896  
897 Mr. Wright - It has been a separate parcel all along?

898  
899 Mr. Christofakis - That's correct.

900  
901 Ms. Dwyer - Mr. Blankinship, it appears that this parcel may have been  
902 originally a part of 9809 River Road, but I would like to know the history of how it is that  
903 this lot came into being as a landlocked parcel, and there's one adjacent to it.

904  
905 Mr. Blankinship - Essentially, what happened is that all the property around it  
906 was subdivided, and maybe somebody who speaks later will have more information  
907 than what I was able to glean from the files. I do have a subdivision plat from 1956 of  
908 Tuckahoe Place, that left it landlocked on the one side.

909  
910 Ms. Dwyer - Was this a separate lot in 1956?  
911  
912 Mr. Blankinship - It was just a parcel that all the parcels around it were  
913 divided. This one was just not included in the surrounding subdivisions,  
914  
915 Ms. Dwyer - There's another parcel next to it that's also landlocked,  
916 according to my map, which is of concern as well, so was that also subdivided in 1954?  
917  
918 Mr. Blankinship - The property around it was divided off. The adjoining  
919 property was subdivided and streets were built to serve it, but this property was not  
920 incorporated within it. Tuckahoe Place was done in 1956, and Drouin Hill is on the  
921 other side of it – I don't have the date that it was approved.  
922  
923 Ms. Dwyer - Where is this lot?  
924  
925 Mr. Blankinship - It's marked here – this is his house here, the 9904 Drouin  
926 Drive.  
927  
928 Ms. Dwyer - The lots along Westwick, Drouin, and Kingsbridge may have  
929 been parceled off, but this particular square may not have been parceled off; it may  
930 have been part of 9809. When did this piece of property become a separate lot?  
931  
932 Mr. Blankinship - That I don't know.  
933  
934 Ms. Dwyer - That's a question I'd like to know, and I'd also like to know, it  
935 looks to me like this has been subdivided into three lots, which would require it to  
936 comply with the subdivision ordinance, which would not have allowed this to happen.  
937 So I would like to know the history of how the County either allowed this to happen, or  
938 whether ..... Here's my question – if I have a piece of property, and I want to  
939 sell off a lot that's landlocked, can I just get a surveyor to come in, mark the boundaries  
940 of that lot, and sell it as a lot, and thereby subdivide my property without any County  
941 intervention?  
942  
943 Mr. Blankinship - If it meets the other zoning requirements, other than the  
944 public street frontage, yes, and the reason is the public street frontage requirement  
945 specifically states that any parcel to be used for a dwelling has to have public street  
946 frontage, so if they cut off a parcel for any other purpose, they are not required to  
947 provide it with street frontage.  
948  
949 Ms. Dwyer - I'm looking at a square here that looks like it has four parcels  
950 on it. If I owned this property, and I just wanted to divide it up like this, I get a surveyor  
951 to come in, mark off those lots, and I file that in the County Clerk's Office as a separate  
952 lot – where does the County intervene to say, "no, you cannot do that," so that we don't  
953 have this problem?  
954

955 Mr. Blankinship - We don't.  
956  
957 Ms. Dwyer - Just because this has been divided up as a lot and sold as a  
958 lot, doesn't mean we have to treat it as a lot for .....  
959  
960 Mr. Blankinship - .....dwelling purposes.  
961  
962 Ms. Dwyer - Exactly. Just somebody who owned it happened to divide  
963 up this square and sold it off, and the County never intervened, there was no point at  
964 which the County needed to intervene at that point.  
965  
966 Mr. Blankinship - Right.  
967  
968 Ms. Dwyer - In other words, you can't subdivide your property on your  
969 own and thereby circumvent the subdivision ordinance requirement, so what's  
970 happening now is the subdivision ordinance requirements are coming into play, now  
971 that this lot has been divided and sold and wants to be used as a dwelling.  
972  
973 Mr. Blankinship - Right. Yes ma'am. Now we do have in the packet a 1974  
974 survey that indicates parcel A, parcel B, and parcel C, whether this is the survey that  
975 first created these three parcels or whether they had already been divided and this was  
976 just an update, I don't know, but certainly it was no later than 1974 that this parcel B  
977 was divided off of the property that has frontage on the river.  
978  
979 Ms. Dwyer - But at no time did the County approve this in any way.  
980  
981 Mr. Blankinship - Right, except that it was recorded at the Court House.  
982 There's no record of a subdivision having been approved by the Planning Commission  
983 or by the Planning Office.  
984  
985 Ms. Dwyer - Because we're going to have the same problem with parcel  
986 C.  
987  
988 Mr. Kirkland - Does parcel C have a dwelling on there, or is that just a  
989 garage, Mr. Blankinship? I see a little structure, and which one does that belong to,  
990 9808 Kingsbridge, or does it belong to 9902 Drouin Drive?  
991  
992 Mr. Wright - It may not belong to either.  
993  
994 **(Voice from audience)** - It belongs to 9902.  
995  
996 Mr. Blankinship - A voice from the audience says it belongs to 9902, and I  
997 guess we can get more testimony to that later.  
998  
999 Mr. Kirkland - That makes sense.  
1000

1001 Mr. Nunnally - When we hear from the opposition, we might get some  
1002 information. Any more questions from the applicants right now? If you'll have a seat sir,  
1003 and then we'll call you back up for rebuttal. Are you people against this or for it?  
1004

1005 **(From audience)** - We're against.  
1006

1007 Mr. Pearsall - Good morning Mr. Chairman, esteemed Members of the  
1008 Board. My name is Robert Pearsall. I am counsel for the Widhelms. Mary Kay  
1009 Widhelm is here with me now. I also happen to be a concerned neighbor. I reside at  
1010 9901 Drouin Drive, which is the southwestern corner of Drouin and Kingsbridge. We'd  
1011 like to address in particular a few concerns, firstly, whether the Board actually has  
1012 jurisdiction or ought to render a decision in the case at all, in that Mr. Christofakis, with  
1013 all due respect to the petitioner, has to show that he has endured some kind of hardship  
1014 or demonstrate that he meets the requirements of the Code in order to even submit the  
1015 application for the variance. As indicated, he purchased the property as it is in 1987,  
1016 some 17 years ago, as it lies now, that is, landlocked, a wooded lot situated behind his  
1017 lot and with, as Mr. Christofakis indicated, no thought about it other than being more  
1018 land for his. In essence it was purchased as one lot, and as Ms. Dwyer has pointed out,  
1019 it looks like this is more or less an end run around the subdivision requirements, in that  
1020 he's going to use this parcel he acquired, really as part of his parcel when he acquired  
1021 his home in 1987, now to residentially subdivide and put another home on the land, but  
1022 it was originally solely for his primary residence. Again, he's got to demonstrate that  
1023 he's got some sort of exceptional or extraordinary circumstances that would justify the  
1024 Board granting the variance in his favor, and our opinion, simply because the land is  
1025 landlocked, as it was and always has been since, as far as we can tell, the parcel was  
1026 originally created. There's nothing exceptional or extraordinary about it; it simply is  
1027 what it is, and to grant a variance and allow a home to be built there would be an end  
1028 run around the subdivision requirements.  
1029

1030 Secondly, the argument's be posited that the parcel is somehow unique and justifies the  
1031 variance, but in all candor from the aerial photo, from the plats submitted by the  
1032 petitioner, the land is just like all the other parcels, size wise perhaps a little bit smaller  
1033 than some of the other residential parcels, but otherwise in character exactly the same.  
1034 The only thing that makes this parcel any different whatsoever is, the fact that it is, in  
1035 fact, landlocked, does not have any street frontage, which would be required for  
1036 residential subdivision.  
1037

1038 The last point, posited by the petitioner, a home constructed on this parcel, which if I  
1039 could refer the Board to the exhibit submitted by the petitioner, which is shown as, not a  
1040 residential plat, but has all the adjacent parcels. As you can see, these parcels .....

1041 Mr. Wright - Do we have that before us?  
1042

1043 Mr. Blankinship - I don't recognize it.  
1044

1045 Mr. Wright - Can we get that on the overhead so we can see it? That's  
1046

1047 the 1974 plat. We've got that in our material.  
1048

1049 Mr. Pearsall - Yes sir. This is something different. This plat was part of  
1050 the original petition that was submitted by the petitioner to the Board.  
1051

1052 Mr. Wright - That's not what you're talking about?  
1053

1054 Mr. Pearsall - No sir, this is something different that's not yet on the  
1055 screen.  
1056

1057 Ms. Dwyer - We're having technical difficulties.  
1058

1059 Mr. Pearsall - It's a little out of focus. Parcel B is the subject parcel.  
1060 Parcel C is the parcel that belongs to the Streets, the residence that fronts on Drouin  
1061 Drive next door to the Christofakis residence. The dotted lines represent the proposed  
1062 easement area to the back parcel, parcel B, which is subject to the proposed request for  
1063 variance. As the Board can see, these parcels B and C, command a very unique  
1064 position in the community. They're right centrally located, and both are heavily wooded  
1065 lots, representing almost 2 ½ acres of undeveloped land in the middle of this  
1066 subdivision. What you also cannot see is that the community itself, the neighborhood, is  
1067 heavily wooded, is full of mature hardwoods, old growth trees, which make the  
1068 community very appealing, and make the properties sell at a premium, and certainly  
1069 add value to the property, in any event. The parcels B and C serve as a buffer for  
1070 Westwick, Drouin Drive, River Road, and Kingsbridge Road, and you can see that the  
1071 homes literally ring these parcels B and C. The concern of the community and  
1072 opposition is that the development of parcel B will reduce this buffer zone. Any clearing,  
1073 obviously, is going to have a detrimental impact on the buffer that the parcels serve  
1074 currently between the neighbors. The community has a very quiet feel about it. The  
1075 lots are large, typically bigger than one acre, and it offers sort of a suburban feel in the  
1076 near west end, due to the fact that it's got so much woodland and an abundance of wild  
1077 life.  
1078

1079 Ms. Dwyer - Mr. Pearsall, I'm interested in why you feel that the granting  
1080 of this variance would be a detriment to adjacent properties – I would like to hear those  
1081 arguments, but it's not persuasive to me that just because you enjoy somebody else's  
1082 woods, they shouldn't be entitled to do something with them. We hear that argument a  
1083 lot, and the Planning Commission hears it a lot. You're not really entitled to enjoy  
1084 someone else's property and prevent them from using it. The question is, "can they  
1085 legitimately use it?" I would like to hear about how your property would be harmed,  
1086 other than just simply the fact that you want to enjoy your neighbor's woods.  
1087

1088 Mr. Pearsall - The theory being, obviously, that if the residential use of the  
1089 property is approved, then the residence can be built on the property, but that use would  
1090 have a detrimental impact on the values of the neighbors' property. It is going to reduce  
1091 that buffer zone. It is going to reduce the isolated feeling that the neighbors can get  
1092 because they're not going to have as much of a buffer between themselves and the



1093 neighbors. The Widhelms, whom I'm representing, own the property on Westwick,  
1094 which is directly adjacent. They were noticed participants in the hearing, because  
1095 they're adjacent property owners to the parcel, and they've spent substantial sums on  
1096 their property improving it and adding substantial square footage to the house, and a  
1097 concern there is that any diminution in the value of the property is going to directly affect  
1098 all the substantial investment that they've made.

1099  
1100 Obviously, the petitioner is entitled to do with his property that which it is legal to do, but  
1101 he has to demonstrate that there has been some sort of burden or hardship placed on  
1102 him in order to come before the Board and request and receive the variance. In this  
1103 case, this is a parcel from 1987, purchased not for development, but as simply what it is  
1104 used for today, a buffer zone. Our contention is that the neighbors have a reasonable  
1105 reliance on that property remaining in its current use, and that was the point with the  
1106 loss of the trees being a detriment to the community.

1107  
1108 There may be an even more pressing concern for the community, in that the proposed  
1109 easement area, which you cannot tell from looking at the plats, or the survey, and I  
1110 would direct the Board's attention also to the survey of 1999 for Drouin Drive – this  
1111 easement area that's proposed is right along a creek bed. I've made some notes, which  
1112 are my own, in red, on the overhead projector, which you may be able to see, but the  
1113 arrows pointing down indicate where the community is steeply graded. It runs down into  
1114 a creek, which is a tributary of Tuckahoe Creek. The properties, both the Streets' and  
1115 the Christofakis's, slope severely into the creek. The asphalt drive, which I have dotted  
1116 in red, is not to scale, but is approximately where you'll find it on the plat of 1999 for  
1117 Drouin Drive, drops off precipitously into the creek. In order to have any use  
1118 whatsoever of that easement area, in order to get to the back parcel, parcel B, it will  
1119 require substantial backfilling to bring the property up to the street grade for vehicular  
1120 ingress and egress. It's an engineer's question as to whether it can be done at all, but  
1121 certainly if they can do it, they're going to have to do something that's going to radically  
1122 alter the character and nature of the creek that runs through the community, and that is  
1123 another feature of the community that the neighborhood contends has value to it,  
1124 because it's a scenic, wild, natural area, an abundance of habitat, birds, wildlife, deer.  
1125 Obviously using that area for any kind of easement to the back parcel is going to have a  
1126 very traumatic and negative impact on the neighborhood as a whole.

1127  
1128 Mr. Kirkland - Mr. Blankinship, in the staff report it says, "A small portion of  
1129 the property appears to lie in the floodplain." Where is this on the drawing? Is it the  
1130 creek that they're talking about?

1131  
1132 Mr. Blankinship - Yes, the lowest corner of the property just touches that  
1133 creek.

1134  
1135 Mr. Kirkland - Does that go to the piece of the parcel that we're looking at  
1136 also? Or is that completely out of it?

1137  
1138 Mr. Blankinship - We were not absolutely certain of where that's located.

1139 That's why it was noted the way it is in the report. I believe the applicant has submitted  
1140 something showing that at least the stream is not on his parcel, and he doesn't believe  
1141 that the floodplain affects his parcel.

1142  
1143 Mr. Kirkland - If this is an R-0, what's that, a minimum of one acre, and  
1144 how large is this parcel, one acre?

1145  
1146 Mr. Blankinship - It's 1.03, so he doesn't have very much to spare.

1147  
1148 Mr. Kirkland - Yes, if the floodplain was on his property, then he wouldn't  
1149 meet the requirement.

1150  
1151 Mr. Blankinship - There's no request for a variance from that requirement  
1152 though, so he would have to demonstrate that he has one acre outside of the floodplain.

1153  
1154 Ms. Harris - Could you identify the properties of the neighbors who are  
1155 here? You gave us your address.

1156  
1157 Mr. Pearsall - If I could just have them do it. I know where they live, but I  
1158 can't tell you what the address is. This is Mr. Lovelace; he's on Kingsbridge, 9810  
1159 Kingsbridge, which is the corner house on Kingsbridge and Drouin. Mr. Street is the  
1160 next-door neighbor, who also owns parcel C, and to answer the question posed earlier,  
1161 the improvement in the rear of the property is actually a garage, is it not.

1162  
1163 Mr. Street - It's a shed.

1164  
1165 Mr. Blankinship - But you own parcel C as well as 9902 Drouin Drive?

1166  
1167 Mr. Street - Yes sir.

1168  
1169 Ms. Widhelm - I'm at 5 Westwick Road.

1170  
1171 Mr. Pearsall - And that's the property that's the second house heading  
1172 north on Westwick Road, which is right behind parcel B, the subject parcel.

1173  
1174 Mr. Nunnally - Any other questions from the Board? Does anyone else  
1175 want to speak?

1176  
1177 Mr. Street - I just want to reiterate regarding the creek, it is basically the  
1178 division between my property, 9902, and 9904, as well as the creek is an integral part of  
1179 parcel C as well, and my specific concern as the neighbor is in the development of this  
1180 property, what type of run-off, what type of backfill could potentially cause in any type of  
1181 disuse for both of my parcels and potentially how the creek will be affected. The  
1182 driveway, as Mr. Pearsall commented, my driveway and my neighbors' driveway,  
1183 severely slope down and then divides the property right at the creek and, again it's an  
1184 engineering or environmental question, but with regards, even though the driveway

1185 proposed is not on our property, my concern is how it could potentially affect the creek  
1186 or even, I guess it's an unknown to me, that it potentially could be affecting our property,  
1187 given the fact that we're divided by a creek that's certainly going to be affected, given  
1188 the fact that it's downhill from the proposed building site, as well as the proposed  
1189 variance. That's my concern.

1190  
1191 Mr. Wright - Is your driveway along the creek?

1192  
1193 Mr. Street - My driveway is 20-30 feet up above on my property from the  
1194 creek.

1195  
1196 Mr. Wright - On that side?

1197  
1198 Mr. Street - Correct?

1199  
1200 Mr. Lovelace - My name is Ralph Lovelace. I think it all comes down to one  
1201 thing; we're all very proud of our neighborhood. If you've ever been through that  
1202 neighborhood, every home kind of stands on its own. They're all very well kept, and the  
1203 idea of having two driveways so close together go up into a second home – I don't  
1204 believe there's any other scenario similar to what they're requesting here, so naturally  
1205 when we look at this and look at the history of Drouin Hill, I think that's where the  
1206 concern is. When you do things of this nature, you don't know what the impact is going  
1207 to be on the homes around it. Certainly as it is now, it is a very sought after  
1208 neighborhood, and when we moved into Drouin Hill five years ago, what I liked about it  
1209 is the fact that this neighborhood hadn't really changed. I grew up in lower Tuckahoe  
1210 and moved in 1969, and this neighborhood has pretty much remained the same, and  
1211 that's what I like about it. The other issue that I thought of is that the properties, both  
1212 properties, as I know it, have been sold together, the Streets property and parcel B, with  
1213 the **(unintelligible name)** other house. I don't believe, if you look at the history of what  
1214 these things sold for, that any greater value is obtained for the sale of those real estates  
1215 together. The Streets' home sold a couple of years ago, and the price that they paid for  
1216 their house per square footage was similar to what you'd see for other homes in the  
1217 area, which would lead me to believe that no greater value was paid for these other  
1218 parcels, parcel C or parcel B, because both buyers knew going in that the property  
1219 could not be developed or built upon, because of the issue of not having frontage on a  
1220 major road. Had the circumstances been different and it had been bought with that  
1221 understanding, or a change had been made after the purchase of that property, you  
1222 could maybe show some harm. I really do question, and I think that maybe more harm  
1223 really comes to the neighborhood in doing this. It doesn't serve the greater good in this  
1224 situation, and that's why I've come to speak out against it.

1225  
1226 Mr. Nunnally - Any questions of Mr. Lovelace? Anyone else want to  
1227 speak?

1228  
1229 Mr. Blankinship - Raise your right hand. Do you swear that the testimony you  
1230 are about to give is the truth, the whole truth, and nothing but the truth, so help you

1231 God?  
1232  
1233 Mr. Adams - I do. Thomas Adams, and I'm at # 3 Westwick Road. I  
1234 didn't realize that my property adjoined this property. I wasn't notified of this request for  
1235 variance.  
1236  
1237 Ms. Dwyer - You're not an adjoining.  
1238  
1239 Mr. Adams. - Well, I don't know. It appears today I am.  
1240  
1241 Mr. Blankinship - It's certainly in the neighborhood.  
1242  
1243 Ms. Dwyer - It's in the neighborhood, but it doesn't actually touch this  
1244 property, according to my map.  
1245  
1246 Mr. Adams - I don't know what the notification requirements are, but I was  
1247 not notified, but I'm here to oppose the request for variance. As has been said before,  
1248 the properties have been conveyed as a unit, and when I purchased my property, I  
1249 understood, actually from my realtor and my attorney, that those properties would  
1250 continue to be conveyed in that manner. The Sanborns. who are on River Road, have  
1251 the large lot. They told me that theirs would never be conveyed separate. They're  
1252 parcel A, 9811. They actually tried to buy part of my property, because I have an extra  
1253 400-500 square feet, and also the Barefords at parcel A had advised me that their  
1254 understanding was, when I purchased my property, that their property would never be  
1255 divided and could not be conveyed separately from what they had purchased it as, and  
1256 that would apply to the Sanborns as well, so we're talking about 9809 and 9811. Again,  
1257 I'm at # 3, and I do abut that property; I didn't realize it.  
1258  
1259 Mr. Nunnally - Anyone else in opposition wish to speak? All right then,  
1260 come down for rebuttal sir.  
1261  
1262 Mr. Christofakis - The only statement I guess I can make is that I like this  
1263 neighborhood; I've been in it for 18 years. My plans are to stay in the neighborhood. I  
1264 purchased this property when I purchased it separately; again, it was from the same  
1265 owner, but it was a separate parcel. We pay taxes separately. I did not give it any  
1266 thought; I had no plans at the time of doing anything with it. I'm at a different stage of  
1267 my life. My two sons are adults, so I have to think a little differently, and I do want to  
1268 develop that property with your permission, if I can. My intention again, is to stay in it,  
1269 so whatever we build on it, it will be in the same character as the rest of the properties  
1270 in the area. It will have a minimum impact to the environment, the creek that was raised  
1271 as a concern. I will have a legal access to it on my current property, and it will be  
1272 recorded as such. Regarding the trees, I understand that it's environmental  
1273 beautification to the area. I respect that; I like that; we've enjoyed it for 18 years. I will  
1274 keep it down to a minimum. I could have built a tennis court or something different on it,  
1275 like one of my other neighbors did up the street, or put up a pool, and it would affect the  
1276 area, the nature part of it in a similar way. I will follow the letter of the law, so the

1277 decision is basically in your hands. Thank you.  
1278  
1279 Mr. Nunnally - Any of you have any other questions of the applicant?  
1280 Hearing none, that concludes the case. Thank you for coming. A-103-2005.  
1281  
1282 Ms. Dwyer - I move that we deny, and I'd like to state my reasons.  
1283  
1284 Ms. Harris - Second.  
1285  
1286 Mr. Nunnally - Motion by Ms. Dwyer to deny; seconded by Ms. Harris.  
1287  
1288 Ms. Dwyer - Discussion. I would just like to state that just because a lot  
1289 is segregated from a piece of property, doesn't mean that it's entitled to be developed.  
1290 That's something that has to be determined by the subdivision ordinance, the zoning  
1291 ordinance, and sometimes by this Board, so the fact that somebody, sometime, before  
1292 1974 decided to separate this piece of property out, does not automatically or  
1293 necessarily mean, is not necessarily an argument in favor of the fact that this should be  
1294 a developable lot. I think that the current owner has used this property since 1987,  
1295 when he purchased it, this additional lot, as part of his existing parcel. I think that it is a  
1296 reasonable use of both of these parcels to have a single home on that lot; that is, one  
1297 house for the two separated lots is a reasonable use. It's been under common  
1298 ownership since at least 1987. There's been no change in circumstances since the lot  
1299 was purchased. It was purchased as a landlocked parcel and has remained so for the  
1300 last 18 years. I think to put a house that does not have road frontage in a subdivision  
1301 like this would be detrimental to the character of the neighborhood. I will also say that  
1302 I'm not making my decision based on the fact that neighbors would like to have a buffer  
1303 on someone else's property. A buffer is something on your own property that you may  
1304 be required to have, but I would just like to make it very clear that this decision in my  
1305 view is not based on the fact that we want to use someone else's property as a buffer.  
1306  
1307 Ms. Harris - It seems to me too, that there are many non-buildable sites  
1308 in the County, not only in the County, but probably period, and this is simply one of  
1309 them, so I stand by the Code that makes it nonbuildable, and I quite agree with Ms.  
1310 Dwyer that we need to look at other options when we have landlocked properties, such  
1311 as zoning regulations.  
1312  
1313 Mr. Nunnally - Motion by Ms. Dwyer; seconded by Ms. Harris, that we deny  
1314 it. All in favor, say aye. Opposed? It's denied.  
1315  
1316 After an advertised public hearing and on a motion by Ms. Dwyer, seconded by Ms.  
1317 Harris, the Board **denied** application **A-103-2005** for a variance to build a one-family  
1318 dwelling at 9906 Drouin Drive (Parcel 739-737-9872).  
1319  
1320 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1321 Negative: 0

1322 Absent: 0

1323  
1324 The Board denied your request as it did not find from the evidence presented that there  
1325 was any "hardship approaching confiscation" as required by § 15.2-2309 of the Code of  
1326 Virginia to justify a variance.

1327  
1328 **A-104-2005 HICKORY CORNER, LC** appeals a decision of the Director of  
1329 Planning pursuant to Section 24-116(a) regarding the property at  
1330 5350 Twin Hickory Road (Hickory Corner Office Condo) (Parcel  
1331 747-773-1506), zoned O-2C, Office District (Conditional) (Three  
1332 Chopt).

1333  
1334 Upon a motion by Mr. Wright, seconded by Mr. Kirkland. the Board **deferred** application  
1335 **A-104-2005** to appeal a decision of the Director of Planning regarding the property at  
1336 5350 Twin Hickory Road (Hickory Corner Office Condo) (Parcel 747-773-1506).

1337  
1338 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1339 Negative: 0  
1340 Absent: 0

1341  
1342 The case was deferred at the request of the applicant, from the November 17, 2005,  
1343 until the February 23, 2006, meeting.

1344  
1345 **A-105-2005 BRADLEY AND ANNE MARIE DIKE** request a variance from  
1346 Section 24-94 to build a screened porch at 11401 Greenbrooke  
1347 Court (Sadler Grove) (Parcel 746-765-3777), zoned R-3C, One-  
1348 family Residence District (Conditional) (Three Chopt). The rear  
1349 yard setback is not met. The applicants propose 25 feet rear yard  
1350 setback, where the Code requires 40 feet rear yard setback. The  
1351 applicants request a variance of 15 feet rear yard setback.

1352  
1353 Mr. Nunnally - Is anyone else here interested in this case? If so, please  
1354 stand and raise your right hand.

1355  
1356 Mr. Blankinship - Do you swear that the testimony you are about to give is the  
1357 truth, the whole truth, and nothing but the truth, so help you God?

1358  
1359 Mr. Dike - I do. My name is Bradley Dike. We're requesting to enclose  
1360 the area over our existing deck with a screened-in porch, and we would like to extend  
1361 the deck a little bit, because it's a little small, to make the screened-in porch a little  
1362 bigger than that. One of the reasons for the screened-in porch is, as you see, the lot is  
1363 somewhat unique, and our younger children play over on the one side, and we have a  
1364 brand new baby as well, and my wife would like to be able to be outside when our other  
1365 child is playing, but with the bugs, and we get a lot of direct sunlight in our back yard,  
1366 and the sunlight is not very conducive to the baby. We would also like to just enjoy the  
1367 deck and that area. As you can see with the house itself, it is just meeting the setback

1368 requirements for both the front and the back, by 3 inches in the back, and by 9 inches in  
1369 the front, so the lot has a very unique shape, in that it's only 120 feet deep on the right  
1370 side as I'm facing it here on the right side, which lends to the fact that there's only 40  
1371 feet depth in the back yard, as opposed to the about 190 feet on the other side. And  
1372 then there's also 200 feet along the back. So it's very long along two sides, but very  
1373 short along the other side, which made it difficult in the first place to even get the house  
1374 located on the lot. I know the builder had some issues trying to get it there to begin  
1375 with.

1376  
1377 Mr. Wright - Mr. Dike, currently you have, according to our information, a  
1378 3,089 square foot family dwelling on the property.

1379  
1380 Mr. Dike - Yes, it's three stories at that.

1381  
1382 Mr. Wright - How long have you lived there?

1383  
1384 Mr. Dike - Just about two years.

1385  
1386 Mr. Wright - So you have a reasonable use of the property at this point  
1387 without the variance or the extension that you request.

1388  
1389 Mr. Dike - A reasonable use of the living area, but to use the rear yard  
1390 reasonably, I don't know that I would agree with that statement.

1391  
1392 Mr. Wright - Our problem is that this recent Supreme Court decision,  
1393 Cochran vs. Fairfax, indicates that if you have a dwelling on the property, which means  
1394 you have a reasonable use of the property without the variance, this Board has no  
1395 authority to grant a variance.

1396  
1397 Mr. Dike - Yes, and I guess that's where the question of the  
1398 "reasonable use" comes. Is it reasonable .....

1399  
1400 Mr. Wright - That's the Supreme Court's decision, that if you have a  
1401 residence on the property, which you've used for several years, obviously, you've been  
1402 using the property, that's a reasonable use, and our hands are tied.

1403  
1404 Mr. Dike - Is that true in the case of, I didn't know the zoning law at the  
1405 time that we wouldn't be able to move anywhere because of that 40-foot limit because  
1406 of the depth? And the other question I have, has to do with the Code as it exists in  
1407 Section 24-95. There's a reference in there, if the depth of the yard is not 150 feet, that  
1408 the rear setback does not need to be the full 40 feet.

1409  
1410 Mr. Blankinship - That's for property that was subdivided prior to 1960.

1411  
1412 Mr. Dike - In the Code it nowhere references that.

1413

1414 Mr. Blankinship - It does in 24-95(b); it states that explicitly.  
1415  
1416 Mr. Dike - It does, because this is section C.  
1417  
1418 Mr. Blankinship - Yes, C refers back to B. It says, "on any such lot."  
1419  
1420 Mr. Dike - So that's only for lots of that case. That was just a question I  
1421 had in that case that they had mentioned before.  
1422  
1423 Ms. Dwyer - His deck, Mr. Blankinship, is as deep as it can go, as well?  
1424  
1425 Mr. Blankinship - He could add almost three feet to the deck. It's allowed to  
1426 extend ten feet into the setback.  
1427  
1428 Ms. Dwyer - The deck is beyond the setback, but something without a  
1429 roof is allowed to do that.  
1430  
1431 Mr. Dike - In putting the roof over it, that's what's considered making it  
1432 an enclosure?  
1433  
1434 Mr. Nunnally - Any other questions from the Board or staff? Is anyone here  
1435 in opposition? That concludes the case. Thank you for coming, sir. A-105-2005.  
1436  
1437 Mr. Wright - Move we deny it, basis on the grounds that the owner has  
1438 reasonable use of the property, and therefore, we have no authority to rule on this case,  
1439 under the Cochran decision.  
1440  
1441 Ms. Dwyer - Second.  
1442  
1443 Mr. Nunnally - Moved by Mr. Wright; seconded by Ms. Dwyer, that we deny  
1444 it. All in favor, say aye.  
1445  
1446 After an advertised public hearing and on a motion by Mr. Wright, seconded by Ms.  
1447 Dwyer, the Board **denied** application **A-105-2005** for a variance to build a screened  
1448 porch at 11401 Greenbrooke Court (Sadler Grove) (Parcel 746-765-3777).  
1449  
1450 Affirmative: Dwyer, Harris, Kirkland, Nunnally, Wright 5  
1451 Negative: 0  
1452 Absent: 0  
1453  
1454 The Supreme Court of Virginia has determined that a board of zoning appeals may  
1455 grant a variance only after finding that the zoning ordinance "interferes with all  
1456 reasonable beneficial uses of the property, taken as a whole" (Cochran v. Fairfax  
1457 County BZA, 267 Va. 756 (2004)).  
1458  
1459 **UP-29-2005 RICHMOND WASTE SERVICES, LLC** requests a conditional use



1460 permit pursuant to Section 24-116(c)(3) to transfer ownership of  
1461 construction debris landfill at 1820 Darbytown Road (Parcel 809-  
1462 707-1585), zoned M-2, General Industrial District (Varina).  
1463

1464 Upon a motion by Mr. Kirkland, seconded by Ms. Harris, the Board **deferred** application  
1465 **UP-29-2005** for a conditional use permit to to transfer ownership of a construction  
1466 debris landfill at 1820 Darbytown Road (Parcel 809-707-1585).  
1467

1468	Affirmative:	Dwyer, Harris, Kirkland, Nunnally, Wright	5
1469	Negative:		0
1470	Absent:		0

1471  
1472 The Board deferred the request from the November 17, 2005, until the December 15,  
1473 2005, meeting, to allow for advertisement and notification under the new applicant's  
1474 name.  
1475

1476 Mr. Nunnally - June 23, 2005 minutes.  
1477

1478 Mr. Wright - Page 29, line 1311 – should read “your”; page 54, line 2466  
1479 – remove the bracket at the end of the sentence.  
1480

1481 Ms. Harris - Page 4, lines 135-6 – should that “thank you, Dave,” be  
1482 there?  
1483

1484 Mr. Nunnally - I think that was in answer to Mr. O’Kelly, right?  
1485

1486 Mr. Kirkland - Yes.  
1487

1488 Ms. Dwyer - Dave must have done something nice.  
1489

1490 Ms. Harris - Page 5, line 213 – I’m not sure that this needs to be – is that  
1491 where it should be? Maybe she had not completed her statement, I don’t know.  
1492

1493 Mr. Blankinship - You’ll see that frequently in minutes where something is said  
1494 that isn’t grammatically correct, or just doesn’t make any sense. But if that’s what was  
1495 said in the meeting, that’s what goes on the paper.  
1496

1497 Ms. Harris - Page 48, line 2171 – I hope I said “in the Code,” but I don’t  
1498 know what I said at that point.  
1499

1500 Ms. Dwyer - I have a couple. Page 51, line 2297 – should be “is” and not  
1501 “us.” Page 53, line 2385 – “buildings are visible from residences behind when the trees  
1502 leave” should be “when the trees lose leaves.” Page 59, when we’re talking about in the  
1503 case, having a condition that specified the building color, that it be a dark color, and not  
1504 a bright reflective color, and that’s not reflected in the conditions, so I just wanted to  
1505 double check on that and make sure that the applicant had noticed that we were

1506 specifying building color, that it was to be dark green or brown, to blend in with the  
1507 scenery.  
1508  
1509 Mr. Blankinship - I'll go back and check my minutes. Sometimes conditions  
1510 are discussed during the hearing, but they're not actually adopted at the time.  
1511  
1512 Mr. Wright - I thought we did.  
1513  
1514 Ms. Dwyer - In this case, if you look at the top of the page, Mr. Wright  
1515 says "Do we have all the conditions straight, Ben? And then Ben says, "hours of  
1516 operation, nuisance, walls, insulated, and that the color should be dark green or brown,"  
1517 so that was not only discussed, but clearly agreed to. It's not in the condition.  
1518  
1519 Mr. Blankinship - What's the case number there?  
1520  
1521 Ms. Dwyer - Case number UP-11-2005.  
1522  
1523 Mr. Blankinship - I guess we'll have to correct the minutes too, to get that in  
1524 the correct conditions, as well as the action letter to let them know.  
1525  
1526 Ms. Harris - On page 57, did you read that, when you mentioned in terms  
1527 of color?  
1528  
1529 Ms. Dwyer - And before, it was confirmed later by Mr. Blankinship  
1530 himself. If you could just check and make sure all those conditions were put in there  
1531 that the applicant was notified. I'm not sure the soundproofing was put in there, now  
1532 that I'm looking.  
1533  
1534 Mr. Blankinship - Will do.  
1535  
1536 Mr. Wright - I move we approve the minutes as corrected for June 23.  
1537  
1538 Ms. Dwyer - Second.  
1539  
1540 Mr. Nunnally - Motion by Mr. Wright; seconded by Ms. Dwyer, that the  
1541 minutes of the June 23, 2005, meeting be approved as corrected. All in favor, say aye.  
1542  
1543 On a motion by Mr. Wright, seconded by Ms. Dwyer, the Board **approved as**  
1544 **corrected**, the Minutes of the **June 23, 2005**, Henrico County Board of Zoning Appeals  
1545 meeting.  
1546  
1547 Mr. Nunnally - July 28. I have one here on page 1, line 17 – it says "I hope  
1548 I don't have you cut me up on the platform before the next term's up." I think that  
1549 means "help me out."  
1550  
1551 Ms. Harris - Page 18, line 1813 – I think the word was "house," rather

1552 than "hours."  
1553  
1554 Mr. Nunnally - Any others in July?  
1555  
1556 Mr. Kirkland - I move that we approve as corrected, the July 28, 2005,  
1557 meeting minutes.  
1558  
1559 Ms. Harris - Second the motion.  
1560  
1561 Mr. Nunnally - Moved by Mr. Kirkland; seconded by Ms. Harris, that the July  
1562 28, 2005, meeting minutes be approved as corrected. All in favor, say aye.  
1563  
1564 On a motion by Mr. Kirkland, seconded by Ms. Harris, the Board **approved as**  
1565 **corrected**, the Minutes of the **July 28, 2005**, Henrico County Board of Zoning Appeals  
1566 meeting.  
1567  
1568 Mr. Nunnally - And August.  
1569  
1570 Ms. Harris - I move that the August 25 minutes be approved.  
1571  
1572 Mr. Kirkland - Second.  
1573  
1574 Mr. Nunnally - Moved by Ms. Harris; seconded by Mr. Kirkland, that the  
1575 August 25, 2005, meeting minutes be approved. All in favor, say aye.  
1576  
1577 On a motion by Ms. Harris, seconded by Mr. Kirkland, the Board **approved** the Minutes  
1578 of the **August 25, 2005**, Henrico County Board of Zoning Appeals meeting.  
1579  
1580 Mr. Wright - I move we adjourn.  
1581  
1582 Ms. Dwyer - Second.  
1583  
1584 Mr. Nunnally - Moved by Mr. Wright, seconded by Ms. Dwyer, that we  
1585 adjourn. All in favor, stand up.  
1586  
1587 There being no further business, and on a motion by Mr. Wright, seconded by Ms.  
1588 Dwyer, the Board adjourned until **December 15, 2005**, at 9:00 am.  
1589  
1590  
1591  
1592 James W. Nunnally  
1593 Chairman  
  
1594  
1595 Benjamin Blankinship, AICP  
1596 Secretary